

UNIVERSITY OF LONDON

THE LONDON SCHOOL OF ECONOMICS AND POLITICAL SCIENCE

GOVERNMENT DEPARTMENT

**THE REGIONAL DIMENSION IN PROMOTING HUMAN
RIGHTS AND THE RULE OF LAW IN NEW DEMOCRACIES:
THE POLICE CASE IN ECUADOR AND POLAND**

AUTHOR: OLAYA HANASHIRO

DEGREE: PhD

2010

UMI Number: U615344

All rights reserved

INFORMATION TO ALL USERS

The quality of this reproduction is dependent upon the quality of the copy submitted.

In the unlikely event that the author did not send a complete manuscript and there are missing pages, these will be noted. Also, if material had to be removed, a note will indicate the deletion.



UMI U615344

Published by ProQuest LLC 2014. Copyright in the Dissertation held by the Author.
Microform Edition © ProQuest LLC.

All rights reserved. This work is protected against
unauthorized copying under Title 17, United States Code.



ProQuest LLC
789 East Eisenhower Parkway
P.O. Box 1346
Ann Arbor, MI 48106-1346

THESES

F

9463



12 75780

ABSTRACT

The democratisation process experienced by third wave countries demonstrates the complexity of the relationship between democracy and human rights. The incompleteness of the legal state reveals some interconnectedness between democratisation and human rights protection, which this research explores in order to understand how countries starting democratisation in similar political and civil rights conditions ended up with different civil citizenships and control of the security apparatus in their new democracies.

In debate with Modernisation theory, this research argues the importance of political factors and a legal state for the expansion of civil citizenship. As much as socio-economic indicators and the development of a welfare state impact human rights, the possibility of their violation is embedded in the laws and practices inherited from non-democratic regimes and political dynamics that reproduce them. At the same time, in a debate with Transition theories, this work emphasises the potential impact of regional factors in the democratisation process and the relevance of reintroducing geopolitical elements to the discussion.

The regional dimension presents different categories of influence. In order to identify regional factors related to the democratic aspects discussed here, this research focuses on regional mechanisms for promoting human rights and the rule of law, as well as on the regional cooperation or assistance related to law enforcement areas, most specifically to the police institution.

Through a comparative analysis of the police in Ecuador and Poland, this research discusses: (1) the relationship between the agents of the security apparatus and ordinary citizens; (2) the domestic and regional institutional network that regulates and controls the lawlessness of their activities; and (3) regional environments that promote changes or constrain attempts toward their democratisation.

In summary, this research aims to verify whether or not the regional dimension has impacted the democratic salience of the rule of law and human rights in the democratisation process.

To Sílvia, Getúlio and Javier

Acknowledgements

As we know writing a thesis is not only an intellectual challenge but also an emotional long marathon to resist, sometimes with more obstacles one could anticipate. Thanks to so many people and institutions it was possible to accomplish this challenge.

I am full of gratitude to my supervisors at the Government Department of the LSE, Professor Francisco Panizza for all his comprehension and support, and Professor Chun Lin for her dedication and motivation; to Professor Bob Hancké, at the European Institute, for his valuable comments and enthusiasm; to Adrián Bonilla for his friendship and institutional support at FLACSO-Ecuador; to CAPES to make this research possible.

Along the research process many people contributed in different ways to the development of this work, it is hard to name all of them, but I am grateful to all the interviewees who enormously contributed to this research; to the generosity of Pedro, Marta Casaús, Jordi, Holly and Andy; and to the friendship, support and shared feelings of old and new friends who are now in different corners of the world: my PhD colleagues, specially Madalena, Hendrik, Kayoko and Chico; Carin, Asdrúbal, Eduarda, Júlio, Jonny, Alicia, Isabel, Rita, Ana, Sônia, Susaninha, Malu, Cris, Pilar, Lucía, Nashira, Norma and Ana Patricia; to my parents, Sílvia and Getúlio, and Carolina and Rodrigo for their constant support and for being my reference in life; to Javier for his support and encouragement for new challenges; and to Danilo and Javier for the beauty and enchantment of life.

CONTENT

Abbreviations and Acronyms	p. 6
Introduction	p. 9
Part I	
Chapter 1- The European Context	p. 35
Chapter 2- The Inter-American Context	p. 61
Chapter 3- Police assistance: Cooperation or Cooptation?	p. 86
Part II	
Chapter 4- Policing Democracy	p. 111
Chapter 5- Poland: Facing Police Reform	p. 142
Chapter 6- Ecuador: Skipping Police Reform	p. 169
Conclusion	p. 198
Methodological Appendix	p. 206
<u>Annex</u>	
Table 1- Countries' ratings for political rights and civil liberties, and freedom status	p. 218
Table 2- Human Development Index (HDI)	p. 219
Table 3- Signatures and status of ratifications of the American Convention on Human Rights until 2009	p. 220
Table 4- Accusations of gross human rights violations received by CEDHU	p. 222
Table 5- Cases initiated by the NCPJ in 2004	p. 223
Table 6- U.S. Assistance to Ecuador (2006)	p. 224
Table 7- Projects developed under agreement between the U.S. and the Ecuadorian government for 2005	p. 225
Table 8- Projects developed under agreement between the U.S. and the Ecuadorian government for 2004	p. 226
Table 9- Ecuadorian Security Budget (2006)	p. 227
Table 10- Female inmates by type of offence (2005)	p. 228
Organisation Scheme of the Polish Police	p. 229
Organisation Scheme of the Ecuadorian Police	p. 230
Chronology of the US military and clandestine operations in Latin America and Caribbean countries since the post World War II	p. 232
Bibliography	p. 233

Abbreviations and Acronyms

AI	Amnesty International
AID/USAID	United States Agency for International Development
ALDHU	Latin-American Association of Human Rights (<i>Asociación Latinoamericana de Derechos Humanos</i>)
AR	Andean Region
ATA	Anti-terrorism Assistance Programme
AVC	<i>Alfaro Vive Carajo</i>
BCPR	Bureau for Crisis Prevention and Recovery
BSW	Internal Affairs Bureau (<i>Biuro Spraw Wewnętrznych</i>)
CAF	Andean Development Corporation (<i>Corporación Andina de Fomento</i>)
CAN	Andean Community of Nations (<i>Comunidad Andina de Naciones</i>)
CARICOM	Caribbean Agreement and Common Market
CARIFTA	Caribbean Free Trade Association
CEDHU	Ecumenical Human Rights Commission (<i>Comisión Ecuménica de Derechos Humanos</i>)
CFSP	Common Foreign and Security Policy
CIA	Central Intelligence Agency
CICAD	Inter-American Drug Abuse Control Commission (<i>Comisión Interamericana para el Control del Abuso de Drogas</i>)
CICTE	Inter-American Committee against Terrorism (<i>Comité Interamericana contra el Terrorismo</i>)
CONAIE	Confederation of Indigenous Nationalities (<i>Confederación de Nacionalidades Indígenas</i>)
CPT	Committee for the Prevention of Torture
CSCE	Conference for Security and Cooperation in Europe
CSO	Committee of Senior Officials
DEA	United States Drug Enforcement Administration
DNA	Anti-Narcotics Office (<i>División Nacional Anti-drogas</i>)
DOD	Department of Defence
DOJ	Department of Justice
DPS	Department of Public Security
EC	European Community
ECE	East Central Europe
ECJ	European Court of Justice
ECSC	European Coal and Steel Community
EHR	European System for Protection of Human Rights
EIDHR	European Instrument for Democracy and Human Rights
ENPI	European Neighbourhood and Partnership Instrument
EP	European Parliament
EPC	European Political Cooperation
ERCAIAD	Andean Community Regional Counter-drug Intelligence School (<i>Escuela Regional de la Comunidad Andina de Inteligencia</i>)
EU	European Union

EUMC	European Monitoring Centre on Racism and Xenophobia
FAA	Foreign Assistance Act
FARC	Revolutionary Armed Forces of Colombia (<i>Fuerzas Armadas Revolucionarias de Colombia</i>)
FBI	Federal Bureau Investigation
FRA	European Fundamental Rights Agency
FTA	Free Trade Agreement
FTAA	Free Trade Agreement for Americas
FUT	Workers Unit Front (<i>Frente Unitario de Trabajadores</i>)
GAO	General Accountability Office at the US Congress
GDP	Gross Domestic Product
GEMA	Special Anti-Narcotics Mobile Group (<i>Grupo Especial Móvil Antinarcóticos</i>)
GIR	Group for Intervention and Rescue (<i>Grupo de Intervención y Rescate</i>)
GOE	Group for Special Operations (<i>Grupo de Operaciones Especiales</i>)
HDI	Human Development Index
IAA/IAAA/COIAA	Office of the Coordinator of Inter-American Affairs
IACD	Inter-American Agency for Cooperation and Development
IACHR	Inter-American Commission on Human Rights
IACP	International Association of Chiefs of Police
IAHRS	Inter-American System for Protection of Human Rights
IAPA	Inter-American Police Academy
ICCPR	International Covenant on Civil and Political Rights
ICITAP	International Criminal Investigative Training Assistance Programme
IDB	Inter-American Development Bank
IFIs	International Financial Institutions
INL	State Department's Bureau of International Narcotics and Law Enforcement Affairs
INM	Bureau of International Narcotics Matters
IPA	Instrument for Pre-accession Assistance
IPA	International Police Academy
JHA	Justice and Home Affairs
JSSR	Justice and Security Sector Reform
KGP	Commander in Chief of the Police (<i>Komenda Główna Policji</i>)
MAP	Military Assistance Programme
MERCOSUR	Southern Cone Common Market (<i>Mercado Común del Sur</i>)
MEM	Multilateral Evaluation Mechanism
MO	Citizens' Militia (<i>Milicji Obywatelskiej</i>)
MSWiA	Ministry of Interior and Administration (<i>Ministerstwo Spraw Wewnętrznych i Administracji</i>)
NAFTA	North American Free Trade Agreement
NAS	Narcotics Affairs Section
NATO	North Atlantic Treaty Organisation
NCPJ	National Court of Police Justice (<i>Corte Nacional de la Justicia Policial</i>)
NGO	Non-governmental Organisation
OAS	Organisation of American States

ODECA	Organisation of Central American States (<i>Organización de los Estados Centroamericanos</i>)
ODIHR	Office for Democratic Institutions and Human Rights
OECD	Organisation for Economic Cooperation and Development
OPS	Office of Public Safety
ORMO	Voluntary Reserve of the Citizens' Militia (<i>Ochotnicza Rezerwa Milicji Obywatelskiej</i>)
OSCE	Organisation for Security and Cooperation in Europe
PHARE Economy	Poland and Hungary Assistance for the Restructuring of the
PSC	Social Christian Party (<i>Partido Social Cristiano</i>)
SB	Security Service
SICA	Central American Integration System (<i>Sistema de Integración Centroamericana</i>)
SIRG	Summit Implementation Review Group
SIU	Special Investigative Units
SPA	Secretariat for Political Affairs
UOP	State Protection Agency (<i>Urząd Ochrony Państwa</i>)
UPD	Unit for Promotion of Democracy
UK	United Kingdom
UN	United Nations
UNASUR	Union of the South American Nations (<i>Unión de las Naciones Suramericanas</i>)
UNDP	UN Development Programme
UNFPA	United Nations Population Fund
UNHCR	United Nations High Commissioner for Refugees
UNICRI	UN Interregional Crime and Justice Research Institute
URSS	Union of Soviet Socialist Republics
US	United States of America
USFQ	University San Francisco de Quito
WTO	World Trade Organisation
ZOMO	Motorised Reserve Citizens' Militia (<i>Zmotoryzowane Odwody Milicji Obywatelskiej</i>)

Introduction

Given the wave of enthusiasm for widespread processes of democratisation in different continents around the world, it is necessary to face the continuous and new challenges imposed by those processes. In Latin America, the hope in the 1980s was that the end of dictatorships would also imply the end of the abuse of power. However, if this was partially true for the political opposition in ensuing governments, it was not true for most of the population.

The democratisation process experienced by third wave countries¹ demonstrates the complexity of the relationship between democracy and human rights. A great deal of confusion exists over the relationship between human rights protection and democracy. Although strongly interconnected, they are not the same. The degree of closeness between them depends very much on the concept of democracy implied as well as on the instruments available for its promotion. For this reason, democracy and human rights must be analytically decoupled.

Recognising that human rights protection and democracy are not the same does not mean that democratic regimes can neglect human rights issues, or that they should follow Samuel Huntington's advice of not prosecuting human rights abusers². Deeper reconciliation in a society and a consolidated democracy require dealing with the crimes committed by authoritarian regimes, giving formal apologies to victims and their families and punishing those responsible for the crimes in accordance with democratic laws. The justice system may become more efficient in dealing with those crimes after a period of democratic experience; however, the possibility that this efficiency will produce a democratic and human rights-oriented culture requires a place for these issues in the political agenda. The same examples used by Huntington³

¹ The first wave of democratisation was between 1828 and 1926, the second one was between 1943 and 1963, and the third wave started in 1974 with Portugal (Huntington 1991 p. 16).

² Guidelines for Democratisers 4: "(1) If transformation or transplacement occurred, do not attempt to prosecute authoritarian officials for human rights violations. The political costs of such an effort will outweigh any moral gains" (Huntington 1991 p. 231).

³ In Southern Cone countries there have been many attempts to deal with the past. Since the Presidency of Fernando Henrique Cardoso, the Brazilian state has recognised its responsibility in past crimes and has created a Commission to review those cases and indemnify victims or their families. Argentina and Chile are also reviewing their laws of general amnesty. For the first time, early in 2006 the Supreme Court of Chile admitted complaints related to human rights violations against the former Dictator

in his argument demonstrate the necessity to deal with the past in order to protect the present and to strengthen the future of democracy. Reconciliation with the truth and with justice is a necessary epilogue for every authoritarian past, and it is an important part of the continuum of the democratic process.

At the same time, the protection of human rights from state violence cannot be limited to the violations that have already been committed. It is the legal framework that creates the core of human rights protection. Without guarantees or “the right to have rights,” to use Hannah Arendt’s expression, it is not possible to effectuate any protection *vis-à-vis* the state. As Koszeg (in Kádár 2001 p. 5) observes:

“The possibility of such rights violations is embedded in the law, which gives rough and general indications to law enforcement agencies, especially the police, concerning the extent of human rights and limits on the use of force; it is embedded in the internal structure of these organisations, in a police force that functions like a military machine, by following orders unquestioningly; it is embedded in inherited practices, in a philosophy openly expressed – or sometimes sworn in secret.”

Addressing past crimes and strengthening a liberal and democratic rule of law are both necessary for building democracy.

Due to the approach defined here, this research does not address past crimes issues, it focuses in particular on a “problématique of democracy” that O’Donnell (1999 p. 325) has identified as critical for any democracy; that is, the legal state specifically regarding the effective extension of civil citizenship and accountability under the rule of law. The incompleteness of this legal state implies some interconnectedness between democratisation and human rights protection that this research aims to explore in order to understand how countries that began to democratise under similar conditions, mostly with regard to political and civil rights, ended up with different types of control over the state’s repressive apparatus in their new democracies.

General Augusto Pinochet. In Uruguay, the government of Tabaré Vasquez, inaugurated in 2005, also started to investigate past crimes.

Full human rights protection requires deep reforms for countries moving away from an authoritarian past. Not only must the government democratise, but the state must also, a fact very often obliterated by the dominant discussion on the political system. Based on this assumption, this research elaborates on the legal state and the reforms to democratise it. In order to develop the discussion about the democratisation of the legal state, this research looks at the relationship between the state and its population specifically through the analysis of the police, its principles and functioning in new democracies. The discussion about the police will attempt to build a bridge between formal human rights and their protection in practice.

Protecting human rights in their most basic aspect and controlling the state's repressive apparatus are an old challenge in a new context; new not only in their domestic aspects of new democracies but also in their regional and international environment of a more dynamic and tight interrelations. For this reason, this research focuses on one aspect seldom explored about democratisation processes: their regional dimension. It looks comparatively at the impact that the regional political environment may have in the protection of human rights, more precisely at the control of the police institution in order to protect not only the political opposition but also all vulnerable groups in society. This research elaborates on the argument that there is a close connection between human rights protection and regional initiatives, and also between the regional environment and the priorities established in the democratisation process. Domestic concerns about the legal person have more and more connection to its regional construction.

Composing Democracy: Time and Chord

A discussion within the framework of a democratisation process requires clarifying some aspects of this process and of specific sets of institutions. Without missing the integral vision of this process, it is relevant to identify separately the different interrelated questions in debate.

The first question concerns the concept of democratisation implicit in this research. This process is usually divided into three stages: liberalisation, democratic transition,

and democratic consolidation. Liberalisation is identified as the moment when there may be some changes in policy and the introduction of some legal safeguards for individuals, such as *habeas corpus* (Linz and Stepan 1996 p. 3), but since it starts under a non-democratic regime and is characterised by the mere toleration of opposition, the main changes are in the sense of softening the regime. During liberalisation there may also be an increasing concern about international public opinion; however, the relationship with international human rights regimes, when it is not totally ignored, is still openly conflictive. As this research focuses on the contradictions present in an already democratic context, it will skip the discussion of the liberalising phase.

Democratic transition may still embrace liberalisation, but it implies a further transition, which means that the opposition is not only tolerated but is able to compete for the control of government. Open contestation and free association are permitted and competitive elections introduced. At the international level, the attitude toward human rights regimes starts to change as states desire to be well accepted in the international community and have more access to financial funds. Most changes in this period are related to political and, to some extent, civil rights.

Democratic consolidation, in turn, is considered as the process that leads democracy to become the “only game in town” (Linz and Stepan 1996), when “democracy acquires deep and widespread legitimacy among all major elite groups and the citizenry at large” (Diamond and Plattner 1996 pp. xxviii-xxix) and it is sustained in its behavioural, attitudinal and constitutional dimensions. Democratic consolidation, following Juan Linz and Alfred Stepan (1996 p. 6), presents three dimensions. The first one, behavioural, implies the absence of threat and acceptance of alternative proposals for democracy from any group in the country. The second dimension, attitudinal, means that democracy has strong support from public opinion. The third one, constitutional, indicates that all forces in the country are subjected and habituated to law. Put in a different way, democratic procedures and institutions are responsible for resolving any conflict in society.

Some authors emphasise specific elements during this process, such as strong political parties for political stabilisation and legitimate representation (Sartori 1976;

Pridham and Lewis 1995) or the advantage of parliamentarism to avoid critical conflicts between the executive and legislative branches of government (Linz 1990; Linz and Valenzuela 1994a and 1994b; Horowitz 1990). Others highlight the necessity of a democratic political culture for a real commitment to democracy (Dahl 1971), focus on socio-economic conditions (Lipset 1980; Przeworski 1995), or stress the importance of accountability to provide space for the opposition and underprivileged groups in society to dialogue and negotiate (Mendez, O'Donnell and Pinheiro 1999).

It is difficult to determine precisely when a democratic regime becomes consolidated; depending on the emphasis received by certain elements, the concept of democratic consolidation may be very controversial. In fact, it is intrinsically related to the concept of democracy assumed⁴. The utility of the term “democratic consolidation”, for instance, is questioned by O'Donnell (in Diamond et al. 1997) when applied to the new democracies since he identifies them with polyarchies; that is, basically synonymous with political institutionalisation⁵. According to Dahl (1971 pp. 3-8), a polyarchy is based on three opportunities: (1) to formulate preferences, (2) to signify preferences, and (3) to have preferences weighted equally in the conduct of government. The struggle for democracy, in this case, is grounded in political freedoms⁶. The challenge for new democracies or polyarchical regimes is to incorporate a liberal component, which means solving the paradox pointed out by Zakaria (2004 pp. 101-102) of conciliating democracy that is about the accumulation and use of power with constitutional liberalism that is about the limitation of power. Introducing accountability and strengthening civil rights become more difficult for

⁴ Collier and Levitsky (1996) describe five different types of democracy: the electoralist; procedural minimum; expanded procedural minimum; established industrial democracy; maximalist definition.

⁵ A formal democracy as opposed to substantive democracy, in Agnes Heller's terms, or a low intensity democracy in opposition to high intensity democracy in Boaventura Souza Santos' expression. O'Donnell also uses a similar term “low intensity citizenship” for new polyarchies where individuals are citizens in terms of their political rights, but not their civil rights due to violations of the law at a social level (Mendez, O'Donnell and Pinheiro 1999 p. 320).

⁶ Therefore, polyarchies require the following institutions for their consolidation: (1) freedom to form and join organisations, (2) freedom of expression, (3) right to vote, (4) eligibility for public office, (5) right of political leaders to compete for support and for votes, (6) alternative sources of information, (7) free and fair elections, and (8) institutions for making government policies depend on votes and other expressions of preferences. O'Donnell adds three other requirements: (8) elected officials (and some appointed persons, such as high court judges) should not be arbitrarily terminated before the end of their constitutionally mandated terms; (9) elected officials should not be subject to severe constraints, vetoes, or exclusion from certain policy domains by other, non-elected actors, especially the armed forces; and (10) there should be an uncontested territory that clearly defines the voting population (O'Donnell 1998 pp. 34-51).

these new regimes, since they have followed a reverse historical sequence in relation to the expansion of subjective rights in comparison to the most developed democracies, where civil citizenship preceded political citizenship (Mendez, O'Donnell and Pinheiro 1999 p. 324).

Rather than engaging in the discussion about the definition of democracy and its consolidation, this research starts from three interrelated assumptions about democracy and democratisation. First, polyarchy, despite its initial contradiction with constitutional liberalism, offers a necessary and valuable ground for the struggle to foster a liberal democracy. Second, as a corollary deriving from the previous statement, this research approaches democracy as more than a political regime; in O'Donnell's words (in Mendez, O'Donnell and Pinheiro 1999 p. 321) it should also refer to a "particular mode of relationship between state and citizens, and among citizens themselves, under a kind of rule of law that, in addition to political citizenship, upholds civil citizenship and a full network of accountability". It leads us to a third assumption in this research: that democracy is a long-term and open-ended outcome. In this sense, this research assumes a moderately "constructivist approach" as presented by Whitehead (2002 p. 3), by understanding that "democracy is not just a feasible equilibrium but is a socially desirable and imaginary future".

Comparative Politics Approach: Introducing Two (Sub) Regions

Among the third wave of democratising experiences in member states of consolidated regional human rights regimes,⁷ Latin America and Eastern Europe bring interesting issues for the discussion I propose here. Specifically, the Andean Region (AR)⁸ and East Central Europe (ECE)⁹ permit cross-regional comparisons that, despite the

⁷ Apart from the European System for the Protection of Human Rights and the Inter-American Human Rights System, there is also the African System of Human and People's Rights. The African "Banjul" Charter on Human and People's Rights was adopted in 1981 and entered into force in 1986. In other regions there are only some instruments for human rights protection, but not structured mechanisms with human rights courts.

⁸ AR countries are identified as Bolivia, Colombia, Ecuador, Peru, and Venezuela. They are all part of the Andean Community of Nations (CAN in its Spanish initials), created in 1969, with the exception of Venezuela that withdrew from the community in May 2006.

⁹ ECE countries or the so-called Visegrad Four are constituted by the Czech Republic, Slovakia, Hungary, and Poland. This term comes from the meeting held in Visegrad, Hungary in February 1991 by the prime-minister of Hungary and the presidents of Poland and what at that time was still

oversimplification this perspective implies, do illustrate the link between the theoretical discussion and the empirical evidence. The AR and ECE sub-regions make a clear and interesting case to exemplify the arguments I pursue in this research.

Due to the complexity of variables involved in this research, I have limited the scope for specific comparison to the cases of Ecuador and Poland. In the AR, Colombia and Venezuela do not qualify for the research since they belong to the second democratisation wave (1943-1962). Peru elected its first civilian president in 1980 but experienced a recent reverse period in its democratisation process with Fujimori's military-backed self-coup in 1992. And Bolivia, with its first civilian president elected in 1982, presents stronger ethnic tensions and a higher level of poverty compared to Ecuador. Among ECE countries, Slovakia and the Czech Republic make a special case since they emerged from a country-split process. Hungary could make a possible case for comparison, but it shares fewer social, political, and cultural similarities with Ecuador than Poland does.

In both sub-regions, Ecuador and Poland were the first countries to initiate transition. Ecuador started the democratisation process with the new Constitution and the election of a civilian president, Jaime Roldós, in 1979. In Poland the roundtable discussions between the Party-State regime and the opposition ended Communist rule in 1989, and in 1990 Lech Walesa, the leader of the Solidarity movement, was elected president. Both countries, as will be further developed, started their transition through a negotiated process between the authoritarian forces and the new democratic ones. The difference in time for the beginning of transition in both sub-regions does not interfere in the analysis. The decade that separates the Ecuadorian and the Polish initiating process, and especially the end of the bipolar world, make the conditions I propose to discuss and the importance of the regional dimension more visible; furthermore, they make the analytical decoupling between democracy and human rights more necessary.

Czechoslovakia to discuss mutual cooperation. In October of the same year, these countries signed a cooperation agreement in Krakow, Poland, and in December 1992 they created the Central European Free Trade Agreement (CEFTA).

In terms of human rights violations, both countries presented a moderate repression when compared with other non-democratic regimes. If we look at the survey conducted by the Freedom House to measure political and civil rights, both countries initiated transition with a similar situation (see Annex, Table 1). In 1979, Ecuador was considered a free country with a score of two for political rights and four for civil rights, while Poland in 1989 was considered only partly free and scored four for political rights and three for civil rights. However, from their respective second years of democratic elected government, both were considered free and scored the same, two for both political and civil rights.

Although Ecuador and Poland have different historical developments, both countries share a past formation based on Western values. In Poland, the European liberal values were well established, as much as in other parts of the West (Whitehead 1996 p. 359). Both are also deeply religious countries with a strong and prominent representation of the Catholic Church.

Additionally, Ecuador and Poland present regional strategic positions. Ecuador has borders with Colombia, a country emerged in an internal conflict for decades, and it constitutes part of the “Pacific corridor” used for drug trafficking and migration, two security issues in the hyper-realist perception of the U.S., the regional hegemonic power. Poland represents a significant border with the East and a virtual “wall” against organised crime, terrorism, and also migration in the perception of European countries. Ecuador and Poland also have a history of territorial dispute. The dispute between Poland and Germany was resolved in 1990 with an agreement between both parties accepting the Oder-Niesse line as their definitive frontier. The dispute between Ecuador and Peru was only resolved in 1998 with the Peace Agreement signed between the two countries. Conversely, both countries have been very sensitive to external influence.

In terms of initial conditions for democratisation, geopolitical concerns, and neighbourhood turbulence, both countries lend themselves to the comparison developed here. By limiting the scope of my comparison to the context of the Andean and East Central European sub-regions, I assume the risk of omitting different sub-regions in the Americas and Europe that also have made a great effort at

democratisation. I acknowledge the potential contribution of those other sub-regions to my research. Although European institutions have had an important role in Southern European countries since their political liberalisation process, the AR and ECE make more interesting sub-regional environment cases due to the external sensitivity both regions presented already during the Cold War. The same criteria are valid for Southern Cone countries, where regional influence is less visible in countries the size of Brazil and, to a lesser extent, Argentina. The Balkan states¹⁰ and Central America, in turn, present a recent experience of internal armed conflict. The AR, as already mentioned, also experienced war after democratisation had started, but the border dispute between Ecuador and Peru did not involve the civilian population. Yet, with the intention of working with specific sub-regional environments, I also omit the isolated cases of Turkey and Mexico.

Notations for Democratic Expansion in Ecuador and Poland

The possibility for democratic expansion involves different interactive and complementary elements that permit one to compare the reality of the countries this research examines. Those elements can be recognised in their main areas of action, which Linz and Stepan (1996 pp. 7-15) identify as five arenas: (1) a lively civil society, (2) a relatively autonomous political society, (3) an economic society, (4) a usable state, and (5) the rule of law.

Civil society is the arena where individuals, groups and movements from all social strata articulate values, create solidarities, and advance their interests (Linz and Stepan in Diamond *et al.* 1997 p. 17). A lively civil society requires two basic institutions: freedom of expression and freedom of association. This arena was paramount in order to mobilise the opposition to non-democratic regimes in both regions. A civil society enables people to generate political debate and alternative policy proposals, as well as to organise institutions and to monitor the government and the state. Concerning human rights, civil society, through manifold organisations, is greatly responsible for generating policies in this field, promoting changes, and

¹⁰ Bulgaria, Rumania, Albania, and the Former Yugoslavia.

activating mechanisms of protection. The question this arena poses to us is why civil society in Ecuador, in comparison to Poland, has not been able to create a civic culture that can push for the strengthening of legal institutions and for the expansion of civil rights. Still following Freedom House's scores for political and civil rights (see Annex Table 1), in the first four years of democratically elected governments, both countries were judged equally free, and both were deemed to have a fertile terrain for the formation and development of civil society groups.

The trade unions in Ecuador, led by FUT (*Frente Unitario de Trabajadores*¹¹), played an important role in the opposition to the military dictatorship during the 1970s, and in the protests against the outcomes of economic policies during the debt crisis that dominated Latin America in the beginning of the 1980s. The Catholic Church has kept a relevant place in Ecuadorian society, but its activities have been mainly local rather than national. The same can be argued about student movements. By the end of the 1980s, new social actors with new demands emerged or were strengthened, such as human rights organisations, women's groups and environmental groups, neighbourhood organisations, and the strongest one, the indigenous movement with its claim for a plurinational state. The indigenous movement has been primarily articulated in CONAIE (*Confederación de Nacionalidades Indígenas*)¹², created in 1986. However, the collective rights of indigenous people and of black communities were recognised for the first time only in the 1998 Constitution, and the plurinational character of society remains to be built.

In Poland, the two main forces in society during transition were the Catholic Church and the Solidarity movement. The Polish Catholic Church, unlike the Hungarian, was not accused of collaborating with the Nazi occupation, and it never publicly compromised with the Communist regime, although it did accommodate it

¹¹ FUT joined three of the five Ecuadorian national labour unions: CEDOCUT (*Confederación Ecuatoriana de Organizaciones Unitarias de Trabajadores*), CTE (*Confederación de Trabajadores del Ecuador*) and CEOSL (*Central Ecuatoriana de Organizaciones Sindicales*). The other two are: UGTE (*Unión General de Trabajadores del Ecuador*) and CEDOC (*Central Ecuatoriana de Organizaciones Clasistas*). With the exception of the UGTE and the CEDOCUT that were organised, but not necessarily legally recognised, in 1982 and 1976 respectively, the others were already organised before the 1970s. CEDOC, the oldest one was organised in 1938 (Vázquez and Saltos 2004).

¹² There are other older indigenous organisations, such as FEI (*Federación Ecuatoriana de Indios*, important during the 1950s and 1960s), FENOCIN (*Federación Nacional de Organizaciones Campesinas, Indígenas y Negras*, important during the 1970s), and FEINE (*Federación Ecuatoriana de Indígenas Evangélicos*), organised in the 1980s by the Evangelical churches.

(Prazmowska 2004 p. 205). The Church was able to keep its moral authority during the non-democratic regime, and saw its support increased with the election in 1978 of the Polish Cardinal Karol Wojtyla to the Papacy. When the transition started, the Church enjoyed a paramount position in society and played a direct role in negotiations between the government and the opposition. At the same time, Poland entered the 1980s with economic difficulties that encouraged workers to form free trade unions, soon named Solidarity. The movement, the largest and most disciplined ever seen in Europe, challenged the regime's control over society and reasserted the Catholic Church as a moral reference and national symbol (Millard in White et al. 2003 p. 24). The declaration of martial law in December 1981 allowed the government to declare Solidarity illegal and to imprison many of its members. In 1986, all prisoners detained under martial law were given amnesty, and in 1988, when new strikes broke out during an economic crisis largely caused by the growing foreign debt, the regime had to turn to Solidarity's leaders to stop protests and try to negotiate some support for economic reforms (Prazmowska 2004 p. 210; Millard in White et al. 2003 p. 24). In 1989, the Solidarity trade union was restored to legality with the leadership of Lech Walesa, and it fully participated in the Round Table Talks that set up the process of democratisation.

Wrongly presented as the opposite of civil society is the political society arena. In both sub-regions, democratisation was stressed by a discourse that emphasised "civil society versus state." Nevertheless, the political arena is also vital for democratic life. It is the space where the competition for legitimate control over public power and over the state apparatus takes place (Linz and Stepan in Larry Diamond et al. 1997 p. 17). The institutional design of a political society may present a complex variation among democracies, from its form of government to its type of party and electoral system. Discussion abounds about what might be the most appropriate arrangement for institutional routinisation aiming to regulate the conflicts inherent in any democratic polity.

Ecuador and Poland are not classic contrasting cases. Poland has adopted a semi-presidential system, at least until the promulgation of its 1997 Constitution that strengthened the parliamentary character of the system; Ecuador, until the reforms introduced by its 1998 Constitution, had a presidential system with parliamentary

elements, such as the possibility of parliamentary motions against ministers of the government cabinet. Both countries, in the beginning of their respective democratisation processes, presented low leadership control over parties, a personal type of vote, high volatility of the party system, and opposition in the legislature leading to, in different degrees, deadlocks in the government. However, despite all the problems and imperfections in its system, Poland was able to advance rapidly in the democratisation process, as the external legitimacy given by its accession to the EU in 2004 suggests. However, in Ecuador, political instability and flaws in its democratic rules have increased in recent years, as illustrated by the downfall of three out of the four most recently elected presidents: Abdalá Bucaram (1996-1997), Jamil Mahuad (1998-2000), and Lucio Gutierrez (2003-2005). In the beginning of the process the perception of democratisation in both countries would point to other directions. Ecuador seemed to have a more stable polyarchical system with fewer problematic polities, and Poland presented a difficult institutional building process.

The third arena is the economic society, responsible for the mediation between state and market through a set of accepted norms, institutions, and regulations, which must be socio-politically established in order to make democracy fundamentally concerned with citizens rather than with consumers. In Ecuador, the previous regimes had left a legacy favouring consolidation in this arena. Ecuador had already stimulated private accumulation, encouraged certain forms of competitiveness, and created fiscal institutions to strengthen an institutionalised market. From the perspective of individual autonomy, at a first glance it would seem that Poland had as many, if not more, serious problems to overcome than Ecuador, since all the sources of status and wealth were concentrated in the state. In addition to the task of consolidating an economic society, the dual transition in Poland presented the paradox of struggling for civil rights while, at the same time, introducing new social relations that are inherently unequal in their ownership structure. During the process of dismantling the communist regimes, citizenship rights were identified with ownership rights (Whitehead 2001 p. 358). Yet, in both countries, the process of democratisation was filled with tension from pressures for the application of neoliberal economic reforms.

The concept of a usable state represents the fourth arena and refers to the state's capacity to accomplish at least the minimal functions implicit in the Weberian

definition of a state; a usable state must be able to exercise a monopoly over the use of force in its territory, protect the rights of its citizens, and deliver the basic services they demand. For that, the state requires a functioning apparatus with rational-legal-bureaucratic norms. Economic crisis and anti-statist reforms tend to increase this deficiency. In Ecuador, the economic crisis over debt and adjustment reforms which mainly favoured the interests of dominant groups in society have aggravated problems regarding the disconnected and less-than-accessible welfare state and have weakened civil citizenship. In Poland, the deficiency was mainly due to the juxtaposition of party and state; when the party was delegitimised, it affected the whole state apparatus indistinguishably, including the consolidated welfare state. Out of different circumstances, both countries faced problems in relation to their delivery of services. However, although it is true that their capacity to deliver social services is not comparable due to the heritage of their previous regime types, this is not true for issues specifically related to the control of their repressive state apparatus and the protection of civil rights, which can be better discussed in the following democratic arena.

Finally, the rule of law is the arena related to the existence of a legal system. A set of rules must be created and must be properly enacted, that is, publicly promulgated by independent and impartial authorities. It must be predictable and equally applied to all people and institutions. It is the central arena for the constitutionalism dimension of democratic consolidation, meaning that the state apparatus and government are also subjected to the law, their power and competence have clear limits, and they are accountable for their actions. The rule of law arena permits the strengthening and expansion of civil citizenship by limiting and constitutionally regulating the government and the state, both of which, as O'Donnell stresses, "exist for, and on behalf of, individuals who are carriers of subjective rights enacted and backed by the same legal system that the state and the government must obey and from which they derive their authority" (O'Donnell et al. 2004 p. 28).

The strengthening of the rule of law requires the existence of an independent judiciary, a police under direct civilian control, and a legal culture which reflects equality under the law and its pre-eminence in civil and criminal matters (Linz and Stepan 1996 p. 308). It is important to emphasise the democratic and liberal nature of

the rule of law in order to empower people to exercise control over their governments and over agents of the state's repressive apparatus (Pribán 2002). The law empty of democratic and liberal principles may be a mere instrument of dominance. The rule of law does not necessarily mean democratic rule, just as democratic rule does not offer an automatic guarantee of human rights. Highly bureaucratic authoritarian states tend to have a proliferation of laws and codes as an instrument to exercise power over their citizens. A famous expression attributed to the Brazilian populist-dictator Getúlio Vargas (1934-1945) illustrates this logic: "For my friends, everything; for my enemies, the law." Thus, the concept of the "rule of law" applied here is not restricted to the idea of formal rules and procedures, since it is not the same to talk about "rule by law," that is, acting accordingly to the law, and the "rule of law," understood as the "legally based rule of a democratic state," in O'Donnell's words (Mendez et al. 1999 p. 318). Yet, according to O'Donnell, the "rule of law" entails: (1) guarantees of polyarchy; (2) civil rights for the whole population; and (3) networks of responsibility and accountability which ensure that all agents, public or private, are subjected to legally established control of the lawfulness of their acts.

It is the development and articulation of all five of these arenas that pushes for further democratisation. However, this research focuses on the last arena, due to the specific elements of comparison it affords. The rule of law arena permits us to focus the discussion on the "triangle of tension" between society, its laws, and its repressive apparatus (Lindholt et al. 2003 p. 6). By delimiting our analysis to the legal state, we avoid entering into a discussion of comparisons between countries that, despite many similarities, also present strong differences in relation to the welfare state. The comparison proposed here involves the relationship between agents of the state's repressive apparatus and ordinary citizens, and specifically concentrates on the third entailment of the rule of law pointed out by O'Donnell, that is: the institutional networks that regulate and control the lawlessness of their activities.

Transition Theory and the Prior Regime Type

In the literature that emerged from regime changes in Southern Europe and Latin America, there is a consensus that the prior regime is one of the determinants of the

transition path and the consolidation tasks, and it is also valid in discussing Eastern European cases (Linz and Stepan 1996 pp. 53-65). In this sense, the possibility of comparison between the democratisation processes in Ecuador and Poland would be frustrated if we strictly contrasted communist regimes, as a monolithic bloc of regimes, and military capitalist regimes without analysing variations that they present in the exercise of power. The pace and degree of Stalinisation in Poland differed from other Party-State countries with regard to: (1) the amount of terror applied and the political violence, which predominated during the takeover and consolidation of power period (1944-47) rather than during the subsequent Stalinisation process (1948-54); (2) the significant capacity retained by the elite for defending its survival; (3) the incomplete collectivisation of agriculture; and (4) the restricted animosity between the regime and the Catholic Church, limited to the trial of only a few members (Sanford 2002 p. 25).

Additionally, as with some post-totalitarian regimes, such as Hungary, Poland had already faced a certain liberalisation process when the transition began. This approximated them to the military bureaucratic regime type in certain aspects on which this research focuses. Already in 1956, as Sanford (2002 p. 29) observes:

T]here was a long drawn out redefinition of the 'Dictatorship of the Pro-[letariat' and the constitutional-philosophical framework for the exercise of the Polish United Workers' Party (PZPR, *Polish Zjednoczona Partia Robotnicza*) hegemony. The Stalinist formulation, that People's Democracy was an inferior variant developing towards the Soviet model, was replaced by Gomulka's national domestic flexibility – although he supported ideological homogeneity, albeit of a looser type, within the Soviet bloc."

Before the democratisation process started in Poland, the "decolonisation process" from the Soviet Union had already begun; Poland experienced changes that increased religious tolerance, enhanced the role of Parliament, and most significant, increased a concern for national over class struggle. After the declaration of martial law in December 1981, the Soviet Union authorised the army and not the Communist Party to assume control of Poland (Prazmowska 2004 p. 208). Whether it was due to a perception that the party was weak or due to fear of a backlash with the party action is

difficult to say, but the point is that the Jaruzelski regime (1981-1989) strengthened the role of the military in the political life of the country.

In addition to the strong military character of both authoritarian regimes, Ecuador and Poland present transitions involving negotiation and pacts. In 1977, the Ecuadorian military leaders announced their desire to leave power, but before they left, a new Constitution was approved by a referendum in 1978. In Poland, the roundtable negotiations between the communist government and the Solidarity movement resulted in a pact for a peaceful transition signed by both parties in 1989, and the reform of the legal order began within the existing constitutional framework. In 1992, the existing Constitution, dubbed “the Empty Constitution” suffered some reforms that led it to be called the “Little Constitution”; it was finally replaced by a new Constitution only in 1997. Both countries kept the constitution of the former regime for many years after initiating the democratisation process.

Regarding political rights, as already observed, there is not much difference between AR and ECE countries in the beginning of their respective democratisation processes. Following the Schumpeterian tradition, which stresses the free competition for votes among political parties as a defining feature of democracy, the countries of both regions could be considered political democracies after the transfer of power from the non-democratic governments to transitional ones and fit within the same category of likelihood for a democratic outcome.

Thus, in relation to the expansion of political and civil rights, the previous regime type *per se* does not preclude the comparison proposed and, in this case, does not explain differences in dealing with the reconciliation of civilian control over the military and police and the definition of their role in society.

Modernisation Theory and the Prerogative of Socio-economic Indicators

Modernisation theory has demonstrated, with much diversity in methodological and conceptual measures, the strong relationship between socio-economic development and democracy (Diamond and Plattner 1992; Huntington 1968; Lipset 1980, 1994;

Przeworski 1995). The developmental indicators most commonly tested in association with democracy are wealth, industrialisation, urbanisation, and education. The higher those indices are, Lipset argues, the more democratic the country is or the greater a chance it has to become so. The main argument is that wealth increases social equality by diffusing power and education, and socio-economic development diminishes radicalism and determines the form of class struggle by permitting “those in the lower strata to develop longer time perspectives and more complex and gradualist views of politics” (Lipset 1980 p. 45). The issue of whether there is a causal relationship between democracy and socio-economic indicators, and in which direction it might go, has generated much controversy. The only consensus in the literature about democracy and development is that higher levels of socio-economic development generate a higher probability of democratic stability or durability (Diamond and Plattner 1992; Przeworski 1995; Leftwich 1993, 1996; Sen 1995). Socio-economic development facilitates democratisation but it is not entirely determinative of it, at least in the short and medium term.

In the beginning of the democratisation process, Poland for instance had an exceptional economic performance; in the period of 1991-1995, its average annual GDP growth was 2.3%. However, Hungary presented a negative growth of 2.2% (World Bank 2002). In the same period, Hungary had an annual average inflation rate of 25% for consumer prices, while Poland reached a problematic three figure-rate, 192% for consumer prices (World Bank 2002). With these indicators it is difficult to find a causal relationship between the economic performance of the two countries and their democratic performance in the region. A look at Ecuador and Bolivia’s indicators will also reveal more intra-regional differences than cross-regional ones. In their first years of democratisation, Ecuador (1979-84) presented an average annual GDP growth of 2.7%, while Bolivia (1982-87) had a negative growth of 1.6%. The Southern European democratisation experience also illustrates the difficult causal relationship between socio-economic performance and democracy. When democratisation started in Portugal in 1974, 23% of its population was illiterate, higher than the illiteracy rate of Ecuador in 1979, it was 18.7%. Other indicators show no better development in Portugal; for example, its GDP growth was only 1.1%.

The human development index (HDI), formulated by the United Nations Development Programme (UNDP), has been adopted to emphasise socio-development rather than economic performance as having a strong correlation with a regime's level of democratisation. The HDI, combining three basic dimensions of human development - a long and healthy life, knowledge, and a decent standard of living – readdresses Lipset's thesis in the terms suggested by Diamond (Diamond and Plattner 1992 pp. 108-109), that the statement of "the more well-to-do a nation, the greater the chances that it will sustain democracy" should be slightly reformulated as "the more well-to-do the people of a country, on average, the more likely they will favour, achieve, and maintain a democratic system for their country." The HDI (see Annex Table 2) shows a significant difference between Poland and Ecuador. However, if we analyse the socio-economic indicators for Ecuador, there are slight improvements that do not correspond to the development of political and civil rights; during the same period, those rights have deteriorated in the country (see Annex Table 1).

By questioning the causal relationship between socio-economic indicators and political and civil rights, I am not denying the positive correlation they have or arguing against the indivisibility of human rights, as it was reasserted at the Vienna World Conference on Human Rights in 1993. However, there are complementary factors to socio-economic conditions that explain the human rights reality in many countries and are also fundamental for its improvement. In addition to socio-economic indicators - affluence, growth with moderate inflation, declining inequality - Przeworski and other authors have suggested three more conditions for democratic endurance: democracy¹³, parliamentary institutions, and a favourable international climate (Larry Diamond et al. 1997). To those conditions, if we want to discuss the possibility of further democratisation, it is necessary to add or emphasise the legal state and its role in the extension of civil rights, and the specific regional environment surrounding those processes.

¹³ This apparently tautological argument of democracy as a condition for democracy is presented by the authors to counter the idea that dictatorship favours development in poor countries. In this vein, observing 135 countries between 1950 and 1990, they argue, there is no evidence that developed dictatorships are more likely to become democracies than poor democracies (Przeworski and Limongi 1995).

Here we also have to argue with another line of the modernisation theory that defines “civic culture” as a precondition for democratisation (Almond and Vera 1963 and 1980). There is no question that civic culture favours a democratic outcome, but it cannot be assumed as a precondition for it, or we risk resembling Tocqueville when he reveals all his aristocratic nostalgia with his idea that freedom is not something that can be taught but is something that one simply has or does not have (Tocqueville 1955). Furthermore, civic culture is not a static institution one country has or does not have; it would be difficult to explain the “reverse waves” of democratisation based on this. In Latin America, after World War II, most countries had already reached an intermediate level of development (O’Donnell 1973); they had exhausted the stage of import substitution and already had a larger urban population when the second wave of authoritarianism took over. It is necessary to look at other domestic factors playing with the logic of the Cold War and its regional politics to understand the authoritarian coalition reconvened under military bureaucratic-authoritarianism (Collier 1979). Modernisation theory can neither explain why countries under dictatorships are able to improve their social and economic indicators nor why countries with low civic culture are able to democratise. Yet, if we take into consideration experience with democracy after World War II, Poland had almost no experience, while Ecuador, Bolivia and Peru, presented at least 10 years of political democracy (Huntington 1991 p. 271).

I do not intend to ignore the importance of socio-economic and cultural aspects, but to call attention to other variables, the legal state and regional politics that also have an important impact on democracy and democratisation. There are problems, as Linz and Stepan remind us (Diamond et al. 1997 p. 31), specifically related to “the functioning of the state (...) that allow us to speak of the quality of democracy separately from the quality of society.” This differentiation between the quality of society and the quality of democracy is important in understanding the complexity of the democratisation process and all of its elements.

Regional Dimension

Another consensus in the transition literature that has emerged from the regime change experiences of Southern Europe and Latin America is that the choice of institutions and policies in the democratisation process is predominantly a domestic affair (O'Donnell, Schmitter and Whitehead 1986). The emphasis of transition and modernisation theories on domestic factors has neglected the analysis of the interaction between democratisation and external factors. The debate on democratisation in Eastern Europe, however, has reasserted the role and significance of the international dimension. Even if the influence of the international context is mediated - and normally it is - through national actors and processes to varying degrees, any regime change is affected by the international political context. This is not to say that international factors are the "prime movers," but to recognise that contemporary regimes are increasingly more affected by them. The problem, as pointed out by Schmitter (in Whitehead 2001 p. 28) is that the international context is a difficult variable to pinpoint.

From the recent debate on democratisation, two assumptions have been stated. First, the effects of the international dimension will be greater and more lasting during a stage of further democratisation than during the initial transition to democracy. As this process advances, new international arrangements will be formed and developed in reaction to this effort and will gain more legitimacy on both levels, nationally and internationally. Secondly, the international dimension that can influence democratisation is regional. The regional context, or international sub-context, is more favourable for the construction of the "structure of opportunities" (Schmitter in Whitehead 2001 p. 40). The regional context presents the most effective channel for external actors to influence domestic politics, not only due to cultural and geographical affinity, but mostly because of contemporary patterns of regional interdependence. The development of multilateral initiatives through regional mechanisms and the formation at regional levels of free-trade areas, common markets, and economic blocs promote the elaboration of regional strategies by all types of interest groups.

In order to deal with the regional factors impinging on democratisation, this research uses the analytical framework elaborated by Whitehead (2001 pp. 3-25), who defines three, sometimes overlapping, explanations for the international dimension of democratisation. The first explanation model, “contagion”, is defined as a parsimonious interpretation based on the idea of a neutral process of transmission that “might induce countries bordering on democracies to replicate the political institutions of their neighbours” (Whitehead 2001 p. 6). Without taking into consideration actors and channels of transmission, this category presents a limited capacity to explain democratisation; it endeavours to explain when and where democratisation starts, but not the content of the process. Particularly in the cases of AR and ECE countries, the domino effect is not very helpful to explain even the initial process in Ecuador and Poland, since the two countries compared were the first in their respective sub-regions to initiate the democratisation process. Additionally, by ignoring the development process in each wave of democratisation, this explanation model does not recognise the international or regional constraints on further democratisation.

The second model, the “control” explanation, rests on “the policy of a third power.”¹⁴ This approach takes into consideration the role played by external actors, their interests, and their instruments and strategies of action. This model permits us to understand the development of the democratisation process, its speed, direction, and limits (Whitehead 2001 pp. 8-15). The control approach used here is related to the indirect systems of support and influence, through allocation of aid, cooperation, specific policies, and political statements, that a third power may use to encourage, restrain or redirect democratisation. Based on a realist approach to international relations, it raises questions about the content and objectives of certain cooperation or assistance policies. Not all regional influences or cooperation strategies are equally effective or positive. They may work in a positive or in a restrictive way to affect the quality of democracy. After the end of the Cold War, more complex and conflicting interests started to orient international and regional assistance. On the one hand, the West became the main source of external influence; on the other hand, the West no longer had a *realpolitik* motive for promoting democracy (Whitehead 2001 p. 383).

¹⁴ Since this research discusses democratisation after its liberalisation phase, the strategy of “powers in decline” is not of interest.

The third explanation model, the “consent” approach, looks at the interaction between external and internal actors in an attempt to reassess the international dimension (Whitehead 2001 pp. 15-16). Bringing the international dimension into debate should not mean that the entire responsibility for democratisation is attributed to international factors. This interaction may take different forms¹⁵, contributing or impeding the generation of consent. Of particular interest is the existence or not of “international structures of consent,” in the case of this research, “regional structures of consent” that permit a democratisation process by convergence¹⁶. These structures may create “democratic conditionality” that makes domestic actors incorporate regional factors into their logic of action. The logic of action by the involved actors is based not only on the imposition of third countries or on the increasing and more complex interdependence, but also on the interests and strategies of internal actors. A positive regional dynamic of interaction also depends on the existence or not of institutions or actors facilitating democratisation, something Whitehead (2001 pp. 265-273) calls “bridging institutions” or “bridging actors.” External bridging institutions may influence democratisation whether or not there are adequate internal bridging institutions and actors. They can form a network with internal actors and institutions, pushing democratisation and creating and strengthening the structures of consent.

To the analytical framework articulated by Whitehead, Schmitter adds conditionality as a fourth approach. Conditionality has emerged as a new element in the international dimension of the democratisation process. The novelty of conditionality in the last decades is that it is not restricted to economic and monetary matters but it also addresses “political objectives” (Schmitter in Whitehead 2001 p. 42). However, I

¹⁵ The four aspects Whitehead (2001 pp. 17-22) distinguishes are: (1) “the territorial limits to successive democratisation and their consequences for established alliance systems”; (2) “the main international structures tending to generate consent for such regime changes”; (3) “the ways in which authentic national democratic actors may be constituted from relatively diffuse transnational groupings”; and (4) “the role of international demonstration effects”.

¹⁶ Among the paths to democracy in which the international dimension is dominant and democracy is promoted by an external actor, Whitehead identifies, at least, five possibilities in his works: (1) democratisation-through-defeat (e.g., Japan, West Germany); (2) democratisation-through-invasion (e.g., Panama); (3) democratisation-through-incorporation (e.g., Puerto Rico); (4) democratisation-through-decolonisation (e.g., the former British colonies in the Caribbean); (5) democratisation-through-intimidation (e.g., Nicaragua); and (5) democratisation-through-convergence (e.g., Portugal, Spain, Greece, Hungary, Poland) (Whitehead 2001 pp. 64-83, 265).

understand conditionality more as an instrument used in the dynamic of either control or consent, rather than as a specific analytical approach. Conditionality as applied here is the definition of political obligations and certain priorities as a prerequisite for obtaining diverse sorts of advantages, from most-favoured-nation treatment or access to aid programmes to membership in specific organisations. Conditionality may have a positive impact on the democratisation process; however, depending on the conditioner's policies, the establishment of certain priorities and the manipulation of incentives may generate contradictory effects.

At the regional level, democratisation processes are inserted not only in the dynamic of sharing democratic and human rights values, but also in the dynamic of state security and economic interests. The complexity of interests involved may be contradictory to the promotion of further democratisation, as Whitehead (2001 pp. 410-411) has observed in the context of contemporary Europe and the Americas, "regional convergence or integration constitutes the main bearer of international influence in support of democracy"; however, "not all regional cooperation strategies are equally democracy-friendly" and "the means used to construct a regional community will affect its subsequent quality and durability".

During the democratisation process it was expected that the relationship with regional human rights regimes would start to consolidate in what should be a strong democratic and cooperative fashion. Overcoming traditional concepts of sovereignty, states would work together with regional human rights organisations to protect and promote human rights, which would imply an effort to reform their domestic institutions *vis-à-vis* international and regional standards. In other words, through the legality provided by human rights regimes, a common political space would be established and potentially become a force for social integration (Pribán 2002 p. 4). However, in many countries democratisation was not automatically nor equally translated into this relationship. The existence of "democratic conditionalities" may explain why democratic and human rights values were incorporated more quickly in certain countries and were protected by a network of national and regional watchdog mechanisms. Issues related to the rule of law arena, such as democratic accountability, rights protection, and law enforcement, demand more time and more international support and cooperation, while issues located in the political arena are

usually “settled through domestic decision-making over a limited period of time” (Whitehead 2001 p. 445).

Thus, the regional dimension of democratisation presents a varied range of analytical approaches. For the purposes of this research, the consent and, to a lesser extent, the control explanations are applied. Both explanatory models incorporate the geopolitical element in the discussion about democratisation processes and provide insights about the speed, extent, and direction of those processes.

In order to pin down the regional factors, I disaggregate the channels of external influence by focusing on the regional mechanisms to promote human rights and democracy, and more specifically, on the regional cooperation or assistance related to law enforcement areas, in particular to the police. This research identifies the interacting stakeholders and institutions at the regional level, and the political dynamic they impose upon the democratisation process through these channels of influence. An increasing number of actors play an important role, if we understand these channels within more diffuse regional social processes; however, this research concentrates on state-to-state or state-to-multilateral organisations interactions.

This research aims to verify whether or not the regional dimension has influenced the content of democratisation in Ecuador and Poland. Two main questions will be developed: the first regards the democratic salience or the centrality of the rule of law in the democratisation process, and the second refers to the regional influence and leverage of this dimension. In order to pursue this discussion, this research analyses comparatively the police institutions of countries located in different regions, Ecuador and Poland.

Structure of the Research

The aim of this research is to discuss the impact of the regional dimension in the strengthening of the rule of law and human rights in new democracies. My hypothesis is that, in the democratic framework, a very domestic issue, such as the reform of the police institution, can be significantly pushed or opposed by regional actors and the

regional institutional network responsible for promoting human rights and the rule of law. Police reform is usually understood exclusively as a response to domestic political and social demands; however, as other elements of democratisation, police institutions can suffer a significant impact from regional political issues with important consequences for the capacity of the state to promote further democratisation and human rights protection.

The first two chapters of this work present the political context of each region; Chapter One describes the European institutional environment and Chapter Two describes the Inter-American context. The objective of these two chapters is to discuss the existence or not of a “regional structure of consent” that facilitates a democratisation process by convergence, and the elements it presents for the strengthening of the legal state.

Chapter Three specifically focuses on the assistance directed at the police institution in each region. It explores the different approaches and interests behind the main existing programmes and their relationship with the institutional framework of each region.

After presenting this broader picture of the subject matter, Chapter Four discusses the issue of policing democracy. From the discussion about the role and functions of the police in democratic regimes, this chapter develops a further discussion about the political obstacles for reforming the police during the democratisation process. The police reform debated here do not concern the technical issues involved in police work, but its political aspects and its role within the state apparatus.

The following two chapters are dedicated to the case studies of this research; Chapter Five addresses the police reform in Poland, and Chapter Six addresses the absence of police reform in Ecuador. For both cases I analyse the police institutions through four issues: (1) the continuity from non-democratic regimes, (2) the existence of external control mechanisms, (3) the respect for human rights, and (4) the interaction with regional politics.

Finally, the conclusive chapter discusses the findings in the analysis of the Polish and Ecuadorian police institutions in the light of the hypothesis and questions debated through the development of this work.

PART I

Chapter 1 - The European Context

Introduction

The purpose of this chapter is to identify the main European processes responsible for promoting and supervising human rights and the democratic rule of law in the region. Special attention is given to the European System for Protection of Human Rights (henceforth the European system or EHRS) in order to highlight its specificity in comparison with its American counterpart discussed in the following chapter. Understanding these systems is the starting point for the theoretical and comparative study that seeks to analyse the regional human rights regimes and their relations with the new democratic states.

In order to do so, three levels of analysis are required. The first is the historical analysis. Tracing the history of the European system makes it possible to identify its foundation and examine its development. Questions to be discussed include the kind of system that was created and the kind of system that is desired to address new demands in the human rights field. The second level of analysis is institutional. The investigation of its internal functioning makes it possible to examine how human rights protection has been institutionalised in the region and, thus, to recognise internal constraints imposed on the system. Finally, the third level of analysis required is political. Stressing the idea that regional human rights systems should be understood as a process rather than a rigid system, it is fundamentally important to identify the political actors involved and the dynamic established by them in the use of different regional mechanisms for human rights protection.

The Origins of the European Human Rights Regime

The initiative to create a European system for protection of human rights started with the move to unify Europe. With the lessons from the punitive approach after the First World War, embodied in the 1919 Treaty of Versailles, the predominant assumption was that the best way to ensure peace in Europe was through regional integration and the institutionalisation of common values. By the same token, the political scenario which arose from the Second World War also stressed the Western European states' desire and sense of urgency to bring the non-Communist countries of Europe together within a common ideological framework; what would be possible only through a form of regional inter-state association. Thus, building European unity and embodying a system of liberal values were not only a response to the atrocities that Europe had witnessed during the war, but also a regional response to Communism.¹⁷

The Council of Europe

Following the favourable climate of the post-war period, in 1948, the International Committee of the Movements for European Unity organised a conference that became to be known as the "Congress of Europe". This congress took place in The Hague on 7 May 1948, and was attended by delegates from sixteen states as well as observers from the United States and Canada.

As it was constituted by groups of different persuasions, great divergences were revealed regarding the type of unity desired, and soon two groups became distinguishable. The first was a group comprised of France, Belgium and Luxembourg; states unconditionally supporting a Europe-wide federation, which was

¹⁷ The idea of European unity to combat external and internal threats was not a product of the 20th century. Already in the Middle Ages it was possible to verify the emergency of a European identity evolving from Christianity and developing in the face of external threats to its territory, and since Renaissance the idea of peace through unity had been discussed and would be further developed by thinkers such as Jean-Jacques Rousseau (1712-1778), Jeremy Bentham (1748-1832), Immanuel Kant (1724-1804) and the Comte de Saint-Simon (1760-1825) (McCormick 1999 pp. 31-43). However, for the purpose and feasibility of this research, the discussion only focuses on the emergence of the European regional arrangements after the Second World War, when the ideas of human rights resumed an international dimension and explicitly merged to the idea of European unity.

a very ambitious idea at that time. The second group was constituted by the United Kingdom, Ireland and the Scandinavian countries; states favouring a form of inter-governmental cooperation.

After long negotiations in Brussels, on 27 and 28 January 1949, the five Ministers for Foreign Affairs of the Brussels Treaty countries - Belgium, France, Luxembourg, the Netherlands and the United Kingdom - reached a compromise for the creation of the Council of Europe. On 5 May 1949, in London, the Council was finally founded with the signing of its statute by Ten European States - Belgium, France, Luxembourg, the Netherlands and the United Kingdom accompanied by Denmark, Ireland, Italy, Norway and Sweden. At that time, the only possible outcome was the creation of a Council consisting of an executive body - the Committee of Ministers comprised of the Ministers for Foreign Affairs of all member states or their deputies - and a purely consultative assembly appointed by the national governments - the Consultative Assembly¹⁸.

In contrast to the initial expectations, the Council of Europe has never become more than a “loose inter-governmental organisation” (McCormick 1999 p. 66). In accordance with the compromise reached, its statute made no mention of drawing up a constitution or any other move to achieve the economic and political union called for by The Hague delegates. Consequently, separate bodies were established later to address questions emerging on the political and economic spheres. In this context, on 9 May 1950, Robert Schuman, the French Foreign Minister, approached all the Council of Europe countries with a proposal for a European Coal and Steel Community (ECSC), which would be provided with specific political and budgetary means. The first motivation for creating the ECSC was mainly the concern of situating the heavy industries of the Ruhr, which had supported Germany’s military power in two wars, within an inter-governmental structure constituted by West Germany and its former adversaries. Thus, the six countries most attached to the ideal of integration - Belgium, France, Italy, Luxembourg, the Netherlands and the Federal Republic of Germany - signed the very first Community treaty on 18 April 1951, the

¹⁸The Assembly was soon reviewed and, in 1951, became the first European parliamentary organ comprising representatives of the national Parliaments of the member states, and providing a deliberative forum for the Council of Europe’s work. In 1974 it would name itself the Parliamentary Assembly.

Treaty of Paris. From this date forward, the regional integration process started paving a new way, institutionally different from the Council of Europe.

The Development of the Council of Europe

The Council of Europe became only one of the starting points for the idea of European integration. Although it has not been pivotal in this process, it has retained a relevant role in the European scenario, and the European Human Rights System operates under its auspices. The Council of Europe presents two distinguished phases of development and expansion. The first corresponds to the building of its organs. From the year of its creation through the 1970s, the organisation gradually developed its structure and its major institutions, including the human rights system. In this period, it also expanded its membership. The new members were, in order of accession: Greece (1949), Iceland (1950), Turkey (1950), Germany (1950), Austria (1956), Cyprus (1961), Switzerland (1963), Malta (1965), Portugal (1976), Spain (1977), and Liechtenstein (1978). Until the 1980s, the Council of Europe remained a Western European institution.

The predominant stability in Europe, with few exceptions, demanded a fairly modest political role in this phase. The first major political crisis that engaged the Council of Europe broke out in 1967, when the Greek colonels overthrew the legally elected government and installed an authoritarian regime. Obviously, this was a serious contravention of the Council's statute and the democratic principles defended by the organisation. As a result, on 12 December 1969, just a few hours before a decision that would have expelled Greece from the Council of Europe, the military regime anticipated action by denouncing the European Convention on Human Rights and withdrawing from the Council. Greece would resume its membership on 28 November 1974 after the fall of the military dictatorship and the holding of free elections.

Another political crisis experienced by the organisation occurred in 1974. The Cypriot crisis arose when the Turkish military intervention partitioned the island and

the reticent efforts for a solution by the Council of Europe, alongside those of the United Nations' Secretary General, failed. A new issue involving Turkey occurred in 1981 when, in response to a military *coup d'état*, the Parliamentary Assembly decided to withdraw the right to a seat by the Turkish parliamentary delegation, which did not resume its place until 1984, after free elections were held.

These crises, even if exceptional, are privileged moments for the analysis of the Council of Europe's role on the European political and institutional scene, and equally important for the analysis of the development of its mechanisms to protect and promote human rights and the rule of law. In this specific situation, the human rights mechanism of the Council of Europe was activated by other member states, and demonstrated the regional support for democracy. For the same reasons, Portugal and Spain would not join the Council of Europe until initiating their democratisation process. Portugal acceded to the Council on 22 September 1976, two years after the “*Revolução dos Cravos*” of 1974, the peaceful revolution that brought to an end to 48 years of Salazarist dictatorship. In its turn, the death of General Franco in 1975 put an end to 36 years of dictatorship in Spain and led to its accession on 24 November 1977.

The second phase of the development of the Council of Europe was inaugurated with the trend emerging in Eastern and Central Europe. This phase of development is characterised by the enlargement of the Council, which has reinforced the ideal of a Pan-Europeanism and given another dimension to the European identity. In this context, the Council of Europe resumed its paramount role as the only organisation capable of encompassing all the countries of Europe once they had adopted democratic rules¹⁹.

In January of 1985, the convocation by the Committee of Ministers for an extraordinary session to discuss specifically East-West relations was already laying the groundwork for rapprochement with the ECE countries; thus, when the *perestroika* occurred in the Soviet bloc countries, the Council of Europe became pivotal in political relations with them. It rapidly became the Council's role and

¹⁹ Council of Europe's Secretary General on 23 November 1989.

purpose to support and to assure that the political, economic and social reforms underway would be irreversible. A series of several exchanges was inaugurated, including visits of the Secretary General and the President of the Parliamentary Assembly to the Soviet bloc countries, as well as visits of their respective delegations to the Council's organs in Strasbourg. As a result, in 1989 the Parliamentary Assembly instituted a special guest status for the national assemblies of states willing to apply the Helsinki Final Act of the Conference on Security and Cooperation in Europe (Helsinki 1975) and the United Nations Covenants on Human Rights (the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights). This status was immediately granted to the assemblies of Hungary, Poland, the former USSR and the former Yugoslavia, opening the way to full accession of the ECE countries.

The end of the Cold War and the democratisation process that took place in Eastern and Central Europe permitted the accession of new members. Finland, whose neutrality during the Cold War had previously been seen as incompatible with the Council's membership, joined it in 1989, and followed in subsequent years, in chronological order by: Hungary (1990), Poland (1991), Bulgaria (1992), Estonia (1993), Lithuania (1993), Slovenia (1993), the Czech Republic (1993), Slovakia (1993), Romania (1993), Latvia (1995), Andorra (1994), Albania (1995), Moldova (1995), Ukraine (1995), the "former Yugoslav Republic of Macedonia" (1995), Croatia (1996), the Russian Federation (1996), Georgia (1999), Armenia (2001), Azerbaijan (2001), Bosnia and Herzegovina (2002), Serbia (2003), Monaco (2005), and Montenegro (2006).

At this time, it has 47 members²⁰. The conditions for the admission of a state to the Council of Europe are stated in the Article Three of its statute: the state "must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms, and collaborate sincerely and effectively in the realisation of the aim of the Council". An applicant state must satisfy

²⁰Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Monaco, Montenegro, the Netherlands, Norway, Poland, Portugal, Romania, the Russian Federation, San Marino, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, the 'Former Yugoslav Republic of Macedonia', Turkey, Ukraine, and the United Kingdom.

the requirements of the Council's Committee of Ministers demonstrating that its legal order is in conformity with this article. The opinion of the Parliamentary Assembly is sought and the Assembly in turn appoints an expert group to advise it. The opinion of the experts is based upon an on-site visit. In 1994, an expert report on the situation in Russia concluded that these requirements were not met (Benhardt et al. 1994), delaying its accession until 1996, and Belarus' special guest status has been suspended due to its lack of respect for human rights and democratic principles.

The European Convention

The predominant ideas and fears of the aftermath of the Second World War reflected on the Council of Europe's Statute presented relevant assumptions for human rights. In its first chapter, it states two principles: "(a) the aim of the Council of Europe is to achieve a greater unity between its Members for the purpose of safeguarding and realising the ideals and principles which are their common heritage, and facilitating their economic and social progress." And, "(b) this aim shall be pursued through the organs of the Council by discussion of questions of common concern and by agreements and common action in economic, social, cultural, scientific, legal and administrative matters and in the maintenance and further realisation of human rights and fundamental freedoms". These principles underline three relevant assumptions. First, the protection of the individual is not an exclusive prerogative of the state. Secondly, it recognises that individuals may need protection against their own state. Thirdly, the values of democracy and the realisation of human rights are a common concern and consequently require a common action, that is, a collective guarantee. The first two assumptions will not be directly discussed here since it is not the aim of this research to discuss the foundation of human rights nor to examine its process of internationalisation. This research concentrates on the questions related to the third assumption, which involves a discussion about the regional political dynamic responsible for human rights protection.

Human rights and democracy, in fact, formed the main subject of the first session of the Consultative Assembly of the Council of Europe, in August 1949. The Assembly

decided to charge its Committee on Legal and Administrative Questions to study the matter of a collective guarantee of human rights. One month later, the Assembly adopted the Committee's report, in which ten rights were identified as subject to a collective guarantee, and the establishment of a Commission and a Court of human rights were proposed. In November of the same year, the Committee of Ministers decided to appoint a Committee of Government Experts to prepare a draft text based on the first report. The draft came few months later; however, numerous political problems remained unsolved and another committee had to be appointed. The Committee of Senior Officials also failed to decide on many points, and the final decision was left again to the Committee of Ministers.

Despite the prompt initiatives to write a draft, it was not possible to come to an agreement on all its parts and, on 7 August 1950, the Committee of Ministers approved a revised draft. The result was a more conservative text than the original proposal on a number of questions, such as the system of individual applications and the jurisdiction of the Court established by the Convention; both were made optional at that time. The European Convention for the Protection of Human Rights and Fundamental Freedoms (henceforth the European Convention) was, thus, signed in Rome on 4 November 1950, and entered into force on 3 September 1953, finally inaugurating what is called the European Human Rights System. For the very first time, the abstract human rights ideals were transformed in a concrete legal framework.

Although the disappointment created by the discrepancy between the states' discourse and initial proposals, and the setbacks in its negotiations, the European Convention was an important achievement and has had a paramount significance for the protection of human rights at the international level. It was the first comprehensive treaty in the world in this field and the first to establish international human rights complaints procedures. Besides its pioneering aspects, over time, it has demonstrated productiveness and effectiveness, and generated the most extensive jurisprudence on this subject.

Rights

The rights set out in the European Convention are derived essentially from the Universal Declaration of Human Rights (1948), and accordingly to its preamble, it was framed “to take the first steps for collective enforcement of certain rights stated in the Universal Declaration”. The early versions of the International Covenant on Civil and Political Rights (ICCPR) were also used as a model for the definition of rights²¹.

Although economic and social rights were reflected in the post-Second World War French, German and Italian constitutions, the writers of the Convention decided to adopt a less controversial text. As it would have been very difficult to reach an agreement about economic, social and cultural rights, the European Convention protects predominantly civil and political rights.

Whether the text adopted was a matter of priority or strategy, it does not obscure the fact that there was an implicit concept of democracy; it reflected the belief that it was first necessary to guarantee political democracy and then to coordinate the economies of the European states for the generalisation of social democracy. In the predominant political and ideological context during the elaboration of the Convention, there was a clear intention by the Western European countries to differentiate what they called “genuine democracy” in the Statute of the Council of Europe from the “people’s democracy” that was promoted by the Communist states (Steiner and Alston 1996 pp. 572-580). Some of the economic and social rights, property rights and right to education for instance, were subsequently addressed in Articles One and Two of the First Protocol to the Convention, but their full recognition would come only with the European Social Charter of 1961, which came into force in 1965. This text is seen as the counterpart of the European Convention of Human Rights in the social sphere; however, it does not have the same effective machinery. The European Social Charter

²¹The Covenant was only adopted by the UN General Assembly in 1966 and, in the meantime, suffered a number of changes. The most significant are related to the articles about derogation and limitation of freedoms of expression, association and religion, and the inclusion of rights absent in the Convention.

only establishes a system of monitoring and reporting on states' obligations and the progress achieved²².

A serious silence in the Convention is also found in relation to some individual rights. The Convention does not guarantee the right of a person in detention to be treated with humanity and dignity as stated in Article 10 of the ICCPR. Article Three of the Convention, which states that "no one shall be subjected to torture or to inhuman or degrading treatment or punishment", has been criticised for its lack of legal meaning due to the generality of its text. For this reason, in 1987, the Council of Europe adopted the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which came into force in 1989. Although this Convention is concerned especially with prevention, it is far more innovative and intrusive in its approach to supervision than the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment adopted in 1984. Unless there are exceptional circumstances, each member state is required to permit the Committee for the Prevention of Torture (CPT)²³ to visit places of detention within the state's jurisdiction (Article Two). Most visits are routine and scheduled

²²The European Social Charter was signed in Rome on 18 October 1961 and came into force on 26 February 1965. The Charter has gradually developed a common body of social rights. It consists of four parts. The first part sets out 19 social rights and principles. The second part contains the legal obligations and specific measures designed to ensure the effective exercise of these rights, which are not binding *per se*. The third reflects the principle of progressive implementation tailored to suit the circumstances of individual states. Each contracting party must agree to be bound by at least five of seven rights, which are considered to be of central importance, and accept at least five of the other rights. The fourth part provides for a supervision system based on the submission of periodic reports by contracting parties.

In the past, the reports were examined by the Council of Europe's Committee of Independent Experts (CIE), whose assessments of compliance and non-compliance were then reviewed by the Parliamentary Assembly and a Governmental Committee (also established under Council auspices). On the basis of all these views, the Committee of Ministers could, by a two-thirds majority vote, make specific recommendations to the state concerned. In addition to being cumbersome and time-consuming, this system vested excessive power in the hands of the representatives of governments who were reluctant to take forceful action even when both the CIE and the Assembly considered it to be warranted. It was only in 1991 that an Amending Protocol introduced major reforms in the report system by giving the CIE exclusive competence to interpret and apply the Charter, significantly downgrading the role of the Governmental Committee, enabling the CIE to engage in an oral dialogue with governments, and, most importantly, enhancing the role of non-governmental organisations.

²³ The Convention established the CPT, which is composed of independent experts. The CPT meets *in camera* and its visits and discussions are confidential as are, in principle, its reports. The latter, however, may be released, either at the request of the state concerned or if the state refuses to cooperate and the CPT decides, by a two-thirds majority, to make a public statement. This occurred for the first time in December 1992, when the CPT concluded, after three visits to Turkey, that the Turkish Government had failed to respond to its recommendations to strengthen legal safeguards against police torture, specifically in relation to the activities of the so-called "Anti-Terror Departments". Virtually all states visited have voluntarily agreed to the release of the CPT's report together with the government response to it.

well in advance but there is also provision for visits with little advance notice. The CPT has carried out four visits to Poland; in 1996, 2000, 2004 and 2009.

The European Convention is also neglected in relation to the rights of members of minorities groups. Under Article 14 (freedom from discrimination), it states a general prohibition of discrimination among individuals, but only in relation to rights it protects, which has raised a number of problems of interpretation. In 1994, the Council of Europe finally established the Framework Convention for the Protection of National Minorities, which entered into force in 1998. It was in part motivated by the adoption of the 1992 UN Declaration on Rights of Members of Minorities and the development of non-binding standards and promotional activities in this field by the Organisation for Security and Cooperation in Europe (OSCE). Due to the complexity and controversy of this issue, however, the Council of Europe had avoided the adoption of specific measures. The Framework Convention does not guarantee the right of self-determination and the Council of Europe still shows certain hesitation in this matter by confining the Convention to programmatic obligations that are not directly applicable and that leave considerable discretion about implementation to the state concerned. The supervision was left to the Committee of Ministers based upon periodic reports to be submitted by member states.

Apart from those new specific conventions, the possibility of future additional provisions through the adoption of optional protocols was also a solution found for many matters that did not reach an agreement during the preparation of the Convention. Since 1952, fourteen protocols have been written, six concerning the guarantee of additional rights²⁴. Thus, some human rights guarantees are found only in protocols with optional acceptance. This gradualist approach, in most cases, has

²⁴Protocol Number One of 1952, in force since 1954, concerns protection of property, the right to education and free elections; Protocol Number Four of 1963, in force since 1988, declares freedom from imprisonment for debt, freedom of movement, the prohibition of expulsion of nationals and prohibition of collective expulsion of aliens; Protocol Number Six of 1983, in force since 1985, relates to the abolition of death penalty; Protocol Number Seven of 1984, in force since 1988, concerns the procedural safeguards relating to the expulsion of aliens, the right to appeal in criminal matters, compensation for wrongful conviction, the right to not be tried or punished twice, and equality between spouses; Protocol Number 12 of 2000 declares a general prohibition of discrimination, it entered into force in 2005; and Protocol Number 13 of 2002, concerns the abolition of the death penalty in all circumstances, in force since 2003. Poland has not ratified the last two Protocols.

permitted the remedy of some of the Convention's defects resulting from the authors' to avoid controversial issues.

The Implementing Machinery

The primary responsibility for the implementation of the European Convention, as for all human rights conventions, rests with the member states themselves at the domestic level. The primacy for domestic resolution is clear in various provisions of the Convention. It states that "everyone whose rights and freedoms (...) are violated shall have an effective remedy before a national authority (...)" (Article 13). Furthermore, the implementation machinery provided in the Convention can only come into play when the domestic remedies are considered to have been exhausted (Article 35); the failure to fulfil this requirement is the most frequent reason for rejection of a case by the system. In addition, the possibility of a friendly settlement proceeding must be sought in the examination of any case (Article 38). The consequence of this primacy is that the implementation of human rights mechanisms may vary accordingly to the particular government's desire.

The European Convention has been able to provide a strong enforcement mechanism compared to other international human rights treaties. One sign of this relative success of the European system is its ability to develop its implementation machinery over time in order to develop an educational role in the region by making human rights more visible in the political debate, establish human rights standards in the region, and make it "justiciable".

As with the incorporation of new rights, the Convention has also faced changes in its mechanisms through the adoption of protocols related to procedural matters. The most important protocol is Protocol Number 11, which reformed the Convention by restructuring its control machinery²⁵; it replaced the two-level system - Commission and Court - with a single permanent Court of Human Rights.

²⁵ It replaced Protocol Numbers Two, Three and Five, and made Protocol Numbers Eight, Nine and Ten otiose. Protocol Number Two, in force since 1970, granted the Court a limited power to give advisory opinions. Protocol Number Three, in force since 1970, and Number Five, in force since 1971,

The Council of Europe has sought to adapt to the radical changes within Europe. In this sense, it has begun to develop a much greater focus on broader rule of law issues, and in 1990 it established a European Commission for Democracy through Law, better known as the Venice Commission because it meets in that city. The Commission has played a discreet but relevant role in addressing important matters in new constitutions and laws.

Together with the task of supporting and monitoring the consolidation of the new democracies and the full respect of human rights, several new challenges were posed to the Council of Europe since it has found itself in a more complex and less stable environment. The conflicts in the former Soviet bloc countries; the upsurge in racism, anti-Semitism, xenophobia and other forms of intolerance; social exclusion and minorities; migration; the increasing levels of unemployment and homelessness; the expansion of organised crime and corruption are some examples of this increasing complexity.

Despite the constraints and problems identified, the European political and institutional dynamic has permitted a great acceptance of the European Convention by its contracting states and has made its reform possible. The changes resulting from the institutional development of the EHRS itself have produced a more transparent and efficient system.

The European Institutional Context

The European system is located within a broader European institutional framework built after the Second World War. The Council of Europe was the first inter-governmental organisation to be founded in Europe in this period, but it was soon joined by other institutions. The result is a complicated institutional architecture with

amended the enforcement machinery. Protocol Number Eight, in force since 1990, contained certain provisions relating to the Commission and the Court; Protocol Number Nine, in force since 1994, established the direct access to the Court by individuals; and Protocol Number 10 changed the majority required for a decision of the Committee of Ministers under the original Article 32 of the Convention. In addition, Protocol Number 14 of 2004, in force since 1 June 2010, amends the control system of the Convention in order to improve the operational efficiency of the Court.

three major mechanisms dealing with human rights' issues. Besides the European system of the Council of Europe, there are human rights mechanisms within the European Union (EU) and the Organisation for Security and Cooperation in Europe (OSCE). These mechanisms operate in very different settings and at times tensions may be created by their attempt to develop comparative advantages. Some arrangements to facilitate consultation and coordination among them exist, but they are still deficient or very recently created.

The European system has the longest and most significant track record in the human rights field. However, this does not diminish the importance of the other mechanisms, particularly in their role of promoting human rights and democracy as European values and supervising their observance. In this sense, the activities of each organisation have been relevant to the others, and to the building of a human rights culture.

The European Union

The origins of the European Union lie in the 1952 European Coal and Steel Community Treaty (ECSC)²⁶, and subsequently in the European Economic Community and the European Atomic Energy Community created by the two 1958 treaties of Rome. Those treaties were amended by the 1987 Single European Act, which for the first time included a section on European Political Cooperation.

With the entry into force of the Treaty on Economic Union on 1 November 1993, signed at Maastricht in 1992, these communities were converted into the European Union, which currently consists of twenty-seven members²⁷. The Maastricht Treaty created the European Union initially composed of three pillars: the European Community (EC), which contains amendments to the EC treaties; the Common

²⁶ Signed in Paris in 1951, it expired in 2002.

²⁷ France, Germany, Italy, Belgium, the Netherlands, Luxembourg (original EEC members in 1957); the United Kingdom, Ireland, Denmark (since 1973); Greece (since 1981), Spain, Portugal (since 1986); Sweden, Finland and Austria (since 1995); Malta, the Czech Republic, Hungary, Poland, Estonia, Slovenia, Cyprus, Latvia, Lithuania, Slovakia (since 2004). Bulgaria and Romania since 2007; Croatia is in accession negotiations; The Republic of Macedonia and Turkey are currently candidate countries and Albania, Bosnia and Herzegovina, Montenegro, Serbia, Kosovo under the UN Security Council Resolution 1244, and Iceland are potential country candidates.

Foreign and Security Policy (CFSP) and the Justice and Home Affairs (JHA) that institutionalised cooperation. The Maastricht Treaty has been revised three times: in 1997 with the Amsterdam Treaty that entered into force in 1999; in 2001 with the Nice Treaty that entered into force in 2003; and in 2007 with the Treaty of Lisbon that came into force in 2009. In 2004, a Treaty establishing a Constitution for Europe was also signed in Europe; however, it failed to be ratified after referendum defeats in France and Netherlands.

Although all twenty-seven members of the European Union are also part of EHRS at the Council of Europe, there has been a prevalence of negative human rights integration in the Union's sphere; that is, a lack of clear human rights policy in relation to its own member states. Some positive integration occurred only by the coincidence of some topics, such as gender discrimination at work due to the issues concerning the common market. There is still some resistance to providing the Union with the means to positively integrate human rights. The adoption of a bill of rights was proposed in the early 1950s; however, none of the treaties related to the European Community and later to the European Union contain such a bill or even a list of enumerating rights. Until 1992 neither fundamental rights nor the concept of European citizenship had been recognised in the various treaties. As a matter of fact, the original constituent treaties were more concerned with protecting states' rights from Community encroachments than with the individuals' rights. Due to the context of the Community, which was driven by economic issues, there was the assumption that these rights should be left to the national level (Steiner and Alston 1996 p. 576).

It is true that the European Court of Justice (ECJ), the judicial organ of the European Union, had already begun to evolve a specific doctrine of human rights in 1969. By recognising the constitutional traditions of the member states and the international treaties accepted by them, together with certain provisions of the Treaty of Rome, the Court of Justice had identified different "normative underpinnings". In this sense, in 1977 the European Parliament, the Council and the Commission issued a Joint Declaration emphasising the importance of those rights and pledging the member states to respect them in the exercise of their powers (Steiner and Alston 1996 p. 576). However, it was only with the Amsterdam Treaty that it was stated for the first time that the EU is founded on the principles of liberty, democracy, human rights, and

the rule of law, and that the European Convention was directly mentioned. The Amsterdam Treaty was also responsible for introducing the possibility of suspending the rights of a member state for human rights breaches, and requiring to the European Court of Justice to apply human rights standards to the actions of the Community institutions (Alston 1999 p. 18). The European Convention on Human Rights has particularly received privileged attention within the Community legal order. The Court of Justice has cited the Convention in its case law, tending to interpret its provisions in line with the approach adopted by the European Court of Human Rights. Nevertheless, the Court of Justice has generally applied the concept of human rights to the actions of the Community itself, but not to actions of its member states (Alston 1999 p. 30), and the role played by the European Convention at the EU still lacks a formal basis. Although the Amsterdam Treaty refers to the European Convention and the European Court of Justice very often cites it, the European Court of Justice concluded that the Treaty must be amended to permit the Union accession to the European Convention.

Already in 1979 the Commission proposed beginning a process to lead the European Community's accession to the European Convention. This proposal for formal adherence was revived in the 1990s; however, it received both technical and political objections (in particular from member states such as the United Kingdom²⁸, Ireland and Denmark which had not incorporated the European Convention into their domestic law). The accession is not only important because of the symbolism of incorporating this important and powerful regional actor, but also for subjecting the Union's measures to the obligations stated in the European Convention, which implies more than only negative obligations. To date, it has continued to face the reluctance of the member states to take action to accomplish a formal accession or to adopt a Union bill of rights *per se* (Steiner and Alston 1996 p. 576) since it may imply new conditionalities for them. In 2000, the Nice European Council adopted the Charter of Human Rights and Fundamental Freedoms. It is a non-binding document that requires a discussion about its incorporation into the EC law. The European Constitution signed in 2004, contained a version of the Charter, however, it was never

²⁸The United Kingdom incorporated the European Convention into its domestic law only in 1998 through the Human Rights Act, which came into force in 2000.

ratified. Additionally, the EU is still not part of any international human rights treaties.

Ironically, the EU has produced a double standard regarding human rights policy. More serious than the lacunae in the judicial protection of human rights within the Union legal order, and the lack of an internal policy and institutional coordination to deal with human right issues that has predominated, has been the lack of coherence in the Union's human rights policies. Membership in the European Convention system became a prerequisite for accession to the Union, and countries seeking accession must review their legislation and practice in order comply with EU requirements for human rights protection, while the Union itself remains outside that system. It is also hypocritical to take into account the ratification of human rights treaties by the states applying for EU membership while not all current EU member states have ratified all of them. The two minority rights treaties adopted by the Council of Europe have been ratified by few EU member states. The European Charter for Regional or Minority Languages, in almost twenty years since its elaboration in 1992, has not been ratified by Belgium, France, Greece, Ireland, Italy or Portugal; the Framework Convention for the Protection of National Minorities, 1995, has not been ratified by Belgium, France, Greece, or Ireland; besides these instruments, some of the additional protocols seeking to update the European Social Charter of 1961 and to provide a more appropriate procedure have not been ratified by many countries. In this sense, the EU's practices are inconsistent relative to negative measures required for third countries.

Recently, internal concern for human rights has started to change with the creation of the European Fundamental Rights Agency (FRA), by a Council Regulation in 2007, in order to extend the mandate of the European Monitoring Centre on Racism and Xenophobia (EUMC) created in 1997, and to provide the Community institutions and member states assistance and expertise on human rights when implementing the Community law. The activities of the Agency are determined by its multi-annual framework. The current framework, covering five years, defined nine thematic areas for action: racism, xenophobia and intolerance; discrimination; compensation of victims; the rights of the child; asylum, immigration and integration of migrants; visas and border control; participation of the EU citizens in the EU's democratic

functioning; information society; and access to efficient and independent justice. The Agency can work outside this framework at the request of the European Parliament, Council or Commission. In 2008, the European Community and the Council of Europe finally signed an agreement for cooperation between the European Council and the FRA with the objective of facilitating consultation, complementing their work and avoiding duplication.

Until the reforms introduced in the last decade, in contrast to the EU's active external human rights policy, at the internal level there was a very fragmented human rights policy within the large institutional apparatus. The Union's institutions had a very vague human rights mandate, and there were few units of the European Commission with a specific mandate in this area, focusing mainly on external activities to promote human rights. They were: Unit Two of Directorate A of Directorate General 1A, responsible for human rights and democratisation; and Unit Four of Directorate General VIII, responsible for the coordination of issues relating to the rule of law, fundamental freedoms, democratisation, and institutional support. There was also the "Standing Inter-Departmental Human Rights Coordination Group" responsible for general guidelines for funding the main external relations human rights budget. It was only in 1999 that the area of Justice, Freedom and Security was expanded into a full directorate general in order to cover this new area of the EU competence.

Regarding the EU's policy towards third countries, since 1986, the EC has given small amounts of aid to some Latin American and ECE countries, with the objective of improving their human-rights records and promoting democratic reforms. Under EP pressure, in 1994, the various EU funds were consolidated under one budget heading, the European Initiative for Democracy and Human Rights with approximately 100 million Euros per year (European Commission 2001 p.13). Although it represents a small percentage of external relations budget, which is already a small percentage of the EU's budget, it is a significant amount in comparison to the budget that other states and international organisations give to the same issues, with the exception of the US (Smith 2003 p. 113).

The EU operative criteria for promotion of democracy has been: (1) genuine, free elections; (2) the 'right' electoral results, i.e. a predominance of pro-democratic

parties; (3) a reasonably stable government; (4) leadership by a credible (and pro-European) figure; and (5) the inauguration of a liberal democratic constitution (Schmitter in Whitehead 1996 p. 43; Pridham 1991 p. 235). In this sense, the EU has established electoral monitoring and assistance programmes.

In contrast to the US “carrot and stick” policies, until the 1980s the Community refused to use aid or trade agreements to punish human rights violations. EC trade sanctions were used for the first time in 1982, when the EPC condemned the USSR for the imposition of martial law in Poland (Smith 2003 p. 65-66). And, starting in 1983, the EP has adopted an annual report and resolution on human rights in the world. This report is used to review the Community activities in order to request that the Commission link EC aid with minimum conditions of human-rights protection and build human-rights considerations into development programmes and cooperation agreements with third countries. By the end of the 1980s, the Community became an active promoter of political conditionality, applying measures such as the suspension of aid, or trade preferences in favour of a more pro-active emphasis on promoting the development of democratic-institutions, strengthen the rule of law, working through civil society and funding specific human rights initiatives (Alston 1999 p. 30). In 1987 and 1988, for instance, it refused to approve financial protocols with Turkey and Israel over human-rights concerns (Smith 2003 p. 104). However, the predominant assumption in most EU programmes has been that “development itself contributes to better protection of human rights and democratic principles” (Smith 2003 pp. 113-114)²⁹.

²⁹ In 2005, the EU launched the European Consensus for Development, a policy statement that identifies values, principles, commitments and goals to be followed by its Directorate-General, EuropeAid, responsible for implementing external aid programmes designed by the Directorate General for Development for Africa, Caribbean and Pacific Countries and the Directorate General External Relations for other regions and countries of the world. It particularly mentioned the UN Millennium Development Goals to reduce poverty; Europe’s democratic values, including respect for human rights and fundamental freedom and the rule of law; and the countries’ responsibility for their own development. The Consensus for Development identifies nine areas for action (trade and regional integration; environment and sustainable management of natural resources; infrastructure, communications and transport; water; energy; rural development, territorial planning, agriculture and food security; governance, democracy, human rights and support for economic and institutional reforms; conflict prevention and fragile states; human development; and social cohesion and employment) and four cross-cutting issues (democracy, good governance, human rights, rights of children and indigenous people; gender equality; environmental sustainability; fight against HIV/AIDS).

The main example of EU conditionality has been the ‘human-rights clause’ of 1995, which is supposed to be incorporated in all cooperation and association agreements. It is a significant instrument because it allows the EU to respond directly to human-rights violations. The human rights clause defines respect for human rights and democratic principles as an essential provision for accomplishment of the purpose of all EU treaties; hence, the EU can apply the 1969 Vienna Convention rule on suspending and terminating treaties if a party commits a material breach of a bilateral treaty (Riedel and Will in Alston 1996).

In general, external reviewers have evaluated the EU’s human-rights and democratisation programmes positively. Nevertheless, some problems have been observed, such as programmes with a top-down approach, lack of connections among programmes, and delays in disbursements. Those problems led the Court of Auditors to pronounce in 2000 that the Commission was not adequately assessing the situation and needs of the beneficiary countries, and it was necessary to define priorities. As a result, in 2002 the European Initiative established the following priorities (Smith 2003 pp. 113-114): (1) support to strengthen democratisation, good governance and the rule of law; (2) activities to promote the abolition of the death penalty³⁰; (3) support for the fight against torture and impunity and for international tribunals and criminal courts³¹; and (4) combating racism and xenophobia, and discrimination against minorities and indigenous peoples.

Launched in 2006, the European Instrument for Democracy and Human Rights (EIDHR) replaced the European Initiative and, since 2007, the Development Cooperation Instrument and the European Neighbourhood and Partnership Instrument (ENPI) complement the tools used by the EU to implement its policies for democracy and human rights³². Those instruments represent a significant change in the EU bureaucracy and implementation of its policies, and demonstrate the recognition of the deficiencies that the Community presented in addressing human rights and

³⁰ Initiative launched in 1998 (“Guidelines for EU Policy toward Third Countries on Death Penalty”, Annex 6 to Council of EU).

³¹ Initiative launched in 2001 (“Guidelines to EU Policies towards Third Countries on Torture”, General Affairs Council).

³² Since 2007, the Instrument for Stability (IfS) has also replaced several instruments in order to address global security and development challenges, in fields such as drugs, mines, uprooted people, crisis management, rehabilitation and reconstruction.

democracy issues. Nevertheless, they will not be further discussed here since they were created after the period of democratisation and accession of the ECE in the EU.

Regarding the ECE countries, the main EU programme has been PHARE, the programme of Community aid to the countries of Eastern and Central Europe, set up in 1992. PHARE – “Poland and Hungary Assistance for the Restructuring of the Economy” - was initially developed to support the reconstruction of the economies of Poland and Hungary, but gradually it has been extended to include all EU candidate countries. It constituted the main channel for pre-accession assistance and focuses on two priorities: institution building and investment financing. The EU also sponsored the Pact for Stability for Central and East European countries, from May 1994 to March 1995, the EU set up regional roundtables in order to identify and promote projects and agreements that would facilitate good-neighbourly relations (Smith 2003 p. 63). For the 2007-2013 period, the Instrument for Pre-accession Assistance (IPA) became the only financial instrument for EU candidate countries, replacing PHARE and all existing forms of pre-accession assistance.

Despite the pertinent criticism of all the lacunae and the incoherencies of the EU human rights policies, the EU has been able to develop a relevant role in promoting human rights in Europe, mostly because of its strategy of adopting an approach based on legal texts; the legal approach to human rights is perceived as more neutral and less intrusive regarding domestic affairs. In turn, the EU adoption of this strategy was possible specifically because of its role as a political actor. First, the EU member states and the countries aiming to accede to the EU expect that their membership will be permanent. Secondly, those countries perceived EU membership as a key to accessing an expanding variety of economic and social opportunities, both in the near and distant future. Thirdly, the EU is backed up by an increasing interdependence involving different types of actors at different levels of interaction, strengthening a complex regional network (Schmitter in Whitehead 1996 p. 44). Thus, the most powerful EU diplomatic instrument has been the cross-pillar instrument of the offer of EU membership. In 1993, the Copenhagen European Council set up the requisites for EU candidate countries: democratic institutions, the rule of law, and respect for human and minorities rights; and the implementation the Community *acquis* (the rights and obligations that bind all EU members); and in 1999 the Helsinki European

Council added the condition of “willingness to resolve disputes with neighbouring countries”.

The Helsinki Process

The Organisation for Security and Cooperation in Europe (OSCE) has its origin in the Conference on Security and Cooperation in Europe (CSCE). This conference was opened in 1973 and concluded in 1975 with the Final Act of Helsinki (known as the Helsinki Accord), signed by the 35 participating states (Canada, the United States and all European states except Albania). The process established by the Helsinki Accord continued in the form of long-running diplomatic meetings until 1995, when the CSCE was transformed into an organisation. Its main official organs include a Parliamentary Assembly of the OSCE, the Council of Ministers for Foreign Affairs, the Committee of Senior Officials (CSO), and the ‘Chairman-in-Office’ which is a rotating post held by each Member State’s Foreign Minister. Currently, its membership of 56 states is broader than the Council of Europe.

In the beginning, it was an East-West forum for debate focusing mainly on the area of preventive diplomacy in security (Basket One) and also in economic issues (Basket Two). Taking advantage of a *détente* period during the Cold War, the Western countries were mainly interested in obtaining concessions regarding security issues and the Soviet Union was interested in obtaining formal recognition of its European borders and legitimating its geopolitical position in Europe. In fact, human rights and democracy (Basket Three) did not represent a central concern of the CSCE. It was only at the end of the 1980s, with the democratisation process in the ECE states, that the CSCE started directly performing an important role in these fields by legitimating human rights discourse and developing new standards regarding democracy, the rule of law, national minorities and freedom of expression. These new activities of the CSCE came to be known as its “human dimension” (Steiner and Alston 1996 pp. 577-578).

Nevertheless, the publication of the full text of the 1975 Final Act, including human rights principles, and its dissemination had the effect of calling the public attention to

the human rights situation in the USSR and its allied countries and, most importantly, of providing support for domestic human rights groups. The Helsinki process helped to legitimise political dissidents in the ECE countries and to provide human rights and democratic standards once the democratisation process was initiated.

Since 1991, with its institutionalisation process, the CSCE started to acquire operational tasks regarding democracy and human rights issues. Besides the general secretariat in Prague, it has also established a set of arrangements responsible for its “human dimension”: a Conflict Prevention Centre, based in Vienna; a High Commissioner on National Minorities, based in The Hague; an Office for Democratic Institutions and Human Rights (ODIHR)³³, based in Warsaw; an Office of the Special Representative and Coordinator for Combating Trafficking in Human Beings; an Office for Civil Society Development Centres in Albania; and a Representative on Freedom of the Media. Paradoxically, due to the non-binding diplomatic origin of the CSCE, it was able to create new standards and to provide a “focus for non-governmental activities at both the domestic and international levels” (Steiner and Alston 1996 pp. 578-579, p. 564). Thus, the OSCE added a third dimension to regional human rights cooperation in Europe.

Old and New Challenges for the European Regime

The eternal challenge of regional or international human rights systems is to regulate the relationship between politics and law. As systems of sovereign states, which in the end depend on the political will of the member states, they face the challenge of finding the balance between the pressure of a *raison d'état* approach and the “judicial activism” alleged by the states (Dijk and Hoof 1998 pp. 617-618). In other words, while it is correct that judicial protection is a foundational dimension of human rights systems (Alston 1999 p. 13), it is also true that the legal perfection of the normative structure does not necessarily mean an actual impact on the promotion and protection

³³ The OSCE, through ODIHR, monitoring and reporting on the compliance of the states with the protection of human rights and democracy, mainly in the areas of freedom of assembly and association, the right to liberty and to a fair trial, and the use of the death penalty. It also offers technical assistance, training and education.

of human rights (Tomuschat in Steiner and Alston 1996 p. 588). The protection and promotion of human rights are inserted in a complex dynamic with elements of power, morality, and cooperation.

Human rights promotion requires not only legal but also political bases upon which a human rights programme can be implemented. For this reason, a strong regional human rights system requires a certain level of regional integration and not a merely intergovernmental cooperation. This requirement is important for two reasons: first, to avoid parochial and selfish attitudes of which any regional system could be the expression, signifying the danger of a serious blow to the idea of the universality of human rights (Vasak and Alston 1982 p. 569) reaffirmed by the 1993 Vienna World Conference on Human Rights; and, secondly, for true effectiveness of the human rights protection.

Although the European system operates within an intergovernmental cooperation framework, the effectiveness of the European human rights system can be evaluated both in its own terms, which implies its judicial decisions as well the state responses, and in comparison to other human rights systems. The fact that the Council of Europe became merely one of the starting points for European integration at first glance would undermine the argument presented here; however it does not. Neither does it contradict the initial hypothesis about the impact of the regional promotion of human rights for many reasons. First, the Council of Europe has retained a relevant role in the European scene, and in recent decades it has played a vital role as an “antechamber” for negotiating the transition from authoritarian towards democratic regimes. Secondly, the regional integration process, once initiated with the Council of Europe, has guided the strategy of the political actors of the continent, involving all the regional actors and establishing the dynamic of interaction among them. Thirdly, the Council of Europe in fact became an element of political integration, and therefore, the European system has been used not only as a scenario for the forum of shame. The importance attached by the states of ECE to membership of the Council reflects their determination to gain ‘respectability’ within Europe in order to qualify for certain membership ‘benefits’ and, particularly, their strategy for possible admission to the EU.

The compatibility of domestic law with the European Convention on Human Rights implemented by the Council of Europe through its Directorate of Human Rights has been taken into account by the organs of the EU in the process of assessing the situation in candidate countries (Nowak in Alston 1996 p. 692). Other human rights monitoring procedures have been used by the EU during this process, especially now with the current admission practice of the Council of Europe regarding countries such as Albania, Croatia and the Russian Federation, known for their poor human rights situation. Although the Council of Europe has been criticised for its increasing flexibility for admission of new members, it is still perceived as a pre-requisite for postulating membership at the EU, and, most importantly, this new practice has not impacted the functioning of the EHRS.

The Council of Europe and the development of the EU have helped to strengthen each other in different aspects. The Council of Europe has been responsible for the building of the European human rights body. At the same time, the EU has indirectly reinforced the institutions of the Council of Europe and has given it a new dynamic that enabled institutional changes to occur within the system.

As with regional integration, the idea of process is also implicit in human rights systems. Internally, when deciding a case the Court must make a judgement in accordance with the standards currently accepted in the European society, not with those prevalent when the Convention was adopted. If new social standards have achieved sufficient wide acceptance, they can affect the meaning of the Convention. The dynamic feature of the Convention has also been emphasised by its law-making character. The Convention is not a contract of reciprocal obligations among the parties, but a contract that imposes obligations upon them. Thus, externally, the impact of the EHRS on the human rights situation is based on its institutional effectiveness as well as the political pressure in the region for the observance of its decisions.

The simultaneity of the development of the EHRS and of the European regional integration process is a keystone in differentiating it from the processes that took place in other regions. The building of a European identity from the idea of integration has supported and been supported by the EHRS. In this sense Alston

(1999 p. 30) observes that the European system “has become more than a legal safety net. It is now a part of the cultural self-definition of the European civilisation.”

It is neither the Council of Europe nor the EU alone that is able to promote and protect human rights. The real impact on human rights protection depends on the political dynamic of the network established by and around those organisations, and the legitimating process of the principles they defend in a broad “Europeanisation” process (Lippert, Umbach and Wessels 2001). In this sense, the role of the Helsinki process as disseminator and legitimating of human rights principles within the ECE countries is also relevant for the effectiveness of the EHRS *vis-à-vis* the response of those states and the identification of those principles with the construction of the European identity. Other regional organisations or organisations operating in the region, such as the North Atlantic Treaty Organisation (NATO) and the Organisation for Economic Cooperation and Development (OECD) that are not discussed here, and different organs of the EU, add a further dimension to this “Europeanisation” process.

It is clear in the case of Europe how the political dynamic throughout the building of its regional institutions has created a “regional structure of consent” and a complex network responsible for protecting, promoting and monitoring human rights and democracy in the region.

Chapter 2 - The Inter-American Context

Introduction

In a comparative perspective with the European institutional and political dynamic for protection and promotion of human rights and the democratic rule of law, this chapter analyses the inter-American context with special attention to the Inter-American System for Protection of Human Rights (henceforth the Inter-American System or IAHRs).

This chapter develops three levels of analysis - historical, institutional and political – in order to understand the foundation of the Inter-American System and its development, the regional institutionalisation of mechanisms for protection of human rights and democracy, and the extent that the regional political dynamic has promoted or impeded such institutionalisation.

The Origins of the Inter-American Human Rights Regime

Concerns related to human rights in the Americas developed parallel to the principle of Pan-American solidarity, on which the construction of a regional system for cooperation among states was based. Since the struggle for independence in the American continent, the idea of Pan-Americanism has been in the political imagination; however, it is difficult to define. In order to avoid the discussion about its definition and content, Pan-Americanism is approached here through the institutionalisation process it also expresses. In this sense, since the Congress of Panama in 1826, it is possible to find regional concern with democracy and certain human rights. During that Congress the Treaty of Perpetual Union, League and Confederation was signed by representatives of Grand Colombia³⁴, Peru, Mexico and the Central American Federation³⁵. Together with the defence of the political and territorial independence of those countries and the creation of an American Confederation of States for the consolidation of peace and solidarity among them, the

³⁴ Constituted by Colombia, Ecuador, Panama and Venezuela.

³⁵ Constituted by Guatemala, El Salvador, Honduras, Nicaragua, and Costa Rica.

text of the Treaty also highlighted: (1) representative democracy as the *sine qua non* for joining the Union; (2) the principle of continental citizenship that established juridical equality for individual rights between nationals and foreigners of a state; and (3) the promise of the parties to abolish slavery. In the end, only Grand Colombia ratified it and, consequently, it could not come into force. Despite its failure, this Treaty has been considered the great antecedent of the Inter-American System (Navia 1993 p. 11). Before the Second World War, there were several regional meetings to discuss the political independence of the American states, their territorial integrity, the consolidation of peace, and some questions related to nationality, asylum and the rights of foreigners and women (Buergethal 1990 p. 33). The initial landmark for human rights protection in the region can be identified more specifically as the 1902 Convention Related to Foreigners Rights, established in Mexico City.

In order to keep the focus of this research, the discussion starts with the post-Second World War period, when the institutionalisation process of the Organisation of American States (OAS) began. The landmark for this process was the Inter-American Conference of Chapultepec, which took place in Mexico City in 1945³⁶. The Declaration of Mexico reaffirmed the adherence of states to democratic principles and the need to conciliate the interests of the collective with those of individuals. This Conference approved resolutions regarding freedom of information, defence of democracy in the continent, international protection of the essential rights of men, racial discrimination and social principles in the region (Navia 1993 p. 17). It was during this Conference that the proposal for the Charter of the OAS and the proposed American Declaration of Human Rights were prepared. Both documents would serve as the basis for the IX International Conference of American States, which in 1948 would inaugurate what is called the Inter-American System for Protection of Human Rights. On 30 April 1948, during the IX Conference of Ministers of Foreign Affairs in Bogota, the Charter of the OAS was signed and it became effective on 13 December 1951. The Charter was responsible for providing a conventional and

³⁶ In 1889, a cycle of conferences with the Ministers of Foreign Affairs of the American states was inaugurated. The precursors of the OAS emerged from this period. The First Conference took place in Washington, D.C. in 1889-1990.

institutional basis to the Pan-American ideal³⁷ while transforming the OAS into an organism of the United Nations.

In the Charter, there are some references to human rights, particularly in two articles. Article 5J states that the fundamental rights of a person are a principle of the OAS and Article 13 reaffirms the rights of states to develop their cultural, political and economic life freely and spontaneously, and states that the rights of a person and the principles of a universal morality are to be respected during this development. Nevertheless, all these statements were written in very generic terms without establishing the rights and the mechanisms for their protection and promotion. During the same conference, the American Declaration of Human Rights and Duties³⁸ was also adopted, seven months before the adoption of the Universal Declaration of Human Rights by the General Assembly of the UN, in December 1948³⁹.

However, the Declaration was not considered a part of the OAS Charter; in other words, it did not create juridical contractual obligations. Accordingly to the Inter-American Juridical Committee, the Declaration lacks the character of substantive positive law because it was adopted as a simple resolution of the OAS (Resolution XXX). This put the Declaration in the category of a “declaration of principles”, without the coercive power of a treaty. In contrast, there is another position supported by international jurisprudence, which states that declarations express the “moral conscience of humanity”. By signing a declaration, a state assumes the protected rights as general principles of law, and consequently, also assumes the obligation to respect them. In international law, an accepted and recognised norm by the international community becomes a *jus cogen* norm (Buergethal and Maier 1990 p.

³⁷ The origin of the General Secretary of the OAS is the Commercial Office, the secretary of the International Union of the American Republics created during the first Conference that took place in Washington, D.C. The purpose of the Union was to collect and distribute commercial information through its secretariat. In 1920, during the Fourth Conference in Buenos Aires, both the Union and the Commercial Office were renamed respectively as the Union of the American Republics and the Pan-American Union.

³⁸ In this conference, the Inter-American Charter of Social Guarantees was also signed. This did not receive the same status as the American Declaration. Forty years later, this Charter would be used as the basis for the 1988 Protocol of San Salvador.

³⁹ The American Declaration should also be distinguished from other human rights instruments for defining not only rights but also duties of citizens in relation to society, their children and parents, duties such as education, suffrage, obedience to the law, service to the collective and their nation, assistance and social security, paying taxes, working, and not becoming involved in political activities in foreign countries.

107-108). But, even sharing the view that the declaration should be understood as general principles protected by law, the fact is that it did not establish international juridical mechanisms for supervision.

The efforts to establish a mechanism to deal exclusively with human rights issues in the region would only start to be concretised in 1959 at the Fifth Consultative Meeting of Ministers of Foreign Affairs in Santiago, Chile. The debate during this meeting was guided by the perception of a threat to the “security of the region”. The political tension in the Caribbean, and mostly the Cuban revolution, led to the creation of the Inter-American Commission on Human Rights (henceforth the Inter-American Commission or IACHR), revealing the strong political ingredient of the Inter-American System from the very beginning. Created in 1959, the Inter-American Commission began to operate as an autonomous entity of the OAS in Washington, D.C. in October 1960. Although it was the first organ effectively in charge of problems related to human rights issues, its autonomous status left the IACHR in a fragile situation within the Inter-American System. As in the case of the American Declaration of Human Rights, the IACHR was based on a weak constitutional arrangement of a resolution adopted at a conference.

Initially, the IACHR had very limited powers: (1) promoting human rights awareness in the Americas; (2) formulating recommendations to the governments of the member states when deemed necessary; (3) preparing reports on human rights violations in specific countries; (4) asking the member states for information about human rights measures adopted; and (5) serving as the consultative body of the OAS in this field. The Commission also conducts on-site visits to member countries at their invitation. In its first years, the Commission concentrated its work on the supervision of the human rights situation in Cuba, dedicating its first reports to this country, and reflecting the ideological intentionality of its creation. However, as other political tensions became evident, the Commission had to broaden its focus. With the multiplication of military regimes in Latin America, there was an enormous increase in the Commission’s workload as these regimes constantly violated human rights. It was necessary to ask the Council of the OAS to enlarge the Commission’s jurisdiction, enabling it to start paving a more independent institutional path.

In 1965, the Commission's powers and attributions were expanded through Resolution XXII of the Second Extraordinary Inter-American Conference, which took place in Rio de Janeiro. The Commission gained a more active role in the protection of human rights. Complementing its work, the Commission started to write an annual report to the Inter-American Conference or to the Consultative Meeting of Ministers of Foreign Affairs and established a system to receive individual petitions. Over time, these new activities would become the most important.

The most significant changes, however, occurred in 1967, with the adoption of the Protocol of Buenos Aires that reformed the OAS Charter, and in 1969 with the adoption of the American Convention on Human Rights. The Protocol of Buenos Aires, which entered into force in 1970, modified the OAS structure⁴⁰ institutionally legitimising the Commission as an OAS organ (Article 51 of the revised OAS Charter). The Protocol strengthened the normative character of the American Declaration to judge activities related to human rights in all member states. Gradually, the Commission was able to strengthen itself and change from a body exclusively for the promotion of human rights into an organ for the protection of human rights.

The different activities and norms of the Commission are stated in four documents, which are, in hierarchical order: the American Convention; the Statute adopted for the V Consultative Meeting of the Council of the OAS in 1960; the Statute, written and approved by the Commission itself in 1979⁴¹; and the Rules of Procedure of the Commission, approved in 2000⁴². As the Commission is an organ included in the OAS Charter, it has power to receive legal petitions with allegations of human rights violations against any member state of the OAS, applying the American Declaration on Human Rights in these cases. The Commission increased its capacity to react to situations of gross human rights violations. It can write, by *motu proprio*, a report on the human rights situation of any country without requesting authorisation from any

⁴⁰ Currently the structure of the OAS is constituted by: the General Assembly, its supreme organ; the Permanent Council and the Inter-American Council for Integral Development; the Inter-American Juridical Committee; the Inter-American Commission on Human Rights; the General Secretariat, its central and permanent organ; and specialised organisations and other entities established by the General Assembly.

⁴¹ The Statute of the Commission was later modified in 1985, 1987, 1995, 1996, and 1997.

⁴² It has already been amended in 2002, 2003, 2006, and 2009.

OAS organ. The Commission can also develop *in loco* investigations of emergency situations. The latest thematic report of the Commission, presented in 2009, is about citizen security and human rights. Regarding Ecuador, the Commission made one on-site visit in 1994; and in 1997, it dedicated a report to the human rights situation in the country.

The American Convention on Human Rights

At the Second Extraordinary Inter-American Conference, which took place in Rio de Janeiro in 1965, a decision was made to convoke a Specialised Conference on Human Rights (Resolution XXIV). For this purpose, the Council of the OAS was asked to update and complete the proposed Convention on Human Rights that had been prepared by the Inter-American Council of Jurists in 1959. The Conference also took into consideration the opinions of the Inter-American Commission on Human Rights and two proposals on the Convention presented at the Conference by the governments of Chile and Uruguay.

The work on the proposal for the Convention was extended until 1968 when the text of the Convention's bill was ready. It was this text, with comments from the governments of the continent, that became the substantive work for the Specialised Conference. Although 1968 had been declared by the UN General Assembly as the "International Year of Human Rights", the atmosphere in the continent did not seem to be the most favourable to human rights. While it was true that most of the member states were not under military rule, they could not be considered democratic regimes. The Specialised Conference also had to be postponed for two months due to a conflict between El Salvador and Honduras⁴³.

Finally, from 7 to 22 November 1969, the Specialised Conference on Human Rights took place in San Jose, Costa Rica⁴⁴. At this Conference the American Convention on

⁴³ A football match in Honduras, between its national team and the national team of El Salvador, provoked disturbances that unleashed reprisals against the Salvadorian minority in the country. It was the excuse for El Salvador to invade Honduras, with which it had a territorial dispute.

⁴⁴ Nineteen of the 23 member states which comprised the OAS at that time participated in the Conference: Argentina, Brazil, Chile, Colombia, Costa Rica, the Dominican Republic, El Salvador,

Human Rights, also known as the Pact of San Jose, was adopted. The American Convention established the rights and gave the necessary jurisdiction for their protection; however, the Convention would not come into force until 1978, when the government of Grenada deposited the 11th instrument necessary for ratification with the OAS General Secretary⁴⁵.

Thus the Inter-American System has two different legal sources, one developed from the Revised OAS Charter and other from the American Convention. Theoretically, this dual institutional structure was not supposed to be permanent since the ratification of the Convention for all member states would end this duality. However, there has been great resistance from the states to fully accessing the Convention, that is, the ratification and recognition of the Inter-American Human Rights Court (henceforth the Inter-American Court) created by the Convention (see Annex for signatures and current status of ratification of the American Convention). The delay in the convention entering into force reflected the level of commitment that states had to human rights and the place they have in their intra-regional relations.

Rights

In terms of rights, the American Convention distinguishes itself for encompassing a broad number of rights. It is more extensive than most international instruments in its protection of human rights, and has been considered the most ambitious of the existing conventions in this field and has even been called “unrealistic” as some of its clauses are so advanced that there is a question whether any state can completely fulfil it. Many of the Convention’s provisions were more advanced and encompassed more than the European Convention for Protection of Human Rights and Fundamental Freedoms and the UN Pact for Civil and Political Rights. Both were used as model for the American Convention. It is the first international human rights instrument to explicitly prohibit the suspension of “essential guarantees” for the

Ecuador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Trinidad and Tobago, United States of America, Uruguay and Venezuela. The four member states which did not take part of the Conference were: Barbados, Bolivia, Cuba and Haiti.

⁴⁵ The Statute of the Court was approved by the General Assembly in 1980, and its rules of procedure were later modified in 1991, 1996, 2000, 2003 and 2009.

protection of rights⁴⁶ and to embody substantive norms related to these rights as well as norms endowed with sanctions in a single instrument.

Most of the rights defined by the Convention are civil and political rights. Only Article 26 mentions economic and social rights, but without defining them, and states that their effectiveness would be progressive. The proposal for the Convention presented by the Inter-American Commission on Human Rights had two different articles concerning these rights. Article 25.1 included a long list of rights and Article 26 determined that states had to inform the Commission periodically about the measures that they are undertaking in order to guarantee those rights; it also proposed the development of a Special Convention or Additional Protocol to the American Convention.

During the Specialised Conference on Human Rights, there was a controversial debate about the rights that should be included in Article 25 and strong opposition by member states against the obligation to present reports on this topic. As it was impossible to include all economic and social rights in only one article and the mechanism for their protection was still very vague, the solution was to postpone the discussion. It would not be until 1988 that the Additional Protocol to the American Convention on Economic, Social and Cultural Rights, known as the Protocol of San Salvador, would be signed, and it entered into force only in 1999. In its first section, besides defining rights, the Convention establishes the obligation of the member states to respect the norms introduced in the treaty, responding to the *pacta sunt servanda*, and to adopt the provisions of their internal laws to make those norms effective. Only 14 of the 35 OAS member states have ratified this Additional Protocol⁴⁷.

The states that participated in the Conference were concerned about establishing an ample system for reservations; the result was the Article 75 of the Convention, in accordance with the Vienna Convention about the Right of Treaties (1969), which

⁴⁶ The rights that cannot be suspended are: right to the recognition of juridical personality, right to life, right to personal integrity, prohibition of slavery and servitude, principle of legality and retroactivity, freedom of thought and religion, protection of the family, right to a name, right to nationality, rights of the child, and political rights (Article 27).

⁴⁷ They are: Argentina, Brazil, Chile, Costa Rica, Ecuador, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname and Uruguay.

allowed states to ratify the Convention with any reservations provided that they are not incompatible with the objective and purpose of the Convention. The interpretation of incompatibility of the reservations is open to controversy. In 1983, the Inter-American Court issued an Advisory Opinion about the Restrictions to the Death Penalty (OC3/83) affirming that reservations could not suspend any fundamental right in Article 27.2 of the Convention; however, many states have presented reservations regarding those rights. Most of the reservations illustrated the singularity of the legislation in each country and the difficulty in harmonising them. The application of the death penalty by some countries of the region is the most sensitive issue. Contrary to the European System, the Inter-American System admitted its application but makes some restrictions that ended up receiving reservations. In 1991, the Protocol to the American Convention on Human Rights to Abolish the Death Penalty⁴⁸ came into force, but it has been ratified by only 11 OAS member states⁴⁹.

The Implementing Machinery and its Development

The American Convention, in its second section, establishes means for protection of the human rights it recognises through its organs: the Inter-American Commission of Human Rights and the Inter-American Court of Human Rights.

As mentioned before, the American Convention expanded and strengthened the powers and jurisdiction of the Inter-American Commission. Most of these changes, however, were the result of a state-centric vision rather than a focus on individual rights. During the Specialised Conference that created the American Convention, the question of the mandatory jurisdiction of the Commission generated much debate. It is its semi-judicial character that makes the Commission's jurisdiction mandatory for all the states; its decisions are not considered sanctions, but mere recommendations.

⁴⁸ Other Human Rights documents are: the Inter-American Convention to Prevent and Punish Torture, in effect since 1987; the Inter-American Convention on Forced Disappearance of Persons, in effect since 1996; the Inter-American Convention on Prevention, Punishment and Eradication of Violence Against Woman (Convention of Belem do Pará), in effect since 1995; the Inter-American Convention on the Elimination of All Forms of discrimination against Persons with Disabilities, in effect since 2001; the Principles and Best Practices on the Protection of Person Deprived of Liberty in the Americas, approved in 2008; and the Declaration of Principles and Freedom of Expression.

⁴⁹ They are: Argentina, Bolivia, Brazil, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Mexico, Panama, Paraguay, Uruguay, and Venezuela.

As the minutes and documents of the Conference⁵⁰ illustrate, the major concerns of the states were regarding the inter-state petitions. The establishment of direct access by individuals to the Commission was, in fact, an attempt to depoliticise the process by creating an alternative that might avoid the direct involvement of states in the human rights issues of other states. In practice, however, regional politics in the Inter-American System were expressed by other means. Until 2006, there was no case of inter-state petition either at the Commission or at the Court. The only case brought to the Court by a state was the Viviana Gallardo case, which was presented by the state in question itself. In a communication on 31 July 1981, the Secretary of the Inter-American Court of Human Rights reported to the Commission that the Government of Costa Rica had presented a case to the Court under the terms of Article 62.3 of the American Convention on Human Rights, and remitted the Court's resolution on 22 July 1981. The resolution, in addition to other matters, asked the Commission to give its point of view on the jurisdiction of the Court to follow the case and decide whether Costa Rican authorities had violated any of the human rights protected in the Pact of San Jose. This case concerned the death of Viviana Gallardo and the injuries to her cellmates as a result of the actions of a member of the Civil Guard while they were detained in jail. Curiously, it was with this case that the Court was activated for the first time, and in its decision the Court reaffirmed the process at the Commission as a prerequisite⁵¹.

The paradox of the ongoing process of the IARHS is that the weakness of the Commission as a semi-judicial organ led it to become the pivotal organ of the system. The Commission is not only the organ capable of reacting to systematic and gross human rights violations, but it is also the gatekeeper for this human rights system

⁵⁰ OAS, Conferência Especializada sobre Direitos Humanos, 1973, pp. 44, 47, 51, 99, 100, 102 and 342-367.

⁵¹ There was a case presented to the Commission by the State of Nicaragua against the State of Costa Rica, however, it was considered inadmissible. On 6 February 6, 2006, the IAHRC received a communication from the State of Nicaragua which alleged that the State of Costa Rica had committed violations of Articles 1 (obligation to respect rights), 8 (right to a fair trial), 24 (right to equal protection), and 25 (right to judicial protection) of the American Convention on Human Rights; Articles 2, 7, 8, and 28 of the Universal Declaration of Human Rights; Articles II (right to equality before the law) and XVIII (right to a fair trial) of the American Declaration of the Rights and Duties of Man; and Article 9 (elimination of all forms of discrimination) of the Inter-American Democratic Charter, due to the alleged failure by the State of Costa Rica to fulfil its duty to ensure protection for the human rights of the Nicaraguan migrant population under its jurisdiction.

since individuals have no direct access to the Inter-American Court. Although the idea of a regional court of justice dates back to the Fifth Pan-American Conference of 1923, when Costa Rica proposed a plan for establishing it, the Inter-American Court of Human Rights was only created in 1969 by the American Convention and finally installed in Costa Rica in 1979. The 11th ratification deposited by Grenada in 1978 that made the Convention effective and established the Court was not expected; in fact it was considered by many observers to have been an “accident”.

The Court has two functions, one consultative and the other contentious. The consultative function was created to interpret the American Convention and other human rights treaties related to the American states. It has contributed to the development of the Court’s jurisprudence and has strengthened the principles that orient the Inter-American System, particularly in its first years when the Court received very few cases. The objective of the contentious function of the Court is to apply the Convention to individual petitions. The Court is the main organ of the system; however, it depends on the Commission or the member states to develop its contentious function. This situation has created a double role for the Commission, first it acts as judge in the cases it receives, then, once it decides to send a case to the Court, the Commission becomes a party in that process. In an attempt to diminish this contradictory role it has been given more space for the victims’ representatives during the process at the Court.

The development of the Inter-American System occurred within an environment defined by the dictatorships of the region. This is reflected in the constraints it presents as much as in the advances it has achieved during this period. In contrast to its European counterpart that was created and developed within a democratic regional context, the Inter-American System, especially the Inter-American Commission, had to assume a confrontational attitude in relation to the governments of the region during the 1970s. Violating human rights was part of the policies of those regimes, and, consequently, the Commission could not expect collaboration with its work. With little resolution about individual cases, the Commission assumed a role similar to many human rights NGOs, concentrating its work in denouncing violations. The objective was to question the credibility of the dictatorial governments before the international community and to legitimise the opposition in each country. As an organ

of an inter-governmental organisation, the work of the Commission played an important role during the liberalisation process in many countries. A paradigmatic case to illustrate the importance of the Commission is still the visit *in loco* to Argentina in 1979. During this visit, the Commission found 42 political inmates that had been reported as dead and received cases related to more than 3,000 disappeared people. Moreover, both the visit and the resulting report had a great impact on the international community; it was important in helping to give support to social and political sectors of Argentinean society that were marginalised by the military regime while also publicising the American Convention and the work of its organs (IACHR, 1980).

With the regime change in the region, the Court moved from 15 ratifications to the American Convention and no recognition of its jurisdiction at the end of the 1970s, to nine more ratifications and, by the year 2000, recognition by the 24 states that are part of the Convention (see Annex table 3). To date, the IACHR Court has processed 211 cases, including eight demands against the Ecuadorian State. The first case against Ecuador was brought by the IACHR in 1995, the Suarez Rosero case, and the Court issued its decision in 1997⁵². Most of these cases involve violations of rights related to personal integrity, arbitrary arrest, torture and murder committed by state agents. The most recent cases, bring different issues; the Albán Cornejo case is related to medical practice and the lack of investigation by the Ecuadorian state; and the Salvador Chiriboga case involves the lack of compensation by the state after expropriating private property. In both cases, the domestic remedies were considered to have been exhausted after the victims had tried all domestic recourses for years without any results. There are also Provisional Measures dictated by the Court regarding the Sarayaku Indigenous People and its rights on its territory, a centre of conflict between the indigenous community and the Ecuadorian state due to the petroleum reserve in their ancestral territory. As the cases against the Ecuadorian state illustrate, in recent years the Court has been able to discuss broad rule of law issues, reflecting the diversity of the human rights problems in the region and increasing the jurisprudence in the field. Gross human rights violations still persist

⁵² The other contentious cases are: Benavides Cevallos; Tibi Case; Acosta Calderón; Zambrano Vélez and others; Chaparro Álvarez and Lapo Íñiguez; Albán Cornejo and others; and Salvador Chiriboga.

but the democratisation process made it possible to introduce other human rights issues into the regional debate.

At the same time that the Court began to be more frequently activated, the governments of new democracies started to give more attention to the Commission's work. Seeking internal and external legitimacy, and attempting to avoid bad publicity from the release of a critical report or having a case sent to the Inter-American Court, states started to consider the Commission's friendly solution mechanism to be a convenient instrument. Until 1994, the friendly solution was interpreted as a discretionary faculty of the Commission (Article 48.1.f of the Convention), but since the Court's recommendation in the case of Caballero Delgado and Santana against Colombia, a case brought to the Court in 1992, this instrument became a mandatory step in the process for all cases.

The conciliatory character adopted by the Commission is a consequence of its increased strength within a democratic context, but at the same time it reveals the new problems faced by the human rights system. On the one hand, the Inter-American System has gained new vitality and more visibility. The friendly solution mechanism saves time and expenditures per case and has the advantage of permitting the participation of the victims or their representatives in the negotiations.

On the other hand, the collaboration by the state accused of human rights violation may be an attempt to neutralise the work of the Commission. Admitting a violation in vague or general terms can lead to the end of investigations and result in timid decisions against the state in question. The visibility that the Inter-American System received with the democratisation process in the region also meant a greater desire by governments to control its organs, and a greater political cost for the Commission in developing its work.

The human rights discourse employed by the democratic governments of the region does not correspond to the small budget established for the system; the Inter-American Commission has usually received around 3.5% of the total OAS budget⁵³.

⁵³ The 2008 budget allocated to the IACHR was \$3,362.9 (in thousands of U.S. dollars), which is equivalent to 3.8% of the total OAS budget. 68.5% of the OAS budget went to administration,

Among the member states, the U.S. is the main contributor, followed by Canada and, with a much smaller contribution, by Brazil, Mexico and Colombia⁵⁴.

Besides the lack of financial resources and personnel to deal with the increasing number of cases received, the Inter-American Human Rights System does not constitute an element of regional identity. First, it establishes different obligations and mechanisms for states that are party to the Convention and non-party states; secondly, it is still more of a Latin American system than an Inter-American one. The democratisation process in the region provided space for the ratification of the Convention by many Latin American countries; however, due to their common law legal systems, there are still problems for countries from the Commonwealth, Canada and Caribbean countries, in adhering to it. Yet, more serious is the absence of the U.S. in the system. Although Jimmy Carter signed the Convention during his presidency (1977-1981), the U.S. still resists ratifying it.

U.S. Human Rights Policy

Successive Congresses and Administrations have enacted laws linking U.S. policy and actions toward a country to its human rights performance. The Carter Administration broadened the country annual reports on human rights produced by the State Department and made them more serious; eventually they became a valuable source of information about human rights conditions around the world. However, the U.S. leadership on human rights has been very inconsistent, and depends on non-interference of major security and economic interests (Forsythe 2000 p. 123).

The containment of communism during the Cold War, and then the increasing perception of new threats, such as drug traffic, migration and terrorism, since the 1990s, has resulted, on many occasions, in support by the U.S. of non-democratic regimes, military interventions and different U.S. foreign policies that undermine

infrastructure and common costs, the remaining 27.7% was allocated to 45 other sub-programmes (CIDH 2008).

⁵⁴ The U.S. gave \$1,360.0; Canada \$853.3; Brazil \$300.0; Mexico and Colombia \$100.0 each; Chile \$10.0; and Costa Rica \$2.9 (in thousands of U.S. dollars) (CIDH 2008).

human rights protection. Domestically, the application of the death penalty, including the execution of juvenile offenders and the mentally impaired, and the resistance to recognition of socio-economic rights as such, are examples of the contradictions in U.S. human rights policies.

Regarding the international mechanisms for protection of human rights, the contradictions are no fewer. The U.S. has actively participated in the creation of a series of international human rights documents and instruments; however, it has been sceptical of domestic implementation of them, and when it does ratify such treaties it usually imposes so many reservations that they remove any domestic effect.

Most explanations about the ambivalence of the U.S. human rights policy or its outright hypocrisy of rhetorically supporting universal human rights with great enthusiasm while following a national particularism within the U.S. (Forsythe 2000 p. 148), have been based on the idea of exceptionalism, that is “a pervasive sense of cultural relativism, ethnocentrism or nationalism” (Moravcsik 2001 p. 335). However, the belief in the greatness and distinctiveness of the United States as the first modern democracy, founded on personal freedom, can only partially explain U.S. unilateralism in human rights. As Moravcsik argues, the U.S. “is sceptical of domestic implementation of international norms because it is geopolitically powerful, stably democratic, ideologically conservative, and politically decentralised” (Moravcsik 2001 p. 347).

The judicial model of multilateral human rights enforcement, in contrast to legislative institutions, means great sacrifice for powerful countries in terms of their bargaining power and influence. This realist approach is important in explaining many U.S. foreign policies and actions at the international level. However, the geopolitical imperatives of a superpower alone does not explain everything; it does not account for why the U.S. does not ratify the multilateral treaties, apply specific reservations and maintain a parallel unilateral human rights policy. The aversion of the U.S. to the domestic application of binding international legal standards for human rights can be better understood by three complementary domestic determinants pointed out by Moravcsik (2001 pp. 349-350).

The scepticism toward the legitimacy and effectiveness of the international human rights mechanisms is also due to the fact that the U.S. has been a stable democracy, “there is no overarching sense of the need to protect the U.S. political institutions against a slow slide into right- or left-wing authoritarianism” (Moravcsik 2001 p. 352), as in the case of Europe in the 1950s and in Latin America in the past few decades. Additionally, the U.S. is a conservative nation; its fundamental policy goals are underlined by conservative national identity, political institutions, and ideas of socio-economic redistribution. The most important rights for Americans probably will not coincide with those defined by other liberal democracies, placing “the nation distinctly outside the mainstream of the global consensus on the definition of human rights” (Moravcsik 2001 p. 355). The singular broad constitutional protection that the U.S. reserves for the rights to bear arms, own property and enjoy freedom of expression, and the exceptionally weak guarantees for welfare rights, labour rights, and rights against cruel punishment are good examples of this. The reason for that is the distinctive and idiosyncratic U.S. political and legal system that has generated constitutional rights over more than 200 years. The consequence is a partisan and ideological division over human rights issues in the country; two outstanding examples of salient elements of conservatism in the U.S. are racial discrimination and economic libertarianism (Moravcsik 2001 pp. 352-355).

The third domestic determinant of U.S. human rights policy is the structure of its political system, which is very decentralised and with divided political institutions. Moravcsik points out two decentralising elements of the U.S. political system that are of particular importance in limiting its domestic support for international human rights norms: the existence of “the super-majoritarian Senate voting rules on treaty ratification”, and “the strong separation of powers among the three branches and between federal and state government”. This political system results in a great number of “veto players” that are able to block government actions to accept international obligations (2001 p. 358).

The consequences of those peculiarities of the U.S. political and social institutions are, as we have seen, the preference for unilateral policies and a distrustful position toward international judicial regimes as well as any regional integration process. The U.S. has insisted in establishing a Free Trade Agreement for the Americas (FTAA) as

an extension of the free trade agreement that it has had with Canada and Mexico, the North American Free Trade Agreement (NAFTA) since 1994; talks started in that same year, but with the resistance it has received from many countries in the region, the process has been paralysed. At the same time, the U.S. started to promote bilateral free trade agreements with Latin American and Caribbean countries, thus avoiding negotiations with regional blocks. In the case of the Andean countries, the U.S. has not only ignored the Andean Community of Nations, but has tried to replace the trade preference system it had with Peru, Bolivia, Colombia and Ecuador⁵⁵ with bilateral agreements. In 2006, the U.S. signed the Trade Promotion Agreement with Peru and the Free Trade Agreement with Colombia; Bolivia rejected negotiation of an agreement and the negotiations with Ecuador have failed. There is much debate about the benefits of this type of bilateral agreement instead of the World Trade Organisation (WTO) instruments or other multilateral agreements; however, what is relevant for the discussion here is the preference of the U.S. for unilateralism and how regional actors are neglected and set aside by U.S. foreign policy⁵⁶.

The Institutional Development of the Region

At the end of the Cold War and with the democratisation process experienced in the region, the OAS member states have intensified their cooperation and emphasised the commitment to democracy as the main core of the OAS. The *ad hoc* summits were institutionalised into a regular “Summit of the Americas”; the first of these summits was held in Miami in 1994, and established broad political, economic and social goals⁵⁷. The main management body of the summit process is the Summit Implementation Review Group (SIRG) created in 1995.

⁵⁵ In 1991, the Andean Trade Preference Act (ATPA) was signed within the framework of U.S. foreign policy to combat the drug traffic in the region; in 2002, the programme was renewed as the Andean Trade Promotion and Drug Eradication Act (ATPDEA); since 2006, the ATPDEA has gained successive short periods of extension, the last one was in 2009 and the U.S. Congress approved the extension for one more year; in 2008, Bolivia was removed from the agreement by the allegation that the country has failed to cooperate with efforts to counter drug trafficking.

⁵⁶ At the same time, the EU was recognising the Andean Community of Nations as a valuable interlocutor and was trying to negotiate an agreement with it. In 2003, the Political and Cooperation Agreement was signed; it will constitute the framework of the relationship between both regions when it enters into force.

⁵⁷ To date there have been six more summits: the Summit of the Americas on Sustainable Development, in Santa Cruz, Bolivia, in 1996; the Second Summit of the Americas, in Santiago, Chile,

The Third Summit, held in Quebec in April 2001, adopted the democracy clause which establishes that any unconstitutional alteration or interruption of the democratic order in a member state constitutes an insurmountable obstacle to its government's participation in the Summit process. On 11 September 2001, the OAS member states adopted the Inter-American Democratic Charter and the democracy clause was incorporated into Article 19 of the Charter.

The Democratic Charter defines the elements of democracy and the procedures to undertake when it is ruptured or seriously at risk. Article 3 states: "The essential elements of democracy include, *inter alia*, respect for human rights and fundamental freedoms, access to and exercise of power in accordance with the rule of law, the holding of periodic, free, and fair elections based on secret balloting and universal suffrage as an expression of the sovereignty of the people, the pluralistic system of political parties and organisations, and the separation of power and independence of the branches of government." Part II (Articles 7 to 10) is dedicated to democracy and human rights. In Article 8 the member states "reaffirm their intention to strengthen the Inter-American System for the Protection of Human Rights for the consolidation of democracy in the Hemisphere".

The first time the Charter was invoked was in 2002 when an attempted *coup d'état* temporarily forced Venezuelan President Hugo Chavez out of office. As the Rio Group was holding a summit in San José, Costa Rica, when the news of the *coup* broke, they were able to issue a declaration on the Venezuelan situation and to invoke the Charter; however, Chavez returned to power before any further step was taken to convene the General Assembly. In 2005, Nicaraguan President Enrique Bolaños invoked the Democratic Charter under the assumption that democracy was at peril because the National Assembly, dominated by the opposition parties, passed constitutional reforms that significantly reduced his presidential prerogatives. In response, four missions were sent to Nicaragua at different moments and several resolutions and declarations were adopted; as a result, the OAS was recognised as a

in 1998; the Third Summit of the Americas, in Québec, Canada, in 2001; the Monterrey Special Summit of the Americas, in Monterrey, Mexico, 2004; the Fourth Summit of the Americas, in Mar del Plata, Argentina, in 2005; and the Fifth Summit of the Americas, in Port-of-Spain, Trinidad and Tobago, in 2009. The Sixth Summit will be held in Cartagena, Colombia, in 2013.

legitimate interlocutor and advisor in the democratic process. The Charter was formally invoked again in 2009 when a constitutional crisis in Honduras culminated in a *coup* that removed and forced President Manuel Zelaya into exile.

Although the Charter is only a declaration and not a treaty, it has been differentiated from other declarations since it is considered a tool for interpretation and updating of the OAS Charter. Before 2001, the OAS Charter, the Protocol of Washington and Resolution 1080 of 1991 were the instruments invoked during political crises. The Protocol of Washington, which amended the OAS Charter, was signed in 1992 but only entered into force in 1997 when it was ratified by two-thirds of all member states. The Protocol granted the General Assembly the power to suspend or expel a member state when a democratically-elected government has been overthrown by force. Resolution 1080 on representative democracy provides for an emergency meeting of the hemisphere's foreign ministers when democracy is interrupted in order to define a collective action. It has been invoked in four cases: Haiti (1991), Peru (1992), Guatemala (1993) and Paraguay (1996).

Yet in 1990, the OAS created the Unit for Promotion of Democracy (UPD). Its main activity has been the observation of elections in the region, but it also supports efforts to strengthen civil society and national legislatures, decentralise governments, modernise political parties and promote democratic values. The OAS role of arbiter and monitor of the electoral process is still the main tool of the organisation to defend democracy. These activities imply less controversial actions for the organisation and do not require member states to take part in the discussion and decisions of more sensitive issues. Most governments still fear that they can be subjected to criticism about human rights and the rule of law.

The Ecuadorian political instability of the last decades is a good example to put in evidence the problems of the collective mechanisms of the OAS to protect democracy. In 2005, the National Congress impeached President Lucio Gutierrez after he had sacked the highest judicial authorities of the Constitutional Tribunal and the Supreme Court of Ecuador. The Andean Commission of Jurists (*Comisión Andina de Juristas*) and the Carter Centre evoked the Charter and called for OAS members to defend democracy during undemocratic actions taken by the Gutierrez government;

nevertheless, neither the OAS nor any other regional organisations or mechanisms such as the CAN and the Rio Group took action. Although there was already a report made by the UN Special Rapporteur for Judicial Affairs, Leandro Despuy, warning of the severe threat to judicial independence in Ecuador, an OAS mission was only sent to Ecuador when Gutierrez was overthrown. There is still no institutional channel for civil society groups to activate the Permanent Council or the General Assembly of the OAS. After the crisis, however, the OAS developed a significant role in providing technical assistance for establishing the procedures for electing the new magistrates in accordance with the Democratic Charter.

The OAS presents a clear bias in favour of current presidents and a lack of political will to take action to protect other democratic institutions or democratic processes. The current difficulty in dealing with different threats to democracy is a consequence of the historical development of defence of democracy in the political context of the transition from military authoritarian regimes and the fear of intervention. The OAS remained unreliable in directly protecting democracy greatly due to “lingering widespread fears about the U.S. power” (Forsythe 2001 p. 130). There is a history of U.S. military intervention and different operations in the region (see Annex Chronology of the US military and clandestine operations in Latin America and Caribbean countries since the post World War II), and the defence of democracy has been one of the reasons listed to justify these.

The OAS is still perceived as the reflection of U.S. power. In fact, the U.S. is responsible for about 60% of the amount contributed by the member states⁵⁸. The consequence is that it has not been possible to develop an authoritative interpretation of democratic standards (Levitt 2006). For this reason, the actions in the region have been very erratic and uneven.

Sub-regional Mechanisms

⁵⁸ In the budget approved in 2008, the U.S. was responsible for 59.470% of the contribution to the OAS, followed by Canada with 13.761%, Brazil with 7.626%, Mexico with 6.513%, and Argentina with 4.282% of the assessed percentage (OAS 2008 p. 18).

Parallel to the development of the OAS, there have been different attempts at regional integration. Most of them have been aimed at creating more than a free trade area; however, the development of these processes has been very erratic.

The most advanced process has been the Southern Cone Common Market (MERCOSUR is its Spanish acronym). Founded in 1991 by the Treaty of Asunción, it brought together Argentina, Brazil, Paraguay and Uruguay, and has expanded its partnership to other countries in the region. Bolivia, Chile, Colombia, Ecuador and Peru currently have associate member status. In Central America, the current integration organisation is the Central American Integration System (*Sistema de Integración Centroamericana*, SICA)⁵⁹ established in 1991 by the Protocol of Tegucigalpa, which amended the Charter of the Organisation of Central American States (ODECA)⁶⁰, and came into force in 1993. In 1973, the Treaty of Chaguaramas was signed with the purpose of transforming the Caribbean Free Trade Association (CARIFTA)⁶¹ into a Common Market and established the Caribbean Community (CARICOM)⁶².

In the Andean Region, the Cartagena Agreement created the Andean Community (CAN is its Spanish acronym). The Cartagena Agreement was signed in Bogota⁶³, Colombia in 1969 by delegates from Bolivia, Chile, Colombia, Ecuador and Peru. In 1973, Venezuela acceded to it and in 1976 General Augusto Pinochet withdrew Chile, claiming economic incompatibility. The CAN was intended to initiate an integration process of the Andean countries through its integration system (Article 6); however it has faced a series of political crises that have interrupted this process. In 2006, Venezuela formally denounced the Cartagena Agreement and left the Community.

⁵⁹ The member states are: Belize, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama; the Dominican Republic participates as an associate state.

⁶⁰ The Charter of the ODECA was signed in 1962.

⁶¹ CARIFTA was founded in 1965 by Antigua and Barbuda, Barbados, Guyana, and Trinidad and Tobago.

⁶² The CARICOM member states are: Antigua and Barbuda, The Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saint Lucia, St. Kitts and Nevis, St. Vincent and the Grenadines, Suriname, and Trinidad and Tobago. Anguilla, Bermuda, the British Virgin Islands, and the Turks and Caicos Islands are associate members.

⁶³ It received the name of this other Colombian city because it was there that negotiations were concluded.

Recently the Bolivarian Alliance for the Peoples of Our America (ALBA, the Spanish acronym for *Alianza Bolivariana para los Pueblos de Nuestra America*) was created. It is an international cooperation organisation associated with left-wing governments that emerged in part as a response to the U.S. FTA proposals in the hemisphere. The cornerstone of ALBA was an agreement between Venezuela and Cuba, signed by Hugo Chavez and Fidel Castro in 2004, to respectively exchange petroleum for medical and educational resources. In 2006, Evo Morales brought Bolivia into the Peoples' Trade Agreement (TCP, the Spanish acronym for *Tratado de Comercio de los Pueblos*), which aims to implement the principles of ALBA. In 2007, Nicaragua entered the agreement when Daniel Ortega signed the TCP; Dominica joined the agreement in 2008 and Saint Vincent and the Grenadines joined in 2009. Ecuador, under President Rafael Correa, also officially joined the TCP in 2009⁶⁴.

Additionally, there is the Rio Group, a permanent mechanism for consultation and concerted political action created in 1986 by the Declaration of Rio de Janeiro. The Declaration was first signed by the Members of the Contadora Group (Colombia, Mexico, Panama, and Venezuela) and the Support Group (Argentina, Brazil, Peru, and Uruguay)⁶⁵, which had previously worked together on the Central America crises. The Rio Group was created as an alternative regional body to the OAS and U.S. predominance.

In 2008, the Constitutive Treaty creating the Union of South American Nations (UNASUR is its Spanish acronym) was signed in Brasilia, Brazil. The UNASUR aims to integrate MERCOSUR and CAN as part of a continuing process of South American integration. It is still a very embryonic process modelled on the European Union.

Regarding human rights and democracy, the only regional mechanisms for protection operating in the region are those offered by the OAS framework. In the Andean region, CAN has three reference documents regarding those issues: the Cartagena

⁶⁴ Honduras had joined ALBA in 2008. However, with the position of Venezuela against the *coup d'état* that removed President Manuel Zelaya from the Presidency in 2009, and all the events that followed this political crisis, Honduras formally withdrew from ALBA at the beginning of 2010.

⁶⁵ Currently its member status are: Argentina, Belize, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay and Venezuela.

Charter (1969), the Riobamba Code of Conduct (1990) and the Machu Picchu Declaration on Democracy (2001); however, none of them establish effective enforcement mechanisms. The Code of Conduct states the democratic nature of the commitment by the Community and member states to respect human rights. The Machu Picchu Declaration on Democracy, the Rights of Indigenous Peoples and the War against Poverty, signed in 2001, reiterates the will to strengthen the Inter-American Human Rights System, including the possibility of progressively permanent operation of the Inter-American Court of Human Rights and the fostering of the universality of the Inter-American System for the Protection of Human Rights.

The Additional Protocol to the Cartagena Agreement, the “Andean Community Commitment to Democracy”, written in 1998, has not been ratified yet. The Additional Protocol establishes the procedures to be followed in the event of disruption of the democratic order in any of the member states. The measures (Article 4) include: the “suspension of the Member country’s participation in any of the bodies of the Andean Integration System”; the “disqualification by the Andean financial institutions from obtaining access to facilities or loans”, and the “suspension of rights to which it is entitled under the Cartagena Agreement and of the right to coordinate external actions in other spheres”.

In 2001, at the Thirteenth Andean Council of Presidents in Valencia, Venezuela, the decision was announced to approve an Andean Human Rights Charter to ensure the protection of human rights, reinforce democratic governance and the rule of law, and promote a culture of peace. In 2004, the Andean Council of Foreign Ministers, in Guayaquil, Ecuador, adopted Decision 586 for a “Working Programme for the Dissemination and Execution of the Andean Charter for the Promotion and Protection of Human Rights”. The Programme establishes specific goals for the promotion, implementation and follow-up of the Andean Charter.

Deriving from this Protocol and the 1998 MERCOSUR Protocol of Ushuaia, the Presidents of the CAN and the MERCOSUR approved the so-called “democratic clause” in a communiqué in 2000. The clause states that: “Maintenance of the rule of law and full respect for the democratic system in each of the twelve countries of the region constitute an objective and a shared commitment, which as of today is a

prerequisite for participation in future South American meetings.” Both documents state that punitive financial measures might be taken when democracy is overthrown. However, the response to a steady erosion of democracy is open to interpretation. As Levitt has argued “[w]hat has hampered the defence of democracy regime in the Americas is not precisely compliance, but the development of authoritative interpretation of democratic standards” (Levitt 2006).

The alternative to the lack of strong multilateral responses to erosion of democracy is still the Inter-American Human Rights System. Individuals may file complaints of violations of human rights, which include political and civil rights, with the Inter-American Human Rights Commission.

The Continuing Challenges for the Inter-American Regime

The regional network has played an important role in denouncing human rights violations or the breakdown of democracy, but it has not gone much further in the strengthening of the regional regime and the legal status of the party countries. In contrast to the European context, the regional instruments and political actors that can be identified in the Americas constitute, at most, a weak regional structure of consent.

The Inter-American Human Rights System continues to play a paramount role in the defence of those rights and, indirectly, of democracy in the hemisphere. Evaluating the IAHRs on its own terms, there have been significant changes in the last decade; however, in comparison to its European counterpart, the IAHRs still presents many problems and faces serious resistance to further development. It is far from allowing individual access to the IAHR Court and from becoming a single permanent court.

Building a regional identity based on democracy and human rights is still an enormous challenge in the Americas. The OAS and the IAHRs have developed for many years through a dynamic established with non-democratic states. The consequence is not only the initial antagonism between states and the protection mechanisms, but also the slow progress toward broader support for them. The new dynamic of dealing with supposed democratic regimes has also, on many occasions,

resulted in timid or ambiguous approaches. Yet, the IAHRS is still more a Latin American than an Inter-American system, due to the non-participation of the U.S. and the Commonwealth countries.

Paradoxically, the OAS is not perceived as a reliable forum due to the predominance of the asymmetric power of the U.S., which has greatly contributed to the proliferation of alternative regional institutions to the OAS. Thus far, the multiplication of organisations with autonomy-minded agendas in the region has not resulted in mutual strengthening of these organisations and has not created powerful networking⁶⁶. On the contrary, the superposition of many institutional frameworks has usually undermined power and created competing political actors. More recently, the regional interlocutors started to recognise each other and move towards what seems to be convergence. It is not clear what approach or pace the OAS will assume with all these regional interlocutors in moving toward convergence in the European model or whether they will converge at all. Meanwhile, the hemisphere requires a regional political process that supports broad integration, and effectively builds a “regional structure of consent” and a network able to promote democracy and human rights.

⁶⁶ There are other regional inter-governmental organisations, such as the Latin American Integration Association (ALADI - *Asociación Latinoamericana de Integración*, created in 1980 by the Treaty of Montevideo), that are not mentioned here since they are not directly relevant to the arguments made.

Chapter 3 - Police Assistance: Cooperation or Cooptation?

Introduction

The international assistance agenda has changed perspective and strategy over the last decades. On the one hand, it has been influenced by political events, such as the third wave of democratisation. On the other hand, it has contributed to shaping this process by emphasising different aspects of democracy.

Democratisation processes always involve a great number and variety of actors, and as they advance, more actors are included as a result of the democratic process itself. The consequence is much more complex interactions and dynamics. This is true not only at the domestic level but also at the international level as seen in the discussion about the European and the American institutional contexts in the previous chapters. Regardless of their approach and efficiency, there is a noteworthy number of new actors, institutions and instruments concerned with democracy, rule of law and human rights at the regional level.

The aim of this chapter is to specifically discuss assistance to the police and to analyse: (1) how it has emerged in each region; (2) if there is a difference in the approach to the rule of law; and (3) the impact that it has had on new democracies. It is not an exhaustive analysis of the existing assistance, but an overview of its situation in each region.

International Assistance

Since the end of the Second World War, a variety of mechanisms have been consolidated for international assistance to developing countries and the number of actors interested in this has multiplied. The orientation and scope of the agenda for international aid have also changed, resulting in the great complexity we know today.

From the 1950s until the 1970s, democracy *per se* had no priority on the international assistance agenda since it was understood as an outcome of socio-economic development. The predominance of the modernisation theory gave priority to the formation of capital in developing economies. The Cold War context also implied constraints on democratisation efforts because of the primacy of the fight against the spread of leftist movements and the Soviet influence. Thus, international assistance was focused exclusively on traditional security and development issues. Programmes concerning the strengthening of public administration focused more on technical aspects of improving government capacities and, in more than a few cases, the programmes were carried out in non-democratic countries. Although assistance to law institutions, civic education, legislatures and local governments, among others, had already been introduced in the 1960s, this assistance lacked a democratic focus.

Yet in the 1960s, criticism of the idealism or determinism of the modernisation theory had raised discussion about international assistance and had started changing the emphasis from economic growth to basic human needs – such as food, shelter and medicine. This would culminate, in the 1980s, in a change of emphasis from physical capital to human capital. Furthermore, in the 1970s, gross human rights violations committed by non-democratic regimes began to receive attention from the international community. In Latin America, as we have seen in the previous chapters, the Inter-American Commission on Human Rights started playing a more active role in condemning human rights violations, and in East Central Europe, the Helsinki process was responsible for placing a focus on human rights. In both regions, an international network of human rights NGOs emerged and, with the introduction of those issues into the international political agenda, there was an increasing demand for complementary assistance.

It was the democratisation in Southern European and Latin American countries during the 1980s that consolidated a new approach in international assistance. Democratisation processes opened up space for more assistance, with increased quantities and complexity. Although it was only with the democratisation occurring in East Central Europe that the international dimension of this process gained special attention, transition theory helped to introduce a new view about developmental assistance and put political institutions at the centre of the debate. The break-up of the

Soviet Union left democracy as the only political ideology with broad international legitimacy. The end of the Cold War and the democratisation process itself led to a redefinition of the interests and needs of donors and recipients. Democracy, therefore, became a specific assistance field.

In this new field, international assistance is basically divided into two main areas: electoral processes – political parties, free and fair elections, and state institutions in their different aspects – constitutions, judicial systems, legislatures, local governments and civic-military relationships. Of particular interest for this research are the reforms of state institutions, especially the assistance related to the areas that have been put under the rubric of “rule of law”.

The rule of law programmes are related to efforts to improve the functioning of the major state institutions directly involved in the making, implementation and enforcement of laws, and to some extent the legislative strengthening programmes. Although the expression “rule of law” produces broad consensus, the rule of law agenda is very broad, and may be marginally related to human rights and other aspects of democracy not included in its minimalist definition.

In the rule of law assistance, following Thomas Carothers’ analysis for Latin America (in Rachel and Sieder 2001) but applicable for ECE countries, it is possible to identify five, sometimes overlapping, major specific programme areas. The consensus that democracy requires an independent and efficient judicial system is presented in all the areas, although using different rationale, and sometimes based on competing motivations.

The first area corresponds to programmes for advancing democratisation that focus on accessibility, equitability and competence concerning the legal system. Those programmes concentrated on personnel training and equipment needed to process cases more efficiently. The practice of external donors has been to directly sponsor projects of the judiciary and government.

The second area refers to programmes aimed at the advancement of human rights and social justice. Their main objectives are to promote access to the legal system for all

citizens and to prevent human rights violations with special concern for marginalised and vulnerable groups in society. In this area, the external assistance has usually been directly to human rights NGOs, grassroots organisations or advocacy groups. As democratisation processes advanced, there was a demand for other activities, such as promoting legal aid and legal advocacy skills for those groups that had previously concentrated their activities on denouncing gross human rights violations committed by authoritarian governments.

The third area concerns programmes to strengthen civil society. These usually focus on the improvement of legal education (revising curriculum, promoting discussion on alternative rule of law reforms), the independence of the media, the promotion of legal aid clinics, and the strengthening of human rights NGOs in their monitoring work, and of trade unions, and especially bar associations, in order to establish ethical standards.

The fourth area relates to economic programmes. They primarily emphasise the modernisation of the judicial system and are mainly concerned with commercial, financial and other laws related to the institutionalisation of market reforms. The structural adjustment policies and liberalisation of the economies in Latin America in the 1980s, and the transition from a communist economy to a market economy in ECE in the 1990s, introduced new issues into the rule of law agenda, including the enforceability of private contracts and laws related to taxes, antitrust issues, banking and bankruptcy. In sum, these programmes focused on updating commercial law and improving the efficiency of the commercial work of the courts.

The fifth specific area involves programmes directed at advancing international law enforcement. In fact, it is more appropriate to refer to this area as international order, rather than law enforcement programmes because the main focus has been on strengthening national capacity to fight international criminal activity rather than strengthening public international law and universal rights. In the 1980s in Latin America and in the 1990s in ECE, rising crime rates and especially the increase in organised crime, and the cost of this for development, has focussed the attention of the international community. Police assistance has been introduced mainly in this area of the rule of law agenda. The programmes that especially address police and

prosecutors became part of the strategy of the international actors against organised crime, particularly international drug trafficking.

The rule of law agenda may also be identified with the good governance agenda, both in a narrow approach with emphasis on public administration management, or in a broad approach with an “emphasis on the normative dimension of the openness, accountability and transparency of government institutions” (Crawford 2001 p. 23). The tension between a narrow and a broad agenda of political-oriented programmes generated a false duality between efficiency and accountability of institutions. In the judicial system this tension can be translated in prioritising assistance to the criminal justice system based on the order enforcement approach or to programmes promoting judicial accessibility based on the law enforcement approach. The police, as part of the criminal justice system, are also embedded in this duality between improving police operational capabilities and efficiency, or promoting human rights and democratic accountability. It is in this context that policing issues emerged in the international assistance debate, revealing that policing may not be an exclusively domestic affair.

While the law enforcement approach encompasses the normative guidelines provided by human rights, the order enforcement approach, although dissimulated in democratic discourses, is not concerned with human rights and is barely concerned with some aspects of democracy. In terms of police assistance, the order enforcement approach may perpetuate abuse of power and corruption in controlling people instead of strengthening people’s mechanisms for controlling the police.

The issue of police assistance is relatively new for multilateral development agencies. The security system is considered a pariah for most donors because of the risk it implies and the minimal noticeable impact it produces (quoted in Ziegler and Nield 2002 p. 59). However, despite the little attention it has received, police assistance is not new in foreign affairs, either as part of assistance in post-conflict contexts or as part of general military programmes.

The sensitivity of approaching internal security issues of foreign countries has led to the disguise of police assistance under broad issues in bilateral relations. The

priorities for money and technical cooperation for police forces, more than any other issue in the assistance field, are developed more in accordance with the donor motivations than the recipient needs. Assistance is an effective instrument to promote the security agenda of donor states, mostly in new democracies that usually lack a clear public security policy. Police assistance may play an important role in the process of building democracy, but it can also digress from this process. The consequence may be the incapacity of new democracies to control their repressive forces and institutional changes that do not follow the priorities of the recipient country. For this reason, it is crucial that there be discussion of the context in which the debate about police reform emerges domestically as well as the context in which police assistance develops regionally. The impact of the assistance for police forces depends on two factors: 1) the type and motivations of the donor; and 2) the regional political dynamic in which the assistance is developed.

The main regional actors were already defined in the previous chapters. Now, it is necessary to identify the police assistance programmes developed in each region in order to analyse: (1) their approach to the rule of law; (2) to what extent they incorporate or subordinate human rights guidance; and (3) how the level of regional commitment to democratisation and human rights by donors affects the strengthening of the rule of law in the recipient countries.

The focus at the regional level makes it possible to observe how the police issue is also part of a more complex political dynamic that involves domestic and regional interaction. Police issues are not restricted to the area of good administration, they have historically been instruments of dominance and, in this sense, they are part of the power relationships.

Police Cooperation in ECE

In the ECE several donors related to the rule of law or police assistance can be identified. Nevertheless, in the political context already discussed in the Chapter One, the primary role in this area was developed by two multilateral organisations, the

Council of Europe and the EU. In the following section I will present an overview of the police assistance.

The European Union and the Council of Europe

The EU, as we have seen, is a “foreign policy system” based on three pillars – the Common Foreign and Security Policy (CFSP), Justice and Home Affairs (JHA), and the European Community (EC) – and each member state’s foreign policies. The Rome Treaty did not present foreign policy objectives since the original concern was with economic integration. The 1970 Luxembourg Report, followed by the 1973 Copenhagen Report and the 1981 London Report, began to frame a specific mechanism for cooperation. Initially, the European Political Cooperation (EPC), introduced in 1970 and formalised since 1987 by the Single European Act, permitted the EC to build itself as an international actor. The EPC was based on intergovernmental rather than supranational principles. In 1993, the Maastricht Treaty replaced the EPC with a new mechanism for foreign policy cooperation, the Common Foreign and Security Policy (CFSP) in order to cope with all the regional and international changes⁶⁷. Decisions on aid are supposed to follow the general EU orientation towards third countries and take into account the CFSP discussion on violations of human rights and democratic principles (Smith 2003 p. 67). The European Commission manages the aid programmes through its directorate generals (DGs) and offices related to external relations - External Relations, Trade, Development, Enlargement, the European Aid Cooperation Office, and the Humanitarian Aid Office.

During the 1980s, there were attempts to establish the common interests and international objectives of member states; however, it was only with the Maastricht Treaty on European Union that the objectives of a common foreign and security policy were established. In general terms, it states the following objectives: (1) “to safeguard the common values, fundamental interests and independence of the Union”; (2) “to strengthen the security of the Union and its Member States in all ways”; (3)

⁶⁷ See the Maastricht Treaty chapter on development cooperation.

“to preserve peace and strengthen international security, in accordance with the principles of the United Nations Charter as well as the principles of the Helsinki Final Act and the objectives of the Paris Charter”; (4) “to promote international cooperation”; (5) “to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms” (Title V: Provisions on a Common Foreign and Security Policy, Article J.1.2).

The Maastricht Treaty also establishes, under the JHA pillar, matters for cooperation of common interest to the members: (1) asylum policy; (2) rules governing the crossing by persons of the external borders of the member states and the exercise of controls therein; (3) immigration policy and policy regarding nationals of third countries including (a) conditions of entry and movement by third country nationals in the territory of member states; (b) conditions of residence by third country nationals in the territory of member states, including family reunion and access to employment; (c) combating unauthorised immigration, residence and work by third country nationals in the territory of member states; (4) combating drug addiction insofar as this is not covered by 7 to 9; (5) combating fraud on an international scale insofar as this is not covered by 7 to 9; (6) judicial cooperation in civil matters; (7) judicial cooperation in criminal matters; (8) customs cooperation; (9) police cooperation for the purposes of preventing and combating terrorism, unlawful drug trafficking and other serious forms of international crime, including, if necessary, certain aspects of customs cooperation, in connection with the organisation of a Union-wide system for exchanging information within a European Police Office (Europol) (Maastricht Treaty, Title VI, Article K.1).

The JHA pillar had its origin in the network formed by the Trevi Group, in 1975, which was initially created to coordinate actions against terrorism - at that time the concerns were the IRA in the UK, the Red Brigades in Italy and pro-Palestinian groups across Europe – and later to deal also with football hooliganism, international crime and immigration (Smith 2003 p. 31). It was only during the second half of the 1980s that the EC started incorporating human rights considerations into assistance programmes and promoting political conditionality. It has established small programmes to promote human rights aid to democracy in Chile and ECE countries. During the Cold War, the EC prioritised trade ties and persuasive diplomacy to

promote liberalisation in ECE countries instead of retaliation policies regarding human rights situation. It was only in 1992 that the EU created the programme of “Poland and Hungary Assistance for the Restructuring of the Economy” (PHARE).

With the democratisation process initiated, the EC started to provide aid for economic reforms and use conditionality to encourage political change. In contrast to the EU strategy with other regions, in the beginning, the EU’s relations with the ECE countries were predominantly bilateral (Smith 2003 pp. 103-105). Individually, France and the UK in 1990 and Germany in 1991 announced that democracy and human rights considerations would guide aid distribution (Smith 2003 p. 105), and since 1995 - with the human rights clause – human rights and democracy started to orient the EU’s policies.

Finally, in 1994, the European Initiative for Democracy and Human Rights was created and its funds from the ECU increased from 59.1 million Euros to 410 million Euros for the period from 1999 to 2004. This is a small percentage of the EU external relations budget, but it is more than most states and international organisations give (Smith 2003 p. 113). The Initiative’s priorities have been: (1) support to strengthen democratisation, good governance and the rule of law; (2) support to the abolition of the death penalty; (3) support for the fight against torture and impunity and for international tribunals and criminal courts; and (4) combating racism and xenophobia, and discrimination against minorities and indigenous peoples (Smith 2003 p. 114). Launched in 2006, the European Instrument for Democracy and Human Rights (EIDHR) has replaced the European Initiative and, since 2007, the Development Cooperation Instrument and the European Neighbourhood and Partnership Instrument (ENPI) complement the tools used by the EU to implement its policies for democracy and human rights.

In the process of preparing for accessing the EU, all candidate countries made an effort to harmonise their laws and institutions with those of the EU member states, including the police. Candidate countries “try to give the impression that the laws on the police organisation, authority, and legal status comply with European norms” (Koszeg in Kádár 2001 p. 5). Although the practice within the EU is to respect different traditional administration systems and common and civil law, the

harmonisation of human rights norms is “just as much a condition of integration as harmonisation of economic and commercial practices” (Koszeg in Kádár 2001 p. 6).

In fact, the EU conditionality mainly addresses legislation and involves issues that meet their interests. In this sense, regarding the police, there is a positive conditionality⁶⁸ in relation to law, but less concern for more structural problems, such as its organisational and supervisory framework. As the JHA recommendations are non-binding, close cooperation is needed among judicial authorities and police forces. The main cooperation programmes among the EU members and the ECE countries have been in the areas of regional security matters, focusing on combating organised crime, drug trafficking and illegal migration. However, despite the predominance of bilateral relations with the ECE countries, the tendency for police assistance has been to channelling it through the EU’s mechanisms. In this spirit, Europol was created to pursue the priorities of the EU public security agenda and promote cooperation among police forces of the member states. Although the negotiation process for its creation was slow, the Europol convention entered into force in 1998 and became operational in 1999.

In Europe, the *acquis communautaire* of the European Union and the admission criteria developed during the rounds of enlargement was backed by significant material incentives for the European values already constructed and promoted by the Council of Europe. These values have fostered a regional identity, the promotion of democracy and human rights also in non-member states in Europe.

The Council of Europe, as we have seen in Chapter One, has been the main political actor for cooperation and assistance to East and Central European countries. The European Commission for Democracy through Law, based in Venice and comprised of independent experts, assisted the transitional countries in drafting their

⁶⁸ Positive conditionality means benefits to a state if it fulfils the conditions; negative conditionality involves reducing, suspending or terminating those benefits if the state in question violates the conditions. The EU often holds out the promise of an agreement if the country concerned meets certain conditions (such as respect for democratic principles or implementing structural adjustment programmes). Negotiation and conclusion of agreements can be delayed if the conditions are not being met. For example, since September 1997, the Council has put off the conclusion of a partnership and cooperation agreement with Belarus, because that country does not respect human rights and democratic principles.

constitutions and other laws. Its work was complementary to the Council's assistance programmes for legal reforms. Several special programmes were launched before and after the countries' accession. These programmes were dubbed Demosthenes, Themis and Lode, and gave priority to work on the ground (Council of Europe 1989).

Demosthenes covered all areas of activities of the Council of Europe and had the goal of bringing each country's legislation and institutions into conformity with Council of Europe norms, especially the European Convention of Human Rights. Themis was a programme specifically designed for legal cooperation aiming at the establishment of an independent judiciary; it trained judges, prosecutors, lawyers, police officers, prison administrators and public servants in the judicial system. And the Lode Programme was designed to promote grassroots democracy and was addressed to local leaders and administrators in local politics (Diana Pinto in Council of Europe 1996 pp. 47-58).

Furthermore, the Directorate of Cooperation has developed activities in the areas of legal and human rights capacity building, economic crime and judicial reforms. Regarding the police, the legal and human rights capacity building office has recently launched the police and human rights programme in order to raise awareness, develop training tools and build networks for police and human rights across Europe. However, for the period targeted by this research, the most important impact on the police forces was the strengthening of oversight mechanisms and human rights values that began to frame the police activities and the institutional reforms.

An early attempt to establish a pan-European framework for the police occurred in 1979, with the adoption of the Declaration on the Police (Resolution 690) by the Parliamentary Assembly of the Council of Europe. The Declaration aimed to provide ethical standards for the police. In 1998, the European Committee on Crime Problems adopted the terms of reference established by the Committee of Experts on Police Ethics and Problems of Policing, and it became the basis for the European Code of Police Ethics adopted in 2001. Together with the United Nations documents related to law enforcement, the Code has become a reference for the concept of democratic policing. The Council of Europe's effort to develop rule of law and human rights

standards has been a unique and paramount work in Europe, as illustrated by the case of Poland which is discussed in Chapter Five.

Police Assistance in Latin America

In Latin America, police reform has received more bilateral support while multilateral agencies have emphasised the reform of the courts (Ziegler and Nield 2002 p. 68). The primary donor in police assistance to Latin America has always been the U.S. It was only beginning in the 1990s that other bilateral donors, such as Spain, France, the UK and Canada, and multilateral organisations, such as the Inter-American Development Bank (IDB), the World Bank, the UN, the EU, and the OAS started working on police reform in the region. Below, I will present an overview of police assistance by multilateral organisations in the region with special attention to programmes in Ecuador.

With the assumption that there is a strong link between violence and losses in gross domestic product, since 1996, the IDB has supported research and projects on crime prevention and public security initiatives, and has drawn up policy guidelines for lending in the area. The Bank has projects in different stages of preparation or development in Colombia, Chile, Honduras, Jamaica, Nicaragua, Guatemala, Guyana, Peru, Trinidad and Tobago and Uruguay, and has identified possible citizen security programmes in Brazil, the Dominican Republic, Ecuador, Panama and Venezuela (Buvinic et al. 2005). The Bank's guidelines for projects in the area of violence reduction proscribe certain areas for support, such as "acquisition of lethal or potentially lethal equipment (e.g., weapons, ammunition), activities designed to preserve state security or investigate crimes committed with political motivations (support for counterintelligence or state security) and all other areas that are associated with human rights abuses or that have political aspects" (Buvinic et al. 2005 p. 12 Footnote 8). And, so far, the Bank has not financed more comprehensive police restructuring or reform projects. In the case of Ecuador, since 1998, the IDB has already supported "non-reimbursable" technical cooperation for legislative development, training systems, an administrative system for judicial operations,

access to justice, and juridical security for the improvement of competitiveness (BID 1998). However, there is no project that includes the police.

The rule of law aid from the World Bank is basically related to economic reforms and some projects on legal access following the economic view of the Bank's definition of good governance⁶⁹. In 1994, the World Bank evaluated the justice sector in Ecuador and developed a loan operation of US\$10.7 million for a Judicial Reform Project initiated in 1996 and completed in 2002 (Project ID PO36056). The project included improvement in the efficiency of justice, development of legal education, justice access, and improvement of physical structures. In 2002, a grant of US\$1.78 million was approved for the Law and Justice for the Poor Programme (Project ID PO87390). The other two projects addressing Ecuador focused on legal institutions for the market economy and state enterprises.

The United Nations Development Programme (UNDP), through its Bureau for Crisis Prevention and Recovery (BCPR), established a Justice and Security Sector Reform (JSSR). Specifically regarding the police institution, as of 2006, JSSR has activities only in Argentina, Brazil, Belize and Guatemala. In Ecuador, it has developed activities related to the establishment of a civilian oversight office (ombudsmen office) and provides support for the development of national plans to reform the security sector⁷⁰ (UNDP 2006). The UN Interregional Crime and Justice Research Institute (UNICRI) is also developing a project for judicial training in the Andean countries; it is called "Assistance to Bolivia, Colombia, Ecuador and Peru in the Fight against Corruption and Drug Trafficking". This project is based on training courses for judges and public prosecutors. The donor for the project is the Italian Ministry of Foreign Affairs, but training and technical contributions have been provided by academics, magistrates and officials from Argentina, Brazil, Colombia, Italy, Mexico, the U.S., and senior representatives of the OAS. The aim of the project is to promote

⁶⁹ The World Bank defines governance as "the traditions and institutions by which authority in a country is exercised for the common good. This includes (i) the process by which those in authority are selected, monitored and replaced, (ii) the capacity of the government to effectively manage its resources and implement policies, and (iii) the respect of citizens and the state for the institutions that govern economic and social interactions among them" (World Bank 2004).

⁷⁰ A similar programme has been developed in Brazil, Colombia, El Salvador, Guatemala and Nicaragua.

knowledge of international and regional legal instruments against corruption and organised crime, and to establish a basis for cooperation.

Among its thematic priorities, the European Initiative for Democracy and Human Rights in Third Countries identified the strengthening of democratisation, good governance and the rule of law. In Latin America, the focus countries have been Colombia, Guatemala and Mexico. In Ecuador, the Initiative supported the project for “Strengthening Constitutional Justice” (Project Number 2001/0990) of the Spanish University Carlos III. Following the EU policy of dealing with third countries on a regional basis, in general, cooperation from EU to Ecuador has been carried out under the Framework Agreement between the EU and the Andean Community, signed in 1993 and entered into force in 1998⁷¹, and under the 1996 Declaration of Rome. Nevertheless, a new Political Dialogue and Cooperation Agreement was negotiated in 2003. Once ratified, it will replace the previous documents and will extend the areas of cooperation to include good governance, conflict prevention, counter-terrorism and migration (EU 2006)⁷².

Under this framework, the EU has focused on two priorities. First, the support for the Andean integration process in order to develop a single market and project the Andean Community as an international player. Secondly, the support of an Andean Peace Zone in order to fight against drugs and promote the management of natural resources. For the 2000-2006 period, 27 million Euros have been allocated for three initiatives in these domains: involvement of civil society, harmonisation of statistics, and prevention of natural disasters. The EU is the main donor for Andean regional projects since donors have usually opted for a national approach (EU 2006 pp. 5-6). However, with the exception of Spain, EU Member States do not engage in cooperation with the Andean region as such. Spanish cooperation has been specifically related to the fight against drug trafficking. The Spanish national anti-drug plan has designed projects to support police assistance and other aspects of law enforcement to complement the initiatives of the European Commission.

⁷¹ By 1983 the EU had established a regional framework agreement with the region, at that time called the Andean Pact.

⁷² In 2008, the EU-CAN negotiations failed and a new negotiation format was adopted: regional negotiation with the Andean Community on political dialogue and cooperation, an update of the 2003 Agreement; and multi-party trade negotiations with individual Andean Community countries.

The OAS, through its main areas of activities - defending democracy, protecting human rights, strengthening security, fostering free trade, combating illegal drugs, and fighting corruption – has developed a framework for human rights, rule of law and good governance, and has created agencies responsible for cooperation in those fields. Until 2005, the OAS Secretariat for Political Affairs (SPA) was responsible for activities related to democracy, good governance and prevention of conflicts, and had no specific programme for the police. Although, the discussion about citizen security was already present in the regional debate, with the exception of the OAS Special Mission “Support for Strengthening Democracy in Haiti”⁷³, police assistance had represented a small effort by the OAS and usually within programmes concerning drug trafficking, terrorism and international organised crime.

Following the new concept of security adopted in the Declaration on Security in the Americas (2003), the Secretariat for Multidimensional Security was created in 2005, for the purpose of coordinating cooperation among the member States to deal with threats to national and public security. The Secretariat is comprised of three divisions: the Executive Secretariat of the Inter-American Drug Abuse Control Commission (CICAD), already created in 1986; the Secretariat of the Inter-American Committee against Terrorism (CICTE), established in 1999; and the Department of Public Security (DPS), created in 2006.

CICAD has provided police training through different projects concerning supply reduction. In the area of counterdrug cooperation and capacity building, CICAD helped to establish, in 1999, the Andean Community Regional Counterdrug Intelligence School (ERCAIAD) based in Lima, Peru. It developed a project for counterdrug enforcement training for all member states, and a community policing project for the Dominican Republic (CICAD website). With the exception of the community policing project which was funded by Canada alone, all the other projects had been developed with funds from Canada and the U.S. CICAD also had projects involving police training in the area of maritime drug-trafficking, chemical control, and organised crime; some of these projects were funded by France and Spain

⁷³ Initiated in 2000, this makes the regional community responsible for building a new police institution in the country.

(CICAD website). Police training also has been provided by CICTE through programmes on port security, customs and border protection.

The DPS is responsible for promoting public policies on security, legislation and technical assistance to member States, and this includes the responsibility for promoting police training, activities to improve the penitentiary system, legislative assistance and information systems on crime and violence. Very recently, DPS has launched the Inter-American Training Programme (PICAP). The main purpose is the exchange of information, transfer of experience, and analysis of political actions among the member States in order to develop tools for the prevention and control of crime and violence. DPS has also focused on the modernisation of police education through the development of a model curriculum. This has been a significant change in the OAS concern for public security⁷⁴ and, in the broad picture, in its approach to strengthening democracy in the region. However, it is a very recent trend, and PICAP is in a very early stage. It will be interesting to follow the development and application of PICAP's activities in order to analyse its approach to policing and the rule of law as well as to evaluate its impact on the police institutions of the region. It is an issue for another study since the argument of this research focuses on the first years of the democratisation process in the region.

In the Andean Community of Nations (CAN), political cooperation has focused on security matters in the region - basically drug trafficking, terrorism and corruption - in order to create a common external security policy for the Andean Community as stated in Decision 587 of the Andean Council of Foreign Ministers adopted in July 2004. Related to the citizen security field, in June 2003, through Decision 552, the "Andean Plan to Prevent, Fight and Eradicate Illicit Trafficking in Small Arms and Light Weapons in all its Aspects" was approved. In Ecuador, the Andean Community, together with the OAS and the UN, participated in the process of naming the new Supreme Court of the country in 2005. However, assistance for police forces is not part of its agenda.

⁷⁴ The OAS has also initiated a process of Ministerial Meetings on Public Security. The first one was held in Mexico in 2008.

The Andean Development Corporation (CAF), the financial institute of the Andean Community, has a strategic programme of governance with four main areas: “ethics and transparency for development”, “institutionality”, “decentralisation and citizen participation”, and “leadership for transformation”. The latter area has a project for education of youth with democratic values. Nevertheless, there is no programme related to the judicial system, and most of CAF’s programmes in Ecuador focus on infrastructure, commerce and microfinance (CAF 2004).

Police assistance from multilateral organisations is a very recent activity and, in general, relates to specific cases without continuity or real concerns regarding the police institution itself. Although the UN has already developed an important conceptual framework related to human rights and law enforcement, it is rarely incorporated into police assistance. At the same time, bilateral donors, directly or through multilateral organisations, have also increased their participation in police assistance in recent years. In comparison to other countries, the U.S. is far ahead in the police assistance field. Moreover, many of the programmes developed by multilateral agencies are totally or partially financed by the U.S. For this reason, it is fundamentally important to discuss U.S. police assistance.

U.S. Police Assistance

From the 1950s to the 1970s, U.S. police assistance was developed through the “Public Safety Programme”⁷⁵ developed under USAID’s Office of Public Safety

⁷⁵The public safety program was created in 1954 to provide assistance for foreign governments. The first country to receive assistance was Indonesia, followed by Iran, South Korea and Cambodia (GAO 1976 p. 9). “Preventive doctrine” - “NSC Action Memorandum 1290, dubbed a “Review of Basic National Security Policy”, directed, in Sub-clause “d”, that the NSC’s Operations Coordinating Board (OCB) present to the [National Security] Council a report on the status and adequacy of the current program to develop constabulary forces to maintain internal security and to destroy the effectiveness of the Communist apparatus in free world countries vulnerable to communist subversion (NSC 1954b 2). The police program that grew out of this directive came to be known throughout the U.S. national security bureaucracy as the 1290d Program. From then on, foreign police assistance would be reorganised as part of the U.S. national security bureaucracy. The 1290d Program was thought to be necessary because “many countries threatened with communist subversion [had] neither the knowledge, training nor means to defend themselves successfully [against communism]” (OCB 1955c, 1). To correct this, 1290d would train foreign countries’ “regular and special police gendarmerie and *carabinero*, constabulary and investigative types of forces” as a first line of defence against Communist subversion (OCB 1955c, 5). However, recognising that police training alone would not prepare host countries against Communism, in 1957, the OCB broadened its internal security initiative

(OPS), the Military Assistance Programme (MAP), and the Military Service Funded programme in South Vietnam (GAO 1976 p. 1).

The OPS was set up in the U.S. Agency for International Development (USAID) in 1962 as an attempt to centralise the public safety programmes. The Kennedy government, according to Martha Huggins (1998 pp. 104-107), acknowledged that police training was a political rather than a military instrument and for this reason should be controlled by USAID or the Central Intelligence Agency (CIA). However, the CIA did not want official control of its activities since it was afraid of exposing its personnel by having them act overtly.

In 1963, the International Police Academy (IPA) was established to train foreign police officers. The Inter-American Police Academy (IAPA) established in 1962 by the CIA's Panama Station at Fort Davis Army Base in the Panama Canal Zone was later transferred to Washington D.C. to operate at IPA. In 1974, USAID decided to close the IPA due to the allegations that the CIA recruited informants and operatives through the academy (Huggins 1998 p. 108) and "(1) encouraged or condoned police brutality, (2) taught or encouraged use of terror and torture techniques, and (3) promoted creation of police states" (GAO 1976 p. 14).

In 1973 and 1974, the U.S. Congress passed legislation incorporating human rights into aid policies and abolishing U.S. assistance to foreign police forces and prisons⁷⁶. The Foreign Assistance Act (FAA) of 1974 introduced Section 660 which prohibits the U.S. "to provide training or advice, or provide any financial support, for police, prisons, or other law enforcement forces for any foreign government or any programme of internal intelligence or surveillance on behalf of any foreign government within the United States or abroad" (GAO 1976 p. 6). The OPS was also accused of assisting human rights violations through foreign police forces, or at least, having knowledge about it. For this reason, Gerald Ford's Administration completely

to include the Overseas Internal Security Program (OISP). This top secret internal security program combined 1290d police assistance with a variety of strategies to coordinate international security planning more carefully by integrating military and police assistance with judicial reform, using USIA [the U.S. Information Agency] propaganda to convince vulnerable countries that they needed OISP internal security assistance", (Huggins 1998 p. 80).

⁷⁶ Foreign Assistance Act of 1973 (17 December 1973); Foreign Assistance and Related Programs Appropriation Act, 1974 (2 January 1974); and Foreign Assistance Act of 1974 (30 December 1974).

dismantled the OPS in order to avoid investigation of its past activities (Huggins 1998 p. 195).

Nevertheless, the prohibition stated by the FAA did not apply to the activities of the Drug Enforcement Agency (DEA) or the Federal Bureau of Investigation (FBI) (GAO 1976 p. 4). This legislation only concerns the Departments of State and Defence. However, Defence also interpreted that the Congress did “not intend for military assistance to be prohibited to countries under martial law or to units assigned dual military-police functions” (GAO 1976 p. ii). Subsequently, there were numerous amendments to Section 660 establishing exemptions for specific countries or areas, mostly related to narcotics control and counterterrorism issues but also to illegal migration.

The International Security and Development Cooperation Act of 1981 granted exemptions to Haiti in order to assist Haitian police forces to stop illegal emigration to the U.S. The International Security and Development Assistance Authorisations Act of 1983 removed the prohibition to train foreign police for the anti-terrorism programme. With the International Security and Development Cooperation Act of 1985, a series of police assistance activities were allowed, mostly related to judicial reform involving police assistance in judicial investigative roles for Latin American and Caribbean countries. In 1988, the Congress expanded the judicial reform programme to include the promotion of law enforcement training curricula and improved administration and management of law enforcement organisations. The International Narcotics Control Act of 1986 allowed the Department of Defence (DOD) to train foreign police in the use of aircraft to control drug trafficking. The International Narcotics Control Act of 1988 expanded the training for the police units specifically organised for narcotics control in certain countries of Latin American and Caribbean; through this act the Colombian police started receiving economic support for protection of government officials, judges and members of the press against what were called “narco-terrorist attacks”. The International Narcotics Control Act of 1989 extended the DOD’s activities to train and provide defensive equipment to police units in Colombia, Bolivia and Peru; this extension was reaffirmed in the International Narcotics Control Act of 1990. Other examples are the Urgent Assistance for Democracy in Panama Act of 1990 and the Foreign Operations, Export

Financing, and Related Programmes Appropriations Act of 1991 related to the Eastern Caribbean (GAO 1992 pp. 8-11). Exemptions to the police assistance prohibition can also be made by the president, who may authorise foreign assistance when “it is important to the security interests of the United States” (quoted in GAO 1992 p. 11). With the end of the Cold War and the democratisation process in Latin America and Eastern Europe the exceptions have proliferated.

In 1974, Ecuador was among the 17 countries where the Public Safety Programmes had to be phased out (GAO 1976 p. 11). Already in the 1970s, the U.S. Narcotics Control Programme helped to establish special narcotics units by the police in Colombia, Peru and Ecuador (GAO 1976 Appendix II p. 68). These special units permitted the U.S. to keep aiding and training the police despite the prohibitive legislation. Ironically, the 1973 and 1974 legislation, which intended to incorporate human rights and prohibit support to authoritarian governments, promoted imbalances between those special units and the rest of the police. Moreover, it promoted a partial approach to what should be a comprehensive security system as will we discuss in Chapter Six on the Ecuadorian police.

USAID was the main entity responsible for narcotics control projects financed through the Department of State; however, since 1973, the administration and supervision of the narcotics control funds were transferred to the Senior Advisor to the Secretary of State and Coordinator for the Bureau of International Narcotics Matters (INM) which provides training and equipment in order to strengthen the enforcement and interdiction capabilities of the recipient countries. For fiscal year 1990, with a minimum of US\$45 million, INM assisted police in countries recognised as producers or traffickers, mostly Bolivia, Brazil, Colombia, Ecuador, Jamaica, Mexico, Peru, Venezuela, Pakistan, Thailand, and Turkey (GAO 1992 p. 12). In 1990, U.S. police assistance reached 125 countries all over the world, including countries that may have received assistance only through the participation of one person in a training course. Most programmes were developed through INM, which includes training provided by the DEA, the U.S. Coast Guard, and the U.S. Customs Service (GAO 1992 pp. 19-22). There are also other agencies involved in the Narcotics Control Programme. The narcotics training provided at the academy, closed in 1974, was primarily transferred to the Drug Enforcement Agency (DEA). Training

and equipment are also provided by the DOD; for fiscal year 1990, it provided at least US\$17 million to Mexico, US\$1.3 million to Bolivia, US\$10 million to Colombia, US\$1 million to Peru and US\$1 million to Ecuador (GAO 1992 p. 13). For fiscal year 1974, the U.S. Congress gave US\$42.5 million for international narcotics control (GAO 1976 p. 20). During fiscal year 1992, the GAO identified a cost of at least US\$117 million in police assistance. These numbers do not represent the total expenditure on drug control since some agencies do not maintain such data (GAO 1992 p. 2).

In the mid-1980s, the U.S. increased the administration of justice programmes in Central America, mostly through USAID. The Reagan administration, which was providing significant military aid to the region, was under pressure from the House of Representatives, controlled by the Democrats, to develop a human rights policy for the region (Carothers 1999 p. 6). Originating with the Republican government policy strategy in the region, those programmes were inserted within a democracy promotion programme. The assumption was that promoting an independent, efficient and effective judicial system was fundamental to democracy; however, the programmes were concentrated on criminal justice, in particular on reforming criminal law, and training prosecutors, judges, and police (Carothers 1999 p. 6).

In 1986, the Department of Justice (DOJ) established the International Criminal Investigative Training Assistance Programme (ICITAP) with funds transferred by USAID. ICITAP operates with oversight from the Department of State and its main goal is to improve criminal justice in Latin America. Training programmes have expanded to include police management and police academy development. In 1989, a special programme emerged after the U.S intervention in Panama; the National Police Force Development project was created by ICITAP with the goal of helping to develop the newly formed police force in the country. For fiscal year 1990, ICITAP received US\$7 million from the Department of State to develop its regional programme. ICITAP has become the primary coordinator of U.S. assistance to foreign police (GAO 1992 p. 13).

Aid for police through programmes like ICITAP is justified by the reasoning that crime and violence are a major obstacle for development in Latin America (World

Bank 1999). In fact, in late 1994, a USAID Administrator approved the integration of police assistance efforts into USAID rule of law programmes “explicitly acknowledging the role that an effective and law abiding police force plays in the development and functioning of a justice system”. This policy guidance was never developed, but USAID’s Rule of Law Working Group recently proposed formalising that 1994 suggestion (Ziegler and Nield 2002 pp. 54-55). Initially, USAID’s work was not “so much driven by the objective of reducing ordinary crime as by that of improving the treatment of citizens at the hands of the system for the reduction of crime” (Carothers 1999 p. 9), however, the increase of criminal activity during the 1990s redirected its work.

There are many other U.S. agencies involved in foreign police assistance at the Department of State, DOJ, and DOD, such as the Narcotics Affairs Section (NAS), the Bureau of International Narcotics and Law Enforcement Affairs (INL), the Secret Service and Customs Services. Training for law enforcement officials is also provided by the FBI through its own allocated funds. The result is a great deal of overlapping assistance.

The main U.S. assistance provided to foreign police identified by GAO (1992), already in the early 1990’s were: (1) Antiterrorism Assistance; (2) International Narcotics Control; (3) Investigative and International Police Training; (4) Counterterrorism and Military Assistance; and (5) National Police Force Development (GAO 1992 p. 12).

Since the 1980s, U.S. foreign policy has become more and more decentralised among many agencies. There is a decentralisation of programmes through a multiplication of source institutions in the U.S. bureaucracy and receptor institutions in the foreign countries. The result is not only the overlapping of objectives, but this also makes assistance policies less accountable to Congress and makes the U.S. presence less visible in other countries (Huggins 1998 pp. 76, 195-196). Even the U.S. Government Accountability Office at the Congress (GAO) is not able to determine the exact amount of aid and the number of police officers trained because of the number of agencies involved and the lack of details and cross-referenced information among them. Moreover, most agencies do not distinguish between assistance provided to

police and assistance provided to the military (GAO 1992). It is also difficult to have an overall evaluation of U.S. police assistance because of the lack of U.S. policy guidance in the area. Each agency has its own programme agenda (GAO 1992); sometimes in conflict with each other, as in the case of USAID and NAS, with the former developing projects in the sector of the penal system with emphasis on the strengthening of civil society, and the latter with an emphasis on combating drug trafficking.

Directly or indirectly, intentionally or unintentionally, during the Cold War, U.S. foreign police assistance meant a contribution to the creation of Latin American bureaucratic-authoritarian states. The rationale behind police aid, in many cases, continues to be to transform such police into transmission lines for U.S. foreign policy and U.S. economic and political interests abroad, providing a mechanism for the U.S. to penetrate foreign states through their police systems (Huggins 1998 pp .2, 117). U.S. police training is still developed under the same model described by Huggins in 1898 and in 1974, the “U.S. personnel who were training Latin America police most often and increasingly came from the U.S. military or national security agencies, and not from civil police organisations. Accordingly, the policing and social control techniques taught were oriented toward military, not civilian, models of control” (Huggins 1998 p. 8). It is still conceived on the idea that the local police force is not prepared to combat the threats perceived by the U.S., and thus it requires their technical support and ideological orientation. The rationale of the U.S. police assistance has not changed with the end of Cold War, and all these programmes enable it to reproduce the internationalisation of the U.S. security agenda, first developed to contain communism, then to fight narco-trafficking, and now also to combat terrorism and control migration. The U.S. police assistance to Ecuador, which will be discussed in Chapter Six, is illustrative of the U.S. political dynamic in police assistance.

Conclusion

In both regions, there has been an increased development of mechanisms for the promotion and protection of democracy and human rights. As we are talking about

open processes at different levels, it is the work of a Sisyphus to maintain an updated analysis regarding the changes and advances on all fronts. Thus, the intention of this chapter was to give an overview of the international assistance related to policing at the initiation of the democratisation processes in each region.

The European guidelines have been developed within different institutional sets; however, they have operated in a complementary fashion, promoting shared values and objectives among different European actors and fostering the construction of a regional public space. Without overlooking structural problems in different countries, more attention must be given to the regional political dynamic in order to understand the timing and success of democratic processes. The existence of strong multilateral organisations responsible for the promotion of human rights and democratic values and the network of oversight mechanisms is crucial for the democratisation process. The strength and efficiency of these mechanisms have more to do with the features of the regional political dynamic than with the human rights problems on each continent.

On the one hand, EU conditionality imposed during the accession process has been crucial for promoting human rights and democracy in the candidate countries. On the other hand, the process of supranational institutionalisation itself has been favoured by the Council of Europe's political dynamic; the Council has promoted shared perceptions of interests and identities that constitute an important support for regional integration. The fact is that these different regional instruments have created a system of collective efforts to frame practically all the political actors' activities in the region in line with democratic values and human rights. Although born out of different concerns – police reform, democratic accountability, human rights, organised crime, terrorism, illegal migration – police assistance has been framed in the same way.

The institutional context of the Americas is not comparable to the regional law enforcement framework developed in Europe. The lack of long-term perspective based on regional institutionalisation and the prevalence of bilateral relations have created a regional context that is less favourable to developing and incorporating regional parameters for democratic policing. Most bilateral programmes related to police forces have focussed on pursuing order enforcement rather than law enforcement. Strengthening citizenship in other countries will hardly be the priority

of bilateral donor countries. In many cases, assistance programmes may be used as instruments with an economic and political rationale that has little or nothing to do with human rights and law enforcement.

U.S. assistance for foreign police “is provided in an *ad hoc* way responding by and large to concerns about criminal threats to the United States rather than to the goal of expanding democratic criminal justice practices” (Bayley 2006 p. 48). Instead of working as external stimuli for democratic policing, these prime motivations may be obstacles to democratisation.

It is true that activities of multilateral organisations are more prone to be framed and monitored than bilateral ones. The question is not so much whether the police assistance is delivered by a bilateral or a multilateral donor, but whether this assistance is framed within established democratic and human rights standards and whether there is oversight by different control mechanisms. Donors have to be subject to the same democratic and human rights norms in order to be successful in producing police and law enforcement reforms in other countries, as Bayley remind us “[r]eform abroad begins with reforms at home” (Bayley 2006 p. 143).

PART II

Chapter 4 - Policing Democracy

Introduction

One of the essential problems of human rights in transitional societies and new democracies is to control the arbitrariness exercised by corruption or violence in daily and ordinary police work. It is a permanent challenge for any democratic society, but it acquires a more urgent character in countries trying to change their interior power relationships, or at least the way that power is exercised. The police, together with the judiciary, are the most conservative areas in society and usually the last to change in the transition towards democracy. The two extremes of the debate about the police are whether police forces are an organic part of democracy or whether they are intrinsically contradictory to democratic values because of their quasi-military character and their function of ensuring public security (Szikinger in Kádár 2001 p. 15). Between these extremes, a variety of views abound about police institutions that enable us to discuss ways to democratise police forces and make them function more effectively.

Regardless of regime type, the police are essentially a political issue. This issue implies building a political policy and designing certain institutions, as well as finding and keeping the social support for the police (Chevigny 1995 p. 119). Police officers are the closest and most visible representatives of law enforcement for the majority of citizens; and the police force is possibly the state institution most exposed to social problems and political changes, especially in transitional societies (Losing in Waldmann et al. 1996 p. 381). In this context, the problem of the police presents two analytical faces. The first relates to the rule of law; it concerns the question of which law is to be constructed by and enforced by whom, in other words, how democratic and inclusive the concept of the rule of law embraced by the state is. The second, and the topic for this chapter, concerns the implementation and protection of this law or, more precisely, how the police work to achieve the rule of law.

Police practices help to reproduce the order of a society, and consequently, they are also an indicator of the extent to which a given society is democratised. By saying that, I am not assuming that the police merely reflect society. In modern society, as Paul Chevigny (1995 p. 7) observes, “policing allows for enormous discretion. The police may enforce status distinctions or try to minimise them in the interests of reducing conflict; they may impose them through an ‘order’ (in a slightly different sense) that ranges from that of an autocratic military to an impersonal ‘legal’ order. In reproducing order, the police have the power to represent it as well, and, through interpreting, to influence it.” The police institution, through its own subculture, can become part of a democratisation process or, on the contrary, can reinforce the authoritarian legacy of the previous regime.

In this sense, it is inconceivable to have a democratisation process without encompassing the police forces, not only in relation to dismantling the repressive apparatus of the previous regime but also in reference to the building of a democratic one. However, police have been almost absent in the literature on democracy and democratisation. It is because, as Mercedes Hinton (2006 p. 4) observes, the police “have not been as politically decisive or as historically prominent as the military: they rarely perpetuate *coups* or wrestle power from the state”, which has led to a misconceptualisation of policing. It is assumed that “explaining the state explains the police” (Marenin in Das and Marenin 2000 p. 314); that is, analysing the state and its relation with society is enough to understand the police institutions and their actions. The consequence is that police are not perceived as an actor, nor have their discretionary capacity and specific organisational culture been recognised.

The police are subject as much as object in the reproduction of the political system and in the relation between state and society (Marenin in Das and Marenin 2000 p. 314). Consequently, the police are a central institution and political actor for any attempt to democratise both state and society. For this reason the police should not be considered, in Lone Lindholt’s (2003 p. 1) words, “only as an obstacle to the promotion and protection of human rights. The police are, and should be viewed as, an important target group for improvement in the sense that efforts invested in this area may effect a direct positive change in the human rights situation. In this way, the

police may become a constructive force in the process towards democratisation and respect for human rights.”

Thus, this chapter aims to discuss the main problems regarding the police institution that are faced by new democracies: (1) their function; (2) their relationship with the government and the military; (3) their possibility to reform; and, essentially, (4) their paramount role in efforts toward further democratisation.

The Emergence of the Police Institution

Despite the differences in the development of police forces that each country may present, functionally, they have basically the same origin and basic role. The concept of police emerged with the Absolutist State in Europe in the fifteenth century. Initially, their functions were as broad as the functions this type of state attributed to itself; the police forces were related not only to security but also to the general welfare of society. Not until the nineteenth century were the police transformed into a bureaucratic and professional institution. This transformation implied two main changes: first, the monopoly over physical coercion by the state apparatus; and secondly, the separation between military and police functions (Waldmann et al. 1996 pp. 35-39).

The definitive change in Europe from police forces that represented a vigilant and tutelary state to an institutional police force responsible for maintaining the internal constitutional order was due to changes originating in the structural transformation of the European societies that presented an enormous threat to the traditional institutional system. The main changes were related to: (1) the process of industrialisation; (2) the rapid growth of the population; (3) the rural migration towards cities; (4) the fast urbanisation; (5) and all the socio-economic problems that resulted from this structural transformation.

Although there was an emerging debate about the rule of law and the political and civil rights manifested in the U.S. Constitution of 1787 and the French Declaration of 1789, the process of police professionalisation was first framed by a discussion about

the counterproductive effects of an exaggerated tutelage and disciplinary regime over citizens by the state⁷⁷. For this reason, the decisive action came from within the state's own apparatus, through administrative and judicial institutions in an attempt to "control who controls"⁷⁸ (Waldmann et al. 1996 pp. 35-49).

In the U.S., the police were institutionalised in a similar environment, as Martha Huggins (1998 p. 9) describes: "Permanent police forces were established in major U.S. cities in the 1840s during a period of intense industrial, social, and political turmoil, when immigration was increasing rapidly, when class, ethnic, and racial riots were exploding in the bigger U.S. cities, and when labour strife was constantly on the rise". There, the same context of socio-economic changes resulted in the perception of new threats and the necessity to regulate the armed groups to deal with them.

In Latin America, between the end of the nineteenth century and the beginning of the twentieth century, the organisation of the police in a professional, bureaucratic and hierarchical institution followed a similar pattern. In Peru, just to give an example, the establishment of the police in the 1920s "coincided with the expansion of the Peruvian state and with the emergence of the public [sector], highlighted by an eruption of political movements, parties and periodicals that functioned as debate platforms. The police as a corporate body was devised to secure order and to safeguard a particular power structure in society in support of the oligarchy against insurgency" (Acha 2001 p. 87). The intention of regulating the existing security forces and permitting the police to develop their own operational logic was clearly to respond to the new demands imposed on them.

⁷⁷ Despite the impact that popular movements and individual freedoms had in the birth of the modern state in countries like England and France, Waldmann argues that the differences between the Prussian model of state police and a police that represents society and citizenship should not be overestimated. In England and France the evolution of the police institution did not produce its democratisation, but its centralisation, bureaucratisation and professionalisation under the Prussian model (Waldmann 1996 pp. 49-50).

⁷⁸ Peter Waldemann, based on the example of Germany in 1859, offers some established arguments against the excessive production of police norms that still apply for contemporary situations: (1) if for any trifle people had to pay a fine or go to jail, the notion of just and unjust would be lost and they would do whatever they wanted; (2) if people considered the police as a threat and an adversary, it would create obstacles for police work. In order to avoid these negative effects of policing, German authorities decided to reduce the punitive norms and ordered the police to be more tolerant and use a generous interpretation of police orders (Waldemann 1996 pp. 48-49).

Thus, urban police forces were established, in the first place, for political motives. In a broad view, all police professionalisation processes were initiated by a relatively strong state and were characterised by police bureaucratisation, centralisation, and differentiation from the military. Despite each country's history, the police gain specific attributes as part of the administrative apparatus in similar processes. As Renate Weber (in Kádár 2001 p. 39) argues, it "means that similar rules should function with respect to fundamental aspects of the police in every country. Of course, disparities will still exist because there are many differences between countries, but they should not be extreme". Consequently, it is possible to discuss common principles for policing and, at the same time, to discuss how to reform the police institution in a given country within a broad political dialogue.

Police Functions

The police are a central institution for any attempt to democratise state and society. In this sense, the most basic discussion in reforming the police is about the functions developed by them. These functions may include: (1) controlling people and specific groups; (2) disciplining people and specific groups; (3) regulating social relations; (4) investigating crime and lawless actions; (5) preventing crime and lawless actions; (5) protecting property; or (6) protecting people and rights. Some of these functions do not exclude others; however, some become incompatible in democracies. The notions of order and freedom in society are still approached in a contradictory way by the vast majority of contemporary democracies. It seems that the clash between the Hobbesian and the Lockean concepts of state are not easily resolved⁷⁹ as the democratisation process does not necessarily conciliate both notions.

Thus, the law enforcement role of the police may take two different directions, one with an emphasis on punishing criminals or anyone who challenges a given order, and the other with an emphasis on protecting rights. The conciliation or balance between punishment and protection is determined by the nature of the rule of law in

⁷⁹ In the Hobbesian state, sovereigns govern by the awe they inspire in their subjects. It is not the terror of the uncertainty of the state of nature but a fear of violent death that moves individuals to give up their total freedom. In contrast, the Lockean state is not based on awe, but on consensus about individual rights and the limits of state power.

each country. The type of policing chosen reflects a project based on political and legal definitions, and is responsible for building institutions and interactions.

Historically, the initial professionalisation process, as mentioned above, was a political response to major changes in the structure of society and was basically a state initiative. In a very broad sense, it meant the building of a specific institution within the “legal-rational bureaucratic state” to take care of internal threats to security in contrast to external ones. The centralisation and specialisation of the modern state created a full-time paid public service occupation. This professionalisation process in Western Europe or in any other country lacked human rights and democratic principles as leitmotifs. In Western Europe and, to a different extent, in the U.S., they were gradually assimilated into a continuous process; in the case of many Latin American and Eastern Central European countries this professionalisation process, especially the separation of the police from the military, was never completed. The process was not only interrupted during non-democratic regimes, but it was also set back by new authoritarian elements.

As they democratised, these countries were expected to resume this professionalisation process and encompass police reforms oriented by human rights and democratic components. This late or second professionalisation process presents different and more complex driving factors and a variety of actors promoting it. It does not correspond to a deep change in societal structure that culminated in the creation of the modern state, but to changes related to this state and the way to govern it. I do not intend to confuse professionalisation with democratisation or human rights, but to emphasise the necessity in new democracies of combining them in order to respond to all the legitimate requirements and demands of democratic societies.

Transitional countries commonly foster police professionalisation by applying it merely to technical development and efficiency in combating crime; however, professionalisation should also encompass the definition of police functions and the prioritisation of activities adopted. Professionalisation, as Niel Uldrik and Piet Van Reenen (2003 p. 202) remind us, “is not a *panacea* to all problems since the political and societal realities faced by the police are largely beyond their control. Nevertheless, by professionalising on a variety of fronts, the police can do much on

their own to bridge the legitimacy gap regardless of the limiting conditions encountered. This involves the enhancement of both knowledge and skills on the part of officers, but also encompasses an ethical dimension that increases police officers' awareness of the moral content of their work". In sum, any democratic process should acknowledge two important assumptions: first, the police institution is an actor with singular qualities, but equally an actor to be considered; secondly, police work has an ethical dimension which should not be ignored.

Thus, the current discussion about police professionalisation should be framed by two ethical principles: first, by human rights standards⁸⁰ that lead the police to prioritise human beings and their protection rather than order and protection of the state; and secondly, by democratic principles. In this sense, there is an emergent consensus around the concept of democratic policing. Dilip Das listed seven values and norms that should be present in police institutions and in the development of their activities, they are: (1) rule of law; (2) accountability to the public; (3) transparency of decision making; (4) popular participation in policing; (5) minimum use of force; (6) creating an organisation that facilitates learning of civil and human rights; and (7) internal democracy in the organisation (Das in Das and Marenin 2000 p. 5).

Moreover, the Preamble of the 1979 UN Code of Conduct for Law Enforcement Officials establishes three main components for democratic policing: representativeness, responsiveness, and accountability. The police should: (1) represent the community they serve, including minorities and marginalised groups, and try to distribute their services equally within that society; (2) respond to public needs and expectations within a broad social perspective; and, (3) be accountable legally, politically and economically to the law, to democratic institutions of governance, and to taxpayers⁸¹.

The main challenge for democratic policing today is how to translate those values and norms into the organisational culture and actions of the police in new democracies. In

⁸⁰ The following are the most basic human rights related to policing: freedom from arbitrary arrest and detention; freedom from torture and cruel, inhuman or degrading treatment; freedom from discrimination; freedom of assembly and organisation; and, to some extent, the right to a fair trial. See the Amnesty International's *10 Basic Human Rights Standards for Law Enforcement Officials*, 1998.

⁸¹ In 2009, the UN Publisher the United Nations Criminal Justice Standard for United Nations Police.

this sense, in the following sections, I will discuss three main efforts that should be made in order to effectively encompass democratic and human rights dimensions in policing, they are: (1) the departisanisation of the police forces; (2) the demilitarisation of the police and, at the same time, the total exclusion of the military from policing; and (3) the establishment of oversight and control mechanisms in order to make the police institution fully accountable.

The Relationship between Government and Police

The most visible problem related to the police occurs when a government, in establishing the police functions, either disregards the constitution or creates a constitution that permits political policing. Nevertheless, the greatest challenge for new democracies goes further than eliminating political policing. The departisanisation of the police (I prefer to use the term “departisanisation” instead of “depoliticisation” in order to keep the emphasis on the political aspects of policing) implies that particular groups in society cannot control the police; the police force must serve all of society equally.

Almost all constitutions of new democracies have provisions on human rights, but they are often vague in relation to the police force. Usually, the new provisions of the constitution are related only to the political system. Especially in negotiated transitions, many branches of the state apparatus are left untouched at the beginning of the process. Nevertheless, the notion that violence is simply the result of arbitrary behaviour on the part of the police is false, as Koseg (in Kádár 2001 p. 7) argues: “The great majority of human rights violations are the result of legislation that runs contrary to the constitution or to international human rights agreements [...], or laws that are formulated in such a way as to make possible deliberate misinterpretation or unlawful enforcement.” In this sense, changing the legal status of the police and its related laws through democratic and human rights principles is the first and necessary step towards reforming the police.

However, human rights violations committed by the police are also the result of different political choices that orient the operation of the police and the lack of

political will to hold the police accountable. It is a misconception to interpret police brutality as if the police were “out of control” for operating outside the bureaucratic legal norms of the state. The democratisation process gives the impression of establishing an apparently neutral police force with respect to politics and dominant social groups; the consequence is the “disclaiming [of] responsibility for any police repression and malpractice” (Huggins 1998 p. 11). In the case of the police institution, this creates the perception in society that the police are no longer a political issue and, consequently, do not have to be introduced into the democratisation agenda.

Most of the literature about the police distinguishes between what is called “high policing”, selective and calculated official violence focused on political dissidents, and “low policing”, systematic police violence when dealing with crimes and crowds, mostly focussed on poor people. Paul Chevigny and Ferenc Koseg argue that this distinction does not hold up. Chevigny (1996) calls attention to the methodological rather than functional nature of this differentiation since both are “means to control people”.

In society, the differentiation between “high policing” and “low policing” makes it difficult for human rights activists to foster as much sympathy against social repression as there is against political repression. For this reason, in most cases, it is not police abuses that propel a move to reform the institution in new democracies; it is the transformation of the crime problem that drives the debate on police reform. In recent decades, Latin America and also Eastern Central Europe have experienced a rise in the number of crimes and violence and a growth in the complexity of the criminal problem due to the development of technology and the internationalisation of crime.

Additionally, the more accessible and better publicised the statistics on crime are, the greater the perception of a threat from increased criminality. The public lack of information in non-democratic regimes, especially in the ECE, contributed to the impression that crime was totally under control. Ironically, the visibility of the criminality issue that permits a debate on policing also allows the manipulation of statistics to justify tough legislation and policing practices inherited from previous

regimes. The population's perception of increasing threats also generates impatience with the judicial system and an incentive for varying degrees of vigilantism. Democratic societies are not immune to hypocritical and conflicting demands. The incapacity of the state to deal with conflict and violence on the societal level may compromise the state's monopoly over the use of force. In extreme situations, confrontations may result in the formation of private militias or the practice of lynching.

Without well-defined police reform in concept and strategy by all the actors involved – domestic, regional and international – there is the risk of opening a space for conservative groups to dominate the debate and push for tough actions without a social approach to criminality issues. Another serious risk is the promotion of the “re-privatisation” of police forces or the “commoditisation of security” (Bayley and Shearing in Newburn 2005 p. 728), which means the transformation of security into a market product. In the end, it would be equivalent to the “partisanisation” of the police institution to the benefit of those who are “better-off” in society. Private security forces, which are becoming prevalent in many countries, directly undermine efforts to professionalise and democratise the functioning of the police (Ziegler and Nield 2002 p. 13).

The immediate and demagogic solution for the problem of crime is to transfer the state's responsibility or, more precisely, to partially give it up. This might be efficient in decreasing crimes against property (a solution still in question and deserving of further research), but certainly not in decreasing crimes against people. On the contrary, it leaves people more vulnerable with regard to their basic rights, since security becomes a product not related to citizens but to consumers.

Notoriously in many Latin American countries, the transition period was also characterised by an ineffective political government (“*desgobierno político*”) of public security that allowed a “police self-government”; public security issues became exclusively controlled and operated by the police institutions themselves. The orientation and administration of the security policies were based on corporative concepts defined by the police without interference from any other state agency (Sáin in *Enlace* Julio-2005 p. 2).

The political autonomy of the police and an increase in criminality have contributed to strengthening the invisibility of the police in the political agenda of new democracies. The control of police abuse should assume that the police are an integral part of the state and that policing is a political issue. Consequently, it implies the building of appropriate legislation and mechanisms to prevent the police from functioning outside the state apparatus and from being privatised by any particular group in the government or in society. The imperative is to departisanise the police function without pretending it is no longer a political issue.

The Distance between the Military and the Police

The functions attributed to police forces and the modes under which they operate depend greatly on the type of approach to internal security taken. Military-style police have their historical origins, in part, in the development of the police from militias, but most of the lasting features are the consequence of an interrupted professionalisation process. With the functions of the police and the military not clearly separated or with a militarised police institution, there is much room for democratic as well as non-democratic governments to use both, indistinctively, to preserve the order and protect the state.

A military-style police force assumes an approach focused on crime control rather than public service. The restrictive scope of this approach directly affects the concept of a democratic rule of law and the function that the police are to execute. First, a militarised police lack the flexibility required for ordinary policing. It is, by definition, a centralised and hermetic structure that does not permit intermediary solutions or compromise in the treatment of citizens, and it may hinder the proximity of the police to the community. Secondly, this structure weakens any attempt at oversight by civil society. There is a secretive mentality in relation to most kinds of information, including organisational issues, budget, and type of education. This confidentiality is more severe in matters concerning offences committed by police officers. Specific criteria and corporate loyalty are the guidelines in investigating and prosecuting those officers; the existence of special courts to judge police officers

demonstrates and stresses corporativism. Thirdly, a militarised concept of policing requires an “enemy” and the demarcation of an “inimical territory”. Fourth, it necessarily demands tough legislation and exclusive policies, since there is the sense of dealing with emergency situations. A soldier has to eliminate his enemy and is allowed to kill. This type of approach to policing permits a proliferation of practices that restrict, if not violate, rights. Fifth, a military-style police force is more easily assigned tasks related to the military, such as involvement in secret service activities, than a civil police force (Weber in Kádár 2001 pp. 40-41).

The end of the Cold War would suppose the end of the discourse of war for “non-war” situations, but that has not been entirely the case. If states are not able to dismantle their authoritarian repressive apparatus, their former political-ideological enemies must be replaced with others in order to justify certain continuities. The militarised police and the secret services reminiscent of non-democratic regimes need an inimical figure to justify their activities and their discretion in the restriction of rights (Koszeg in Kádár 2001 pp. 9-10). Increasing crime rates and a realist approach to politics, especially when combined with a right-wing reading of inequality and the implementation of neo-liberal reforms, are a fertile terrain for the discourse of war. The “naturalisation” of inequality makes it easy for people from underprivileged groups in society to be perceived as categorically different. Marginalised and vulnerable social groups like migrants, ethnic minorities, and religious minorities, those who are treated as “second class citizens”, may be the ones eligible for the label “enemy”. It is no less true for former communist countries that have undergone market reforms than it is for the very unequal Latin American nations.

The perverse side of political democratisation processes is that, by banning political repression as a state policy, the state’s repressive apparatus must find other “dangerous” or “threatening” groups on which to focus their activities. In the “war against drugs”, the “war against crime”, or the “war against terrorism”, it is easy to remove political issues from the centre of the debate. The consequences are the stress on police autonomy and the military approach to social problems that keeps the apparatus almost intact. The war terminology also helps to increase the perception of

insecurity in society and is frequently used as a justification for continuities in police practices. It may also aggravate the confusion between “public security” and “national security” and, consequently, the confusion between police and military functions. Besides strengthening the militarisation of the police, it may also promote the “policialisation” of the military in what are primarily civilian issues.

A militarised police force also has implications for the police officers’ rights. Unlike civilian public servants, they are not allowed to organise themselves into trade unions. They also follow a strict disciplinary code in which, as Renate Weber observes: “disobeying an order issued by a superior is a crime, in some cases even if the order is unlawful. The advantages enjoyed by police officers in a military structure are rather privileges than rights and there is a price to be paid, namely, the fact the privileges may also easily be withdrawn; generally, the judicial review of unlawful internal measures, including dismissal from the force, is absent” (Weber in Kádár 2001 pp. 40-41). Members of the police force should be subject to a disciplinary code which is in accordance with their functions in a democracy, and they should be allowed to organise themselves in order to demand better conditions for developing their obligations, such as regulating the number of working hours, and establishing life insurance and health plans, among other rights.

Accountability

Intrinsically related to the departisanisation and demilitarisation of the police forces is the process of making them accountable. The police, as any other institution claiming to be democratic, must be accountable legally, politically, and also economically. Regarding the use of force and power, the police must be guided by three principles: subsidiarity, meaning the use of force by police only when there is no other alternative; proportionality, referring to the use of the minimum amount of force required under the given situation; and human rights. Therefore, in addition to a clear definition of the functions of the police and their mandate, it is crucial that internal and external management is implemented for oversight control in order to regulate the relationship between the police and various branches of the state as well as the relationship of the police with citizens.

Accountability and liability involve the quality and distribution of police services in society. The more accountable the police are, the higher the level of legitimacy and trust in the police (Uildrik and Van Reenen 2003 pp. 204-205). In this sense, the transparency of the police institutions concerning the control of their use of violence as well as their corruption becomes a central issue. A respectful and trustworthy police institution is fundamental for the functioning of the entire judicial system; since both corruption and brutality are part of the police endeavour to enforce a specific order directly, without any intervention by other parts of the criminal justice system or the government (Chevigny 1996).⁸²

Internal instruments of control are basically the administrative disciplinary procedures (internal reports and a discipline code) that help to foster an internal culture through formal accountability to superiors and informal accountability to colleagues. The education and training of police officers are also important instruments for improving accountability and bringing the police closer to citizens.⁸³ The advantages of the internal regulations are that they can be better informed; more thorough and extensive; and more varied, subtle and discriminating than external ones; however self-regulation depends on the will of the police to follow community standards (Bayley 1985 pp. 177-1178). In the case of police institutions without a democratic and human rights basis for their police work, the capacity for self-regulation is mostly reduced to the observance of disciplinary norms.

External instruments of control are comprised of a set of various mechanisms: adequate legislation; a consolidated and independent criminal justice system (courts, attorneys, civil litigation); the existence of external oversight bodies (independent and investigative bodies, civilian complaint review boards, ombudsmen, special commissions, etc.); a vibrant civil society; and strong, trustworthy regional oversight instruments. All these instruments for external regulation should make the police

⁸² Comparing the polices of cities as different as Los Angeles, New York, Sao Paulo, Buenos Aires, Mexico City, and Kingston, Paul Chevigny shows how corruption as much as political interference is responsible for perpetrating police brutality.

⁸³ The control of arbitrariness by the police, as Uildrik and Van Reenen point out, can be improved with “adequate training in techniques and strategies to enable them to control situations by forceful and non-forceful means depending upon the exigencies of a situation, and by integrating and operationalising abstract concepts such as the minimum and proportionate use of force” (Uildrik and Van Reenen 2003 p. 207).

accountable to law – not to the government, not to any group in society - but to the law. In countries where democracy is a mere façade or corruption and violence are endemic, the reliance on and efficiency of many of the domestic instruments will be compromised. In fact, as Bayley (1985 p. 176) reminds us “control systems in themselves do not determine conformity between police behaviour and community wishes”, yet “identical formal control systems can accommodate enormous variations in performance”. In these cases, the existence of a regional network and regulating instruments will have a great impact in checking police activities and especially in strengthening the process for fostering efficient and reliable domestic instruments.

In practice, it is the complementary nature of all these internal and external instruments, domestic and regional, that will guarantee an appropriate control system and help to consolidate democratic and human rights policing. In my view, it is the existence of cross-mechanisms of control that can overcome the limitations of each instrument and may bridge the gap between the formal systems of accountability and the unwritten norms, the “living procedures” (Bayley 1985 p. 176) of the police culture. This requires an integral vision about the police, as a singular actor with a particular organisational culture and special attributions within the state apparatus.

Models of Policing

While the initial process of police professionalisation meant the creation of a completely new institution, the current trend in new democracies means three interrelated processes - departisanisation, demilitarisation and democratisation – are occurring within an already consolidated institution. Professionalisation implies the reform of a body of rules and mechanisms as well as the most difficult task of changing the institutional culture that guides the behaviour of members of the police force. The challenge remaining for these democracies is to transform their police forces into civil public service institutions meant to protect human rights.

Most police reforms in transitional societies tend to be merely superficial, removing the officers identified with the old regime rather than promoting structural changes in the institutions. Democratisation, as already discussed, cannot be automatically

translated into democratic guidance of police activities. The police institution demands specific efforts in order to change. Police reform is a political choice even when it is based on technical elements. Obviously, a lack of reform is also a political choice.

The democratisation process has raised the question of whether there is much difference between the discourse of progressives and conservatives in relation to the police, as in general, “governments and legislative bodies react to the failures of police forces by expanding their powers, overlooking human rights violations, and increasing budgetary support” (Koszeg in Kádár 2001 pp. 8-9). Usually, governments, regardless of their ideological orientation, do not assume their responsibilities for police violence and rarely inquire about it.

According to Géza Finszter (in Kádár 2001 pp. 138-139), contemporary professionalisation⁸⁴ efforts can take two approaches: one based on reform and the other based on evolution. In his analysis of the Hungarian police during the ten years after 1989, he defines “reform” using three terms similar to the ones proposed in this research: depoliticisation, decentralisation, and demilitarisation. He identifies “reformers” as “primarily theoreticians, academics who, in the course of the political changeover, were appointed to various influential positions within the police, despite their lack of previous practical experience”. The “evolutionists” are usually government politicians and police leaders that want an “efficient” police force. In his view, “evolution” has three main objectives: functionality, self-confidence, and discipline. While “evolutionists” seek a police model based on efficiency, “reformers”, we could say, seek a police model based on democratic and human rights principles.

The typology created by Uildrik and Van Reenen (2003 pp. 31-36) is very useful when discussing different principles in policing and the model of policing pursued by reformers. They differentiate between democratic policing and human rights-oriented

⁸⁴ Finszter uses the term “modernisation”; I prefer to use the term “professionalisation” to differentiate it from the modernisation explanatory model.

policing⁸⁵. In democratic policing, the police force is supposed to operate within some kind of political system, act in the framework of the rule of law, and observe human rights principles. It implies “police subordination to the law”, “their accountability to an independent judiciary”, and “the separation of policing and policing responsibility”. In other words, there is a clear distinction between the police attribution of “policing” and the state responsibility of defining security policies. This type of policing seeks to obtain democratic legitimacy at both the domestic and international level. Nevertheless, human rights-oriented policing, the new policing model, goes beyond the incorporation of human rights principles by the national law and the overseeing of human rights based on legal principles; it involves the development of the concept of community-oriented policing and a far more ample concept of public accountability. The new police model corresponds to a model of policing that is more interactive and integrated into the social fabric in contrast to a reactive and proactive model of policing (Wright in Kádár 2001 pp. 168-170).

Human rights-oriented policing adds the community component to democratic policing. Although the definition of a community policing model varies, it is possible to establish some common characteristics attributed to it. Hugo Fruhling (in Lindholt et al. 2003 pp. 107-125) identifies the following: (1) the prevalence of police activities focused on small geographic areas; (2) the establishment of a close, ongoing two-way relationship with the community, consulting with community members to consider their needs and demands as well as welcoming the monitoring of police actions by community members; (3) efforts by police to incorporate the community in preventive actions; (4) the initiative to give the police a more ample and social vision of criminality by engaging them in the study of conditions and circumstances in which criminality develops; and (5) the priority given to problem solving and

⁸⁵ Uildrik and Van Reenen (2003 pp. 31-36) created a policing typology based on the lines of political development in transitional societies in the ECE. They define four types of policing: (1) authoritarian policing; (2) crisis policing; (3) democratic policing; and (4) human rights-oriented policing. Crisis policing is defined as a “continued repressive policing where officers are preoccupied with order and the control of violence”. Human rights still do not have an impact on routine policing. Political instability defines short-term goals for their actions, and there is much uncertainty for the police organisation, not only related to its personnel, but also to its functioning and orientation. Authoritarian policing is “an integral part of an authoritarian political system”. It presents a very hierarchical structure and a military concept. Its function is not to serve the population but to control it and keep the populace distant. Human rights violations are part of the political system and any rights considerations, at most, concern formal legal arrangements in order to satisfy international pressures or obligations. Additionally, the police tend to be self-supporting; with access to their own services and shops, and in some cases even have separate living quarters for police officers and their families.

prevention rather than to reactive strategies in police work. All of these characteristics of community policing imply a reorganisation of the police institution and the reordering of its priorities.⁸⁶

Despite all the positive elements of the community policing model, mostly in its efforts to increase police legitimacy and limit police arbitrariness, the most important element of human rights-oriented policing is its stress on the concept of public accountability. Without the implementation of appropriate internal and external accountability mechanisms and organised watchdogs, the proximity of the police to the community may create some dangerous distortions. Strong groups in the community may be able to impose their interests over the rights of other groups that are not as powerful or well-organised, and in the end it may result in another kind of partisanisation of the police. The police force, as one face of the state and its governance activities, must work against any type of discrimination and unequal distribution of their services in society; the general principles guiding police work and a long-term vision cannot be obscured by immediate and partial interests.

Yet, the community approach is not a panacea for all the problems related to policing. Depending on the emphasis given to community, there is a risk of strengthening the autonomy of the police by transferring decisions to the community that must be made by the government in its responsibility of designing a public security policy, which involves the whole judicial system and is meant to serve the entire society.

At the same time, the concept of professionalisation process that I am using implies more than a professional police force in the aspect of their departisanisation and effectiveness; it implies an integral vision of the functions of the police force within a democratic state, as well as its priorities in society. Thus, the definition of human rights-oriented policing as an ideal type instead of democratic, community, or professional policing is not only a matter of labelling; it requires the police institution

⁸⁶ Another typology of policing that takes into account societal and political elements is presented by Wright and Mawby (in Kádár 2001 pp. 168-172). Combining the two sets of variables, state and civil society, they identify three types of policing: (1) authoritarian, a coercive and control-oriented policing; (2) community, an interactive and integrative policing, bringing police and community into closer proximity; and (3) minimum-oriented policing, an ideal type of policing that implies a strong integration between police and community, in this case the police present a high capacity to adapt immediately to the needs of community. This typology also highlights the obvious tension between state and society, and the possibilities of interaction between them.

to find a balance between an obligation to the community and its legitimate demands, on the one hand, and an obligation to principles based on the universality of human rights, on the other hand.

Here, there are two main questions: First, in new democracies, which factors contribute to a change in the police? Secondly, how are those factors responsible for determining the emphasis of the change on a “reformer” approach aiming to establish a democratic policing model or on an approach that will establish a human rights-oriented policing model? Transition and modernisation theories provide the main explanatory theoretical models for problems related to the building of a pro-reform debate and competing approaches. In the next section I will discuss the contributions and limitations of these explanations.

Transition Theory and Police Reform

Most of the transition literature, as discussed in the introductory chapter, is based on two main explanatory lines for understanding the problems of democratic consolidation. The first is related to the type of former non-democratic regime and its legacies, and the second is related to the type of transition process the country experiences.

As the police institution is part of the state, it would be expected that the type of non-democratic regime experienced would determine the type of police institution that develops and the problems it faces. However, given the specificity of police functions, their development under non-democratic regimes does not vary significantly from one type of authoritarian regime to another. More differences occur among police institutions of democratic countries than among authoritarian ones. In fact, police forces of authoritarian and post-totalitarian regimes, contrary to what would be suggested, present many similarities, the most important of which include a centralised structure, military principles, and corporate culture. In this sense, Géza Finszter (in Kádár 2001 p. 4) observes that “Police cooperation developed since 1990 between East and West has convinced experts that there are far more common traits than differences between the various national police forces, despite the different

political structures”. In the case of Hungary and Poland, in the late phase of the party-state, the regimes bear a greater resemblance to the military bureaucratic regimes than the totalitarian regimes; yet, the daily work of the police follow primarily national priorities.

One relevant difference between the military dictatorships in Latin America and the party dictatorships in Eastern Central Europe that should be mentioned is the extensive control system over the militias. There were dual external controls; one exercised by the ministries of internal affairs and another by the communist parties, as well an internal control developed by inspection bodies. The militias’ work was basically evaluated by the fulfilment of defined quotas and the detailed reports they had to provide as part of their routine work. Nevertheless, those reports were manipulated and under this control system there was little scope for public oversight (Adrian Beck and Annette Robertson in Hinton and Newburn 2009 p. 62). Yet, the high degree of corruption within the militias throughout the Soviet era questions the entire control system. On the one hand, the external accountability system typical of the Soviet model may have left a legacy that facilitated the establishment and development of external control mechanisms. On the other hand, the legacy of a non-reliable control system by itself does not seem to have a positive impact on the accountability of police forces, as the Russian case illustrates⁸⁷.

Thus, the differences between distinct types of authoritarian regimes do not determine the orientation of the police institutions; not only because, in broad strokes, they present similar structures and functions but also because of the corporate culture created by these types of military-hierarchical institutions. In both regions, the AR and ECE, policing was mostly developed through bureaucratic empowerment and corruption (Los and Zybertowicz 2000 pp. 52-57).

The type of transition experienced, in turn, has a great impact on the political decision of whether to reform the police or not; and the actors starting the transition or involved in it influence the extent of autonomy and relevance given to the police

⁸⁷ As Beck and Robertson stress: “The absence of accountability – perhaps the first principle of democratic policing – is a key issue where Russia is found wanting” (Adrian Beck and Annette Robertson in Hinton and Newburn 2009 p. 68).

institution. The type of transition - whether through agreed reform ("*reforma pactada*") or agreed rupture ("*ruptura pactada*"), "defeat in war", "interim government after regime termination not initiated by the regime", or "extrication from rule by hierarchically led military" (Linz and Stepan 1996) – helps to define the place of police reform on the political agenda for the transition. Yet, the nature of the path to democracy defines the police institution's choice to resist or to adapt to the regime change. The initial reaction and outcome for the police force may be to: (1) support the new regime; (2) defend the previous regime through violent resistance; (3) negotiate with the new regime; or (4) strengthen its autonomy and continuity in the new regime⁸⁸. Although neglected, the police institution is an important actor in the democratisation process. Just as the type of transition influences the police reaction to changes, the choice made by the police has consequences for the transition process and the level of legitimacy and accountability of the new regime.

From the actor-driven perspective, Paulo Mesquita Neto (in Lindholt et al. 2003 p. 190) argues that the path toward police reform may have an impact on the consolidation of democratic policing and the nature of public security policies, just as the path toward democracy may have an impact on its consolidation and quality. In this sense, Mesquita Neto (in Lindholt et al. 2003 pp. 181-191) identifies four paths of police reform in Latin America that could be extended to Eastern Central Europe: (1) the first is the reform led by international actors. Facing the complete failure of the State, international missions have to build a completely new police institution, as

⁸⁸ Uildriks and Van Reenen (2003 pp. 28-31) identify five police reactions to regime change in the experiences of East Europe: (1) forceful support for new regimes: "the police did not object to the emerging new order, but instead supported and protected it against conservative resistance, using force when necessary". The examples identified are Slovenia, Georgia, and Azerbaijan, all presenting nationalistic undertones; (2) violent resistance to change: police protected the old regime with force. The examples are Romania, Latvia, Lithuania; (3) negotiated revolution: "In Poland, the old government and security forces used their central position in the power structure during the eighties as well as their manipulative strategies to access information and negotiate an acceptable position in the new state"; (4) adaptation: "Sometimes the militia did not play a significant role in the early phases of the transition, and simply 'muddled through' without creating much public anger and instead adapted to the new political circumstances. The most extreme example of such an adaptation is the *Volkspolizei*, the police of the German Democratic Republic. After the agreement to reunite Germany, the police had no key role to play in the transition. They were simply integrated into the police system of what had been the Federal Republic of Germany"; (5) continuity: "As disrespected and feared by the population, and perhaps the new rulers too, as the secret police and militia may have been during the times of the former regime, the old police institutions have an important trump card: the capacity to use force to solve the ever-present problem of preserving order. The militia, and to a lesser extent the secret police, specialised in the use of force to maintain order. They had the organisation, manpower, and weaponry necessary to use force when called upon, a vital ability during periods of transition".

in the case of Haiti and Panama; (2) the second path is the reform initiated by peace accords, a successful example being the case of El Salvador following the 1992 Peace Accords; (3) the third is the reform led by the government, as has happened in Colombia, Peru, and Chile, and in the case of Poland and Hungary; finally, (4) the fourth path is the reform initiated by political agreements between political actors in the government and civil society, Argentina and Brazil are two examples of this.

These categories do not include the police institution itself as an actor. The singularity of the police as a centralised, closed, and militarised organisation makes the police institution a specific actor and should permit it to stand out also as a leading actor differentiated from the government. By identifying the police as a potential leading actor, I do not want to reinforce the criticised autonomisation of the police; on the contrary, this recognition is an important step in bringing them into the democratic game and in clearly defining the rules that they must follow. There is no better path to reform, and similar types of reforms may have different outcomes, but there is no question that a police force open to or without resistance to reform makes a great difference in the extent of the reform promoted.

There is no evidence to believe in the capacity of the police to democratise itself, it may promote a reform but hardly in democratic terms; however, the police must be recognised as a relevant actor in this process. The behaviour of the police, usually connected to some police leadership, contributes to defining the type of institutional change achieved, which may be (1) the promotion of a partial institutional restructuring (examples are Brazil, Chile, Bulgaria, Romania, and Hungary); (2) the promotion of a complete institutional restructuring (examples are Argentina and Peru); (3) the reshaping of the institutional doctrine and the behaviour of police forces (example of Poland); and (4) the building of a completely new institution (typical of post-conflict societies, such as El Salvador, Nicaragua, Honduras, Guatemala, Haiti, and Kosovo) (Ziegler and Nield 2002 p. 15; Hinton 2006; Dammert and Bailey 2005).

Another category of analysis from the institutional change perspective refers to the different proposals directed at the creation of a new place for policing in the modern division between the public and the private spheres, such as public-private

associations in Chile and Brazil, and the privatisation discourses in Brazil, Ecuador and Peru. Most proposals in this vein defend the privatisation of security. Even if this were to be followed by adequate legislation and control mechanisms to guarantee the accountability of the police force (and the extent to which this is effectively possible is already a debatable issue), the most critical issue is the transformation of the police force into a business and the police service into product. It demands a new concept of policing that would assume the exclusive function of controlling people and protecting property, ignoring any integrative model of policing. The proposal also reinforces the false division between effectiveness and accountability, as if they were incompatible demands. Breaking the monopoly over the use of force within a given society is not the answer. In order to avoid the privatisation of police or police resistance to reforms oriented towards human rights, the reforms should focus not only on dismantling the repressive police system inherited from non-democratic regimes, but also on an effort to incorporate effectiveness as part of the reform goals.

The domestic initiative for police reform poses two considerations. The first is the political will of governments to deal with the police issue. This involves not only the path towards democracy but also the pressures and different demands in society. In most situations, as Mawby (in Kadar 2001 pp. 28-29) highlights, governments “have been reluctant to instigate radical change where social, economic and cultural changes have added to the pressure on criminal justice systems in general and the police in particular. Economic inefficiency, collapse of living standards, and social dislocation has bred a criminogenic environment”. Governments in the best cases will be “evolutionist”. The second consideration is related to the capacity of the executive to promote reforms in the police. In part, this depends on the structure of the police institution itself, its reaction to reform proposals, and the attributed power the government exerts with respect to the police institution. Both considerations impose some limitations on the path towards democracy and explain negligence in the supervision of the police or a lack of will to control the police even in agreed upon or negotiated transitional paths.

The discussion about the political actors involved in the transition process stresses the relevance of the police and how much they have been overlooked. Police are not responsible for creating democracy; nevertheless they can reinforce or undermine it.

At the same time, police reform is part of the democratisation process; however, as police forces are a singular part of the state administration, it does not occur with the same timeline as the transformation of the political system⁸⁹. Police reform is one of a series of reforms in the permanent and open process of democratisation and as such should be analysed through the different dimensions it implies. The relations between civil society and the government, and between national and regional or international actors are largely responsible for the path taken by the police institution during democratisation. It is necessary to look at those interactions to understand why there are differences among countries that follow the same transitional path.

Modernisation Theory and Police Reform

Modernisation theorists would look at various societal factors to explain police arbitrariness and its continuities in transitional societies: peaceful or violent society, history of war, type of political governance, rule of law (impunity for crime and human rights violations), level of development, and political culture. Most theorists would claim that police reform towards human rights orientation is possible only by improving socio-economic conditions and developing a democratic political culture first.

In this perspective, the violence of the police is related to the violence in society. There are two main problems with this argument. First, it implies that police arbitrariness is the responsibility of neither the police institution nor the government. Adhering to the idea of a police force “out of control” the government feels exempted from thinking about police reform, at least in terms of democratisation and human rights orientation. In this case, the automatic answer for problems involving the police seems to be tough legislation and a tough approach to criminality. There is a significant contradiction in this argument; violence is a socio-economic problem, yet the task attributed to the police does not involve a social approach but rather a crime-

⁸⁹ Police reform, as Finszter (in Kádár 2001 p. 141) argues “should be placed in the context of reforming the state organisation rather than the transformation processes of the political system”. The state administration demands more time for transformation than the political system; it “requires a lengthy process of professional preparation, while the system of public administration itself has to take account of daily needs. The training of personnel to be ready for a changed set of requirements can take years, even decades, if it requires new ways of thinking and ethics”.

fighting approach. The ambiguity of this discourse also reinforces the autonomisation of the police as the government does not assume its responsibility for the actions of the police.

Secondly, the argument that police violence is related to societal violence does not by itself explain similarities in police institutions among non-democratic regimes with different socio-economic levels; differences in the levels of societal violence and the type of reforms promoted in these institutions during the democratisation process; or the differences among police institutions among democratic regimes. Chevigny's comparative research on the police use of deadly force shows that some contributing socio-economic elements for police arbitrariness were present in Los Angeles and New York City, such as strong class conflicts between the poor and those that are better-off, pro-vigilantism feelings, and a weak sense of citizen participation. However, neither city presented the same level of abuse of power found in Jamaica and Brazil (Chevigny 1996 p. 129). The explanation for the difference in the level of arbitrariness is afforded by elements of the police institution itself. The police in both U.S. cities were not disciplined along military lines; this was the key element of differentiation.

In relation to the political culture within which the police operate, the main points to consider are: first, reliance on a legal order; and second, the strengthening of civil society. It can be expected that cultural differences in the acceptance of violence and the incorporation of rights would result in different police institutions. The problem with these arguments is that they exclude the police as actors in this process of building strong citizenship and consolidating the rule of law. The question is not which comes first, a democratic and human rights-oriented police force or a consolidated legal order along with a lively and democratic civil society. All these elements are part of the process to democratise the state and society. It is too simple to think of the police as a mere result or mirror of a social order they have to protect. First, this order is usually very complex, based on contradictory values and full of conflicting interests. Secondly, the police are an institution with a singular subculture and the capability to interpret a given social and political framework; they make certain choices between emphasising the law and controlling the use of violence, on

the one hand, and acting as delegated vigilantes and controlling people, on the other (Chevigny 1996). The police are important actors in the reproduction of social order.

Changes in police behaviour and in their approach to criminality embody necessary changes in the external environment within which the police operate as much as changes inside the police institution itself. While it is true that socio-economic development has an impact on the level of incorporation and consolidation of human rights protection in society, it is no less true that the type of policing can improve respect and protection for human rights. In this same vein, Melissa Ziegler and Rachel Nield (2002 pp. 71-72) observe that “there are clear political implications of police reform and considerable risks of seeking to reform coercive institutions in environments typically characterised by human rights abuse, authoritarian bureaucratic cultures, corruption and politicisation” but that “successful police reforms support demilitarisation and democratisation, create a positive environment for economic growth and poverty reduction, and have important effects in improving respect for fundamental human rights”. Police brutality in most Latin American countries is part of an institutional culture that has built its mission outside the rule of law and operationalised it through any means available. Demilitarisation of the police, appropriate legislation, and oversight mechanisms are fundamental to controlling the arbitrariness of police forces.

The participation of civil society is important to limit the state’s ambition for strong police forces and the institutional tendency of the police to extend their power. Nevertheless, the capacity and willingness of the state to assure its administrative monopoly over the use of force and to assume its responsibility in defining a comprehensive policy for public security are still fundamental. As part of the executive branch in most countries, policing is also an issue of political governance. Without ignoring the societal and economic constraints faced by police forces, it is essential to approach the police as a political issue. The continuity or discontinuity of some practices and concepts related to domestic security rest upon political choices and acts. It is at the political and constitutional levels that functional and organisational changes of the police institution should be discussed (Szikinger in Kádár 2001 p. 17). Even where the socio-economic problems restrain citizenship, the solution is primarily political. Regimes have been responsible for building or keeping

specific policies and institutional designs for policing. Whether intended or not, the police may serve as a shield protecting the power structure. The problem posed by the democratisation process and police reform is twofold: the need to first reconcile the notion of order with the rule of law, and then the concept of rule of law itself with democracy.

Regional Dimension in Reforming the Police

Transition and modernisation theories lend relevant contributions to the debate about police reform. Transition theories highlight the police as part of the transitional state while modernisation theories point to the relevance of political culture and civil society for the type of police institution, and both have presented efforts to make connections between the state and civil society. However, as in the cases of Ecuador and Poland, the experience of a negotiated transition and relatively low levels of human rights violations by non-democratic regimes in both countries do not explain their differing approaches to policing.

Both explanations miss the regional dimension of the problems and processes involving the police in the political realm. Modernisation theories concentrate almost exclusively on the domestic level; they ignore the regionalisation and internationalisation of the issues imposed on the police institution, and the multiple influences on the state and the police institution as they define their policies and activities. Transition theories, in turn, correctly identify international actors in the initiative for police reform, however, they do not go further to discuss the different types of influence that international or regional actors may have in shaping a reform, especially when dealing with processes that do not follow any type of war-to-peace transition. Both explanations disregard the diversity of regional actors and the impact of regional politics on the police institution.

Assuming police reform is an open process to move towards a human rights-oriented police force, there is no hegemonic model for reform. The possibility of creating a pro-reform consensus in and among society, government, and the police institution itself is inserted into the political debate, both local and regional. Intentionally or

unintentionally, within the democratisation process, regional politics have an impact on policing. This regional dimension may positively overcome the limitations found in domestic politics and support a democratic professionalisation process of the police, or it may negatively push certain initiatives backward. The regional impact can be identified through three channels of interaction with the police institution: first, the norm created by regional standards; secondly, the oversight mechanisms built and operating in the regional community; and thirdly, ongoing international cooperation or assistance in each region.

The regional context may not be responsible for initiating domestic reforms, but it does work in shaping and speeding them, especially in the uncertain first years of a country's democratisation process, when governments are more vulnerable and civil society is not strongly organised. During this period, the regional norms are important referential support for police reformers, and regional oversight and incentives are crucial for the success of the reforms.

Although the topic of public security emerged in most processes of transition especially in the context of writing a new constitution, in Latin America, police reform is still an ongoing process that is at an early stage in many countries. Thus, it is pertinent to discuss why in some countries it has taken many years for police to be introduced into the democratic political agenda. In both Ecuador and Poland, the police of the non-democratic regimes had a political and social disciplinary role. The difference, which will be discussed in the following chapters, is that questioning of this has begun only recently in Ecuador, while in Poland it was questioned from the beginning of the transition. Police reform was never an issue in the democratic transition in Ecuador. It was only with rising crime rates and the incapacity of the government and the police to respond to that situation that the legacies of arbitrariness and corruption have started to receive attention.

Continuities in policing from non-democratic regimes to democratic ones present two sometimes interrelated ways of pacifying society; one is intended to maintain an order that favours the privileged groups in society, and other is intended to guarantee an order based on interests and priorities defined elsewhere. The rhetoric of "state security" emerges not only due to the domestic incapacity to reshape the repressive

apparatus of the state or to the rise of criminality in most cities, but also because of the acceleration of two related processes that have an impact on democratisation and the guarantee of human rights: (1) the securitisation process of an increasing number of issues, and (2) the internationalisation or regionalisation of security affairs. The securitisation process is here understood in the constructivist terms used by Barry Buzan: “The exact *definition* and *criteria* of securitisation is constituted by the intersubjective establishment of an existential threat with a saliency sufficient to have substantial political effects” (Buzan, Waever and de Wilde, 1998 p. 25).

More issues have gone beyond the political debate and become securitised. Conversely, more perceived threats have emerged. For this reason, an urgent response is required and this may justify actions that break certain rules of the game in democratic societies. Following the end of the Cold War, security lost its ideological anti-communist or anti-capitalist character and, in a supposedly neutral process, has enlarged its agenda. Police affairs now go beyond national borders because of the emergence of what is perceived as new threats, such as terrorism and organised crime – e.g., financial crimes; the smuggling of arms; and the trafficking of drugs, migrant workers, and women. To a certain extent, this blurs the original distinction between the fields of action of the police and of the military. The global and regional discourses about security may give support to policies that compromise the public spaces for democratic socialisation and protection of human rights. The impact of the securitisation process faced by each region depends to a great extent on the type of the regional securitising actor and the regional public space already created.

In Latin America, and especially in the AR, the democratisation process has been followed by a securitisation of the relationship between the region and the hegemonic power exercised by the U.S. Besides the U.S. anti-narcotics policy and, since 2001, the discourse of “catastrophic terrorism” (Dunlap Jr. in Newburn 2005 pp. 786-196), the securitisation process in the region has also come from the U.S. efforts to change the Colombian armed conflict, ongoing since the 1960s, from an internal political problem to a regional terrorist issue and, more recently, to overlap migration issues and security problems.

In ECE, organised crime and terrorism have also taken a preponderant space in the security debate. The difference is that the securitising actor in that region is not a single predominant and asymmetric power. In the ECE, countries have combined regional mechanisms and policies related to their internal security affairs, an example being the creation of Europol. Additionally, ECE countries are facing a “Europeanisation” process that moves them towards the Western European public space with consolidated standards of human rights guarantees. Limitations on the scope of human rights are not totally excluded in Western European democracies; however, these democracies provide more guarantees of those rights and impose more obstacles to their being overridden. It is possible to identify a number of different counter-balancing actors working in ECE, in contrast to the situation in the AR, as discussed in other chapters. Conversely, setting the goal of acceding to the European Union, followed by the accession process itself, made the Eastern Central European governments assume their responsibility to all state institutions in order to meet the conditions for admittance to the EU. Democratic policing has been relevant to obtaining democratic legitimacy also at the regional level.

Additionally, in the AR, U.S. involvement with previous regimes in the anti-communist fight compromises their interest in reform of police forces, in contrast to the relationship of the European Council and the European Union with the non-democratic regimes in ECE. An unfavourable regional context aggravates the usual domestic difficulty of defining a strategy for reform and puts more emphasis on the quality of individual leadership to promote police reform. Thus, the police institution must be understood as an actor inter-relating with national and regional actors in the context of demands that are sometimes contradictory.

In addition to historical, cultural, economic, and political factors that condition the development and outcome of police reform in the AR, it is relevant to analyse the regional factors that interact with all these domestic aspects in order to verify which social order is being reproduced by the police in their intermediary role between state and society. It seems that in the AR, pressures to combat drug trafficking or to implement economic reforms exercised a stronger and better organised influence on transitional countries than domestic groups demanding citizen security. The judicial

reforms experienced by countries of the region since the 1980s should be understood in the framework of these pressures.

Chapter 5 - Poland: Facing Police Reform

Introduction

Compared to other democratisation processes, Poland is a success story in terms of police reform. Similarities to the Ecuadorian case, discussed in the next chapter, did not prevent the reform of the militarised, centralised and partisan police forces in the first decade of the new democratic regime.

In this chapter I analyse the Polish police and its reform through the elements of rupture from the non-democratic regime, and the human rights situation. The four major categories for this discussion are: (1) continuity from non-democratic regimes; (2) the existence of external control mechanisms; (3) the human rights situation; and (4) their interaction with regional politics.

The Police History: A Struggle for Independence

The Polish history of partition, invasion, lost of sovereignty and war was responsible for a very late professionalisation process of the police. The Third Partition, among Russia, Prussia and Austria, ended the Polish Commonwealth in 1795, and Poland would not regain independence until 1918. In the beginning of the 20th century, the embryos of the police institution could be identified in the paramilitary organisations which pursued the interests of particular political parties and in the civic organisations, such as the citizens' guards, which became executive organs of the emergent local authorities (the so-called Citizens' Committees). These organisations were of a volunteer nature and had very limited power, largely dependent on the occupying authority of the moment. The first, created in 1914, was the Citizens' Guard of the Dabrowa Coal Basin, and the first organisation with a metropolitan character was the Warsaw Guard, created in 1915. During the same period, the Municipal Militias were also established; they worked as both executive organs of municipalities and auxiliary organs of occupying authorities, but in contrast to the guards, the members of the Militias were paid, uniformed and armed (Grabowski in Polish Police 2004).

In the short period of independence after World War I, there was an effort toward unification of all organisations which carried out police tasks; it was a long and gradual process. There were many regional guards and militias with different functions and that were also based on different gendarmerie models (especially the Prussian and Austrian models). In 1918, for the first time, a division for police matters was created in the Administrative Department of the Ministry of Interior and Administration (MSWiA is its Polish acronym for Ministerstwo Spraw Wewnętrznych i Administracji). In 1919, there was a partial unification under the Communal Police Decree that transformed most law enforcement organisations into communal police forces (Grabowski in Polish Police 2004). The main effort to transform the police into a state body came, in that same year, with the Parliamentary Police Act of July 24 (now the date of the annual police holiday), which established the State Police Headquarters as the central agency. The unification process would take some years and would be strengthened by the introduction of training courses and the creation of police schools with a certain attempt to make the institution non-partisan.

With the occupation of part of the country by Germany in 1939, the Polish State Police became the Polish Police and this force was incorporated into the German public order police with very limited powers. The other part of the country under occupation by the USSR arrested Polish Police officers, sentencing the vast majority of them to death. After the German defeat in World War II, the USSR took over the Polish territory and the State Police was formally disbanded. Most of its officers were forced to undergo rehabilitation programmes, but were allowed to rejoin the forces.

In 1944, the Citizens' Militia (MO for the Polish acronym for Milicji Obywatelskiej) was created as a legal and public security service, and responds directly to the Department of Public Security. This soon became to the Ministry of Public Security, which would play the primary role in the repression. The MO would lose its autonomy and become an important part of the totalitarian apparatus after the imposition of Soviet rule in Poland by the Red Army occupation and the agreements of Yalta and Potsdam among the Great Powers. In 1954, after Stalin's death, the Ministry of Public Security was dismantled, and the militia forces were separated

from the security apparatus. The MSWiA assumed authority over the work of the MO, while security decisions were made by the Committee for Public Security Matters of the Council of Ministers. However, this structure did not last long.

With the crisis of 1956, there was a major change in the security apparatus. After the uprising in Poznan and the army intervention that resulted in the deaths of 56 people, the Polish leadership negotiated the new party leader with the Soviet leadership and managed to convince them that Wladyslaw Gomulka was the best option. Gomulka was very popular and identified with the nationalist cause⁹⁰. Nevertheless, in order to prove to the Soviets that the Party was in control of changes and to avoid Soviet invasion, Gomulka became increasingly authoritarian. He reintroduced censorship and centralised security (Prazmowska 2004 pp. 177-198). The relationship between the MSWiA and the security apparatus was inverted and, for the first time, the security apparatus was placed under the MSWiA, which took the lead in security matters. The police forces were thus a subsidiary force of the MSWiA, and their main units were: (1) the secret police, called the Security Service (SB); (2) the criminal police, called the Citizens' Militia (MO); (3) the public order police, a paramilitary group called the Motorised Reserves of Citizens' Militia (ZOMO, the Polish acronym for *Zmotoryzowane Odwoły Milicji Obywatelskiej*); and (4) the Voluntary Reserve of the Citizens' Militia (ORMO, the Polish acronym for *Ochotnicza Rezerwa Milicji Obywatelskiej*). In practice, however, the MO was subordinate to the SB, a fact that generated great tension within the police institution itself. This structure would remain unchanged until 1990 (Grabowski in Polish Police 2004).

In the communist bloc countries as well as in the Soviet Union, the police forces were a central part of the political control system. Their primary task was "to sustain the political system and safeguard its functioning" (Koszeg in Kádár 2001 p. 1). Detecting and preventing crime was at a secondary level. The reality of low crime rates, due in part to the strong social and political control and in part to the existing welfare state, contributed to this; however, the role given to police was a deliberate political decision. Although the communist regimes pursued the establishment of a

⁹⁰ In 1948, Gomulka was replaced by the Stalinist Boleslaw Beirut as First Secretary of the Polish United Workers' Party (PZPR, the Polish acronym for *Polska Zjednoczona Partia Robotnicza*). Gomulka was dismissed and arrested under charges of being a right wing nationalist.

classless and more egalitarian society, the police institution was an instrument of the political party to defend the *status quo* reigning in society. Conversely, ethnic, religious, national and independent civil society groups received close attention from the security services. A popular and submissive way of addressing an officer was “Mister Government”, very illustrative of the character of the police institution in Poland (Uildriks and Van Reenen 2003 pp. 12-17).

Thus, as with other countries in the communist bloc, Poland had a system of political and social control based on the Soviet model, which had three pillars: (1) the communist party, (2) the state administrative apparatus, and (3) the security apparatus. The Soviet system of control was reproduced in all areas under its direct influence and in a vast range of social and political institutions, including in the philosophy, organisation, training and practice of the security forces. However, as Uildriks and Van Reenen (2003 p. 18) observe, despite the shared context of Soviet policing, the daily work of the police “proceeded much more along national lines and priorities”.

In the mid-1980s, this system of control relied mostly on the security pillar (Zybertowicz 2002) and, not coincidentally, repression became more pronounced. Although, the police and military had kept separate functions during most of the one-party system regime⁹¹, as the regime became more unpopular and was directly confronted, the police and the military were used to protect and sustain it (Mayby in Kádár 2001 p. 24). This was most evident during the Martial Law period with the attempts to repress Solidarity⁹².

The police were, in essence, set up to command their population instead of serving them, and the tendency before initiating the transition process was for the state and the police institution to expand their power and activities. As the relationship between the MO, which was perceived as the “beating heart of the Communist Party”

⁹¹ Interview with Lasocik.

⁹² An emblematic case of this period was the massacre in Kolpania Wujek, a coal mine in Katowice, in 1981. During a strike against the martial law declared by Wojciech Jaruzelski, the Party’s National Secretary and Prime Minister (1981-1985), nine miners were killed and 59 were wounded in a joint action of the army, MO and ZOMO. In 1994, the former Minister of the Interior General Czesław Kiszczak was accused of authorizing the use of force against the striking miners, but as of 2005, the case had not been resolved.

(Kremplewski in Kádár 2001 p. 204), and the population deteriorated, lower ranking officers started a small movement to change the image of the MO and create a militia trade union. The movement was repressed by the harassment and dismissal of the activists. As a result, the militia officers' committee was created with the same responsibilities of a trade union; however, it was totally subordinate to the authorities (Grabowski in Polish Police 2004).

Police Reform

In the context of the transition initiated in 1989 with the roundtable negotiations between the government and the opposition, some key positions of power, such as the Minister of the Interior and the Minister of Defence, were first occupied by representatives of the former regime, Czeslaw Kiszczak⁹³ (Interior) and Siwicki (Defence⁹⁴) (Sanford 2002 pp. 50-73). However, in the rapid advancement of the initial transition process, the MSWiA was soon handed over to the dissidents and by the summer of 1990, all communist ministers had resigned.

On 6 April 1990, the Police Law or Police Act dissolved the MO and created the Polish Police (Article 147)⁹⁵. ZOMO was also dissolved and replaced by preventive units at the Police, and the SB was replaced by the State Protection Agency (UOP, the Polish acronym for Urząd Ochrony Państwa) under the MSWiA (Mawby in Kádár 2001 p. 26). In 2002, the Law on the Internal Security Agency⁹⁶ was adopted by the Sejm (the lower house of the parliament); this Law dissolved the UOP and created

⁹³General Czeslaw Kiszczak was Jaruzelski's most trusted colleague, and for this reason he was designated by him to initiate talks with the opposition and guarantee the negotiated terms. During his work at the MSWiA, documents and evidence that could be used in the verification process were stolen or destroyed; this has been an issue for debate at the Sejm and in the government.

⁹⁴ The PZPR also controlled the Ministry of Transport and Foreign Trade.

⁹⁵The Polish legal system is based on statutes enacted by the Parliament or subsidiary legislation passed by bodies under powers conferred on them by Acts of the Parliament. Thus, the domestic primary legislation on policing is the Police Law (1990), the Criminal Code and the Code of Criminal Procedure, both from 1997. Secondary legislation includes the Regulation Concerning the Conditions, Circumstances and Procedures of Enforcement by Police Force Members (1990) and the Regulation concerning the Special Conditions and Procedures related to Firearm Use by Police Force Members (1996).

⁹⁶ Law of 24 May 2002 (Journal of Laws No. 74, Item 676).

two institutions: the Internal Security Agency and the Foreign Intelligence Agency⁹⁷. This restructuring law was the first major change in the Police since the transition period. Thus, currently in Poland the non-military security sector organisations are: (1) the Police, (2) the Internal Security Agency, (3) the Foreign Intelligence Agency, (4) the Frontier Guard, and (5) the Office of the Security of Government (Rzeplinski 2003 p. 90).

The Polish Police remained subordinate to the MSWiA and were defined as a uniformed and armed formation serving society and designed to protect people's safety and to preserve public safety and order (Article 1.1) with the duty (Article 1.2) to: "(1) protect the life of individuals and property against lawless attempts on those interests; (2) protect public safety and order; also to secure peace in public places and means of public transport and public communication; in road traffic and on waters for public use; (3) initiate and organise activities aimed at preventing offences and transgressions as well as crime-producing phenomena, and to cooperate in this sphere with State and local agencies and with social organisations; (4) detect offences and transgressions and prosecute the perpetrators; (5) supervise communal (municipal) guards established under statutory provisions, and specialist armed protective formations within a scope specified in separate provisions; (6) supervise the observance of public order and administrative regulations pertaining to public activity or public places; (7) cooperate with police forces of other States and with their international organisations under international contracts and agreements as well as separate provisions" (Police Law 1990).

The 1995 amendment of the Police Law (Article 4) defines the organisational structure of the police through the following services: (1) criminal; (2) prevention; (3) organisation, logistics and technical assistance for police activities. It also includes: (1) the police court; (2) the police academy, training centres and police schools; (3) separate prevention squads and anti-terrorism sub-units; and (4) research and development units. According to the police, currently 30% of the force is constituted by criminal police and 70% by preventive police guided since 1997 by the doctrine of

⁹⁷ There is some concern about the possibility of politisation of the security service under this new institutional arrangement (Rzeplinski 2003 p. 98).

communitarian police⁹⁸. At the same time, power is still centralised at the central agency of the security system in the person of the Commander in Chief of the Police (KGP in its Polish initials for Komenda Główna Policji), who is appointed by the Prime Minister and reports to the MSWiA (Article 5.1).

The legal status of police personnel is of public officials under special administration regulated by the Police Law and ordinances; that is, executive provisions issued by the MSWiA and the KGP. The police structure and doctrine now reflect a civilian rather than a military organisational nature. There is important evidence of the demilitarisation of the institution. First, although police officers have a special status, their ranks are no longer military. The Police Law provides the following order of officer corps and ranks (Article 47.1): general inspector, senior inspector, inspector, junior inspector, sub-inspector, superintendent, commissary, and sub-commissary. The aspirant corps ranks are: staff aspirant, senior aspirant, and junior aspirant. The non-commissioned officer corps ranks are: staff sergeant, company sergeant, and sergeant⁹⁹. Finally, the private corps ranks are: senior constable, and constable. In addition, most personnel decisions are subject to judicial review by administrative courts (Hungarian Helsinki Committee 2000 pl_02.htm p.5).

Secondly, police officers, just like any civil servants, may belong to trade unions. The Police Law (Article 67.1) still imposes several restrictions on police personnel due to their special administration regulation. Only one trade union may operate within the police, and they are not allowed to go on strike or join political parties, if they go abroad for more than three days they must notify their superiors, they still can be transferred to any place in the country without their consent, and they need authorisation to run for the Parliament (Weber in Kádár 2001 p. 49). However, despite all these restrictions, members of the police can organise themselves and they have a clear channel for expressing their demands.

Thirdly, although police personnel are still subjected to disciplinary sanctions for offences and transgressions committed regardless of criminal liability (Police Law

⁹⁸ Interview with Tomaszewski.

⁹⁹ The ranks are still different from the standards of the European countries, sometimes leading to some confusion (interview with Drzał).

Article 132) and for violations of duty discipline (Police Law Article 133.1), members of the police are not subjected to military discipline. In fact, the provisions of the MSWiA's Ordinance of 19 December 1997 stipulate the principles and procedures for disciplinary sanctions for law enforcement officials¹⁰⁰. In cases not specified in this Ordinance, the provisions of the Code of Criminal Procedure are applied. The Police Law still defines the courts of honour for cases "of a policeman's failure to observe the principles of professional ethics, and particularly of honour, dignity and the good name of the Service" (Article 140.1), but those courts do not have jurisdiction in cases regarding disciplinary affairs (Article 140.2), and the law includes the possibility of applying educational measures among their decisions.

Fourthly, criminal offences are investigated by a civilian prosecutor, and brought before a common court. Criminal proceedings against members of the police are the same as those applied to any citizen, the difference is that during the process of investigation and trial police personnel are suspended or dismissed from service. Thus, disciplinary proceedings are regulated by the Police Law while criminal proceedings are regulated by the Criminal Procedure Code applicable to all citizens (Hungarian Helsinki Committee 2000 pl_03.htm, pp. 9-12).

Additionally, in 2002 an Advisory Committee at the KGP was created with the main objective of giving opinions on police strategies and drafts of major legal acts. This Committee is comprised of seven law professors, two sociology professors, two psychology professors, and two human rights activists. Previously, a similar Committee operated between 1997 and 1999 (Rzeplinski 2003 p. 106).

Police Personnel

The vetting committees, established in 1990 by Solidarity, initiated the Polish lustration process in order to exclude officials who had previously violated human rights or basic laws. Of the 24,000 secret police officers, 14,000 underwent this

¹⁰⁰ According to Article 139.2 of the Police Law, it is the MSWiA, through an ordinance, that must detail principles and procedures of granting awards, disciplinary proceedings, imposing penalties, and determining the competence of superiors in such cases.

process which resulted in 10,000 of them being dismissed. The remaining 4,000 were incorporated into the newly created UOP (Zybertowicz 2002). According to the KGP, in 1998, the number of former functionaries of the SB in service at different periods was reduced to 6,792, about 6.8% of the total (Hungarian Helsinki Committee 2000 pl_02.htm p. 2). The militia also passed through a verification procedure, although very limited. The intention of the government was never to fire the personnel; among the reasons was the increasing crime rate that prevented the government from pursuing further verification and this process finally stopped in 1999. Between 1990 and 2005, between 80% and 90% of police officials have been changed¹⁰¹. It is doubtful that the reduction of former officials at the police institution was due to the statutory vetting procedures initiated in 1990; the change of personnel is mainly attributed to retirement. It was possible to retire with 40% of the salary after 15 years of service¹⁰² (Hungarian Helsinki Committee 2000 pl_02.htm p. 4). There were new jobs offered in the rapidly expanding private sector¹⁰³ (Mawby in Kádár 2001 p. 25) and good opportunities to use information and contacts for business during the transition.

Although many officials who retired or resigned in 1990 could have rejoined the police forces after the vetting procedure was completed¹⁰⁴ - it is estimated, for instance, that about 20% of former secret police officials were incorporated into the criminal police service¹⁰⁵, the change of police personnel was significant and had a great impact on the institution, facilitating the reform process. The reduction of police

¹⁰¹ Interview with Cybulski.

¹⁰² In Poland, the right to retire is now acquired after 30 years of employment or at the age of 60 for women or 65 for men (interview with Cybulski).

¹⁰³ Since February 1997, private bodyguard agencies must apply to the MSWiA for a license. This year, there were between 120,000 and 150,000 private agents operating in Poland. Until 23 February 1998, when the Law on Protection of Persons and Property of 22 August 1997 entered into force, there was also a public service entity called the Industrial Guard that guarded State-controlled enterprises, institutions and offices as well as research institutes of importance for the economy and defence. In 1997, the Industrial Guard had 29,000 members. With this Law they lost the powers of public officials and became employees of bodyguard agencies. The same happened to the Post Office Guard which had 2,700 members in 1997 (Report, pl_02.htm, p.2).

¹⁰⁴ Many dismissed officers appealed against their dismissal. There was also a case regarding vetting members of the police brought to the UN Human Rights Committee. A former official of the Security Services, W. Kall, alleged a violation of the International Covenant on Civil and Political Rights (Article 25) during the vetting procedure. In 1997, however, the Committee found (by a majority of 11 to 3 votes) that the procedures provided for by Polish Law did not violate the Covenant. *View of CCPR of 29th of September 1997. Communication No. 552/1993. CCPR/C/60/D/552/1993* (Kremplweski in Kadar 2001 Footnote 15 pp. 216-217).

¹⁰⁵ Interview with Lasocik.

forces from 122,000 members in 1988 to 97,468 in 1992 (Hungarian Helsinki Committee 2000 pl_02.htm p. 1, Footnote 1) also illustrates this institutional change.

However, since 1993, there has been a tendency toward expansion of the police, as shown by the increase in the budget (see Table 1). The Sejm, through the Budget Law, specifies the size of the police force. The budget of the police is allocated by the State as part of the general budget of the MSWiA. Police expansion has been a response to the strong perception of insecurity created, initially, by the uncertainty resulting from the political changeover¹⁰⁶ and the emergence of armed conflict in the Balkans, but mainly from the perception of a rapid growth of criminality¹⁰⁷. Regarding crime rates in Poland, on the one hand, there are grounds to argue that official statistics under the communist regime were manipulated for propaganda reasons; petty theft, for instance, was re-defined as a misdemeanour rather than a crime by the legislature. At the same time, the efficiency of each police officer was measured by crime and crime detection rates, as the lower the crime rate the higher the police efficiency seemed. On the other hand, during the transition period, not only did the police stop playing down crime rates but they also began to overstate it in order to press for more state spending in this area, which included their own salaries (Siemaszko 2000 pp. 15-16). Thus, the escalating crime rate also has been magnified by agencies responsible for law enforcement. Through what we can call “statistical pressures”, there has been a strong lobbying effort in the Sejm to increase the police budget¹⁰⁸ as the following table on the police budget illustrates.

¹⁰⁶ Koszeg (in Kádár 2001 pp. 2-3) points out that “[a] major contribution to this climate of fear was made by the ending of the policy of artificially maintained general employment – a characteristic feature of Socialism – as a result of which masses of people lost their jobs. The secure, albeit modest lifestyle to which the average citizen had been accustomed became fraught with uncertainty, while the state of the national economy was on more prominent display than ever before. With incredible speed social life became far more open and free: total control over society was abolished, constraints on travelling abroad were significantly eased, and formerly imperturbable state bodies disintegrated”.

¹⁰⁷ Comparing the Polish rates to the EU average rates between 1997 and 2001, the crime recorded by the police had an average annual growth of 4.8% in Poland and -0.1% in Europe. For the same period, robbery rates grew an average of 72% in Poland and 24% in the EU (Barclay and Tavares 2003 p. 3). An unintended consequence of the transition was also the increase of organized crime and corruption. The control of information and economic resources by the party leadership and secret service facilitated contact with criminal organizations. As Uildriks and Van Reenen (2003 p. 27) indicate: “[a] Polish Minister of the Interior noted that in Poland, mafia groups are directed by former Soviet intelligence and counter intelligence officials who failed verification checks in the 1990s. Their knowledge and abilities enabled them to ascend rapidly in the mafia hierarchy, striving to influence Polish political and economic circles as well as aiming for access to the various media outlets. Poland is not an exception to the rule – the situation is believed to be similar in all post-communist societies”.

¹⁰⁸ Interview with Lasocik.

Table 1: Police Budget

Year	Zlotych - PLN (million)	US dollars – USD (million)*
2005	6,017	2,003
2004	5,869	1,953
2003	5,480	1,824
2002	5,292	1,763
2001	5,256	1,751
2000	4,739	1,579
1999	4,318	1,437
1998	3,722	1,239
1997	3,243	1,079
1996	2,668	888
1995	2,030	675
1994	1,552	517
1993	1,249	416
1992	901	300
1991	583	194
1990	402	134

Source: KGP, 2006. * Current currency (2006).

In June 1995, an integrated system of recruitment and training was introduced at the four levels of the police - basic, non-commissioned officers, aspirants, and officers. It was not a police initiative, but a political decision by the government¹⁰⁹. Currently, there are five police academies and many regional training schools. About 8,500 police graduate from all types of training each year, and about 2,000 police attend various postgraduate courses. It is calculated that around 11% of the police force are in training programmes each year (Hungarian Helsinki Committee 2000 pl_02.htm, p. 9). Some police training programmes were developed to deal with new issues regarding police work, professional ethics and human rights issues, but they were very limited.

Nevertheless, with the process of expansion, there has been much criticism about the procedures for recruitment and preparatory service. During the 1990s the major concern of the police was to fill the positions and increase numbers to cope with the increasing rate of criminality. By 2006, the number of permanent police men and women was 103,309 (KGP 2006). The concern with the growth of the police force

¹⁰⁹ Interview with Cybulski.

resulted in the reduction of training time and decreased rigor of examinations in order to train the greatest number of candidates within a short time¹¹⁰ (Hungarian Helsinki Committee 2000 pl_5.htm, pp. 1-10). The Police Law requires secondary education for recruitment (Article 25.1), but the Commander in Chief of the Police “may agree to admit to the service in the Police prevention squads a candidate with no secondary education if it was found in the course of the qualification procedure that this candidate has special disposition to serve in the Police” (Article 25.2)¹¹¹.

Accountability System

The Soviet bloc militia systems possessed a highly developed system of control. It was a two-tier supervision system: one external, a political supervision by party representatives; and the other internal, by professional inspection bodies. In their daily work, militias had to fulfil quotas and detailed reports, most of them with manipulated and fabricated results (Uildrik and Van Reenen 2003 pp. 208-209). The extent to which this system controlled police behaviour and activities is doubtful, especially facing the rising level of police corruption during the 1980s; however, the culture of stringent controls left a legacy that facilitated the acceptance of external accountability systems by the police institution. This does not mean that the corporative spirit was absent or has been totally eliminated from the institution¹¹²; but in general, monitoring and control mechanisms have been developed and consolidated.

Chapter 3 of the Police Law, which deals with the range of powers of the police, states: “In the course of performance of their duties, police officers are obliged to respect human dignity and to observe and protect human rights” (Article 14.3). In relation to the right of the police to detain a person (Article 15.1), the Law says that it “should be performed in a manner reducing to the necessary minimum interference

¹¹⁰ At the Academy, a regular course ending with examination for Police officer takes three years. However, graduates from law school take a five-month course, and graduates from other disciplines take 10-month courses.

¹¹¹ In 1991, of all police officers admitted, 24.1% had not finished high school; in 1992, the rate was 20.6% (Police in Transition CD-ROM, Report pl_02.htm p. 1, Footnote 3).

¹¹² There are cases, for instance, of police engaging in corruption activities when they are about to retire with the expectation that, even if they are discovered before retirement, solidarity within the institution would prevail (Hungarian Helsinki Committee 2000 pl_03.htm p. 11).

with the personal rights of the detainee” (Article 15.6). The Law already stated disciplinary and criminal responsibilities of policemen (Articles 132-145), but it was the Penal Code of 1997 (Article 231) that specified the criminal responsibility of police officers who commit acts to the detriment of public and private interests. The Penal Code (Article 247) states that anyone using violence against a lawfully detained suspect faces a penalty of three months to five years in prison, which is increased by one to ten years if the perpetrator acts with particular cruelty. Police officers suspected of criminal offences are always suspended from service activities during investigation (Articles 3 and 39.1 of the Police Law), and all the information on alleged offences committed by members of the police is examined by the prosecutor.

Articles 16 and 17 and the Ordinances of the Council of Ministers regulate the rights of policemen to use firearms. In all cases in which firearms are used, including warning shots, the police officer is obliged to provide immediate notification to the officer on duty at the nearest police unit. However, disciplinary proceedings tend to be kinder to police officers accused of unjustified use of firearms¹¹³.

There are two levels of inspection in the police; one at the regional police headquarters and another at the central police headquarters, the KGP. If authorised by the regional police chief, inspection teams may be also instituted in the largest local police stations. The regional inspectorate addresses complaints filed at the regional police headquarters and is responsible for carrying out the initial investigation. At the KGP, all the complaints are received by the Control Bureau and then the criminal allegations are referred to the Internal Affairs Bureau. The Control Bureau is also responsible for: (1) promotion of human rights at the Police, (2) observing human rights protection in Police activities, and (3) representing the Commander in Chief in national and international projects related to human rights (Journal of Laws of the General Headquarters of Police 2006 Article 23 and Annex 16). The Internal Affairs Bureau (usually referred to as BSW, the Polish acronym for Biuro Spraw Wewnętrznych) is specifically responsible for the detection and prosecution of crimes

¹¹³ The 29 June 1996 amendment to the Police Law has been criticized for extending police powers to use firearms. Firearms may be used in direct pursuit of a person who can be reasonably suspected of having committed a crime as specified in the law. This is a move backward in the matter of controlling the use of firearms (Interviews with Rzeplinski and Lasocik).

committed by police officers and employees at the police institution. It also has the task of analysing the scale and reasons for crime threats in the police environment (Journal of Laws 23 January 2006, Article 12 and Annex 5). In 2000, a toll-free telephone number for complaints against the police was created at the police institution.

Disciplinary proceedings for police officers are considered more severe than criminal ones, because, sometimes as the result of prosecutor's recommendations, they are more extensive and have a greater impact than criminal proceedings (Uildrik and Van Reenen 2003 pp. 186-211). However, there has been a significant drop in the number of police punished and dismissed in cases of disciplinary proceedings (see Table 2), much greater than the decrease in offences for the same period; a decrease of 18.3% in the number of disciplinary offences registered. In 1993, the number of police punished was 4,734; more than three times the number in 2005, for a decrease of 72.3%. The number of police punished with dismissal from service fell by 84.1%. This is attributed to changes in the policy of enforcing disciplinary penalties (Hungarian Helsinki Committee 2000 pl.-03.htm p. 10), due to the demilitarisation of the police and the use of alternative measures in disciplinary cases.

Table 2: Disciplinary Proceedings at the KGP

Year	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Number of Offences	6,027	5,945	6,397	6,661	7,045	4,828	3,915	5,255	5,391	5,710	4,826	5,465	4,924
Offences with Punishment	4,850	4,753	4,661	4,891	4,757	2,547	2,244	2,838	2,884	2,556	1,796	1,682	1,331
% of Offences with Punishment	80.4	79.9	72.8	73.4	67.5	52.7	57.3	54.0	53.4	44.7	37.2	19.8	27.0
Including Punishment of Expulsion from Service	493	408	259	336	288	172	197	295	284	308	204	103	78
Number of Police Punished	4,734	4,613	4,584	4,667	4,507	2,525	2,206	2,765	2,855	2,528	1,778	1,610	1,310
% of Police Punished in the Polish Police	4.8	4.8	4.6	4.6	4.5	2.5	2.2	2.74	2.8	2.5	1.75	1.6	1.3

Source: KGP 2006.

In their comparative work on policing in post-communist societies, Uildrik and Van Reenen (2003 pp. 171-185) point out that Poland and Russia present the highest

number of criminal and disciplinary proceedings against police officers among the former communist countries. However, less than 20 percent of cases in Poland concern allegations of police ill-treatment. In recent years there has been a rise in the number of cases related to “abusive behaviour” by the police (see Table 3). Nevertheless, the type and seriousness of the abusive behaviour reported are not clear.

Table 3: Cases Investigated by the Internal Affairs Bureau

Type of Case	2000	2001	2002	2003	2004	2005
Bribery	108	98	87	141	137	144
Abusive Behaviour	50	91	75	141	172	288
False Evidence	27	31	25	72	102	195
Illegal Seizure, Forgery	37	60	55	103	152	130
Disclosure of State Secrets and Official Documents	8	15	16	11	17	46
Others	43	65	81	102	142	212
Police Officers Charged	273	213	204	269	335	444

Source: KGP 2006.

In general, a high level of complaints can indicate both public discontent with the police as well as the democratisation of the system and the population’s trust of it. Compared to Romania and Bulgaria, Uildrik and Van Reenen conclude that the high number of complaints against police officers at the KGP suggests that the public have confidence in the system.

Although less than 15 percent of criminal proceedings initiated in Poland resulted in conviction and only very few policemen are sentenced to prison (see Table 4), in their analysis of the criminal proceedings they also argue that “the Polish data makes a powerful case for contending that the notion of impunity should not merely be seen in relation to the actual level of criminal convictions, but also to the extent to which use is made of the internal disciplinary system. The very fact so many Polish officers receive disciplinary punishments and are even dismissed, negates any suggestion of impunity, whatever the number of criminal convictions relative to the proportion of serious violations” (Uildrik and Van Reenen 2003 pp. 186-209). The low level of criminal convictions is not in itself indicative of a prevailing attitude of impunity; it may reflect an absence of serious police violations at an institutional level.

Table 4: Criminal Proceedings at the KGP

Year	Cases with Criminal Proceedings	Criminal Proceedings Completed	Criminal Proceedings with Conviction	% of Cases with Conviction
2005	568	221	78	13.9
2004	585*	280	81	13.8
2003	Change of Regulations	380	103	—
2002	770	296	84	10.9
2001	844	300	77	9.1
2000	609	282	70	11.4
1999	490	294	54	11.0
1998	582	419	95	16.3
1997	756	478	100	13.2
1996	691	404	81	11.7
1995	610	424	82	13.4
1994	660	478	64	9.6
1993	627	633	113	18.0

Source: KGP 2006.

In addition to criminal liability, convicted police officers can also be held civilly liable for restitution to the victim. The 1997 Polish Constitution states that "each person has the right to compensation for damages he or she has suffered through illegal action by the public authority" (Article 77.1), and the Civil Code of 1964, which includes many amendments after 1989, stipulates (Article 417) that the State Treasury is responsible for paying damages for illegal acts committed by police officers in the performance of their official duties. The Treasury may file claims against police officers and seek an indemnity or a refund of the money paid to the injured person. The Supreme Administrative Court has the power to process complaints against valid decisions issued by the police (e.g.: refusal of gun permit, orderly performance of police duties, etc.). In the Rehabilitation Act of 1991, there were already grounds for claiming compensation from the State Treasury for damages and injuries suffered. According to Uildrik and Van Reenen (2003 pp. 168-176) "[t]he number of compensation cases indicates that the requirement of legal redress is taken seriously in the Polish legal system". Between 1994 and 1997, the number of general settlements in compensation cases handled by provincial courts varied from 5,448 to 9,809. There are no detailed statistics regarding civil law liability applied to police officers, but human rights organisations have pointed out that a civil suit

against the police institution is still difficult to win (Hungarian Helsinki Committee 2000 pl_03.htm p. 9). At the Ministry of Justice, convictions are divided into the categories of: health service staff (mainly physicians), employees of the education system, prisons and other institutions for the administration of justice; and employees of other public offices. Cases concerning policemen and soldiers are classified in this last category.

Complaints against the police can be also addressed to the Spokesperson for Victim's Rights at the MSWiA or submitted to the prosecutor's office. At the MSWiA, the organ responsible for overseeing police activities is the Control and Supervision Inspectorate. Concerning the Executive, it is also worth mentioning that the Prime Minister has supervisory power and responsibility over the police through the supervision of the MSWiA (Article 148.5 of the Constitution of the Republic of Poland).

Until 1995, there was no parliamentary oversight for security forces. From that year forward, the functions of the Sejm Commission for Security Services have included the responsibility of examining complaints against police activities. At the Sejm, there are also the Administration and Internal Affairs Commission and the Administration of Justice and Human Rights Commission responsible for supervising enforcement of the Police Law and its resolutions pertaining to police work. However, Rzeplinski (2003 p. 109) has observed that legislators on the Administration and Internal Affairs Commission lobby to extend police power regarding crime control, and most legislators lack the professional capacity to provide parliamentary oversight of the police.

In addition to the work of the commissions, the Sejm can also supervise police activities through interpellations and parliamentary questions addressed to the Prime Minister, the MSWiA, other members of the Cabinet, or the President of the Supreme Chamber of Control, which has the power to monitor and investigate the police institution "from the viewpoint of legality, good management, expediency and reliability" (Article 203 of the Constitution of the Republic of Poland), especially related to financial, economic and administrative activities. The Supreme Chamber of Control constitutes an effective mechanism for inspection; however, most of its

reports are secret. The Senate, through the Commission on Human Rights and the Rule of Law, also participates in the supervision of police work (Weber in Kádár 2001 pp. 52-53).

One important institution for the promotion of human rights is the Polish parliamentary ombudsman, the Commissioner for Citizen's Rights (Rzecznik Praw Obywatelskich). The first ombudsman's office was established in 1988, and it is regulated by the Constitution (Articles 208-212) and the Law of July 15, 1987. The Commissioner was created by the communist regime in an attempt to seek domestic and international legitimacy through new institutions, such as the High Administrative Court (1980), the Tribunal of State (1982), and the Constitutional Court (1985). It was a concession to society by a weakening regime in the context of economic problems. The communist regime expected that the Commissioner would be easy to manipulate, and in this sense, as Ewa Letowska herself explains, it was not "accidental" that she was appointed as first Commissioner, a woman with no political affiliations or prior involvement in public activity¹¹⁴. However, as she points out "[c]ommunist politicians accepted the concept [of ombudsman] while having only a vague idea of what the office was and could be" (Letowska 1996 p. 2). The consequence was an inconvenient surprise for the regime. Since its creation, the Commissioner has presented a high level of authority on all matters without restrictions, including cases related to security affairs. As a properly functioning Commissioner is perceived as inconvenient by any kind of authority, much of the success of the Commissioner's office in consolidating its power and independence has been attributed to the timing of its creation, during the weakening of the communist regime and before consolidation of a democratic government (Letowska 1996). Within 10 years, the Commissioner's requests were not respected by the administration in only 3% of its total cases, illustrating the respect gained by this institution (Kurczewski in Priban and Young 1999 p. 188).

The Commissioner's office has a special team to examine individual complaints against police activity. They may examine all relevant documents related to the complaints, except those constituting state secrets. When facing obstacles at the

¹¹⁴ Interview with Letowska.

police unit involved, the Commissioner approaches the KGP and MSWiA for cooperation. The rights of soldiers and of public service officials regarding service relationships, conditions of service¹¹⁵, and training of police officers are also the purview of the Commissioner (Hungarian Helsinki Committee 2000 pl_03.htm pp. 1-2). The problem of discretionary disciplinary proceedings, both in regard to the decision to examine a complaint and presenting evidence, has been raised by the Commissioner's work since discretion in disciplinary matters may contribute to offences or other violations of the law for ordinary citizens as well as members of police forces. However, the Commissioner may demand disciplinary measures or institute proceedings before the Constitutional Tribunal and the High Administrative Court, and may file extraordinary appeals with the Supreme Court against any court's final verdict.

Another enormous contribution of the Commissioner to the democratisation process in Poland has been developed through its educational function of promoting the rule of law in relation to the public and the political establishment, especially when making reference to the European Convention on Human Rights and the decisions formulated by the European Human Rights System (Letowska 1991). It has educated public officials and citizens about the language of human rights and permitted them to become familiar with regional mechanisms for human rights protection.

Oversight of police activities is also provided by NGOs, such as the Helsinki Foundation for Human Rights¹¹⁶ and Amnesty International, and other organs of the Council of Europe and the EU. This occurs mainly through monitoring of the human rights situation as we have seen in Chapter One in the discussion about the European institutional context.

The 2001 Law on Access to Information also imposed on the MSWiA the obligation to create an Internet Public Information Newsletter. There is an effort to make the police institution more transparent and accountable. In this sense, the public now has

¹¹⁵ Including: wages, housing privileges, conditions of service, disability and retirement pensions.

¹¹⁶ The Helsinki Committee in Poland was founded in 1982 and worked in the underground until 1989. With the democratisation process it was able to emerge from its clandestine work and establish the Helsinki Foundation for Human Rights. The Foundation develops supervision, educational and research activities.

access to general information related to the police, including some information about disciplinary and criminal proceedings. In fact, there are different cross-check mechanisms responsible for overseeing police activities.

Despite the prevalent difficulties in prosecuting police officers, the concern expressed by human rights organisations about the lenience of criminal sentences, and certain regression in the matter of using firearms, the fact is that human rights-oriented control mechanisms have been consolidated and are constantly activated in Poland; and most important, they have been able to limit distortions and abusive behaviour at the police institution.

Human Rights and the Polish Police

In the first periodic visit of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) to Poland in 1996, it affirmed that “numerous persons with considerable experience of the police stated that there had been a significant change for the better in recent years as regards the manner in which police officers treated persons in their custody”, and that “the majority of the persons met by the CPT’s delegation who were, or had recently been, detained by the police indicated that they had been correctly treated, both at the time of their apprehension and during questioning” (CPT Strasbourg, 24 September 1998, visit from 30 June to 12 July 1996). Subsequent visits by the CPT to Poland, in 2002 and 2004¹¹⁷, stated the same. Although the CPT delegation has heard some allegations of physical ill-treatment by the police, such as slaps, kicks, punches, blows with a truncheon and tight handcuffing for prolonged periods of time at the time of apprehension and punches, slaps, threats to use physical force and verbal abuse at the time of questioning, “[t]he evidence available about the level and nature of police human rights violations provides a rather positive picture at least where serious violations are concerned. There are no current indications or allegations of

¹¹⁷ CPT Strasbourg, 2 March 2006, visit from 4 to 15 October 2004.

police torture and this suggests the absence of systematic torture on an institutional level” (CPT/Inf 2002 10 p. 7)¹¹⁸.

The greatest concern expressed by the CPT in its reports is related to police treatment of intoxicated people and the lack of respect to them. The CPT has also criticised Poland because its criminal law has not adopted the CPT definition of torture and there are no provisions regarding compensation of victims. There are, however, some criminal laws that permit officials to be prosecuted for torture or cruel and inhuman treatment¹¹⁹, and held civilly liable as any other public authority.

In its annual 2004 report, Amnesty International (AI) mentioned the report of the Council of Europe’s Human Rights Commissioner on his 2002 visit to Poland¹²⁰. The report notes the genuine willingness of Polish authorities to combat the problems identified¹²¹ and, at the same time, expresses concern about: (1) reports of ill-treatment and death while in police custody; (2) the impartiality of investigation of those cases; (3) domestic violence; and (4) racism and discrimination. The Helsinki Foundation, in its annual reports for the 2000s, has also expressed concern about continued reports of ill-treatment by the police, the lack of effective mechanisms to investigate those cases, and the extension of police power to use firearms. Nevertheless, the European Commission’s 2002 Regular Report on Poland’s Progress towards Accession states that “there is no evidence of systemic or systematic mistreatment in police custody” (European Commission 2002).

In fact, the vast majority of cases against Poland filed at the European Court of Human Rights – in 2005 there were 4,744 cases – are related to excessive court delays. Due to the pressure produced by the high number of cases at the Court, the

¹¹⁸ Ten officers in 1999 and 12 officers in 2000 were convicted for securing confessions “under duress” (CPT/Inf 2002 10 p. 7). In 2000, isolated cases of infliction of electric shocks and blows to the soles of the feet were reported to the CPT (CPT Strasbourg, 23 May 2002, visit from 8 to 19 May 2000).

¹¹⁹ Interview with Platek.

¹²⁰ Poland has not been the subject of specific reports presented by AI and Human Rights Watch (HRW).

¹²¹ The document “Security Services in a Constitutional Democracy - The Principles of Oversight and Accountability (1997)” elaborated by the Helsinki Foundation and the Centre for National Security Studies is broadly accepted by other human rights NGOs – the International Helsinki Federation, Amnesty International, Article 19 and the International Commission of Jurists – and was presented as a special publication of the Polish Government (Rzeplinski 2003 p. 115).

Polish government introduced a new law to facilitate the formulation of complaints by citizens against the excessive delay of court proceedings. In Poland, the number of court cases lasting for more than five years is estimated at 6,300; the average for court proceedings is six months in most of the country, 18 months for Warsaw and 29 months for central Warsaw (Freedom House 2005 pp. 3 and 14).

It is important to observe that regional and international human rights mechanisms have played an important role in Poland from the beginning of the transition, providing concrete tools for Polish organs. The European Convention entered into force in Poland in 1993, and is considered the first positivation of human rights in the country¹²². Various external monitoring activities have helped to introduce and, to a certain extent, make the use of existing regional and international instruments routine.

Regional Cooperation

After 1989, Poland started receiving assistance from Western police institutions in order to reform its forces. The assistance, which included police training and the donation of police equipment, reached practically all areas of police work and was aimed at the implementation of Western models. The earliest and most significant assistance came from England, France, Germany and the U.S. Currently there is formal cooperation with foreign police forces, mostly in the areas of training and crime control, especially related to organised crime, the effects of migration movements, and terrorism (interview with Zygmunt).

The U.S. was the first country to provide assistance in police training to Poland after 1989. In cooperation with the U.S. Federal Bureau of Investigation (FBI), in the 1990-1996 period, 318 officers were trained in the U.S. and 196 in Poland (Hungarian Helsinki Foundation 2001). In 2002, the U.S. Department of State signed an agreement on law enforcement cooperation with the MSWiA. The total value of the assistance package was US\$1,318,708, and it included the following projects to be developed in subsequent years: (1) Anti-Corruption Curriculum Development, (2)

¹²² Interview with Letowska.

Combating International Organised Crime, (3) Courtroom Security, (4) Support to the Financial Intelligence Unit, and (5) Police Modernisation and Training (U.S. Department of State 2002).

Since 1990, Poland has had an agreement on police assistance with the British and French police. Between 1990 and 1996, 325 officers were trained in England and 528 were trained by the British Police in Poland, while 286 policemen were trained in France and 1,194 were trained in Poland by French missions. France has been responsible for the highest number of policemen trained, it is the main type of assistance France provides since it does not give money for police; it only offers loans for buying equipment¹²³. During the 1990s, Poland also signed agreements on police assistance with Germany and Austria. Germany has been responsible for most of the equipment obtained by the Polish Police under an agreement between both countries to deal with the effects of migration movements. Canada, the Netherlands and occasionally Japan and Israel are other countries from which Poland receives police training assistance (Hungarian Helsinki Foundation 2001).

Since 1996, there also have been training exchanges between Poland and Hungary under an agreement signed by both countries. In 1997, the International Centre for Specialised Police Training was established in Poland with the objective of conducting research on international crime in that part of Europe, training police officers, and drafting relevant laws. The Polish police force was responsible for most of the costs related to the Centre (Hungarian Helsinki Foundation 2001). The tendency now is for most of the police assistance provided by EU members to be channelled by the EU through different programmes and organs at its Third Pillar: Justice and Internal Affairs¹²⁴.

All the support received by the Polish police results from agreements with other police institutions signed by the Polish government. Despite this, there are also complaints that not all programmes developed by the training assistance from Western partners are suitable for Polish needs. At the Office of the Police

¹²³ Interview with Cordech.

¹²⁴ Interview with Coderch.

Commander in Chief, the Police International Cooperation Development Department is the division responsible for writing, developing and coordinating police bilateral and multilateral proposals for cooperation with police forces from other countries and with regional and international organisations. It is also responsible for disseminating standards of international cooperation at police organisational units (Journal of Laws, 23 January 2006 Annex 9).

In 2002, Poland signed the Europol Convention, and with its accession to the EU in 2004, Poland became member of the Europol. First mentioned in the Maastricht Treaty (1992), Europol became fully operational in 1999. Europol presents the advantage of promoting cooperation among police institutions, at least on specific issues, through a multilateral mechanism, diminishing a country's concern of getting involved in police assistance and helping to avoid distortions in the public security agenda of one country by imposition of the interests of another country. At the same time, Europol is a peculiar institution that raises much concern regarding its nature. It cannot be considered a European Police since a European State as such does not exist. Human rights NGOs and the European Parliament have manifested apprehension regarding the development of Europol. Whether it will be used as a database centre or will work as an operational police force has yet to be defined. Europol has been developed without the establishment of organs for its supervision or any control mechanisms. There is the danger that it will become a "repressive federal system" without being subject to oversight by any democratic bodies (European Parliament report).

As a member of the Council of Europe and the Organisation for Security and Cooperation in Europe (OSCE), Poland has the obligation to observe a number of documents, such as the Council of Europe Declaration on Police (1979), the European Code of Police Ethics (2001), and the OSCE Charter for European Security (1999). However, it is not clear whether Europol is subjected to regional mechanisms and which obligations it assumes.

Since 2004, Poland is also part of the EU's Schengen agreement. This implies not only enforcing the outer borders of the EU, but also tightening international cooperation in fighting international crime and different forms of lawbreaking.

Although the EU has not yet developed a clear human rights policy for its own members, as we have seen in Chapter 1, the regional standards developed by the Council of Europe are a strong reference for the EU itself and for EU members, all of them members of the Council of Europe as well.

Towards Human Rights and the Rule of Law

The advantage of police reform in Poland is that it was considered crucial in the beginning of the transition and started early in the process. The Polish Police Law (1990) promoted a rupture with the militarist traditions of the police and provided the legal conditions for further changes in the police institution.

The constant presence of police control in the daily life of the Polish people brought about the discussion about the legitimacy of the police. Police officers themselves were discontent with the party control and concerned about the image of the institution. Nevertheless, the reform was not a police initiative. It was a political decision by the government, and was successful because there was a network of NGOs and regional institutions that paid attention to legal reforms, the penitentiary system, and human rights issues. The work of those formal and informal institutions was important in making information about the human rights situation accessible, promoting an education on human rights, and strengthening interaction between regional institutions and emerging local entities.

Already in the 1970s, with the Helsinki accords, the human rights concept was the leading concept of civil society; it was not democracy or democratisation¹²⁵. Dissidents believed that it was not possible to change the system, but to pressure for a more “civilised communism” and, at the same time, the former regime did not deny the discourse of human rights¹²⁶. The Helsinki process and the consolidated European Human Rights System were very important in supporting civil society. During the transition, regional and international human rights instruments became the normative

¹²⁵ Interview with Lasocik and Platek.

¹²⁶ Interview with Lasocik.

standard applied, and since 1992, these have become binding norms (Kurczewski in Priban and Young 1999 p. 186).

The EU, and the intention of Poland to join it, has also played an important role in the consolidation of a democratic rule of law by making the Constitution more visible¹²⁷. The struggle for a new constitution, as Priban and Young (1999 p. 6) argue, “must be understood in the context of the symbolic value of constitutions and their cultural and integrative functions”. In the Communist regime, the Constitution was an empty institution (Kurczewski in Priban and Young 1999 p. 186) that was kept for some years under the new regime. In 1992, a constitutional law, which became known as the Little Constitution, defined the relations between legislature and executive, but it was a temporary instrument that preceded the drafting of the new constitution (Priban and Young 1999 p. 7), which was finally put to a popular vote in 1997¹²⁸. The process of writing a new constitution was long, with forward and backward actions; and as the first country from Eastern Europe to initiate the transition, many international observers were following the Polish process.

Police reform is a lengthy, continuous and sometimes non-linear process, as is the democratisation process itself, and the Polish case is not an exception. Police reform faced limitations from the resistance that still exists within the institution along with the increasing concern with public safety. With the transition came a general concern with property crime and vagrancy, and the rise of criminality was perceived by a significant part of the population as a result of the ‘excessive liberalism’ of state institutions. Some authors argue that the objectives of the police changed from primarily sustaining the political system to a social control that no longer serves only the party but the different social powers that emerged. The regression in socio-economic rights followed by a rapid progress in consumer protection is also indicative of this (Koszeg in Kádár 2001 pp. 2-3).

Without ignoring all the old and new concerns related to policing in Poland, it is not possible to deny the major steps taken in the direction of creating policing standards

¹²⁷ Interview with Platek.

¹²⁸ The 1997 Constitution only mentions the police in Article 103.2, where it states the prohibition against police officers, soldiers, prosecutors, judges and other civil servants holding a seat in the Sejm.

associated with the democratic rule of law. Based on reports from different organisations responsible for supervising the human rights situation, we can affirm that, in Poland, there are still problems related to police brutality and institutional accountability, and some statistics about disciplinary and criminal proceedings may support these concerns, but the same reports also indicate the absence of evidence of systematic and gross human rights violations.

It is not possible to talk about a completely new police institution, but there was an enormous restructuring of the police institution. Poland has been able to change the legal status and organisational principle of the police, and this has resulted in a positive impact on the trust of the police by the population¹²⁹. As Plywaczewski has argued: “The efficient protection of human rights during police interventions depends not only on the congruence of Polish law with international standards, but also on the ability of citizens to initiate control of police activities through the prosecutors and courts, as well as on the right to obtain compensation for loss or injury suffered. In all these aspects, the Polish legal system offers significant possibilities for redress, an ability supported by the institution of the Ombudsman”, (Plywaczewski in Das and Marenin 2000 p. 170). The possibility of real change in the police institution originated with the fact that the control mechanisms were developed from the very beginning. To a great extent this was possible because the democratisation process was framed within a regional environment which supported it.

¹²⁹ Interview with Cybulski.

Chapter 6 - Ecuador: Skipping Police Reform

Introduction

In Ecuador the discussion about the police forces did not follow the democratisation process. In fact, it has come very late in the political agenda. Only in very recent years is it possible to find some initiatives in this direction. The keynote during three decades of political democracy has been a complete lack of interest in the police institution by governments, political leaders and academics.

Following the analytical approach used in the case of the police in Poland, in this chapter I analyse the Ecuadorian police and the problem they pose to democracy through the same four major categories: (1) continuity from non-democratic regimes; (2) the lack of external control mechanisms; (3) the human rights situation; and (4) their interaction with regional politics.

The Police History: A Partisan and Military Affair

The current national police have their origins in the “Police of Order and Security” created by President José María Plácido Caamaño (1883-1888) on 14 June 1884. It was only during this Second Republican Period in Ecuador (1884-1938) that the police force was defined as a state institution for the first time. From its inception it possessed a strongly partisan and openly politicised character. Under the Ministry of Government, it was immediately incorporated by the government into the fight against the liberals. Although thought of as a civilian force, the police were organised militarily and their members were called “soldiers of the police”. However, this militarised period lasted for only a few years. In 1892, the police structure was demilitarised by President Luis Cordero Crespo (1892-1895). The revamped structure would last for almost four decades, until it was converted into the current institutional structure.

In 1923, through a new General Regulation (*Reglamento General*), the police had their name changed to “National Police” by President José Luis Tamayo (1920-1924), and in 1925, the national government created the first police academies in Quito and Guayaquil with the support of a French police mission. Nevertheless, the most important changes would be promoted in 1938 by President General Alberto Enríquez Gallo (1937-1938), who is considered the founder of the police as a public institution and the main person responsible for its professionalization. Through “Supreme Decree 219” signed by President Enríquez Gallo on 4 January 1938, the police had their name changed to “Police Forces” and gained a new military structure and hierarchy¹³⁰. Again, on 8 July 1938, the name of the institution was replaced by the “Police Corps” (*Cuerpo de Carabineros*), and the Military School for Police was created. The police forces were similar in construction to the Chilean *Carabineros*, a police and military hybrid.

The further militarisation of the police was promoted by President Arroyo de Río (1940-1944) in order to protect his government from political pressures from the military. With the loss of a significant part of Ecuadorian territory after the war against Peru and the signing of the Protocol of Rio de Janeiro on 29 January 1942, tensions between the military and the government increased. In 1944, the presidency of Arroyo del Río was overthrown by a military-popular insurrection – “*La Gloriosa*” – and, on 6 June 1944, the “Police Corps” was once more transformed into the “National Civil Guard” in an attempt to diminish its military character or at least to disguise it.

The police force was introduced in the Ecuadorian Constitution for the first time in 1946. The Constitution mentioned a civil police force because it was understood that the police had always been military. Since the 1940s, the name of the police has changed a few more times. On 31 October 1951, the National Congress converted it into the “National Police”; on 21 March 1973, President General Guillermo Rodríguez Lara changed it again to “National Civil Police”; and finally, on 28 February 1975, that same president changed it back to “National Police.” Although the name changes were attempts to attribute a civilian character to the police, the

¹³⁰ The first law related to the police personnel, in 1938, was entitled “Law of the Military Situation and Promotion of the Police Forces” (*Ley de Situación Militar y Ascensos de las Fuerzas de Policía*).

institution has kept the same military hierarchy, discipline, organisational structure, and doctrine established in 1938.

The military character of this hybrid institution has fed the eagerness of the military to control the police for decades. During the National Constitutional Assembly (1997-1998), installed after the fall of populist President Abdalá Bucaram in 1997, there was much debate and controversy about the role of the public forces in the country. In this episode there was a confrontation between the police and the military at the National Assembly of 1998 (García 2005). More than 17 years after changing regimes, there were still military attempts to convert the police into a fourth branch of the Armed Forces. Although these proposals presented by the military have not been considered, in the 1998 Political Constitution of the Republic of Ecuador the police are still defined as an auxiliary force of the Armed Forces for the defence of national sovereignty.¹³¹ Under a state of emergency decree, which is not exceptional in the Ecuadorian socio-political instability context of recent years, the police become subordinate to the Armed Forces. In a broad and controversial interpretation of Article 180 of the 1998 Constitution, which states the possibility of a decree of emergency in situations of “serious internal commotion”,¹³² there have been cases in which a declaration of a state of emergency was justified by a high crime rate. During the government of President Gustavo Noboa (2000-2003), the city of Guayaquil was under a state of emergency for months by virtue of this allegation.

The 1998 Ecuadorian Constitution (Article 183) gives a very general definition of the role of the police. However, the 1999 Organic Law of the National Police¹³³ attributes a variety of functions to the institution, in the following order: (a) preservation of

¹³¹ 1998 Constitution, Title VII about the Executive Function, Chapter 5, Article 183 states:

“The public force will be constituted by the Armed Forces and the National Police. Their mission, organization, preparation, application, and control will be regulated by law.

The fundamental mission of the National Police will be to guarantee public security and order. It will constitute an auxiliary force of the Armed Forces for the defense of national sovereignty. It will be under the supervision, evaluation, and control of the National Council of Police, whose organization and function will be regulated by law.

The law will determine the collaboration that the public force will give to the socio-economic development of the country, without affecting the exercise of its specific functions.”

¹³² The other anticipated situations for state of emergency are “imminent external aggression,” “international war”, and “natural catastrophe”. It is the responsibility of the President to declare a state of emergency and determine whether it applies to the entire national territory or to specific parts of it and to determine the extent of its effects - that is, which rights it suspends (1998 Ecuadorian Constitution, Chapter 4).

¹³³ Law 109, Title I, Article 4.

peace, order, and public security; prevention and repression of crime; (b) participation in crime investigation; (c) custody of law breakers; (d) prevention, repression, and investigation related to drug trafficking and drug use; (e) cooperation with the justice administration; (f) external security, and in case of emergency also internal security, of the detention centres; (g) planning, execution, and control of activities related to traffic and transport; (h) control of migrant movements and alien residency in the country; (i) cooperation in the protection of the ecosystem; (j) collaboration in the social and economic development of the country; (k) guaranteeing citizens' individual rights and protecting private property.

It is interesting to observe that the function of the police related to the drug trafficking and use is specifically defined in the law. It is even listed before the protection of individual rights which, in fact, is listed last among the eleven specific attributions. This illustrates the orientation of the police toward crime repression rather than rights protection. These functions are not necessarily exclusive, but the emphasis placed on one or the other may point to different approaches to policing. Among the police functions listed, it is also interesting to see the reference to police collaboration in the socio-economic development of the country. The National Division of Public Security (*Dirección Nacional de Seguridad Pública*) was established to advise the police operational units and the central government on decisions regarding political and socio-economic problems regarding the factors that alter public order and threaten the state's internal security. This power has to do with the militarisation of the institution in a country where the military have a multifunctional character¹³⁴ and, still in the 1998 Constitution, are the guarantors of the constitutional order¹³⁵. During the dictatorship, the police were practically subordinate to the military, especially regarding secret and intelligence services. With the democratisation process, the police have recovered their arena for action but have kept the same military orientation based on the Brazilian National Security Doctrine.

¹³⁴ Arms control is the responsibility of the army, and civil aviation is controlled by the Air Force, just to mention two examples of activities attributed to the military. The military also participate in a wide range of businesses: they own ammunition and uniform factories and participate in steel, metalworking, chemical, cement, and ceramics industries (Fitch 1998 pp. 106-133). They also own a Marriot Hotel in Quito.

¹³⁵ 1998 Constitution Article 183: "The Armed Forces have the fundamental mission of conserving national sovereignty, defending the integrity and independence of the state, and guaranteeing its juridical order".

The National Security Law left by the military as they stepped out of the government in 1979¹³⁶ expresses the National Security Doctrine. The construction of a public security force based on the idea of combating an “internal enemy” is embedded in the police institution and in its approach to criminality. The “enemy” has changed since democratisation started, from communists and “subversive” groups to drug-traffickers and common criminals; however, the police approach to security has not been modified. In fact, until the beginning of the 1990s the police command was held by a military officer and the professors of the Police Academy were military. In 2009, the National Security Law was finally repealed by the Public and State Security Law; however it is too soon to evaluate any impact on policing.

The mixture of the concepts of defence and internal security has left many legacies in the police institution, including its secrecy. Despite the promulgation of the Law on Transparency and Access to Information in 2004, it is still very hard to get information from the police institution. For this reason, to a great extent this chapter is based on interviews. One police report (National Police 2005) lists 40 themes that must be restricted, all of them justified as internal security issues. Among them are specific cases and issues such as indigenous movements and organisations, labour and student unions, various social movements, political parties, corruption, strikes and protests, the Free Trade Agreement for the Americas, and human rights.

The police institution reflects a functional and organisational centralism. The police are organised in large, enclosed headquarters containing many police personnel under a military model. This organisational character is consistent with the police mission to protect the state and maintain public order in a very politically unstable country. Following the same corporate mentality of military institutions, police officers are also isolated from society in their daily life. They have access to a commercial outlet (*Comisariato de la Policía Nacional*) where all types of products are sold at lower prices than those found in the open market, and they also have their own social club and hospital.

¹³⁶ National Security Law No. 275 was published in the Official Register (RO 892) one day before the inauguration of the first democratically elected president, Jaime Roldós (1979-1981), on 10 August 1979.

The police hierarchy is pyramidal (see Table 5) with a great distance between the troops (*clases and policía*) at the bottom and the officers at the top, and with seniority rather than merit as the main criterion for promotion.

Table 5: Police Population by Rank

<i>Rank</i>	<i>Number</i>
General Inspector (<i>General Inspector</i>)	2
District General (<i>General de Distrito</i>)	9
Colonel (<i>Coronel</i>)	126
Major (<i>Mayor</i>)	242
Captain (<i>Capitán</i>)	320
Lieutenant (<i>Tenente</i>)	523
Sub-Lieutenant (<i>Subteniente</i>)	1013
Major Sub-Lieutenant (<i>Subteniente Mayor</i>)	16
First Sub-Officer (<i>Suboficial Primero</i>)	525
Second Sub-Officer (<i>Suboficial Segundo</i>)	849
First Sergeant (<i>Sargento Primero</i>)	2065
Second Sergeant (<i>Sargento Segundo</i>)	2378
First Corporal (<i>Cabo Primero</i>)	3840
Second Corporal (<i>Cabo Segundo</i>)	5630
Police (<i>Policía</i>)	15015
Total	32654

Source: General Command of the National Police, 2005.

The titles of the police officers are military, and the disciplinary code (*Reglamento de Disciplina de la Policía Nacional*¹³⁷), approved in 1998, still expresses military values.¹³⁸ The code defines the police institution as a disciplinary hierarchical system (Article 2); consequently, orders must be carried out without objection or contestation (Article 4). Subordination and disciplinary respect must be observed even when a policeman is not on duty (Article 6). The code classifies disciplinary misconduct into three categories: first class, slight infractions (Article 60); second class, serious misconduct (Article 62); and third class, criminal misconduct (Article 64). The sanctions for any of these categories may include dismissal, arrest, reprimand, extension of the time the person has to serve, and carrying out certain additional work.¹³⁹ First class misconduct includes the failure to salute or respond to a superior's salute (Article 6), washing clothes during unauthorised hours or drying them in inappropriate places (Article 17), and failure to salute the national flag (Article 33). This military organisation and disciplinary code deny police officers the rights afforded to any civil servant; police officers are not allowed to have unions and are

¹³⁷ Agreement 1070, R.O. 35-28.IX-98.

¹³⁸ The police also have a Code of Professional Ethics (1992).

¹³⁹ Sanctions are defined by the Disciplinary Tribunals (1998 Organic Law of the National Police, Law 109, Article 81).

under a Draconian code of ethics. In this sense, we find that third class infractions include the promotion of or participation in collective demands, as well as protests against superiors or against the established internal regime (Article 17.)¹⁴⁰

In the National Police General Inspection Office (*Inspectoría General de la Policía Nacional*),¹⁴¹ which is responsible for the supervision, control, and oversight of the disciplinary, administrative, financial, and technical-scientific activities of the police, there is no systematised data about disciplinary measures or infractions committed by members of the police.¹⁴² Lieutenant Colonel Pazmiño, who analysed the data for 2002 (Pazmiño 2003), found a total of 4,449 cases of disciplinary offences or infractions and about 200 types of entries in the register, ranging from washing or drying clothes in headquarters outside the authorised time to physical aggression and rape. The lack of systematisation of this information and the lack of precision and rigor in registering complaints indicate a silent intention to keep the institution hidden from public scrutiny and control. Of a total of 238 cases specifically identified as violations of the Penal Code of the National Police (1960), there were about 80 different types of listings, and in 80 cases the type of offence is not clearly specified (Pazmiño 2003 pp. 50-76).

The most serious legacy from the non-democratic regime and the essence of the military character of the Ecuadorian police is the existence of a special forum for judging members of the police forces, the National Court of Police Justice (NCPJ). Article 187 of the 1998 Ecuadorian Constitution establishes that members of the public force are subject to a special forum for the judgment of offences committed in the exercise of their professional work. In cases of common offences, they will be subject to the common justice system. However, this Constitution is ambiguous

¹⁴⁰ It is also noteworthy that one of the services developed by the National Public Security Office is to provide political records for citizens who want to join the police forces; this document is valid for six months. The mere concept of political records is alien to a democracy.

¹⁴¹ In addition to the mechanisms established by the 1992 Code of Professional Ethics and the 1998 Disciplinary Code of the National Police, there is the Police General Inspection Office. It operates through the internal affairs units of the various districts and provinces. Specifically for the control of financial and administrative activities, this Office has an Internal Inspection Unit (*Auditoría Interna*) and for technical-scientific activities, there is the "Planning Division" (*Dirección de Planificación*) (1998 Organic Law of the National Police, Law 109, Article 32).

¹⁴² It would be necessary to review the archives of the previous years, month by month, and identify them from among all complaints filed with the institution. In addition to the lack of access to this information, it would be impossible to process all accusations from previous years for the purposes of this study.

regarding which forum has jurisdiction in cases of common offences committed by police when exercising their professional work. At the same time, the 1960 Penal Code of the Police categorises common offences such as homicide, torture, and sexual misconduct that obviously cannot be considered as part of their professional functions. Regarding Article 187 of the 1998 Constitution, the Constitutional Tribunal ruled that common offences committed by members of the Public Forces must be judged by ordinary courts,¹⁴³ and Transitory Disposition No. 26 of the 1998 Constitution establishes that the judges who work under the Executive Branch, explicitly military and police judges, will be transferred to the Judicial Branch. In this sense, in 2001 the National Judicature Council (*Consejo Nacional de la Judicatura*) presented a bill¹⁴⁴ to Congress that would implement this integration. Nevertheless, the political instability of the country, the politicisation of the Judiciary, and its lack of institutionalisation¹⁴⁵ have impeded this reform and left the decision of which forum is responsible for judging cases involving police officers to the discretion of judges. Usually these cases are sent to the special courts because the judges in the ordinary courts do not want to assume them. There are two main reasons for this: first, judges are overloaded with too many cases, and secondly, they are not interested in getting involved with complicated cases regarding a sensitive institution such as the police.

Administratively, the NCPJ is placed under the Ministry of Government, Police and Worship (*Ministerio de Gobierno, Policía y Cultos*), which means that the police judicial system is subordinate to the Executive Branch. In addition to the lack of independence of this judicial function and the discriminatory privileging of police officers before the law, the court lacks impartiality. It consists mainly of members of the police institution in active service, and in the superior levels of the appeals courts,

¹⁴³ In a conflict of jurisdiction between the military justice system and the ordinary court in a case of embezzlement involving high officials of the National Navy, the Constitutional Tribunal emphasized that Article 187 of the 1998 Constitution only authorizes a special jurisdiction for members of police forces in cases of alleged infractions committed in the exercise of their professional work. The crime of embezzlement, ruled the Court, is not of a strictly military nature, and, obviously, embezzlement is not part of their professional work. Sentence No. 002-2202-CC, issued on 19 February 2003 and published in the Official Register on 26 February 2003, pp. 21-28 (Cited in Amnesty International 2004).

¹⁴⁴ Bill of Legal Reforms for the Jurisdictional Unit (*Proyecto de Reformas Legales para la Unidad Jurisdiccional*), Official Note No. 545-SCNJ 2001.

¹⁴⁵ One of the factors that motivated the street protests in Quito that led to the fall of President Lucio Gutierrez in April 2005 was the dismissal of the Supreme Court of Justice on 8 December 2004. It is illustrative of the problems Ecuador has faced in strengthening the rule of law.

by officials in inactive service; in both cases all officials are subordinate to the hierarchy and discipline of the police institution.¹⁴⁶

Between 1985 and 1995, the NCPJ initiated 4,568 cases. Of this total, in 1995, only five cases had conviction sentences; 46 had provisional sentences and 1885 cases were shelved.¹⁴⁷ In addition to the very low number of conviction sentences, a comparison with the number of accusations received by the Ecumenical Human Rights Commission (CEDHU is its Spanish acronym) suggests that very few of the total number of cases of human rights violations reached the court since most of the cases initiated were not related to criminal offences. Unfortunately, the record does not differentiate among types of crime; the conviction sentence can relate to crimes of homicide as well as desertion. For the same period, CEDHU received 3,421 accusations of serious human rights violations (see Table 6).

Table 6: Accusations of Human Rights Violations Received by CEDHU (1985-1995)

<i>Type of Violation</i>	<i>Number of Accusations</i>
Homicide	241
Torture	630
Physical Aggression	1127
Arbitrary Arrest	1423
Total	3421

Source: CEDHU Database 1997.

The vast majority of the cases received by CEDHU were allegedly perpetrated by the police (see Tables 7 and 8).

Table 7: Accusations of Torture Received by CEDHU.

<i>Accusations</i>	<i>1985</i>	<i>1986</i>	<i>1987</i>	<i>1988</i>	<i>1989</i>	<i>1990</i>	<i>1991</i>	<i>1992</i>	<i>1993</i>	<i>1994</i>	<i>1995</i>
Perpetrated by Police	41	64	62	38	47	37	32	41	56	28	20
Total	50	88	84	46	61	56	39	54	67	50	34
Perpetrated by Police (%)	82%	73%	74%	83%	77%	66%	82%	76%	84%	56%	59%

Source: CEDHU Database 1997.

Table 8: Accusations of Physical Aggression Received by CEDHU.

<i>Accusations</i>	<i>1985</i>	<i>1986</i>	<i>1987</i>	<i>1988</i>	<i>1989</i>	<i>1990</i>	<i>1991</i>	<i>1992</i>	<i>1993</i>	<i>1994</i>	<i>1995</i>
Perpetrated by Police	19	60	55	77	83	101	69	59	67	40	43
Total	50	92	89	124	110	171	93	78	115	94	76

¹⁴⁶ Organic law of the Judicial Function of the National Police mentioned in Article 67 of the Organic Law of the National Police.

¹⁴⁷ CEDHU had access to this data because it was provided in 1995 to a national legislator, Pedro Lino Sánchez, who was the President of the Special Permanent Commission on Human Rights of the National Congress.

Perpetrated by Police (%)	38%	65%	62%	62%	75%	59%	74%	76%	58%	43%	57%
---------------------------	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----

Source: CEDHU Database 1997.

The situation has not changed in recent years. In 2004, there were 1,127 cases initiated at the NCPJ; 711 cases were resolved with only 27 conviction sentences. The information sent to Congress does not differentiate among the types of crime or offences that received condemnation sentences, but even if the 27 convictions were related to the most serious accusations, such as crimes against life, this would represent less than about 21% of the cases initiated at the NCPJ (see Table 9), and that is not the case. It is estimated that the average length of a trial from beginning to end is now one year.¹⁴⁸

Table 9: The Most Common Types of Cases Initiated at the NCPJ in 2004

<i>Type of Case</i>	<i>Number of Cases</i>	<i>% of Total Cases</i>
Desertion	205	17.5
Offences against the Existence and Security of the National Police	183	15.6
Crimes against Life	127	10.8
Offences against the Police Oath	118	10.0
Abuse of Faculties	94	8.0
Robbery	82	7.0
Insubordination	54	4.6
Abandonment of Service	51	4.3
Extortion	51	4.3
Total	965	82.8

Source: Based on information provided by the NCPJ, on 30 March 2006.

In 1996, the Inter-American Commission on Human Rights prepared a report on the human rights situation in Ecuador (CIDH 1997). The report observed problems related to the existence of special military and police courts of justice, and it recommended that only the cases involving offences of a military or police nature should be brought to these special courts. The NCPJ was also the topic of the Amnesty International Reports on Ecuador in 2003 and 2004.

Policing and Human Rights: Breaking the Law

During the 1980s it was the issue of subversive groups that dominated police work. The enduring legacy of dictatorships permitted the second directly elected president

¹⁴⁸ Information provided by Cesar Duque (Interview: 16 February 2006).

of this democratic period, León Febres Cordero, leader of the Social Christian Party (PSC - *Partido Social Cristiano*), who represented the conservative right oligarchy of Guayaquil City, to establish a very repressive government (1984-1988).

He created a centralised repressive apparatus based on the military and on the police special operations group, GOE (*Grupo de Operaciones Especiales*), and on the intervention and rescue group, GIR (*Grupo de Intervención y Rescate*). A special force was also created at the Criminal Investigation Service¹⁴⁹ (*Servicio de Investigación Criminal*) that was popularly dubbed the “Criminal Service of Investigation” (*Servicio Criminal de Investigación*). This special force was formed by unidentified members of other units of the police that came together when it was considered necessary (Arguello 1997 p. 95). It was a clandestine group inside the police organised to combat “subversives,” such *Alfaro Vive Carajo* (AVC), and to prevent the infiltration of the “Shining Path” (*Sendero Luminoso*) from Peru and the M19 from Colombia into Ecuadorian territory. The person responsible for designing this structure, both within the police force and the military, was an Israeli security expert, Ran Gassit, who was hired to plan the security strategy of the government.

Under accusations of human rights violations, including executions,¹⁵⁰ forced disappearances, kidnapping, and torture, in September 1987, Minister of Government Luis Robles Plaza faced a political trial at the National Congress, where he was found responsible for those violations. The Special Inspection and Political Control Commission (*Comisión Especial de Fiscalización y Control Político*) and the Special Human Rights Commission of National Congress brought together accusatory testimony and evidence of human rights violations by the police and military (Enríquez Bermeo 1988). This “electoral democracy” headed by Febres Cordero was more repressive than the years of military dictatorship. All the leaders of the leftist

¹⁴⁹ In 1995, it became the Judicial Police, defined as an auxiliary body of the Public Prosecutor’s Office (*Ministerio Público*), and was established as an autonomous body for the first time. The officers of the Judicial Police are hierarchically, disciplinarily, administratively and operationally dependent on the National Police, but the control and judicial direction of investigations correspond to the Public Prosecutor’s Office. Their activities have been regulated by the “Criminal Procedural Code” (*Código de Procedimiento Penal*, Law No 000. RO/Sup360, 13 January 2000).

¹⁵⁰ Usually, the executions were made to simulate a confrontation between the police and the victims. In Ecuador these situations were called “*ley de fuga*”, a practice justifying the murder of a prisoner by claiming that he was trying to escape.

armed group AVC,¹⁵¹ which had first emerged in 1983 as a group of university students along with some rural and urban workers, were killed; six of them with signs of torture.¹⁵² There are many emblematic cases of repression and human rights violations involving members of the Armed Forces and the police during this period.¹⁵³

Since the 1990s drug trafficking has dominated internal security concerns. With the structure and doctrine from the past still unchanged, human rights violations committed by members of the police have not diminished. However, with the lack of a political target for repression, police violence and abuse of power have become invisible. This invisibility is aggravated by the lack of statistics about human rights violations for the country. For this reason, the work of CEDHU is often used as a reference for this research. It is the only institution with reliable and continuous work in monitoring human rights in the country since 1978, when it was created. The reports of the Inter-American Commission on Human Rights and Amnesty International are also based on the numbers provided by CEDHU. In fact, CEDHU stopped publishing its statistics in its monthly journal - *Derechos del Pueblo* - because they were wrongly manipulated as if they represented the total number of human rights violations in the country.

For the period of 1991-2000, CEDHU alone received 2,729 accusations involving state agents. There were 5,016 victims of arbitrary arrest, 3,246 of physical aggression, 727 of torture, and 304 of homicide (see Table 4 in the Annex). Of the 235 accusations received in 2000, at least 149 were allegedly committed by the police, involving 445 victims.

¹⁵¹ On 19 January 1989, during the Presidency of Rodrigo Borja (1988-1992), AVC members handed over their arms and signed an agreement with the government, in which they made a commitment to enter civilian life.

¹⁵² Information provided by Sister Elsie Monje (Personal interview: 11 August 2005).

¹⁵³ Just to mention the two most notorious cases: (1) The case of the Restrepo brothers. On 8 January 1988, brothers Carlos Santiago and Pedro Andrés Restrepo, both under 18 years old, were detained by the National Police, and later disappeared while under the custody of the police. The case was brought to the Inter-American Commission of Human Rights in 2000 and the Ecuadorian State assumed responsibility through a Friendly Solution settlement. (2) The case of teacher Consuelo Benavides. Benavides was kidnapped on 4 December 1985, tortured, and executed by members of the National Navy. This case was brought to the Inter-American Court of Human Rights. On 19 June 1998 the Court issued a decision requiring the Ecuadorian State to compensate her family and investigate the case to punish those responsible.

Table 10: Accusations of Gross Human Rights Violations Received by CEDHU in 2000

<i>Aggressor</i>	<i>Victims of Homicide</i>	<i>Victims of Torture</i>	<i>Victims of Physical Aggression</i>	<i>Victims of Arbitrary Detention</i>	<i>Total</i>
<i>Police</i>	21	26	131	267	445
<i>Military</i>	8	9	25	84	126
<i>Other</i>	4	15	9	332	360
<i>Total</i>	33	50	165	683	931

Source: CEDHU Database 2001.

The figures presented by CEDHU are just a small sample of the denouncements it receives; most of them are from Quito, where CEDHU is based. Although it is not representative of the total universe of cases in the country, it is significant as an indication that the violation of human rights by state agents, not only by police officers, is routinised. In 2004, CEDHU registered 482 victims of human rights violations perpetrated by the police. The continuity of the police institution is possible to a great extent because effective oversight mechanisms do not exist.

In the Ministry of Government there is a Directorate of Human Rights, which is supposed to collect information about human rights from all the governmental agencies. This unit is responsible to the Political Coordination Office of the Undersecretary of Government at the Ministry and has no autonomy. In addition to the manipulation to which the information is subjected, there is also a serious problem regarding the systematisation of the data. There is a total lack of knowledge and understanding of the concept of human rights among the officials. This division usually engenders all kind of complaints, registered with public agencies, ranging from misplacing objects to mistreating public citizens who request information about human rights. For this reason, the Directorate of Human Rights has stopped collecting information as long as there is no appropriate training for personnel to qualify them for this work.¹⁵⁴

In 1996, the Ombudsman's Office (*Defensoría del Pueblo*) was created and the first ombudsman, Julio César Trujillo, was appointed; however, it was only in 1998, with the second ombudsman, Milton Alava, that the office started to operate and receive reports of rights violations. This office has a department specifically dedicated to the public forces, but in its first years of existence it gave more attention to consumers'

¹⁵⁴ Information provided by Laura Orellana (personal interview: 17 August 2005).

rights. In 2000, ironically, Alava was dismissed by the National Congress on corruption charges. Claudio Mueckay took over as interim ombudsman until 2005, when he was finally elected by Congress. However, his election was contested by human rights organisations, due to Mueckay's connections with the PSC and also to some accusations of corruption during Alava's tenure in the ombudsman's office. Because of these accusations, a judge declared the post vacant, using an instrument of "protection" (*amparo*). This decision has been appealed by Congress, but with the process of establishing the new Supreme Court, the decision was delayed. As a result, the Ombudsman's Office was, for months, in the hands of the "interim of the interim". The National Congress has a Human Rights Commission; however, no government body, whether legislative, executive, or judiciary, has been able to develop mechanisms to exercise its function of supervising and monitoring the police institution as required by any democratic regime.

In the various texts of laws and regulating documents of the police institution, it is possible to discern an effort to incorporate "respect for human rights" into police discourse. Article 39 of the 1992 Professional Ethics Code of the National Police, for instance, explicitly mentions that critical or extraordinary circumstances, such as a state of war, a state of emergency, a threat to national security, internal political instability, or any other public emergency, does not justify torture or other cruel and degrading treatment. However, as the accusations of human rights violations and the lack of control mechanisms make evident, human rights discourse is not anchored in concrete measures or practices. The human rights discourse has been followed by limited initiatives by some commanding officers to change police education. During the last decade, human rights courses have been introduced into the curriculum of the police academy, and changes have occurred in the education of police personnel, but it is still predominantly militarised.¹⁵⁵

Since the 1990s, there has been an agreement with the Latin American Association of Human Rights (ALDHU is its Spanish acronym) for the training of some police officers to become human rights instructors at the police academy; it is the same agreement ALDHU has with the military. For the police officers who graduated

¹⁵⁵ Information provided by Professor Carlos Hirose (personal interview: 9 August 2005).

before the introduction of human rights courses in the educational curriculum, the police institution signed an agreement in 2004 with the Ecuadorian Red Cross to provide a one week course on human rights. Additionally, the police have reached an agreement with the United Nations High Commissioner for Refugees (UNHCR) in light of the increasing number of Colombian refugees in Ecuadorian territory. These courses are not very well integrated into the police programmes of study; they are presented as complementary courses rather than core subjects for police education and are organised as short seminars. The ALDHU offers only 10 hours of training and the Red Cross offers 16 hours. In fact, there is no evaluation of these courses. A sad anecdote regarding the case of the “Eleven of Putumayo” (INREDH 1997) illustrates the limited impact these courses have had among the police and the military. In 1994, in a joint action, the military and the police arrested 39 small farmers under the accusation of being “farm guerrillas” (*guerrilleros de finca*), that is, farmers who take part in activities of the Revolutionary Armed Forces of Colombia (FARC) when the guerrilla force finds it necessary. Eleven of them were kept in the custody of the military and were tortured by them before being handed over to the police. In their defence against allegations of torture, the military responded that they could not have tortured the farmers because they had taken the ALDHU course.¹⁵⁶ Similar allegations are in the police discourse. Human rights courses have been used as a violations-free certificate by the military and police. Without reforming the structure of the police institution and its doctrine, human rights courses, even if well designed, will not be able to change police practices and the authoritarian subculture. On the contrary, a discourse without content compromises it and invigorates the invisibilisation of human rights violations.

Although formally incorporated in the discourse of the police institution, human rights represent ideas and values that are still alien to the Ecuadorian police. When interviewing members of the police force, one notices their effort to demonstrate this new discourse; however, with the exception of a small group of officials directly involved in a dialogue with civil society about reforming the police, it is also clear that there is a misunderstanding or superficial comprehension of human rights. It is curious to see how human rights receive a “personified” treatment. In the speech of

¹⁵⁶ Anecdote told by Sister Elsie Monje (personal interview: 11 August 2005).

police it is common to hear expressions like “When the case happened, the human rights came...,” “The human rights complained about the action...,” or “The human rights never show up when a policeman is killed.” These expressions, apart from their content, call attention to the construction of the speech. It seems the police are talking about a person and not about organisations or movements that defend rights and principles. In fact, this treatment of human rights ideas or movements is also common in the Ecuadorian media, demonstrating that little about human rights is understood or supported in the larger society as well.

Two other changes have occurred recently in the education of Ecuadorian police officers: one has been the experience of studying at universities with ordinary non-police students, and the other is the experience of studying at police academies outside of Ecuador, in countries where the police institutions have already started their processes of reform. Since the 1990s, some initiatives have permitted officers to attend university. To this end, the National Police have signed agreements with various universities in Ecuador, predominantly in the areas of engineering and law (agreement with the *Universidad Técnica Particular de Loja*), information technology and physical education (agreement with the *Escuela Superior Politécnica - ESP*), and technical police issues (agreement with the *Instituto Tecnológico Superior*). All of these agreements are incentives for members of the police force to study at regular universities; however, they derived from technical and instrumental concerns of the institution. A novel aspect of this process was an agreement signed with the San Francisco de Quito University (USFQ), which created, in 2005, the School for Police Sciences. This agreement has an explicit focus on providing a humanistic education to the cadets of the Superior Police School. Nevertheless, it has generated some controversy inside the police institution for various reasons. The USFQ is a very expensive and, therefore a very elitist university. With this agreement, students of the Superior Police School are charged a special reduced fee, but still it is not accessible to all cadets. It has created the feeling among some police officers that the programme is a privilege for the few who can afford to study and improve their curriculum vitae, while most members of the police are working hard on the streets.¹⁵⁷ Others criticise the programme for not responding to the needs of the

¹⁵⁷ Interviews with Professor Hirose (9 August 2005) and Captain López (3 August 2005).

police institution. The first group of cadets to study at this university received, among other classes, courses in culinary culture and pottery. Nevertheless, the main criticism that should be made is that this attempt to introduce a humanistic vision into the education of police is accessible to only a portion of the students at the Superior Police School, and these students are not really integrating with non-police students at the university since they attend classes separately from other programmes.

In the same vein, there is a concern that the existing proposal to create a technical-scientific university for educating the police would run counter to the effort of promoting familiarity between police and citizens and a more humanistic education. At the same time, if this university is opened to the public in general, and not just to police officers, as is the intention for the future,¹⁵⁸ it is not difficult to imagine who its students would be: surely they will be people involved with private policing. It would contribute to the privatisation of policing by educating any person in technical police issues.

The experience with the greatest impact in terms of education and potential for institutional change has come from stepping out of the National Police and acquiring familiarity with police institutions elsewhere that have begun a process of reform. All the questions regarding police reform, as discussed in the previous chapter, that are now arising in Ecuador have been debated since the 1980s in Spain, and since the 1990s in various Latin American countries, such as Argentina, Brazil, Chile, and Colombia. The development of this debate and the outcomes derived from this process have varied from country to country, but in all of them the debate has generated a critical movement that pushes for change and for strengthening the normative framework of society for regulating and controlling its public force. Some of the officials most involved with the proposal for reforming the Ecuadorian police force have studied in Chile, where there has been an extensive debate on the police and some reforms.¹⁵⁹ Between 1993 and 1998, of the 100 foreign police officers studying in Chile, 30 were Ecuadorian.¹⁶⁰ However, this opportunity depended on

¹⁵⁸ Intention expressed by Colonel Guzmán, responsible for organizing the university.

¹⁵⁹ In 1998, the Chilean government launched the "Comprehensive Plan for Citizen Security" (*Plan Comprehensivo para la Seguridad Ciudadana*).

¹⁶⁰ Interviews with Colonel Ruedas (11 July 2005) and Captain Cevallos (19 July 2005).

personal initiative; there was no institutionalised programme, and it is not the predominant type of international cooperation in which police usually participate.

Closed but Not Isolated

Since the 1920s, we can find some kind of international assistance to the Ecuadorian police. French, Chilean and Italian missions contributed to the creation of the first police schools and initial training programmes. However, the police Division for International Affairs was created as late as 1998. This division is responsible for keeping records of officials going abroad, but their records date back only to 2002. Apart from that, it is difficult to know exactly what this division does, since all information about international cooperation and course training abroad is still centralised under the General Command (*Comandancia General*) and most of the data are kept secret.¹⁶¹ There are two types of international assistance: training programmes, and financial and equipment aid. With democratisation this assistance has increased and become more complex.

Most police personnel studying abroad take short courses related to technical issues in criminalistics, especially related to drug trafficking. Through those programmes many officials have gone to the U.S., Spain, France, Colombia, Bolivia, Peru, Chile, Argentina, Brazil, Panama, and in fewer numbers, to various other countries. According to the information provided by the police institution, there are cooperative programmes at the National Directorate of Migration (*Dirección Nacional de Migración*), the National Directorate of Health of the Planning Department

¹⁶¹ All requests for information must be sent directly to the General Command, which is responsible for directing the request to the corresponding police divisions. Without the written authorization of the General Command, no division is allowed to provide information. After following this process, the only information about international cooperation or assistance provided by the police was a list of the permissions given to police officers to go abroad in recent years; this includes travel for health treatment and for personal reasons. There was not a word about formalized assistance and cooperation for specific areas of the institution. Facing this situation, I tried to get this information through the National Congress. Congress member Enrique Ayala, from the Socialist Party and the President of the Simón Bolívar Andean University, requested the information from the police. After months, the police provided partial information. Again, in order to support the impression that they are following the Law of Transparency and Access to Information and providing the information requested, they prepared a long list of all the equipment donated by the German government, a reference to the assistance received by the U.S. but without amounts or details, and some information related to migration and HIV programmes. By cross-referencing information with various embassies in Quito, it is evident that the police did not want to provide this information even to the National Congress.

(*Dirección Nacional de Salud del Departamento de Planificación*), and the National Anti-Narcotics Directorate (*Dirección Nacional Antinarcóticos*). Officials at the National Directorate of Migration receive training on issues related to Colombian refugees from the UNHCR, and on issues related to passport security, visas, and detection of false documents by the governments of the U.S., the United Kingdom, Spain, France, Mexico and Guatemala. At the National Directorate of Health, there is an AIDS prevention project that receives technical and financial support from the United Nations Population Fund (UNFPA). The goal of the project, launched in 2005, is to train 80% of the members of the police force in two years. At the National Anti-Narcotics Directorate the police have registered the donation of equipment by the German government and training programmes promoted by the U.S., which I will discuss later. Although they have provided much information, the police have failed to supply a complete report, since the cooperation and assistance actually received are not limited to the information disclosed, as the following examples indicate.

Since 1998, there has been an agreement between the Ecuadorian Minister of Government and Police and the Spanish Minister of the Interior, basically for training. According to information provided by the Spanish Embassy, Spain spends between US\$700,000 and US\$800,000 in Ecuador per year for training in the areas of drug trafficking, organised crime, terrorism, irregular migration, and issues related to documentation. Training programmes for Ecuadorian police officers are developed in Ecuador and Spain as well as in Guatemala, Colombia, and Bolivia. These programmes have trained police personnel in the areas of environment (about 700 personnel), community policing (about 600), drug trafficking (about 400), criminalistics (about 100), and other issues such as transit (about 200). At the moment, the biggest project involves community policing, in which between 100 and 150 police personnel have been trained each year.¹⁶²

France, through an agreement signed with the police in 1982 and renewed in 1994 and 2006, and an agreement signed with the Public Prosecutor in 1998 and also renewed in 2006, is the leading country in training efforts; it is the country that trains the highest number of Ecuadorian police personnel. Due to the entry into force of the

¹⁶² Interview with Julián Marín y Ríos (29 May 2006).

New Criminal Procedures Code (2000), the main training programme has been in the area of the judicial police. It started to work with prosecutors in an attempt to base justice more on an accusatory model than on the inquisitorial system.¹⁶³ An advancement in the 1998 Constitution was the definition of the work of the judicial police under the Judiciary. Although Public Force is a special chapter of this Constitution, the Criminal Investigation Police, that is the Judicial Police, are defined in the chapter regarding the Public Prosecutor's Office. However, the process of applying the new code has not been easy, especially in coordinating the work of the prosecutor and member of the police. France also provides training in the areas of: maintenance of public order, technical and scientific police, and support to intervention groups such as GIR. Recently, France started working on operational cooperation in the areas of drug trafficking, irregular migration, and forgery of documents. Until 1995, French trainers were directly located in the police schools; now they are at the French Embassy and conduct short courses lasting one to three weeks.¹⁶⁴

Most courses promoted by the U.S. and the U.K. are short courses related to intelligence and anti-narcotics with a certain amount of coordination between these specialties. The U.S. also pays for courses for Ecuadorian police officers in other Andean Region countries – Colombia, Peru, and Bolivia. In many cases, the U.S. promotes the joint training of the military and police, and yet, most of the training programmes are given by the military; many are trained at the Western Hemisphere Institute for Security Cooperation (*Instituto de Cooperación para la Seguridad de las Américas*), the former School of the Americas (*Escuela de las Américas*). U.S. expenditures for police training in Ecuador ranges between US\$700,000 and US\$1.0 million per year, and involves different U.S. bureaucratic agencies and programmes. Since 2002, the U.S. has also been involved in the training of judicial police through a U.S. Agency for International Development (USAID) programme with the Department of Justice, the ICITAP (International Criminal Investigation Training Assistance Programme) at the State Department, and the Narcotics Affairs Section

¹⁶³ In the inquisitorial system, it was necessary to prove the existence of a crime and to identify the perpetrators and accomplices during the summary process in order to establish the judicial process. In the accusatory system, the summary process is not meant to prove anything, only to investigate.

¹⁶⁴ Interview with Jean Pierre Coderch (5 May 2006).

(NAS) at the U.S. Embassy in Quito.¹⁶⁵ Ecuador is also one of seven countries in Latin America where the Drug Enforcement Administration (DEA) has special investigative units (SIU). The DEA screens police officers prior to receiving training in the U.S.; upon their return to Ecuador, these units work on their own or in coordination with the DEA (Edwards 2003 p. 8).

On the one hand, because of the rotation system within which police operate, donors complain that they give specialised training to officers who stay for a couple of years in one division only to be transferred soon to another division. Countries complain that they spend a lot of money, yet the advantage provided by their training programmes is wasted. For this reason, the U.S. and French programmes started to make training assistance conditional on a certain amount of stability in specific work assignments. On the other hand, rotation may spread the impact of the training programme to the whole institution. The priorities and the approaches on specific issues will be reproduced by police officers who have received training, while other officials may wish to work on the issues prioritised by other countries in order to have the chance to travel abroad. Before the agreements with universities, the training programmes represented the only alternatives for studying in academic venues other than the police institution.¹⁶⁶ This may create the perception among police personnel of a hierarchy of activities developed by the institution.

Despite the contribution that training programmes may offer to specific areas, their potential impact on the institutional subculture in terms of the central issues of this research, as already mentioned, has been produced by the opportunity to study abroad in countries that have experienced democratic police reform or where there is an ongoing debate that allows police personnel to grow familiar with those issues. The opportunity to study lengthy courses in a regular education system allows police officers to live together with common citizens and, at the same time, to become familiar with the police reforms in particular countries. In this case, the significant impact on the institution is not so much to extend it to greater numbers of police officers, but for the trained officers to collaborate in forming a critical group within

¹⁶⁵ Interview with Ken Keller (16 March 2006).

¹⁶⁶ Interview with Captain Cevallos (19 July 2005).

the institution. Short and technical courses, even if at democratic police institutions, are not able to produce the same impact.

The second group of international assistance relates to aid and equipment. Usually countries avoid directly aiding police institutions and concentrate their assistance on training programmes and the donation of equipment; however, this is not the case with the U.S., by far the leading and most important contributor.

In the 2006 fiscal year, U.S. aid in cooperation with Ecuador amounted to US\$61,590.00 in total (see Table 6 in the Annex). From this amount, US\$11,000.00 is given through the State Department to combat drug trafficking, money laundering, trafficking in persons (*coyoterismo*), and other international crimes.¹⁶⁷ According to the U.S. Embassy, every year for the last five years, the U.S. has given US\$1.0 million to projects on judicial reform, US\$6.0 million to the Armed Forces, and about US\$8.0 million directly to the police, mainly to the Anti-Narcotics Office (DNA is its Spanish acronym), responsible for all activities related to the prevention, investigation, and suppression of drug trafficking. Looking at the U.S. projects in more detail, we find many correlated projects that increase the figures of the U.S. assistance to the police in combating drug trafficking (see Table 11 and Tables 7 and 8 in the Annex for the years 2005 and 2004).

Table 11: Projects Developed under Agreement between the U.S. and Ecuadorian Governments for 2006

<i>Project Number</i>	<i>Project Title</i>	<i>Personnel</i>	<i>Operational Support</i>	<i>Equipment and Supplies</i>	<i>Other Expenses</i>	<i>Total</i>
01181214	Police Operations	625,000	500,000	7,000,000	188,000	8,313,000
01181215	Police Infrastructure	100,000	—	3,465,000	—	3,565,000
01181206	Counter-Narcotics Training	100,000	—	—	900,000	1,000,000
01181207	Chemical Control/ Money Laundering	0	0	0	150,000	150,000
01181208	Prevention	0	0	0	150,000	150,000
01181309	Military Projects	-	700,000	5,300,000	-	6,000,000

¹⁶⁷ All the information was provided by NAS, at the U.S. Embassy in Quito.

01185210	Investigation Support	100,000	50,000	300,000	50,000	500,000
01185211	DEA Andean Initiative	-	-	40,000	-	40,000
01185212	Fluvial Patrol Project	-	-	-	-	0
01181004	Migration Control Project	-	-	-	15,000	15,000
01181510	Cocoa Project	-	-	-	200,000	200,000
Summary	Total of Projects	925,000	1,205,000	16,105,000	1,653,000	19,933,000

Source: NAS, U.S. Embassy in Quito, 2006.

U.S. assistance to the Ecuadorian police poses many questions about the definition and development of security priorities and policies in the country, since it has an enormous impact on the institution, particularly on the DNA which is dependent on U.S. aid for its operation. The DNA, according to information provided by the U.S. Embassy, has an annual budget for operating activities of only US\$700,000.¹⁶⁸ The largest part of the budget that the police force receives from the state goes to pay personnel and other fixed expenditures (see Table 12 and Table 9 in the Annex).

Table 12: Expenditure of Internal Affairs related to Security (2006)

<i>Issue</i>	<i>Budget (US Dollars)</i>	<i>%</i>
Personnel Expenses	331,632,200	63.4
Service and Consumer Goods	118,844,789	22.7
Financial Expenses	1,847,727	0.3
Other Expenses	4,193,613	0.8
Current Transfers and Donations	11,895,267	2.2
Anticipated Reallocation	8,400,000	1.6
Public Works	19,758,857	3.7
Other Investment Expenses	-	-
Transfers and Donation for Investment	-	-
Durable Goods	21,697,882	4.1
Payment of Public Debt	4,666,000	0.8
Total	522,936,315	100.0

Source: Ministry of Economy and Finance, 2006.

Yet, within the DNA, the Special Anti-Narcotics Mobile Group (GEMA, the Spanish acronym for *Grupo Especial Móvil Antinarcóticos*) was created by a Bilateral Agreement (*Acuerdo Bilateral No. 93-2*) between the Ecuadorian and U.S. governments on 31 August 1993. It was further defined in a Letter of Understanding (*Carta de Entendimiento*) signed by both governments through their respective

¹⁶⁸ Interview with Ken Keller (16 March 2006).

organs, the National Investigation Division of the National Police and NAS on 17 April 1995.¹⁶⁹

Since President Ronald Reagan (1981-1989) declared that illicit drugs are a threat to U.S. national security, and later with the Andean Initiative launched by President George Bush (1989-1993), the U.S. approach to the drug problem has been one of repressive policing that involves the military and police of Latin American countries, especially in the Andean Region that is the main drug producer for the U.S. market. The U.S. drug control model based on the repression of drug supply has had a tremendous impact on the Ecuadorian security apparatus and the justice system in general. Although Ecuador has never been a significant producer and has not presented serious social problems due to an internal market for illegal narcotics and drug consumption, it has developed harsh anti-drug legislation¹⁷⁰ that largely affects the smallest and most vulnerable offenders (Edwards 2003 pp. 1-2). One of the consequences of the penetration of the U.S. agenda and its approach to security is the increasing number of inmates in Ecuador; more than 75% of the female inmates are in jail due to drug-related crimes (see Table 10 in the Annex). Foreign aid and training programmes have concentrated on the drug trafficking issue, while the perception of insecurity among the population is related to the increase in common criminality (see Table 13).

Table 13: Criminality in Ecuador

Type of Crime	1975 (%)	1995 (%)
Against Property	23.4	64.3*
Against Persons	0.4	15.6
Drug Offences	13.5	8.5
Other	62.7	11.6

*1994

Source: *Colectivo de Abogados, "Por los Derechos de las Personas"* Ecuador 1995 pp. 7-8 (in Edwards 2003).

¹⁶⁹ Under this division in 1988, the Canine Training Centre (*Centro de Adestramiento Canino*) was created with support from the United Nations Drug Control Program (UNDCP), the governments of Germany, England, and the U.S., and Ecuadorian private firms. The creation of this centre was justified by the increasing international criminality related to drug trafficking (Official Note No. 437-DNA, 10 March 2005 and Official Note No. 595-CAC- DNA of 11 March 2005 cited in the Annual Report on the Transparency Law).

¹⁷⁰ The Law on Narcotic Drugs and Psychotropic Substances, Law No. 108, which entered into force in 1991. Anti-drug legislation makes no distinction among drug users, first-time offenders, "mules" in possession of small amounts, and high-level drug traffickers. They are all subject to a mandatory minimum sentence of twelve years.

In 1986, Ecuador and the U.S. agreed on joint actions against drug trafficking. In addition to the joint training between the police and military promoted by the U.S., the Chief of the Southern Command has direct contact with police and military officers, and the police intelligence service is infiltrated with a security doctrine coming from the U.S.,¹⁷¹ which promotes the “militarisation” of the police institution as well as the “policisation” of the Armed Forces. Direct foreign assistance to the police institution without any type of coordination and control by the state,¹⁷² aggravated by the strong autonomy of the institution and its lack of transparency, compromise the capacity of the state to develop its own agenda on public security and create serious distortions in public policies related to security.

Looking for Change: Shifting or Adaptation?

In the case of Ecuador, the lack of concern about the police institution until very recently is remarkable. The increasing crime rate that produced a debate regarding citizen security, in the beginning mainly at the local government level, concentrated on the recovery of public spaces and ignored the police institution. What is interesting is that the discussion about police reform has been started, to certain extent, by the initiative of the police institution itself through the development, in 2004, of the “2004-2014 Strategic Plan for Modernisation and Comprehensive Transformation of the Ecuadorian National Police” (*Plan Estratégico de Modernización y Transformación Integral de la Policía Nacional Ecuatoriana, 2004-2014*) in order to reform the 1998 Organic Law on the Police. This plan defines the mission, vision, policies, objectives, and strategies of the police. Police officers working on the plan have identified the following priorities:

- 1- Implementation of a comprehensive plan for citizen security in the cities, where the police have started working closely with mayors through the creation of community police.

¹⁷¹ Interview with Colonel Ruedas (11 July 2005).

¹⁷² In 2000, President Gustavo Noboa created the Ecuadorian Institute for International Cooperation (INECI is its Spanish acronym), Executive Decree No. 611, as an organ of the Ministry of Foreign Affairs; it is theoretically responsible for coordinating, administering and supervising foreign cooperation and assistance; however, it has no records regarding police assistance.

- 2- Decentralisation of locations for to serve the public.
- 3- Establishment of an accountability system and the development of value interiorisation programmes.
- 4- Reorientation of the education programme and establishment of criteria for the promotion of officer candidates.
- 5- Updating of the police doctrine.
- 6- Work on the reform of the Organic Law on the Police to be sent to Congress; study of the reform of the Law on Personnel and its statutes; reform of the Penal Code of the National Police and other laws and institutional statutes that are not in accordance with the country's code.
- 7- Increase in the level of satisfaction of police officers; reduction of working hours.

The plan was a result of several workshops with different sectors of civil society organised in different cities throughout the country over a period of eight months. It is difficult to say to what extent this plan can lead to a reform of the police institution. Clearly, there is personal leadership by a group of officers more familiar with police reforms in other countries and more critical to the institution.¹⁷³ General Carlos Calahorrano has argued that “the current challenges to security are criminality, police misconduct, and the irresponsible decisions of political and civil leaders.”¹⁷⁴ Although still very limited, this initiative represents an important step in reforming the police since it helps to break down the institution's resistance to open and democratic debate.

However, there are also other motivations for “reforming” which raise questions about the true extent of this initiative. The main question is how much of this is related to the self-preservation of the institution. In recent years, there has been an attempt by all sectors of the police to change their image, but thus far it has been more a change of image than a genuine change. The police started making an assessment of the institution and its functions as a reaction to recent trends: first, the rise in crime rates and the increasing insecurity felt by the population; secondly, the

¹⁷³ Interview with Colonel Ruedas (11 July 2005).

¹⁷⁴ Speech at the seminar “Democracy, Security and Defense,” PUCE-Ecuador, *Escuela de Estado Mayor*, Konrad Adenauer Foundation (KAS), Quito, 30 May 2005.

negative image of the institution due to its poor record in solving cases and mounting accusations of corruption; and thirdly, the competition imposed by the increase in private policing.

As a result, the “Security Zone Plan” (*PLAN ZONA SEGURA*) was implemented to introduce the concept of community police into the institution; however, it concerns only a small part of the police institution. In 2005, 4,337 of 36,907 of members of the police were community police¹⁷⁵; thus it does not mean a significant change for the whole police institution, which has noticeably expanded in the last few years (see Table 13) as an immediate response to the perception of increased insecurity.

Table 13: Police Personnel.

<i>Year</i>	<i>Number of Police Personnel</i>
2001	22,008
2002	26,008
2003	33,303
2004	36,907
2005	36,907
2006	36,907

Source: “*Cuadro de Recursos Humanos por sectores, 2001-2006*”, *Observatorio de Política Fiscal*

The police argument for fostering this proximity to the population is that the police, because of their monopoly over the use of force, have treated their “clients” with disdain. For this reason, the perception of the police institution is negative, and the proliferation of private police forces is now challenging this monopoly. This diagnosis may be headed in the right direction; however, the community police, as discussed in Chapter Five, are not the answer to all the policing issues, and in the police discourse is still missing the notion of citizens and their rights rather than “clients”.

Another motivation for the police to pursue certain changes in order to ensure police functions and autonomy is the historical competition with the Armed Forces. The police institution in Ecuador, as already discussed, has been used by governments to counterbalance the power of the military on many occasions. At the same time, the military have always had a special prestige, mainly because of the national identity built on the territorial conflict with Peru. Ecuadorian history also has many elements

¹⁷⁵ General Command of the Police.

of a nationalism that glorifies the military and that is responsible for its strong presence in society and for a vast range of activities in various sectors. With 1998 Organic Law still based on the National Security Doctrine, there has still been much confusion over the functions and powers of the police and the armed forces.

In 2007, Rafael Correa¹⁷⁶ took office as president of Ecuador and created a commission for the modernisation of the police. The commission presented three documents regarding urgent actions to improve police activities, one document with recommendations for the constitutional reform and one document to be used as basis for the reform on training and management of personnel. In March of 2008, the National Plan for Citizen Security ("*Plan Nacional de Seguridad Ciudadana*") was launched. So far, the only significant changes have been those introduced in the new Constitution, especially Articles 158, 159, 160, 163 and 188¹⁷⁷. These articles define

¹⁷⁶ In 2006, Rafael Correa founded the "Proud and Sovereign Homeland Alliance" Alliance (*Patria Altiva y Soberana* or PAIS, its Spanish acronym) and ran for the presidency. He defined himself as humanist, a leftist Christian and a proponent of socialism for the 21st century. The PAIS Alliance did not run any Congressional candidates as Correa based his campaign on the convocation of a constitutional assembly. He took office in 2007 and, in 2008, a referendum ratified the new constitution drafted by the Constitutional Assembly that had been elected in 2007. Rafael Correa was re-elected in 2009.

¹⁷⁷ Article 158.- The Armed Forces and the National Police are institutions for the protection of the rights, freedoms and guarantees of citizens. The fundamental mission of the Armed Forces is the defence of sovereignty and territorial integrity.

The internal protection and maintenance of public order are the exclusive functions of the State and are the responsibility of the National Police.

Those serving in the Armed Forces and the National Police will be trained under the tenets of democracy and human rights, and will respect the dignity and the rights of individuals without any discrimination and in strict adherence to the legal order.

Article 159.- The Armed Forces and the National Police will be obedient and non-deliberative, and will fulfill their mission in strict subjection to the civil power and to the Constitution.

The authorities of the Armed Forces and the National Police will be responsible for the orders that they issue. Obedience to orders from superiors does not exempt those that execute them from responsibility.

Article 160.- (...)

The members of the Armed Forces and the National Police will be judged by organs of the Judicial Branch; in the case of crimes committed within their specific mission, they will be judged by special military and police courts, under that same Judicial Branch. Disciplinary infractions will be judged by the appropriate bodies as duly established by law.

Article 163.- The National Police is a state institution and is civilian, armed, technically qualified, disciplined, professional and highly specialised in nature, with a hierarchical structure. Its mission is to ensure citizen security and public order, and to protect the safety and free exercise of the rights of persons within the national territory.

The training of the members of the National Police will be based on human rights, specialised investigation, prevention, crime control and prevention, and the use of dissuasion and conciliation methods as alternatives to the use of force.

The National Police will coordinate its functions with the different decentralised autonomous levels of government in order to carry out its duties.

Article 188.- In applying the principle of jurisdictional unity, the members of the Armed Forces and the National Police will be judged by the ordinary justice system. Infractions of a disciplinary or administrative nature will be subject to their own procedural standards.

the Armed Forces and the National Police and their functions based on democratic and human rights principles, finally eliminating the authoritarian elements that had persisted for three decades after the beginning of the democratisation process.

Due to the political instability in Ecuador since 1997, there was discussion, mostly among police officers, of creating a ministry of public order and citizen security, independent of the Ministry of Government. This proposal had already appeared in the 1997-1998 National Constitutional Assembly (AMR 28/010/2003/s p. 7). On the one hand, an independent ministry could make the police less vulnerable to political issues. On the other hand, it could increase the already great autonomy of the police institution. The decision of the presidency in 2009 was to create an Under Secretary of Internal Security in the Ministry of Government. It seems superimposed on the already-existing Under Secretary of Police and Under Secretary of Citizen Security. It is this new under secretary that will be responsible for the announced intention to reform the police institution and promote a professionalisation process. The creation of this under secretary merits further discussion on the concept of security and the concerns orienting these changes; however, that is work for another research endeavour, and all the changes promoted since the last Constitutional Assembly do not change the arguments presented here.

Although, very recently there have been important changes in the legal status of the police institution¹⁷⁸, the organisational principles of the police structure are still intact. None of the initiatives have effectively pointed to the structural reform of the police institution. It resists as a hermetic institution, closed to public scrutiny and control. The lack of reliable control mechanisms and the absence of integration with a regional network for the protection and promotion of human rights and the rule of law are evident in the Ecuadorian case; in other words, the lack of accountability and a problematic regional environment still represent serious weaknesses for further democratisation.

The law will regulate the jurisdiction of cases concerning the hierarchy and administrative responsibility (2008 Ecuadorian Constitution).

¹⁷⁸ Currently there is a National Police Bill presented for debate in the National Assembly of Ecuador, but it has not yet been discussed.

Conclusion

“In sum, policing is a complicated job, a set of government organisations and programs, a measure and symbol of human rights and universal values and an exercise of power and politics – all simultaneously.”¹⁷⁹

Democratisation, as democracy itself, is an open process that encompasses different actors and dimensions. Despite the extensive literature on democratisation, it is only recently that police forces have been addressed as integral part of the state and not only as an instrumental element. The police, with their discretionary capacity and specific organisational culture, are also a relevant actor in any attempt to democratise state and society.

It is inconceivable to have a democratisation process without encompassing the police forces. They should become part of the process; otherwise police practices will reinforce authoritarian legacies. In Latin America, after decades, democracy has not been able to create democratic and human rights policing. In the case of Ecuador, human rights are still a *façade* in the discourse of the police, and police reform was never an issue in the democratic transition, even in the context of writing a new Constitution. It is only in the last few years that it has been introduced into the political debate.

It is pertinent to discuss why in some countries it has taken so many years for police reform to be introduced into the democratic political agenda while in other countries, as in the case of Poland, police forces were involved from the very beginning of the transition. The explanatory models that have predominated in the debate are not sufficient to explain how countries that began to democratise under similar

¹⁷⁹ Marenin in Das and Marenin 2000 p. 318.

conditions, mostly with regard to political and civil rights, ended up with different types of control over similar militarised and centralised police forces.

Transition and modernisation theories have enormously contributed to the debate about police reform; however, both explanations miss the regional dimension of the problems and processes involving police forces. There is an increasing regionalisation and internationalisation of issues imposed on policing, and a diversification of influences to which the state and police may be subjected when defining their policies and activities. Both explanations disregard the diversity of regional actors and the impact that regional politics may have on the police forces.

Comparatively, Poland is the successful case regarding police reform. It was able to reshape the institutional doctrine and control the abusive behaviour of the members of the police through a reform that came early in the democratisation process. Already in 1990, the Police Law promoted the demilitarisation of the police and established the legal framework for further changes.

The success of the police reform was largely based on the establishment of a network among domestic and regional NGOs, and regional institutions concerned with legal reforms and human rights issues. Regional human rights mechanisms played an important role during the democratisation process in Poland, providing tools for Polish bodies and helping to routinise domestic and external human rights monitoring.

In the process of preparing for accessing the EU, Poland made an effort to harmonise its laws and institutions, including human rights and policing, with those of the EU member states. The EU played an important role in the consolidation of a democratic rule of law by making the legal state more visible. The offer of permanent membership, and the access to an expanding variety of economic and social opportunities was a powerful diplomatic instrument. However, the effectiveness of human rights protection and the promotion of the rule of law rely on a more complex regional network. The simultaneity of the development of the EHRS and of the European regional integration process was key in differentiating the European institutional development from other regions. On the one hand, EU conditionality

imposed during the accession process has been crucial for promoting human rights and democracy in the candidate countries. On the other hand, the process of supra-national institutionalisation itself has been favoured by the Council of Europe's political dynamic; the Council has promoted shared perceptions of interests and identities that constitute an important support for regional integration.

It is neither the Council of Europe nor the EU alone that is able to promote and protect human rights. The real impact on human rights protection depends on the political dynamic of the network established by and around those organisations. Thus, the dense institutional environment in Europe has been responsible for creating a "regional structure of consent", and an extensive and effective regional network for control.

The institutional context of the Americas is not comparable to the regional law enforcement framework developed in Europe. The Inter-American Human Rights System does not constitute an element of regional identity and is still more a Latin American system than an Inter-American one; as not all the countries in the hemisphere have ratified the American Convention on Human Rights. It establishes different obligations and mechanisms for party and non-party states.

The Inter-American Human Rights System continues to play a paramount role in the defence of those rights and, indirectly, of democracy in the hemisphere. Evaluating the IAHRs on its own terms, there have been significant advances in the last decade; however, in comparison to its European counterpart, the IAHRs still presents many problems and faces serious resistance to further development. It is far from allowing individual access to the IAHR Court and moving to one permanent and single court.

The absence of the U.S. in the system also creates a paradox in the OAS context. Symbolically, and financially, the non-adherence of the U.S. to the American Convention represents a serious disregard for the IAHRs. Moreover, the most powerful and richest country in the Americas, which attributes to itself the leading role in defending human rights, is not subordinate to the same human rights standards that other countries are expected to follow. At the same time, the OAS is not perceived as a reliable forum due to the predominance of the asymmetric power of

the U.S. and its position of distrust regarding international judicial regimes. The consequence has been an incapacity to develop an authoritative interpretation of democratic standards (Levitt 2006) and erratic and uneven actions in the region.

This negative perception of the OAS has greatly contributed to the proliferation of alternative regional institutions. Thus far, the multiplication of organisations with autonomous agendas in the region has not helped them to strengthen each other or to create a powerful and efficient network; on the contrary, the superposition of many institutional frameworks has usually undermined power and created competing political actors. More recently, the different regional interlocutors – such as MERCOSUR, CAN and the Rio Group – have begun processes of mutual recognition and are moving towards what seems to be a convergent direction. It is not clear what approach or pace the OAS will assume with all these regional interlocutors in moving toward convergence in the European model, or indeed whether they will converge at all. Meanwhile, the hemisphere requires a regional political process that supports broad integration and is capable of building a “regional structure of consent” and an effective network that is able to promote democracy and human rights.

The lack of long-term perspective based on regional integration, and the prevalence of bilateral relations have created a regional context that is less favourable to the development and incorporation of regional parameters for democratic policing. The case of Ecuador is illustrative of the political dynamic established in the region and the detrimental impact it may have on domestic policing.

The U.S. is the number one donor in police assistance to Ecuador, however, despite this, it is not subordinate to the same human rights standards that the Ecuadorian state is expected to follow and it is rarely held accountable for its assistance policies. U.S. foreign policy, and specifically police assistance, has become more decentralised among many agencies. The multiplication of source institutions has resulted in assistance policies that are less accountable to Congress or other domestic oversight mechanisms. All the same, U.S. unilateralism and its ambivalence in relation to human rights systems make it less accountable to external oversight mechanisms and less visible in other countries (Huggins 1998; Bayley 2006).

The lack of accountability of U.S. police assistance together with the lack of accountability of the Ecuadorian police forces, both domestically and at the regional level, have resulted in a perverse influence on public security in Ecuador. U.S. direct assistance to police forces, without control by any other body, has: (1) followed priorities established in the donor's public security agenda and this is aggravated by the recipient's lack of an agenda; (2) reinforced the autonomy of the police; (3) undermined efforts to make the police forces more accountable; and (4) created a distortion within the police institution in relation to the "status" of the work they developed – better equipped units and the offer of more training courses abroad make the control of drug trafficking very attractive to police officers, in contrast to crime prevention for instance.

Although Moravcsik (2001 p. 347) argues that the primary impact of U.S. unilateralism is restricted to U.S. citizens "who might otherwise be able to plead a broader range of rights before U.S. courts", and that "little currently available evidence supports the claim of human rights activists that the U.S. ambivalence undermines U.S. foreign policy, U.S. human rights policy, or the global enforcement of human rights", in the case of police assistance, the direction of U.S. foreign policy has contributed to the undermining of democratic and human rights-oriented policies in Ecuador. The unfavourable regional context aggravates the domestic difficulty of defining a strategy for reform and puts more emphasis on the quality of individual leadership to promote police reform.

In contrast, police assistance in Poland has been framed by: (1) a public security policy established according to the country's priorities; (2) different domestic and regional mechanisms controlling police activities; and (3) regional democratic and human rights standards incorporated into the country's political dynamic.

In this sense, the efforts by the Council of Europe to develop rule of law and human rights standards for policing, from the establishment of the Declaration on the Police in 1979 to the adoption of the European Code of Police Ethics in 2001, has been a unique and paramount work in Europe.

At the same time, European countries have combined regional mechanisms and policies related to their internal security affairs; it has been possible because there is not a single and asymmetric power influencing security issues in the region. Although the main cooperation programmes among the EU members and the ECE countries have been in areas of regional security matters, focusing on combating organised crime, drug trafficking and illegal migration, and despite the predominance of bilateral relations with the ECE countries, the tendency has been to channel police assistance through the EU's mechanisms.

The ECE countries have experienced an "Europeanisation" process that moved them into a "European public space" supported by consolidated regional institutions. On the one hand, the EU accession process and the European identity, based on human rights values, have made democratic policing relevant for obtaining legitimacy at the regional level. On the other hand, the EU enlargement process itself increases the concern with democracy and human rights; as the new members are countries with less consolidated institutions, the original members are concerned with the protection of their own regional institutions. The European democracies provide more guarantees for human rights and more obstacles to the limitation of their scope. There are also a number of counter-balancing actors working in the region.

Regional Impact on Policing

The tension between a narrow and a broad agenda of rule of law assistance programmes has generated a false duality between efficiency and accountability of institutions. In the judicial system, this tension can be translated into prioritising criminal justice assistance based on the order enforcement approach or programmes promoting judicial accessibility based on the law enforcement approach. The police are also enmeshed in this duality between improving police operational capabilities and efficiency, or promoting human rights and democratic accountability of their activities. It is in this context that policing issues emerged in the international and regional assistance debate, revealing that policing may not be an exclusively domestic affair.

Most bilateral programmes related to police have converged in pursuing order enforcement rather than law enforcement. Strengthening citizenship and accountability in other countries would hardly be the priority of the bilateral donor country; in many cases, assistance programmes may be used as instruments of different economic and political rationale that has little or nothing to do with human rights and law enforcement. In terms of police assistance, the order enforcement approach may perpetuate the abuse of power and corruption by controlling people instead of strengthening people's mechanisms for controlling the police.

Intentionally or unintentionally, regional politics have an impact on policing; they may positively overcome the limitations found in domestic politics and support democratic reforms or they may create additional obstacles. The consequences may be the increasing incapacity of new democracies to control their repressive forces and institutional changes that do not follow the priorities of the country itself.

Thus, the regional impact on police forces can be analysed through three channels of interaction: (1) the norms created by regional standards; (2) the oversight mechanisms operating in the regional community; and (3) the international cooperation or assistance ongoing in each region. This requires an integral vision of the police as a singular actor with a particular organisational culture and special attributions within the state apparatus.

Regional norms are important referential support for police reformers. There is already a consensus regarding democratic and human rights policing and the development of international and, to a different extent, regional standards; what is missing in many cases is their observance and application.

Control mechanisms and public scrutiny are fundamental in any policing circumstances. It is the existence of cross-mechanisms of control that can overcome the limitations of each instrument and may bridge the gap between the formal systems of accountability and the unwritten norms produced by the police culture. It is the complementary nature of internal and external instruments, domestic and regional, that will guarantee an appropriate control system and help to consolidate democratic and human rights policing.

Police assistance is not a matter of technical and operational strategies; it is part of a more complex regional political dynamic with regional and domestic consequences for recipient countries. For this reason, governments must resume their responsibilities regarding public security policies in order to limit police discretionary power and to restrict influence from actors with different motivations and interests in security issues.

In sum, foreign assistance to police forces must be framed by: (1) the recipient country's public security agenda; (2) democratic and human rights international standards; and (3) oversight mechanisms.

Police reform is part of the democratisation process; however, as police forces are a singular part of the state administration, this reform does not present the same timing as the transformation of the political system. Police reform is one of a series of reforms in the ongoing and open process of democratisation and, as such, should be analysed through the different dimensions it implies. The relations between civil society and government, between national and regional or international actors are largely responsible for the path taken by the police institution during democratisation. It is necessary to look at those interactions in order to understand why there are differences among countries that follow the same initial transitional path.

Methodological Appendix

The broad scope of interests of this research – the regional impact on the rule of law and human rights in new democracies - and the sensitivity of the chosen case studies – the police forces - signified particular difficulties for its development. After defining the theoretical framework presented in the introductory chapter, I had to adopt specific strategies for each part of the research process.

In order to discuss the regional institutionalisation process in Europe and the Americas, I used available official institutional information and relied on the extensive literature produced about them. Regarding the case studies, I additionally opted for in-depth interviews. There are many reasons for this decision. First, in-depth interviews make it possible to have diverse perspectives on normative and political aspects of police reform. Secondly, they provide an opportunity to learn about unwritten rules and interactions that orient police forces. Thirdly, when transparency is not part of the political culture, it may help to obtain data that is officially unavailable; in some cases, statistical data does not exist at all; in other cases, it is not obtainable.

In the case of Ecuador, the lack of statistics available was a serious obstacle for the research. There was no statistical data for many crucial issues, such as human rights violations perpetrated by police forces and foreign assistance received by the police institution. In the process of obtaining information from the Ecuadorian police it was also interesting to observe the bureaucratic response they provided. All requests for information must be written and addressed to the General Headquarters of the Police; for all requests I presented I never received “no” as answer, I always received long written answers full of useless information. The same strategy was applied for the requests for interviews with high-ranking officers of the police institution. Again, they never said no, and usually they sent an assistant to talk to me and supposedly help me to make the appointment; this assistant always very kindly answered my calls but he was never able to reach his “superior” or confirm his agenda due to different excuses. Another similar strategy was to redirect me to police sectors that are not part of the real core of the police organisation and operations.

In Poland, one of the outcomes of the police reform was the increase of transparency and public monitoring of the police activities. There is systematised and available statistical data. The biggest obstacle for this research was the language. Although Polish membership in the EU has helped to make translated information more available, not all the information can be found or easily found in English. In any case, simply the way requests for information or interviews were answered inspired more professionalism; all the requests were quickly and objectively answered.

The list of interviewees presented at the end of this methodological appendix is organised by date. The chronological order the interviews took place did not represent their relevance for the research as the arrangement for the meetings depended much on the availability of each interviewee. Following I present the interviewees by the importance of their contribution to this work and the process developed to identify and contact them. The differences between the strategies and criteria for the selection of interviewees in Poland and Ecuador were based on the different processes that took place in each case study. In order to define the first interviewees I started with searching if there was academic work on the police in each country. Prior to my fieldwork, I also conducted interviews in London with academics and human rights NGOs that have developed work on questions related to my research; however, I list only the people I personally interviewed in Poland – during my visits in 2004 and 2005 – and in Ecuador – where I had the advantage of a long stay from 2004 to 2007. I do not include the contacts by e-mail¹⁸⁰ or prior contact or follow up communications with the people I personally interviewed.

On the interviews

In the case of Poland there was a significant work on the police organised by the Hungarian Helsinki Committee on Human Rights that resulted in the CD-ROM *Police in Transition*, 2000. The chapter on the Polish Police was written by Andrzej Rzeplinski, Professor at the University of Warsaw. Rzeplinski is also a member of the Helsinki Foundation for Human Rights and actively participated in the debate on the

¹⁸⁰ Such as Amnesty International, Human Rights Watch – Europe; Interights; Transparency International Polska; the Police Human Rights Programme at the Council of Europe.

police reform in Poland. His interview was the first I conducted in the country and was especially important because of his broad view on the topic as academic and also as human rights activist. Rzeplinski helped me to identify other important interviewees; through him I was able to contact Slawomir Cybulski and Eva Letowska, two key interviewees for this research. Cybulski is a retired police officer and researcher on police issues at the Helsinki Foundation for Human Rights. Besides his continuing work on the police debate, Cybulski was one of the reformers of the police training during the police reform and gave me a relevant internal view of the whole reform process. Eva Letowska is a Judge at the Constitutional Tribunal and Professor at the Institute of Legal Studies of the Polish Academy of Sciences and was the first Ombudsman in Poland. Letowska played an outstanding role during the democratisation process, especially through the incorporation and promotion of the European human rights standards in the Polish legal system and the political debate. Letowska provided a valuable material and comments about her experience.

At the Academy environment I also contacted Barbara Kunicka, Professor at the Institute of Legal Studies of the Polish Academy of Sciences who, besides providing an important overview of the changes in the Polish legal framework, introduced me to Zigmunt Lasocik and Monika Platek. Lasocik is a Professor at the School of Applied Social Sciences and Resocialisation of the University of Warsaw and has worked on violence and rule of law issues in Poland; we had a very rich discussion on the Polish democratisation process and he gave me a relevant overview on the police reform within this context. Platek is a Professor at the Polish Association for Legal Studies and has developed work on the rule of law issues. Platek helped me with a good presentation of the current situation of the Polish legal framework in connection with the topics of this research.

At the same time I contacted the regional and national institutions related to the democratisation process in Poland and the police reform. I interviewed Denis Petit from the Office for Democratic Institutions and Human Rights (ODIHR) at the Organisation of Security and Cooperation in Europe (OSCE), and Albin Dearing responsible for the European Union's programs developed by the Poland and Hungary Assistance for the Restructuring of the Economy (PHARE). Both interviewees contributed with a regional overview of the democratisation process in

Poland mainly by the historical role of their respective institutions in the country. From the perspective of regional and international actors I also found important to contact the U.S. Embassy in Poland. Patrick Lahey who was responsible for the Cultural Affairs Office received me. Lahey had also served at the U.S. Embassy in Ecuador and gave me a good comparison about the U.S. activities in each country; he also helped me to identify other institutions with relevant work in Poland such as the Stefan Batory Foundation that was established by the American financier George Soros. At the Foundation I interviewed Jakub Boratynski, currently at the Directorate General of Justice, Freedom and Security of the European Commission but in that occasion a researcher on the rule of law issues. His interview contributed for the understanding of the debate on the rule of law in Poland.

At the National level I interviewed Andrzej Siemaszko, Director of the Institute of Justice of the Ministry of Justice, who provided a valuable statistical data about the police; and Bodgan Bujak, President of the Administration and Home Affairs Commission at the Sejm, and the Representative Bozena Kizinska. Their interviews contributed to explain how the Legislative commissions work and the place human rights and the rule of law issues have in the political debate. Although much criticism can be made on the commission's work, there is a formal commission that dedicates time and work on human rights and police issues.

At the police institution I interviewed the officers Robert Sudenis, Josef Tomaszewski, Tadeusz Zygmunt, Leszek Szreder and Dariusz Drzal. They all provided important information about the current institutional and operational situation of the police, their perception about the institution, criminality and human rights issues. Their most important contribution, however, was the possibility they gave me to observe, through their own behaviour, a clear evidence of the level of professionalisation, transparency and accessibility of the police institution in Poland.

In the case of Ecuador there was no relevant academic work on the police when I started my research. My first interviewee in the country was Bertha García, Professor at the Catholic Pontifical University of Ecuador (PUCE), who had developed extensive work on the military and was one of the first scholars to give attention to the police in Ecuador. García together with a group of officers had recently organised

a debate about the police reform and through her I was able to contact those officers compromised with the idea of reform and open to discuss the police issues. In this sense, two clue interviewees were Colonel Juan Carlos Ruedas and Captain Ricardo Cevallos. Both provided relevant material for this research and helped me to identify different people and groups within the police institution.

A very important interview was the one I had with the Sister Elsie Monje, Executive Director of the Ecumenical Human Rights Commission (CEDHU). CEDHU has worked for decades in monitoring and promoting human rights in Ecuador. Monje provided a detailed material on police violence and a very interesting overview on the human rights situation and its historical development in Ecuador. At CEDHU I also interviewed César Duque, a lawyer and researcher on human rights who provided complementary material for this research.

Also crucial were the contacts at the U.S. Embassy in Quito, where I interviewed Ken Keller, from the Narcotics Affairs Section of the Embassy (NAS); Brian Doherty, Director of NAS in Ecuador; and Carlos Arrobo, Ecuadorian researcher who was developing a project on the judicial system under the auspices of the U.S. Embassy. All the interviews were very helpful to understand the activities developed by different U.S. institutions in the country, and especially relevant was the detailed information and material provided by Ken Keller about the U.S. police assistance to Ecuador. In order to complement the information about the U.S. assistance related to the rule of law, I also interviewed Patricia Esquetini who was responsible for the projects sponsored by the U.S. Agency for International Development (USAID) at the Esquel Foundation, a non-profit civil society organisation aiming to promote democracy and development in the country.

With the development of my research I found out that France and Spain were the two countries that followed the U.S. regarding police assistance in Ecuador. For this reason I contacted their embassies in Quito and interviewed Jean Pierre Coderch, Police Attaché at the French Embassy, and Julián Marin y Ríos, Counsellor of Home Affairs at the Spanish Embassy. Both interviewees provided relevant information about the police assistance from their respective countries to the Ecuadorian National Police.

In my intent to get official information from the Ecuadorian National Police and to verify if there was any data on the institution and their activities I also contacted Colonel Camacho, Colonel Guzmán, and Colonel Vinuesa, respectively responsible for the Pedagogical, Planning and International Affairs divisions, and Colonel Machado, Under-Secretary of the Police at the Ministry of Government. I tried in vain to contact higher officers at the police; my requests for appointment were never denied, neither attended. The main contribution of these interviews as well as the entire process of trying to make an appointment with the police commanders or get any information from the police was the evidence of secrecy, closeness and hierarchy of the police institution in Ecuador.

At the police institution I also contacted Jacqueline Chacón, a Psychologist who works at the Police Academy, and Carlos Hirose, a Pedagogue who works at the Pedagogical Division. Both develop activities regarding pedagogical issues and were very open in providing the material they had available. I also interviewed Captain López who contacted me when I was conducting research at the Pedagogical Division; this interview was interesting to reveal the concerns coming from the troops in relation to the educational program at the police.

At the governmental level I also contacted Fernando Acosta, who was the Under-Secretary of Government and Police; Laura Orellana, who was in charge of the Human Rights Unit of the Ministry; and Soledad Córdoba from the Ecuadorian Institute of International Cooperation (INECI). In all cases, their interviews mainly contributed to give more evidence of the lack of systematic information and human rights culture in the Ecuadorian institutions.

I also interviewed Osvaldo Jarrín, General of the Armed Forces. Jarrín had been Joint Chief of Staff and later became Minister of Defence. When I interviewed him he was developing research on security issues at FLACSO and provided helpful insights about the relationship between the police and the Armed Forces.

List of interviews

Poland

1- Denis Petit (OSCE, 28 June 2004)

Head of the Unit Legislative of the Office for Democratic Institutions and Human Rights (ODIHR), at OSCE.2- Albin Dearing (PHARE, 29 June 2004)

Responsible for the PHARE projects in Poland.

3- Andrzej Rzeplinski (University of Warsaw, 1 July 2004)

Professor of Criminal and Constitutional Law and member of the Helsinki Foundation for Human Rights.

4- Patrick Lahey (U.S. Embassy in Warsaw, 30 June 2004)

Cultural Affairs Office. The original contact I had at the Embassy was abroad during my stay in Warsaw.

5- Jakub Boratynski (Stefan Batory Foundation, 8 July 2004)

Head of the Unit to Fight against Organised Crime at the Directorate General of Justice, Freedom and Security of the European Commission. Previously, Boratynski was the Programme Director of the Stefan Batory Foundation, an independent private Polish foundation established by the American financier George Soros in 1988.

6- Barbara Kunicka (Polish Academy of Sciences, 5 May 2005)

Professor at the Institute of Legal Studies of the Polish Academy of Sciences.

7- Andrzej Siemaszko (Institute of Justice, 5 May 2005)

Director of the Institute of Justice at the Ministry of Justice.

8- Bogdan Bujak (Sejm, 6 May 2005)

President of the Administration and Home Affairs Commission at the Sejm. Representative Bozena Kizinska, from the same Democratic Left Alliance (DLA), also participated in the interview that occurred with the assistance of an interpreter.

9- Eva Letowska (Justice Constitutional Tribunal, 9 May 2005)

Judge at the Justice Constitutional Tribunal and Professor at the Institute of Legal Studies of the Polish Academy of Sciences.

10- Slawomir Cybulski (Helsinki Foundation for Human Rights, 9 May 2005)

Lawyer and researcher on police issues at the Helsinki Foundation. Cybulski was also a police officer until his retirement in 1995, and participated in the Police reform training.

11- Zigmiew Lasocik (Warsaw University, 9 May 2005)

Professor in the School of Applied Social Sciences and Resocialisation.

12- Robert Sudenis (National Police Headquarters, 10 May 2005)

Commissary and Councillor at the Department of Studies and Analysis of the Police Strategy Office. Interview conducted with interpreter.

13- Josef Tomaszewski (National Police Headquarters, 10 May 2005)

Junior Inspector and Deputy Director of the Police Strategy Office. Interview conducted with interpreter.

14- Tadeusz Zygmunt (National Police Headquarters, 10 May 2005)

Deputy Director of the Bureau of International Police Cooperation. Interview conducted with interpreter.

15- Leszek Szreder (National Police Headquarters, 10 May 2005)

General Inspector of the European and International Cooperation Department. Interview conducted with interpreter.

16- Monika Platek (Polish Association for Legal Education, 10 May 2005)

Professor and researcher at the Polish Association for Legal Studies.

17- Dariusz Drzal, (National Police Headquarters, 11 May 2005)

Deputy Head of the European and International Cooperation Department.

Ecuador

1- Bertha García (Catholic Pontifical University of Ecuador - PUCE, 6 July 2005)

Professor at the School of Human Sciences.

2- Juan Carlos Ruedas (*Escuela del Estado Mayor*, 11 July 2005)

Police Colonel and one of the police leadership that has promoted the debate on police reform.

3- Osvaldo Jarrín (Latin American Faculty of Social Sciences, FLACSO-Ecuador, 12 July 2005)

General of the Armed Forces and Joint Chief of Staff in 2003. Jarrín was developing research on security issues at FLACSO, and in 2005 he also became Minister of Defence.

4- Renato Cevallos (Judicial Police, 19 July 2005)

Police Captain and one of the police leadership that has promoted the debate on police reform.

5- Jacqueline Chacón (*Escuela de Estado Mayor*, 22 July 2005)

Psychologist working at the police academy.

6- Colonel Camacho (Pedagogical Division of the Police, 28 July 2005)

Police Colonel. Colonel Camacho was working in the Pedagogical Division.

7- Francisco Guzmán (Police General Headquarters, 4 August 2005 and 30 August 2005)

Police Colonel. Colonel Guzmán was working in the Planning Division.

8- Carlos Hirose, (Pedagogical Division of the Police, 9 August 2005)

Pedagogue. Hirose was working on the curriculum and training courses in the Police Pedagogical Division.

9- Captain López (Pedagogical Police Division, 9 August 2005)

Police Captain. When Captain López learned that I was doing research about the police and that I was interested in the police agreement with universities for special courses for police members, he came to talk with me and to complain about these programmes, saying they were for an elite within the institution.

10- Elsie Monje (Ecumenical Human Rights Commission - CEDHU, 11 August 2005)

Executive Director of CEDHU.

11- Fernando Acosta (Ministry of Government, Police and Worship, 17 August 2005)

Under Secretary of Government and Police.

12- Colonel Machado (Ministry of Government, Police and Worship, 17 August 2005)

Colonel and Under Secretary of Police.

13- Laura Orellana (Ministry of Government, Police and Worship, 17 August 2005)

Responsible for the Human Rights Unit of the Ministry.

14- Carlos Arrobo (U.S. Embassy in Quito, 30 August 2005 and 1 September 2005)

Research on judicial system. Arrobo was working in a project developed under the auspices of the U.S. Embassy.

15- Brian Doherty (U.S. Embassy in Quito, 30 August 2005)

Director of the Narcotics Affairs Section – NAS of the U.S. Embassy in Quito.

16- Colonel Vinueza (Police General Headquarters, 30 August 2005)

Police Colonel. Colonel Vinueza was responsible for the International Affairs Department of the Police.

17- César Duque (CEDHU, 16 February 2006)

Lawyer and researcher at CEDHU.

18- Ken Keller (U.S. Embassy, 16 March 2006)

Keller worked at NAS.

19- Patrícia Esquetini (Esquel Foundation, 21 March 2006)

Researcher at Esquel, a private non-profit civil society organisation aiming to promote democracy and development. Esquetini was developing some projects sponsored by USAID in Ecuador.

20- Jean Pierre Coderch (Embassy of France in Quito, 05 May 2006)

Police Attaché at the Embassy.

21- Julián Marin y Ríos (Embassy of Spain in Quito, 29 May 2006)

Counsellor of Home Affairs at the Embassy.

22- Soledad Córdoba (Ecuadorian Institute of International Cooperation - INECI, 24 August 2005)

Responsible for the cooperation issues between Ecuador and European countries and organisations.

ANNEX

Table 1 – Countries' ratings for political rights and civil liberties, and freedom status

	BOLIVIA			ECUADOR			PERU			HUNGARY			POLAND		
Period covered	PR	CL	FS	PR	CL	FS	PR	CL	FS	PR	CL	FS	PR	CL	FS
1977	6	4	PF	6	4	PF	6	4	PF	6	5	NF	6	5	NF
1978	5	3	PF	5	4	PF	5	4	PF	6	5	NF	6	5	PF
1979	3	3	PF	2	4	F	5	4	PF	6	5	PF	6	5	PF
1980	7	5	NF	2	2	F	2	3	F	6	5	PF	6	4	PF
Jan.81-Aug.82	2	3	F	2	2	F	2	3	F	6	5	PF	6	5	PF
Aug.82-Nov.83	2	3	F	2	2	F	2	3	F	6	5	PF	6	5	PF
Nov.83-Nov.84	2	3	F	2	2	F	2	3	F	6	5	PF	6	5	PF
Nov.84-Nov.85	2	3	F	2	3	F	2	3	F	5	5	PF	6	5	PF
Nov.85-Nov.86	2	3	F	2	3	F	2	3	F	5	5	PF	6	5	PF
Nov.86-Nov.87	2	3	F	2	3	F	2	3	F	5	4	PF	5	5	PF
Nov.87-Nov.88	2	3	F	2	2	F	2	3	F	5	4	PF	5	5	PF
Nov.88-Dec.89	2	3	F	2	2	F	2	4	F	4	3	PF	4	3	PF
1990	2	3	F	2	2	F	3	4	PF	2	2	F	2	2	F
1991	2	3	F	2	3	F	3	5	PF	2	2	F	2	2	F
1992	2	3	F	2	3	F	5	5	PF	2	2	F	2	2	F
1993	2	3	F	2	3	F	5	5	PF	1	2	F	2	2	F
1994	2	3	F	2	3	F	5	4	PF	1	2	F	2	2	F
1995	2	3	F	2	3	F	5	4	PF	1	2	F	1	2	F
1996	2	3	F	2	4	PF	4	3	PF	1	2	F	1	2	F
1997	1	3	F	3	3	PF	5	4	PF	1	2	F	1	2	F
1998	1	3	F	2	3	F	5	4	PF	1	2	F	1	2	F
1999	1	3	F	2	3	F	5	4	PF	1	2	F	1	2	F
2000	1	3	F	3	3	PF	3	3	PF	1	2	F	1	2	F
2001	1	3	F	3	3	PF	2	3	F	1	2	F	1	2	F
2002	2	3	F	3	3	PF	2	3	F	1	2	F	1	2	F
2003	3	3	PF	3	3	PF	2	3	F	1	2	F	1	2	F
2003-2004	3	3	PF	3	3	PF	2	3	F	1	1	F	1	1	F

PR = Political Rights; CL = Civil Liberties; FS = Freedom Status; F = free; PF = Partially free; NF = Non-free. A country is considered "free" when it has an average rating for political rights and civil liberties of between 1 and 2.5; "partially free" when the average rating is between 3 and 5.5; and "non-free" when it is between 5.5 and 7. Source: Freedom House, Freedom in the World Comparative Rankings: 1973 to 2005.

This survey is valuable for a primary approach to each region; however, in the case of Ecuador, it is striking that the repressive government of León Febres Cordero (1984-1988), responsible for human rights violations, is not reflected in the country's scores. The insensitivity to the repression of this period may be explained by the low number of victims compared to past authoritarian regimes in the region, and the general invisibility of human rights violations in the country.

Table 2 - Human development index (HDI)

Country	HDI value							HDI Rank
	1975	1980	1985	1990	1995	2000	2003	2003
Norway	0.859	0.877	0.888	0.901	0.925	0.942	0.963	1
Hungary	0.777	0.793	0.805	0.804	0.809	0.835	0.862	35
Poland	..	..	..	0.792	0.808	0.833	0.858	37
Peru	0.643	0.674	0.707	0.734	..	0.762	0.762	79
Ecuador	0.630	0.674	0.698	0.715	0.730	..	0.759	82
Bolivia	0.549	0.580	0.604	0.636	0.672	0.687	0.687	113
Sierra Leone	..	..	..	..	..	0.275	0.298	173

Source: UNDP, Human Development Indicators 2002¹⁸¹.

¹⁸¹ <http://hdr.undp.org/reports/global/2005>.

Table 3- Signatures and status of ratifications of the American Convention on Human Rights until 2006

SIGNATORY COUNTRIES	DATE OF DEPOSIT OF RATIFICATION	DATE OF ACCEPTANCE OF THE JURISDICTION OF THE COURT
Antigua y Barbuda		
Argentina	5 Sep. 1984	5 Sep.1984
Bahamas		
Barbados	27 Nov. 1982	4 Jun. 2000
Belize		
Bolivia	19 Jul. 1979	27 Jul. 1993
Brazil	25 Sep. 1992	10 Dec. 1998
Canada		
Chile*	21 Aug. 1990	21 Aug. 1990
Colombia*	31 Jul. 1973	21 Jun. 1985
Costa Rica*	8 Apr. 1970	2 Jul. 1980
Dominica	11 Jun. 1993	
Dominican Republic	19 Apr. 1978	25 Mar.1999
Ecuador*	28 Dec. 1977	13 Aug. 1984
El Salvador	23 Jun. 1978	6 Jun.1995
Grenada	18 Jul. 1978	
Guatemala	25 May 1978	9 Mar.1987
Guyana		
Haiti	27 Sep. 1977	20 Mar.1998
Honduras	8 Sep. 1977	9 Sep.1981
Jamaica*	7 Aug. 1978	
Mexico	3 Apr. 1982	16 Dec.1998
Nicaragua	25 Sep. 1979	12 Feb.1991
Panama	22 Jun. 1978	3 May 1990
Paraguay	24 Aug. 1989	26 Mar.1993
Peru*	28 Jul.1978	21 Jan.1981
St. Kitts and Nevis		
St. Lucia		
St. Vicent and Grenadines		
Suriname	12 Nov. 1987	12 Nov.1987

Trinidad y Tobago	28 May 1991	28 May 1991
United States		
Uruguay*	19 Apr. 1985	19 Apr. 1985
Venezuela*	9 Aug. 1977	24 Jun. 1981

* States that have accepted the competence of the Inter-American Court on Human Rights to receive and examine communications in which a State Party alleges that another State Party has violated the human rights set forth in the American Convention: Argentina (September 5, 1984); Chile (August 21, 1990); Colombia (June 21, 1985); Costa Rica (July 2, 1980); Ecuador (August 13, 1984); Jamaica (August 7, 1978); Nicaragua (February 6, 2006); Peru (January 21, 1981); Uruguay (April 19, 1985) and Venezuela (August 9, 1977).

Table 4: Accusations of gross human rights violations received by CEDHU

<i>Year</i>	<i>Homicide</i>		<i>Torture</i>		<i>Physical Aggression</i>		<i>Arbitrary Detention</i>		<i>Detainees Disappeared</i>	
	C	V	C	V	C	V	C	V	C	V
1985	9	11	50	50	0	55	66	66	-	-
1986	19	19	88	88	92	92	115	115	-	-
1987	36	36	84	84	89	89	177	177	-	-
1988	19	19	46	46	124	124	142	142	-	-
1989	21	21	61	64	110	110	137	439	-	-
1990	20	20	56	57	175	177	225	236	-	-
1991	22	23	39	46	93	132	95	166	-	-
1992	28	35	54	83	92	450	80	189	-	-
1993	30	43	67	119	127	250	134	436	-	-
1994	21	21	51	107	95	501	126	399	-	-
1995	16	16	34	53	80	144	126	253	-	-
1996	26	34	43	67	105	376	166	414	-	-
1997	22	35	47	70	129	211	190	613	-	-
1998	11	17	21	45	75	138	87	323	-	-
1999	31	47	33	87	87	882	137	1559	-	-
2000	18	33	19	50	67	162	131	664	-	10
2001	-	62	-	31	-	857	-	542	-	1
2002	-	28	-	79	-	323	-	240	-	2
2003	-	10	-	25	-	551	-	83	-	3
2004	-	21	-	17	-	368	-	252	-	3
Total	371	551	841	1268	1643	5992	2210	7308	-	19

C = Complaints; V = Victims

Source: CEDHU, 2005.

Table 5: Cases initiated by the NCPJ in 2004

<i>Type of offence</i>	<i>Number of cases</i>
Offences against individual freedom	16
Offences against home violation	3
Offences related to statements of unions or relatives	1
Offence against police personnel	2
Offences against the existence and security of the NP	183
Offences against subordination	54
Illegal absence	20
Abandonment of service	51
Desertion	205
Abuse of police power	94
Offences against "police faith" (<i>delitos contra la fe policial</i>)	118
Offences against the administration of justice	9
Offences against the administration of justice	15
Fraud, mismanagement, and other abuses in the administration of the institution	127
Crimes against life	40
Injuries	4
Rape	6
Abduction	61
Theft (<i>hurto</i>)	21
Robbery	51
Extortion	8
Embezzlement and other previous frauds	38
Total	1,127

Source: NCPJ, on 30 March 2006.

Table 6: U.S. Assistance to Ecuador (2006)

<i>U.S. Bodies</i>	<i>Issue</i>	<i>Amount (US\$)</i>
USAID	Social and Economic Development - Northern Border and Southern Border	14,390,000
Department of State	Security: Counter-narcotics	8,000,000
	Security: Trafficking of People, Money Laundering and Other International Crimes	3,000,000
Department of Labour	Child Labour	11,000,000
Department of Agriculture	Agriculture	10,000,000
Military Group	Humanitarian Aid	5,300,000
USAID	Environmental Protection	4,500,000
USAID	Democracy and Governance (Reforms to the Judiciary)	3,250,000
Department of State	Education	1,000,000
Total: 61,590,000		

Source: U.S. Embassy in Quito; FY 2006.

Table 7 - Projects developed under agreement between the US and the Ecuadorian governments for 2005

<i>Project Number</i>	<i>Project Title</i>	<i>Personnel</i>	<i>Operational Support</i>	<i>Equipment and Supplies</i>	<i>Other Expenses</i>	<i>Total</i>
01181214	Police Operations	450,000	1,000,000	2,242,000	200,000	3,892,000
01181215	Police Infrastructure	80,000	-	-	1,880,000	1,960,000
01181206	Counter-Narcotics Training	90,000	-	145,000	710,000	945,000
01181207	Chemical Control / Money Laundering	0	0	200,000	70,000	270,000
01181208	Prevention	0	0	0	75,000	75,000
01181309	Military Projects	-	500,000	2,300,000	200,000	3,000,000
01183913	Migration Control Project	-	140,000	50,000	10,000	200,000
01185210	Investigation Support	-	440,000	100,000	60,000	600,000
01185211	DEA Andean Initiative	-	25,000	15,000	0	40,000
Summary	Total of Projects	620,000	2,105,000	5,052,000	3,205,000	10,982,000

Source: NAS, U.S. Embassy in Quito, 2006.

Table 8 - Projects developed under agreement between the US and the Ecuadorian governments for 2004

<i>Project Number</i>	<i>Project Title</i>	<i>Personnel</i>	<i>Operational Support</i>	<i>Equipment and Supplies</i>	<i>Other Expenses</i>	<i>Total</i>
0118-1214	Police Operations	294,000	810,000	2,221,000	1,000,000	4,325,000
0118-1215	Police Infrastructure	18,000	0	2,682,000	0	2,700,000
0118-1206	Counter-Narcotics Training	75,000	785,000	140,000	0	1,000,000
0118-1207	Chemical Control / Money Laundering	0	0	0	150,000	150,000
0118-1808	Prevention	0	0	0	125,000	125,000
0118-1309	Military Projects	0	150,000	5,800,000	50,000	6,000,000
0118-5210	Investigation Support	100,000	29,000	300,000	124,000	553,000
0118-5211	DEA Andean Initiative	0	0	16,000	258,990	274,000
0118-5212	Fluvial Patrol Project	0	12,000	388,000	0	400,000
0118-3913	Migration Project Control	0	0	200,000	25,000	225,000
0118-9202	Investigation Support	0	0	0	100,000	100,000
Summary	Total of Projects	620,000	2,105,000	5,052,000	3,205,000	10,982,000

Source: NAS, U.S. Embassy in Quito, 2006.

Table 9 - Ecuadorian Security Budget (2006)

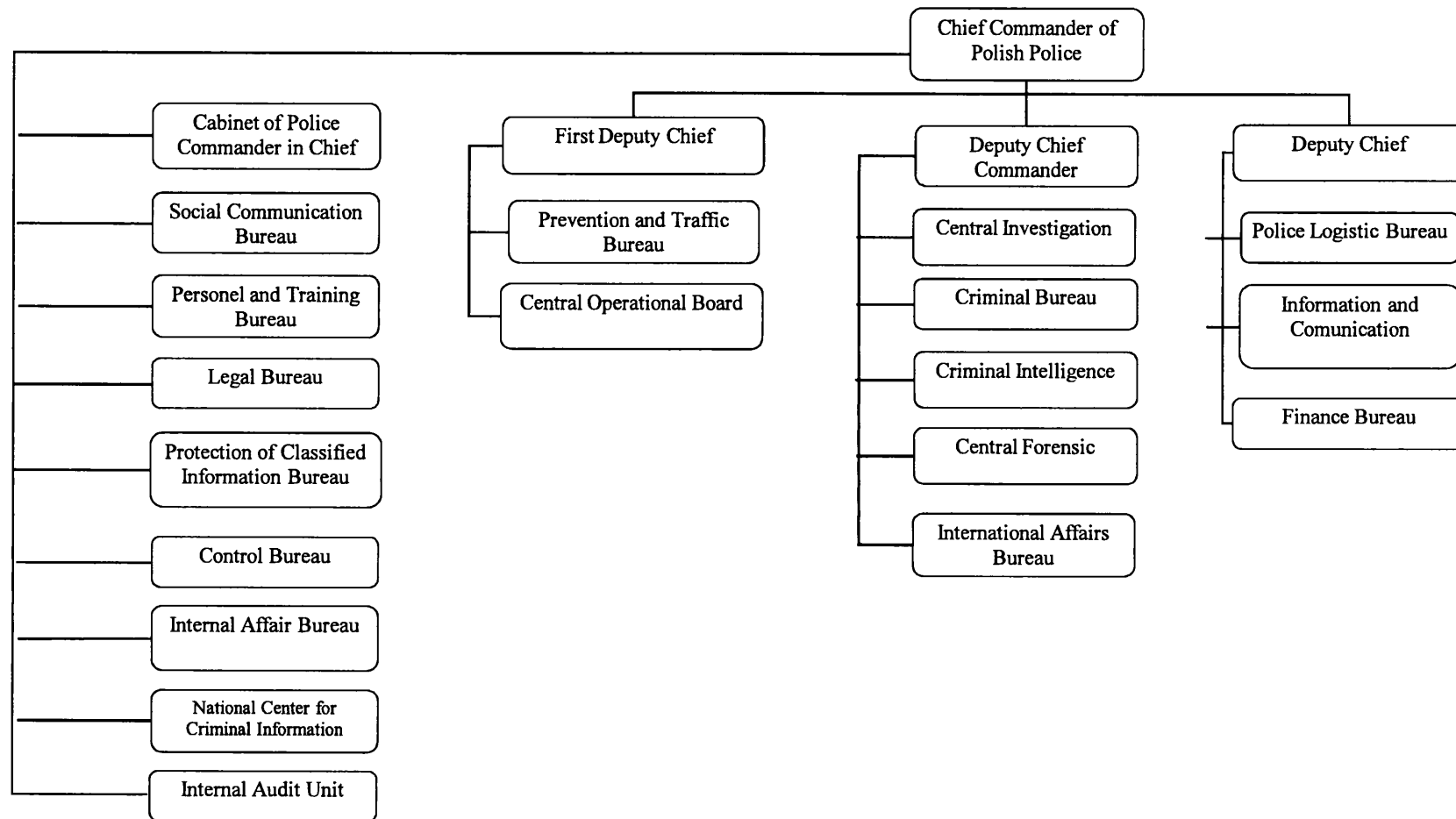
<i>Sector</i>	<i>Institution</i>	<i>Initial Budget (In millions of dollars)</i>
Judicial Sector	Supreme Court	140,38
	Military Court of Justice	0,89
	Police Court of Justice	2,05
	Total	143,31
Internal Affairs Sector	Ministry of Government and Police	24,27
	National Police	410,72
	National Security Directorate	0,86
	Social Rehabilitation National Council	31,35
	Traffic National Council	38,12
	National Migration Directorate	3,00
	Total	508,32
Defence Sector	Ministry of Defence	627,78
	National Security Council	4,48
	Total	632,26

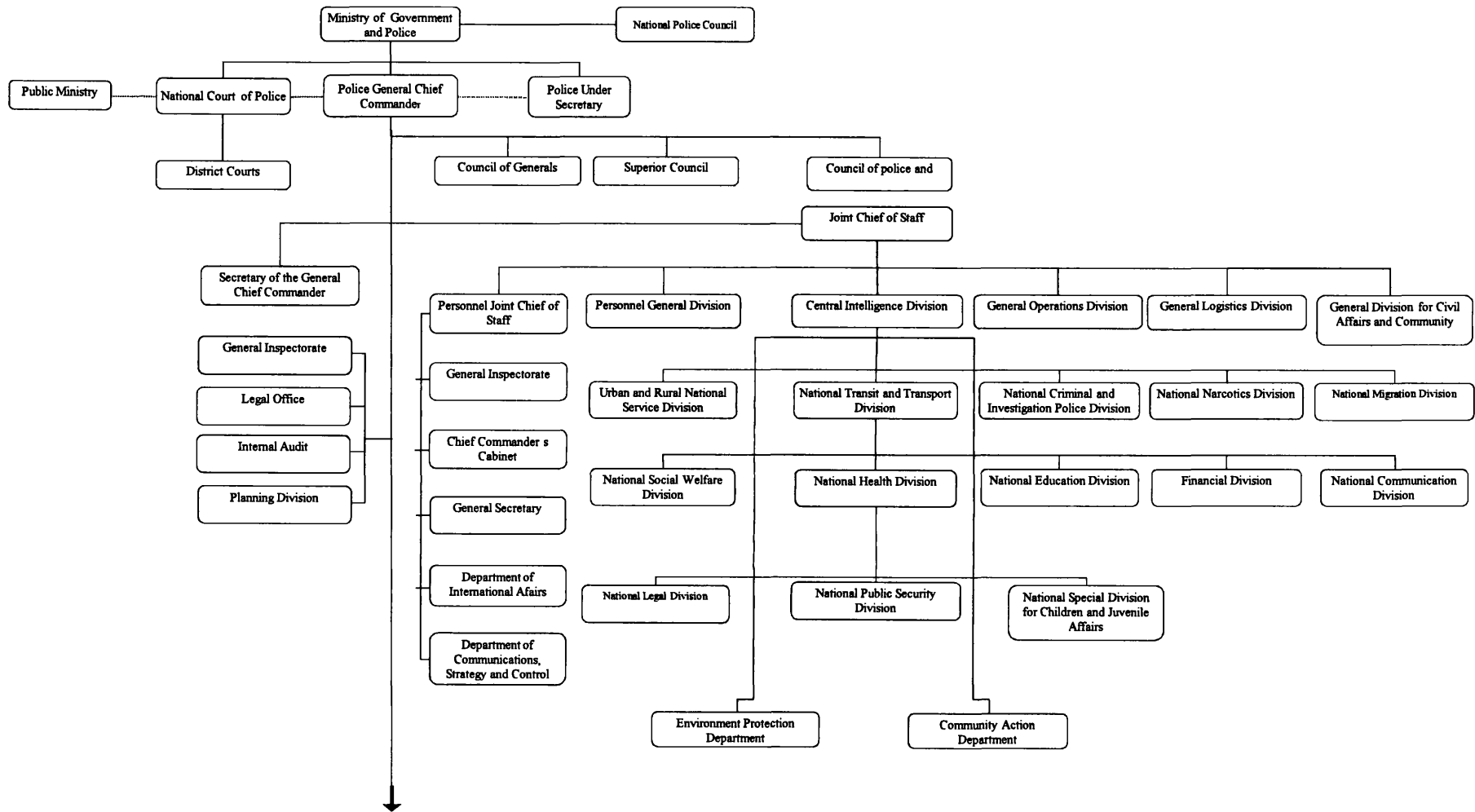
Source: Ministry of Economy and Finance, 2006.

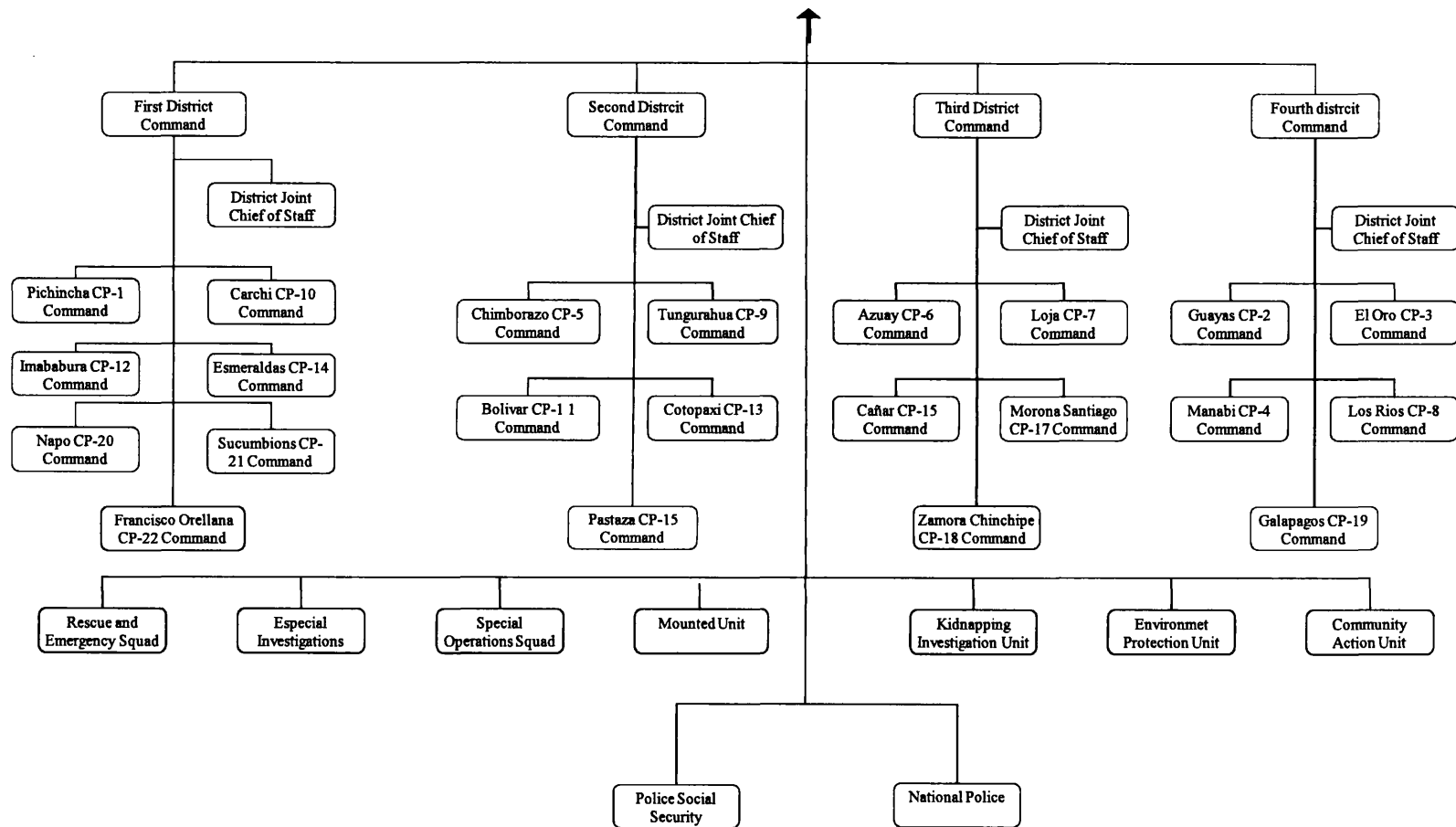
Table 10 - Female inmates by type of offence (2005)

<i>Type of offence</i>	<i>Inmates in Quito (%)</i>	<i>Inmates in Guayaquil (%)</i>
Against people	5	5
Against property	5	10
Related to drugs	75	77
Others	15	8
Total	100	100

Source: FLACSO, Survey at Social Rehabilitation Centres, 2005.







Chronology of the US military and clandestine operations in Latin America and Caribbean countries since the post World War II:

1954	Guatemala	CIA overthrows the government of President Jacob Arbenz Guzman.
1958	Panama	Clashes between US forces in Canal Zone and local citizens.
1959	Haiti	Marines land.
1961	Cuba	CIA-backed Bay of Pigs invasion.
1962	Cuba	Nuclear threat and naval blockade.
1963	Ecuador	CIA backs military overthrow of President Jose Maria Velasco Ibarra.
1964	Panama	Clashes between US forces in Canal Zone and local citizens.
1964	Brazil	CIA-backed military coup overthrows the government of João Goulart and General Castello Branco takes power.
1965	Dominican Rep.	23,000 troops land.
1966-67	Guatemala	Extensive counter-insurgency operation.
1973	Chile	CIA-backed military coup outs government of President Salvador Allende. General Augusto Pinochet comes to power.
1981-1992	El Salvador	CIA and special forces begin a long counterinsurgency campaign.
1981-1990	Nicaragua	CIA directs exile “Contra” operations. US air units drop sea mines in harbors.
1983	Grenada	Military forces invade Grenada.
1983-1989	Honduras	Large program of military assistance at conflict in Nicaragua.
1986	Bolivia	Special Forces units engage in counter-insurgency
1989	Colombia, Bolivia, and Peru	Andean Initiative on war on drugs.
1989-1990	Panama	27,000 troops as well as naval and air power used to overthrow government of President Noriega.
1991	Haiti	CIA-backed military coup outs President Jean-Bertrand Aristide.
1994-1996	Haiti	Troops depose military rulers restore President Jean Bertrand Aristide to office.
2004	Haiti	Marines land. CIA-backed forces overthrow President Jean Bertrand Aristide.

Source: Based on Global Policy Forum, US Military and Clandestine Operations in Foreign Countries, 1798-Present, December 2005.

BIBLIOGRAPHY

ABBOTT, K. and SNIDAL, D., 2001. Why States Act Through Formal International Organizations. In P.F. DIEHL (ed.), *The Politics of Global Governance*. Boulder: Lynne Rienner Publishers.

ACHA, E., 2001. *The Peruvian State and the Nature of the Police Forces*, PhD Thesis, Department of Social Psychology, LSE.

ÁGH, A., 1998. *The Politics of Central Europe*, London: Sage Publications.

AGUERO, F. and STARK, J. (eds.), 1998. *Fault Lines of Democracy in Post-Transition Latin America*, Miami: University of Miami Press.

AGUILAR, J.P., 2004. Speech in the seminar *Democracy, Security and Defense*, PUCE-Ecuador, Escuela de Estado Mayor, Fundacion Konrad Adenaur (KAS), Quito, 30/05/05.

ALBERT, M. and LOTHAR, B., 2001. What keeps Westphalia Together?" In M. ALBERT et. al., *Identities, Borders, Orders*. Minneapolis: University of Minnesota Press, pp. 29-50.

ALMOND and VERA, 1963. *The civic culture: political attitudes and democracy in five nations*, Princeton: Princeton University Press.

ALMOND, G., 1988. The return of the State, and replies by Eric A. Nordlinger, Theodoro Lowi and Sergio Fabbrini, *AMERICAN POLITICAL SCIENCE REVIEW*, vol. 82 (sep. 1988), pp. 875-901.

ALSTON, P. (ed.), 1999. *The EU and Human Rights*. Oxford: Oxford University Press.

ALSTON, P., (ed.), 1992. *The United Nations and Human Rights - A Critical Appraisal*. Oxford: Clarendon Press.

ALT, J., 1996. The Political Economy of International Trade: Enduring Puzzles and an Agenda for Inquiry. In *Comparative Politics Studies*, December 1996, pp.689-717.

ALTO COMISIONADO DE LAS NACIONES UNIDAS PARA LOS DERECHOS HUMANOS (<http://www.ohchr.org/english/press/media>).

ALTO COMISIONADO DE LAS NACIONES UNIDAS PARA LOS REFUGIADOS. <http://www.acnur.org/>

ALVES, J., LINDGREN, A. 1994. *Os Direitos Humanos como Tema Global*. São Paulo: Ed. Perspectiva.

AMNISTÍA INTERNACIONAL, Informes (<http://www.derechos.net/amnesty/doc/>).

AMNISTÍA INTERNACIONAL, ECUADOR, 2003. Sin una Justicia Independiente e Imparcial no existe el “Estado Social de Derecho”, Londres: Amnistía Internacional, Octubre 2003 (AI: AMR 28/010/2003/s).

ANDERSON, B., 1993. Comunidades Imaginadas. México: Fondo de Cultura Económica.

ANDERSON, R., FISH, S., HANSON, S. and ROEDER, P., 2001. Postcommunism and the Theory of Democracy. Princeton: Princeton University Press.

ANTONIO, A.; TRINDADE, C.; GONZALEZ, L.; AND ZOVATTO, D. (eds.), 1995. La Dimensión Jurídica de los Derechos Humanos. Instituto Interamericano de Derechos Humanos, San José: IIDH (CD - ROM).

ARHIBUGI, D. and HELD, D., 1995. Cosmopolitan Democracy – An Agenda for a New World Order. Cambridge: Polity Press, pp. 96-120.

ARCHIBUGI, D.; HELD, D.; AND KOHLER, M., 1998. Re-imaging Political Community. Cambridge: Polity Press.

ARCOS CABRERA, C., 2001. Ecuador: cooperación para el desarrollo – Balance de una década. Quito: Abya-Yala.

ARÉCHAGA, E., 1988. La Convención Interamericana de Derechos Humanos como Derecho Interno. In Revista IIDH - Instituto Interamericano de Derechos Humanos. San Jose, pp. 25-41.

ARENDT, H., 1989. Origens do Totalitarismo – Anti-Semitismo, Imperialismo, Totalitarismo. São Paulo: Companhia das Letras.

ARGUELLO, S. 1997. Delincuencia y Justicia Penal. Tesis Doctoral. Pontificia Universidad Católica del Ecuador.

ARGUELLO, S. ed., 2004. Derechos Humanos: apuntes para la reflexión. Series 1, 2, 3, 4. Ecuador, Plan País.

ARMSTRONG, D., LLOYD, L. and REDMOND, J., 1996. From Versailles to Maastricht – International Organisation in the Twenty Century. London: Macmillan.

ASBJORN, E., and HAGTVET, B., 1995. Conditions for Civilized Politics – Political Regimes and Compliance with Human Rights. Seandenawan: University Press.

ASHLEY, R.K., 1986. The Poverty of Neorealism. In R. Keohane (ed.), Neorealism and its Critics. New York: Columbia University Press.

ASSOCIATION OF BAR. 1993. The Inter-American Commission on Human Rights: A Promise Unfulfilled, by The Committee on International Human Rights, vol. 48, n.5, New York, pp. 590-620.

ATKINS, G. P., 1989. *Latin America in the International Political System*. Boulder: Westview.

AYOOB, M., 1996. *State Making, State Breaking, and State Failure*. In CH. A. CROCKER; F. O. HAMPSON and P. AALL (eds.), *Managing Global Chaos – Sources of and Responses to International Conflict*. Washington: The Endowment of the United States Institute of Peace.

AYOOB, M., 2002. *Inequality and Theorizing in International Relations: The Case for Subaltern Realism*. In *International Studies Quarterly*, Oxford: Blackwell.

AZZAM, F., 1993. *Non-Governmental Organizations and the UN World Conference on Human Rights*. In *The Review, Special Issue - The UN Conference on Human Rights*. Vienna: International Commission of Jurists, n.50, pp. 89-100.

BANKS, M., 1989. *The Evolution of International Relations Theory*. In *Conflict in World Society*. London: Harvester Press. pp. 3-19.

BARBOSA, R. A., 1991. *América Latina em Perspectiva: a Integração Regional da Retórica à Realidade*. São Paulo: Edições Aduaneiras.

BARKER, R., 2001. *Legitimizing Identities-The self-representation of rulers and subjects*. Cambridge: Cambridge University Press.

BARRINGTON, M., 1973. *Los Origenes Sociales de la Dictadura y de la Democracia*, Barcelona: Ediciones Península.

BARRY, B., 1989. *Theories of Justice: A Treatise on Social Justice*. Vol.1. London: Harvester-Wheatsheaf.

BAYLEY, D.H., 2006. *Changing the Guard – Developing Democratic Police Abroad*, Oxford: Oxford University Press.

BAYLEY, D.H. 1985. *Patterns of Policing – A Comparative International Analysis*, New Brunswick: Rutgers University Press.

BAYLIS, J. AND SMITH, S. (eds.), 1997. *The Globalization of World Politics*, Oxford: Oxford University Press.

BEDDARD, R., 1993. *Human Rights and Europe*. Cambridge: Grotius Publications Ltd.

BEETHAM, D., 1999. *Democracy and Human Rights*. Cambridge: Polity Press.

BEETHAM, D., 1995. *Politics and Human Rights*, Oxford: Blackwell Publishers.

BEINER, R. (ed.). 1995. *Theorizing Citizenship*. Albany: State University of New York Press.

BELGRADE CIRCLE (ed.), 1999. *The Politics of Human Rights*. London: The Belgrade Circle.

BELL, D. AND JAYASURIYA, K., 1995. *Understanding Illiberal Democracy: A Framework*. In D. BELL, D.BROWN, K. JAYASURIYA, AND D.M.JONES (ed.), *Towards Illiberal Democracy in Pacific Asia*. London: MacMillan Press, pp. 1-16.

BELL, D., 2000. *East Meets West: Human Rights and Democracy in East Asia*, Princeton: Princeton University Press.

BELL, D.; BROWN, D.; JAYASURIYA, K. AND JONES, D.M. (eds.), 1995. *Towards Illiberal Democracy in Pacific Asia*. London: MacMillan Press.

BENALCÁZAR, P., 2004. Marco de protección de los derechos humanos: balance en la región andina. En *Programa Andino de Derechos Humanos*, ed; Globalización, migración, y derechos humanos. Quito: Universidad Andina Simon Bolivar, pp. 25-45.

BENEDICT, A., 2000. *Comunidades Imaginadas – reflexiones sobre el origen y la difusión del nacionalismo*, Buenos Aires: Fondo de Cultura Económico.

BENHARDT, R., 1995. *Reform of the Control Machinery under the European Convention on Human Rights: Protocol No. 11*, 89 Am. J. Int'l L, 145.

BERMEO, F., 1988. *Febres Cordero y los Derechos Humanos – La interpelación al ministro de Gobierno Luis Robles Plaza – Informe Especial*, Quito: El Conejo.

BID, 1998. *Modernización del Sistema Jurídico (Programa de Apoyo a la Reforma Judicial)*, TC-94-07-35-6, BID 451668[1].pdf.

BIEBESHIMER, C. and MEJÍA, F. (eds.), 2000. *Justice Beyond Borders – Judicial Reforms for Latina America and the Caribbean*. Washington: Inter-American Development Bank and The John Hopkins University Press.

BIRYUKOV, N. and SERGEEV, V., 1994. *The Idea of Democracy in the West and in the East*. In D. BEETHAM: *Defining and Measuring Democracy*, London:, pp. 182-198.

BLOED, A., 1993. *Monitoring the CSCE Human Dimensions: In Search of its Effectiveness*. In A. BLOED et al (eds.). *Monitoring Human Rights in Europe: Comparing International Procedures and Mechanisms*.

BLOED, A., (ed.). 1993. *The Conference on Security and Cooperation in Europe: Analysis and Basic Documents 1972-1993*.

BOBBIO, N., 1992. *A Era dos Direitos*. Rio de Janeiro: Ed. Campus.

BONILLA, A., 1993. *Las Sorprendentes Virtudes de los Perverso – Ecuador y Narcotráfico en los 90*. Quito: FLACSO Sede Ecuador.

BOOTH, K. AND SMITH, S. (eds.), 1995. *International Relations Theory Today*, Oxford: Polity Press.

BORJA, R., 2004. *Violencia y Seguridad Ciudadana*. Quito: Ediciones Gallo Rojo.

BORNEMAN, J., 1997. *Settling Accounts: Violence, Justice, and Accountability in Postsocialist Europe*, Princeton: Princeton University Press.

BOURDIEU, P., 1991. *Language and Symbolic Power*. Cambridge: Polity Press.

BRODEUR, J. GILL, P. and TOLLBORG, D., 2003. *Democracy, Law and Security – Internal security service in contemporary Europe*. Burlington: Ashgate.

BUERGENTHAL, T., 1984. The Inter-American System for the Protection of Human Rights. In T., NERON, *Human Rights in International Law: Legal and Policy Issues*, vol. II. Oxford: Oxford University Press, pp.439-493.

BUERGENTHAL, T., 1991. The CSCE Rights System. 25 *Geo. Wash. J. Int'l L. & Econ.* 333.

BUERGENTHAL, T., 1996. *Derechos Humanos Internacionales*, México: Ed. Gernika.

BUERGENTHAL, T., AND MAIER, H., G., 1990. *Public International Law*. St. Paul, Minn: West Publishing Co.

BUERGENTHAL, T., MORRIS, R., E. SHELTON, D., 1990. *La Protección de los Derechos Humanos en las Américas*. Instituto Interamericano de Derechos Humanos. Madrid: Editorial Civitas.

BULL, H., 1977. *The Anarchical Society – A Study of Order in World Politics*, London: Palgrave.

BURBANO DE LARA, F., 2003. *Democracia, gobernabilidad y cultura política*, Quito: FLACSO Sede Ecuador.

BURGERS, H., 1992. The Road to San Francisco: The Revival of the Human Rights Idea in the Twentieth Century. *Human Rights Quarterly*, pp. 447-477.

BURNELL, P., J., 1997. *Foreign Aid in a changing world*. Buckingham: Open University Press.

BURNS, W., LUKES AND HNATT, 1987. Regional Human Rights Regimes: A Comparison and Appraisal. *Vanderbilt J. Transnat'l L.* 585.

BUSCAGLIA JR., E., DAKOLIAS, M. and RATLIFF, W., 1995. *Judicial Reform in Latin America – A Framework for National Development*. Stanford: Hoover Institution on War, Revolution and Peace, Stanford University.

BUZAN, B. WAEVER, O. and WILDE, J., 1998. Security – A New Framework for Analysis. Boulder: Lynne Rienner Publishers.

CAF, 2004. Ecuador-Informe Anual 2004, Caracas.

CAÏS, J., 1997. Metodología del análisis comparativo. Madrid: CIS.

CAMPILONGO, C. F., 1997. Direito e Democracia. Sao Paulo: M. Limonad Ed.

CARDOSO, F. H. Y FALETTO, E., 1978. Dependencia y desarrollo en América Latina. México: Siglo XXI.

CAROTHERS, J., 1999. Aiding Democracy abroad: The Learning Curve. Carnegie Endowment, Washington: Carnegie Endowment for International Peace.

CASAÚS ARZÚ, M., 1999. Reflexiones en torno a la legitimidad del estado, la nación y la identidad en el marco de los acuerdos de paz en Guatemala. In Anuario de Estudios Centroamericanos. Universidad de Costa Rica, pp. 7-31.

CASOS DE ECUADOR EN LA CORTE INTERAMERICANA DE DERECHOS HUMANOS. <http://www.corteidh.or.cr/paises/ecuador.html>

CASSESE, A., 1999. Are Human Rights Truly Universal? In THE BELGRADE CIRCLE (ed.), The Politics of Human Rights, London: Verso, pp. 149-165.

CASSESE, A., CLAPHAM, A. AND WEILER J. (eds.), 1991. Human Rights and the European Community: The Substantive Law. Nomos.

CASTLE, M. and TARAS, R., 2002. Democracy in Poland. Boulder: Westview Press.

CAVALLARO, J., 1994. O Papel do indivíduo no Processo da Petição Individual no Sistema Inter-Americano: Uma Estratégia para o Avanço dos Direitos Humanos no Brasil e na América Latina, Palestra de James Cavallaro na Primeira Conferência da FIDEH. Brasília: Cejil e Human Rights Watch/Americas, pp. 24-29.

CENTRE FOR HUMAN RIGHTS AND DEMOCRATIC DEVELOPMENT, 1993. Collectively Defending Democracy in a World of Sovereign States: The Western Hemisphere Prospect. In Essays on Human Rights and Democratic Development. Québec: Centre for Human Rights and Democratic Development.

CERNA, C., M., 1996. The Changing Role of Public International Organizations: Challenges to UN-OAS Cooperation. Washington, DC. (mimeo).

CHEVIGNY, P., 1995. Edge of the Knife – Police Violence in the Americas. New York: The New Press.

CHOMSKY, N., 1993. Ano 501 – A Conquista Continua. São Paulo: Scritta Editorial.

CIDH and Corte IDH., 1997. Documentos Básicos em Matéria de Direitos Humanos no Sistema Interamericano (Atualizado em setembro de 1997). OEA/Ser.L.V/II.97, Washington, D.C.: Secretaria Geral.

CIDH, 1997. Seminário sobre el Sistema Interamericano de Promoción y Protección de los Derechos Humanos, Conclusiones de la Comisión Interamericana de Derechos Humanos y Minutas de las Exposiciones realizadas por los participantes, (95o Período Ordinario de Sesiones, 2 al 4 de diciembre de 1996, OEA/Ser/L/V/II.95).

CLAPHAM A, 1991. Human Rights and the European Community: A Critical Overview. Nomos.

CLAPHAM, A. and WEILER, J., (eds.), 1991. Human Rights and the European Community: Methods of Protection. Nomos.

CLARK, J., 1991. Democratizing Development - The Role of Voluntary Organizations. West Hartford Connecticut: Kumarian Press.

COLLIER, D. (ed.), 1970. The New Authoritarianism in Latin America. Princeton: Princeton University Press.

COLLIER, R. B., 1999, Path Toward Democracy. Cambridge.

COLLIER, R.B. and LEVITSKY, 1996, Democracy with adjectives: Conceptual Innovation in Comparative Research, Working Paper, The Kellogg Institute, Southbend: University of Notre Dame.

COMISIÓN INTERAMERICANA DE DERECHOS HUMANOS.
<http://www.cidh.org/Default.htm>

COMPARATO, F., K., 1992. A Afirmação dos Direitos Humanos na História. São Paulo: Ed. Saraiva.

CONDÉ, H., V., 1999. A Handbook of International Human Rights Terminology. University of Nebraska Press, p. 54.

CONFERENCE ON ACCESSION TO THE EUROPEAN UNION – POLAND, 2000. Brussels, 24 May 2000, CONF-PL 28/00.

CONSELHO PERMANENTE, 1996. Toward a New Vision of the Inter-American Human Rights System. (OEA/Ser.G). Washington, D.C.

CONSELHO PERMANENTE, 1997. Relatório da Comissão de Assuntos Jurídicos e Políticos sobre a Avaliação do Funcionamento e Aperfeiçoamento do Sistema Interamericano de Promoção e Proteção dos Direitos Humanos. (OEA/Ser.G.) Washington, D.C.: Secretaria Geral.

CORTE EUROPEA DE DERECHOS HUMANOS. <http://www.echr.coe.int/echr>

CORTE INTERAMERICANA DE DERECHOS HUMANOS.
<http://www.corteidh.or.cr/>

CORTE PENAL INTERNACIONAL. <http://www.icc-cpi.int/home.html&l=en>

COUNCIL OF EUROPE 2001, The European Code of Police Ethics, Strasbourg, Council of Europe Publishing.

COUNCIL OF EUROPE 1996. The Challenges of a Greater Europe – The Council of Europe and democratic security, Strasbourg, Council of Europe Publishing.

COUNCIL OF EUROPE 1989, Declaration of the Committee of Ministers on 5 May 1989.

COUNCIL OF EUROPE. 1975-1985. Collected Edition of the Travaux Préparatoires of the European Convention on Human Rights.

COUNCIL OF EUROPE, Police, (08/05/06).
(<http://www.legislationline.org/?jid=60&less=false&tid=155>)

COUNCIL OF EUROPE, 1979. Declaration of the Council of Europe on the Police.

COX, R. W., 1987. Production, Power and World Order: Social Force in the Making of History, New York: Columbia University Press.

CPT, Report to the Polish Government on the visit to Poland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. Strasbourg, 2 March (Visit from 4 to 15 October 2004).

CPT, Response of the Polish Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment on its visit to Poland from 8 to 19 May 2000. Strasbourg, 23 May 2002 (www.cpt.coe.int).

CRAMPTON, R. J., 1994. Eastern Europe in the Twenty Century – and After. London: Routledge.

CRAWFORD, G., 2001. Foreign Aid and Political Reform – A Comparative Analysis of Democracy Assistance and Political Conditionality, Hampshire: Palgrave.

CREMONA, M. (ed.), 2003. The Enlargement of the European Union. Oxford: Oxford University Press.

CUADERNOS DE ANÁLISIS JURÍDICO, 1991. El Sistema Interamericano de Protección de los Derechos Humanos: Una Crítica. In Cuadernos de Análisis Jurídico, 26 serie seminarios. Escuela de Derecho Universidad Diego Portales.

DAHL, R., 1971. Poliarquía - Participation and Opposition. New Haven: Yale University.

DAMMERT, L. y BAILEY, J., 2005. Seguridad y reforma policial en las Américas – Experiencias y desafíos. Santiago: FLACSO Sede Chile.

DAS, D. K. and MARENIN, O., 2000. Challenges of Policing Democracies – A World Perspective, Amsterdam: Gordon and Breach Publishers.

DAVIDSON, S., 1993. Human Rights- Law and Political Change. Open University Press.

DAWISHA, K. and PARROTT, B. (eds.), 1997. Politics, Power, and the Struggle for Democracy in South-East Europe. Cambridge: Cambridge University Press.

DAWISHA, K. and PARROTT, B. (eds.), 1997. The Consolidation of Democracy in East-Central Europe. Cambridge: Cambridge University Press.

DER DERIAN, J., 1998. Todas las Cosas Post - Teoría y tradición en las relaciones internacionales tardías. En C. NASI: Post-modernismo y Relaciones Internacionales. Bogotá, U. Javeriana.

DERECHO INTERNACIONAL HUMANITARIO - COMITÉ INTERNACIONAL DE LA CRUZ ROJA (CICR). <http://www.icrc.org/spa/dih>

DERECHOS HUMANOS. <http://www.un.org/spanish/hr/>

DESCH, M. 1993. When the Third World Matters: Latin American and United States Grand Strategy. Baltimore: Johns Hopkins University Press.

DEUTSCH, K., 1961. Social Mobilization and Political Development. In American Political Science Review, 55:3 (Sep. 1961), pp. 493-514.

DIAMOND, L. and PLATTNER, M. (eds.), 1993. The Global Resurgence of Democracy. Baltimore: The John Hopkins University Press.

DIAMOND, L. and PLATTNER, M. (eds.), 1994. Nationalism, Ethnic Conflict, and Democracy, Baltimore: The John Hopkins University Press.

DIAMOND, L.; HARTLYN, J.; LINZ, J.; and, LIPSET, S. (eds.), 1999. Democracy in Developing Countries – Latin America, London: Rienner.

DIAMOND, L.; PLATTNER, M.F.; CHU, Y.H.; and TIEN, H.M. (eds.), 1997. Consolidating the Third Wave Democracies – Themes and Perspectives. Baltimore: The John Hopkins University Press.

DIETRICH, R; HUBER STEPHENS, E.; and STEPHENS, J., 1992. Capitalist Development and Democracy: The Controversy. Chicago: Chicago University Press.

DIJK, P. and HOOFF, G.J.H., 1998. Theory and Practice of the European Convention on Human Rights. Kluwer.

DIJK, V. and HOOFF, V., 1999. Theory and Practice on the ECHR, 2 ed.

DOMINGO, P. and SIEDER, R. (eds.), 2001. Rule of Law in Latin America: The International Promotion of Judicial Reform. London: Institute of Latin American Studies: University of London.

DOMÍNGUEZ, J. (ed.), 2000. The Future of Inter-American Relations. New York: Routledge.

DOMÍNGUEZ, J. and SHIFTER, M. (eds.), 1996. Constructing Democratic Governance in Latin American. Baltimore: The John Hopkins University Press.

DONNELLY, J., 1998. International Human Rights. Boulder: Westview Press.

DONNELLY, J., 2000. Realism and International Relations. Cambridge: Cambridge University Press.

DOS SANTOS, T., 2003. The structure of Dependence. In M. A. SELIGSON and J. T. PASSÉ-SMITH (eds.): Development and Underdevelopment – The Practical Economy of Global Inequality. London: Lynne Rienner Publishers, pp. 277-288.

DOYLE, M. W., Liberalism and World Politics. AMERICAN POLITICAL SCIENCE REVIEW, 80/4: 1151-69.

DRZEMCZEWSKI, A., 1997. Shortcomings and Progress Made in the Implementation of Human Rights: the European Experience. Strasbourg (mimeo).

DRZEMCZEWSKI, A. and MEYER-LADEWIG, 1994. Principal Characteristics of the New ECHR Control Mechanism, as established by Protocol No. 11, 15 Hum. Rts. L. J., pp.81- 82.

DUNNE, T., and WHEELER, J. (eds.), 1999. Human Rights in Global Politics. Cambridge: Cambridge University Press.

DWORKIN, R., 1994. Taking Rights Seriously. 7th impression. London: Duckworth.

DWYER, A., S., 1990. The Inter-American Court of Human Rights: Towards Establishing an Effective Regional Contentious Jurisdiction. In Boston College International & Comparative Law Review, vol. XIII, n. 1., pp. 127-166.

EAST EUROPEAN CONSTITUTIONAL REVIEW, 2002. Constitutional Watch, New York University School of Law, Vol. 11 Num. ½, Winter/Spring 2002.

ECHEVERRÍA, J. y MENÉNDEZ-CARRIÓN, A., 1994. Violencia en la Región Andina – El Caso de Ecuador. Quito: FLACSO Sede Ecuador.

EDWARDS, M., and HULME, D., (eds.), 1996. Making Difference - NGOs and Development in a Changing World. London: Earthscan Publications.

EDWARDS, S., 2003. Illicit Drug Control Policies and Prisons: The Human Cost. WOLA, Nov. 2003.

EKIERT, G. and KUBIK, J., 2001. *Rebellious Civil Society – Popular Protest and Democratic Consolidation in Poland, 1989-1993*. The University of Michigan Press.

EL COMERCIO, 2005. Los cadetes se cultivan en arte y gastronomía para ser oficiales. *El Comercio*: Miércoles 27 de julio de 2005, Judicial A7.

ELKINS, D. and SIMEON, R., 1979. A Cause in Search of its Effect, or What Does Political Culture Explain? In *Comparative Politics*, Vol. 11, No 2, pp.127-145.

ELSTAIN, J. B., 1997. *Feminist Inquiry and International Relations*. In M. DOYLE AND G. J. IKEMBERRY: *New Thinking in International Relations Theory*, Boulder: Westview Press.

ENRIQUEZ BERMEJO, F. (compilador) 1998. *Febres Cordero y los Derechos Humanos (La interpelación al ministro de Gobierno Luis Robles Plaza) – Informe Especial*. Quito: Editorial El Conejo.

ERSSON, S. and LANE, J.E., 1992. *Democracy and Development: A Statistical Exploration*. In R. APPELBAUM AND J. HENDERSON, *States and Development in the Asian Pacific Rim*, London, Sage Publications, pp. 45-69.

ESCUELA DE ESPECIALIZACIÓN Y PERFECCIONAMIENTO DE OFICIALES., 1999. *Legislación Policial Actualizada – Edición Especial, XXIX Curso para Capitanes*, Policía Nacional del Ecuador, Quito.

EUROPEAN COMMISSION, *Handbook on Promoting Good Governance in EC Development and Co-operation* (Draft) (<http://europa.eu.int/geninfo/query/resultaction.jsp>).

EUROPEAN COMMISSION, 2000 *Regular Report on Poland's Progress towards Accession*, Brussels, 8 November 2000, COM (2002) 700 final.

EUROPEAN COMMISSION, 2001. *Communication from the Commission to the Council and the European parliament – The European Union's Role in Promoting Human Rights and Democratisation in Third Countries*, Brussels, 8 May 2001, COM (2001), 252 final.

EUROPEAN COMMISSION, 2002 *Regular Report on Poland's Progress towards Accession*, Brussels, 8 October 2002, COM (2002) 700 final.

EUROPEAN COMMISSION. *Cooperation in practice – EU funding opportunities in the area of justice, freedom and security*. http://ec.europa.eu/justice_home/funding/intro/funding_intro_en.htm (03/12/2006).

EUROPEAN COMMISSION. *Financial Assistance*. http://ec.europa.eu/enlargement/financial_assistance/index_en.htm (03/12/2006).

EUROPEAN COMMISSION. *Phare*. http://ec.europa.eu/enlargement/financial_assistance/phare/index_en.htm (03/12/2006)

EUROPEAN GROUP FOR THE STUDY OF DEVIANCE AND SOCIAL CONTROL 1999. Europe in Transition: Past Trends and Future Perspective. 25th Conference of the European Group for the Study of Deviance and Social Control, Kazimierz Dolny, September 11-14, 1997. Warsaw: The European Groups for the Study of Deviance and Social Control and the Polish Association of Legal Education.

EUROPEAN PARLIAMENT, 1998. The Phare Programme and the Enlargement of the European Union, Briefing No 33, The Coordinator, Luxembourg, 4 December 1998, PE 167.944.

EUROPEAN STUDIES NEWSLETTER, 2002. The Death Penalty: Getting Beyond "Exceptionalism". The Newsletter of the Council for European Studies Bridging a Wider Atlantic. <http://www.europanet.org>.

EUROPEAN UNION, 2006. http://europa.eu.int/comm/europeaid/projects/eidhr/eidhr_en.htm.

EUROPEAN UNION, 2005. Annual Report on Human Rights, Council of the European Union, General Secretariat.

EUROPEAN UNION, The Maastricht Treaty, <http://europa.eu.int/en/record/mt/top.html>.

EVANS, M.; RUESCHMEYER, D. and SKOCPOL, T. (eds.), 1985. Bringing the State Back In. Cambridge: Cambridge University Press.

EVANS, T., 1996. US Hegemony and the Project of Universal Human Rights. New York: St. Martin's Press.

EVANS, T., (ed.). 1998. Human Rights Fifty Years On – A reappraisal. Manchester: Manchester University Press.

FALCOFF, M., 1995. The Obstacle to Regional Governance in the Western Hemisphere. In Inter-American Dialogue - Occasional Papers in Western Hemisphere Governance. Washington, DC.

FARER, T. (ed.), 1996. Beyond Sovereignty – Collectively Defending Democracy in the Americas. Baltimore: The John Hopkins University Press.

FARER, T., 1993. Collectively Defending Democracy in a World of Sovereign States: The Western Hemisphere Prospect. In Essays on Human Rights and Democratic Development. Quebec: Centre for Human Rights and Democratic Development.

FARER, T., 1998. The Future of the Inter-American Commission on Human Rights: Promotion vs. Exposure. Washington, D.C.: The Inter-American Dialogue.

FARER, T., and GAER, F., 1977-78. The UN and Human Rights: At the End of the Beginning. In A. ROBERTS AND B. KINGSBURY Ed. United Nation, Divided World - The UN's Roles in International Relations, pp. 240-296.

FAUNDEZ, J., 1997. Good Government and Law – Legal and Institutional Reform in Developing Countries. London: MacMillan Press.

FAWCETT, J., 1987. The Application of the European Convention on Human Rights (2nd ed.).

FEARON, J. and LAITIN, D., 1996. Explaining Inter-Ethnic Cooperation. In American Political Science Review, Vol. 90, No 4, December 1996, pp. 715-735.

FITCH, S. 1998, The Armed Forces and Democracy in Latina America. Baltimore: The Johns Hopkins University Press.

FLACSO Sede Ecuador y Fundación ESQUEL, 2005. Políticas Públicas de Seguridad Ciudadana – Proyecto de Ley de Seguridad y Convivencia Ciudadana. Quito: FLACSO Sede Ecuador y Fundación Esquel.

FOOT, R., 2003. Credibility at Stake: Domestic Supremacy in U.S. Human Rights Policy. In D. MALONE and Y. KHONG (eds.), Unilateralism and U.S. Foreign Policy – International Perspectives. Boulder: Lynne Rienner Publishers, pp. 95-115.

FOOT, R., MACFARLANE, N. and MASTANDURO, M. (eds.), 2003. US Hegemony and International Organizations, Oxford: Oxford University Press.

FOREIGN POLICY, 1998. International Institutions: Can Interdependence Work? Foreign Policy, Spring.

FORSYTHE, D., 2001. Human Rights in International Relations. Cambridge: Cambridge Univ. Press.

FOUCAULT, M., 1985. Microfísica do Poder. Rio de Janeiro: Graal.

POWERAKER, J. and LANDMAN, T., 2000. Citizenship Rights and Social Movements, a Comparative and Statistical Analysis. Oxford: Oxford University Press.

FROWEIN J., 1992. The European Convention on Human Rights as the Public Order of Europe, ½ Collected Courses of the Academy of European Law, p. 217.

FUENTES, C. (ed.), 2004. Bajo la Mirada del Halcón – Estados Unidos – América Latina Post 11/09/2001. Santiago: FLACSO Sede Chile.

FUKUYAMA, F., 1992. The End of History and the Last Man. New York: The Free Press.

FUNDACIÓN DEMOCRACIA, SEGURIDAD Y DEFENSA, Mayo 2005. Gestión de las Políticas de Defensa y de Seguridad Ciudadana en el Estado de Derecho, Serie: Doctrinas y proceso de Gestión en Seguridad Democrática, No1, año 1.

FUNDACIÓN FRIEDRICH EBERT STIFTUNG – ILDIS, 2006. Seguridad y Democracia, La Paz: FES-ILDIS.

FUNDACIÓN REGIONAL DE ASESORÍA EN DERECHOS HUMANOS, 2004. Balance y perspectivas para construir un derecho a la comunicación. En Los Derechos de la Comunicación: Reflexión Debate y Practica. Serie Investigación N° 9. Quito, INREDH, pp. 291-324.

FUNDATION STEFAN BATORY, 2004. Poland's Foreign Policy: Continuation or a Break with the Past? – On the Future of Europe, Warsaw.

GAETE, R., 1993. Human Rights and the Limits of Critical Reason, Applied Legal Philosophy. Darmouth.

GAO, Report to the Congress about Stopping US Assistance to Foreign Police and Prisons – Department of Defense and State Agency for International Development, Washington, 19 February 1976 (ID-76-5).

GAO, Report to Congressional Requesters, Foreign Aid – Police Training and Assistance, Washington, 5 March 1992 (GAO/NSIAD-92-118).

GAO, Report to Congressional Requesters, Foreign Assistance – Meeting the Training Needs of Police in New Democracies, Washington, 21 January 1993 (GAO/NSIAD-93-109).

GAO, Briefing Report to the Chairman, Caucus on International Narcotics Control, US Senate. Drug Control – International Counterdrug Sites Being Developed, Washington, 28 December 2000 (GAO-01-63BR).

GARCÍA, A., 2000. Plan Nacional de derechos Humanos del Ecuador. Quito: Ministerio de Relaciones Exteriores.

GARCÍA, P., 2004. Teoría Breve de las Relaciones Internacionales. Madrid: Tecnos.

GARRO, A., M., 1994. Latin American Legal Systems, vol.II. Columbia University School of Law.

GEORGE, J. and CAMPBELL, D., 1999. Patterns of Dissent and the Celebration of Difference: Critical Social Theory and International Relations. In INTERNATIONAL STUDIES QUARTERLY, No. 34, Blackwell.

GILL, S., 1997. Transformation and innovation in the study of World Order. In S. GILL and J. MITTLEMAN: Innovation and Transformation in International Studies, Cambridge: Cambridge University Press.

GILPIN, R., 1990. *La Economía Política de las Relaciones Internacionales*. Buenos Aires: GEL.

GILPIN, R., 2001. *Global Political Economy. Understanding the International Economic Order*, Princeton: Princeton University Press.

GLASIUS, M., 2002. Expertise in the Cause of Justice: Global Civil Society Influence on the Statute for International Criminal Court. In M. GLASIUS et. al. (eds.): *Global Civil Society*. Oxford: Oxford University Press, pp.137-168.

GLOBAL GOVERNANCE, 1995. The United Nations and Human Rights at Fifty: An Incremental but Incomplete Revolution. *Global Governance*, pp. 297-318.

GLOBAL POLICY FORUM, 2005. US Military and Clandestine Operations in Foreign Countries, 1798-Present, December 2005, www.globalpolicy.org/component/control/article/155126024.html.

GOLDSTONE, J., 1986. *Theoretical, Comparative and Historical Studies*, New York: Harcourt.

GOMIEN D., 1995. *Judgments of the European Court of Human Rights: Reference Charts*. Council of Europe.

GRAJEWSKI, A., 2004. *Poland: Continuity and Change*, HELDREF PUBLICATIONS, Summer.

GROSS E. H., 1987. *La Historia de los Derechos Humanos en América Latina, V Curso Interdisciplinario en Derechos Humanos*. San José: Instituto Interamericano de Derechos Humanos – IIDH.

GROSSMAN, C., 1989. Proposals to Strengthen the Inter-American System of Protection of Human Rights. In *German Yearbook of International Law*, vol. 32. Berlin: DUNKER & HUMBLLOT, pp. 264-279.

GRZEGORZ, E. and KUBIK, J., 1999. *Rebellious Civil Society: Popular Protest and Democratic Consolidation in Poland, 1989-1993*. Ann Arbor: University of Michigan Press.

HABERMAS, J., 1993. *Justification and Application: Remarks on Discourse Ethics*. Cambridge: Polity Press.

HABERMAS, J. *Acerca da legitimação com base nos Direitos Humanos*. In *A Constelação Pós-Nacional – Ensaios políticos*. São Paulo: Littera Mundi.

HALLIDAY, F., 1994. *Rethinking International Relations*. London: Macmillan.

HANASHIRO, O., 2001. *O Sistema Interamericano de Proteção aos Direitos Humanos*, Biblioteca Edusp de Direito, São Paulo: Edusp.

HARRIS, D. J., 1992. *Introductory Note*, 31 *Int. Leg. Mat.*, pp.155-156.

HARRIS, D. J. and O'BOYLE, M., 1995. Law of the European Convention on Human Rights. London: Butterworths.

HART, H. and LIONEL, A., 1961. The Concept of Law. Oxford: Clarendon Press.

HARTLEY, T., 1994. The Foundations of European Community Law, p. 148 (3rd. ed.).

HARTLYN, J. SCHOULTZ, L. and VARAS, A., 1992. The United States and the Latin America in the 1990s. Chapel Hill: University of North Carolina Press.

HARVARD COMMITTEE ON HUMAN RIGHTS STUDIES., 1995. Human Rights at Harvard - Interdisciplinary Faculty Perspectives on the Human Rights Movement, a Symposium held at Harvard University. Cambridge: Harvard Law School.

HAYDEN, P., 2002. John Rawls - Towards a just world order. Cardiff: University of Wales Press.

HELD, D. Y MCGREW, A., 2003. Globalización/Antiglobalización – Sobre la Reconstrucción del Orden Mundial. Barcelona, Píds, Estado y Sociedad 109, pp. 137-156.

HELD, D., 1995. Democracy and the Global Order. Polity Press.

HELD, D., 2005. Globalization, International Law and Human Rights. Lecture presented on 20 Sept. 2005 at Human Rights Center, University of Connecticut.

HELPER, L., 1993. Consensus, Coherence and the European Convention on Human Rights. Cornell Int. L. J. P 133- 134.

HINTON, M. and NEWBURN, T. (eds.), 2009. Policing Developing Democracies, London: Routledge.

HINTON, M., 2006. Police and Politics in Argentina and Brazil. Boulder: Lynne Rienner Publishers.

HOBSBAWN, E., 2000. In J. Lechner & J. Boli, The Globalization Reader, London: Blackwell Publishers, pp. 49-108.

HOBSON, J., 2000. The State and International Relations. Cambridge: Cambridge University Press.

HOFFMAN, M., 1989. Critical Theory and the Inter-Paradigm Debate. In H. DYER Y L. MANGASARIAN: The Study of International Relations. New York: St. Martin Press.

HOFFMAN, S., 1981. Duties Beyond Borders- On the Limits and Possibilities of Ethical International Politics, Syracuse: Syracuse University Press.

HOFFMANN, S., 1991. Una Ciencia Social Norteamericana: Relaciones Internacionales. En JANO Y MINERVA: Ensayos sobre la Guerra y la Paz, Buenos Aires: GEL, pp.17-36.

HOLLIFIELD, J.F., 2000. The Politics of International Migration – How Can We ‘Bring the State Back In? In C. B. BRETTELL AND J. F. HOLLIFIELD: Migration Theory – Talking Across Disciplines. London: Routledge, pp. 137-185.

HOLMES, L., 1997. Post-Communism – An introduction. Cambridge: Polity Press.

HOOD, C., 2000. The Art of the State: Culture, Rethoric, and Public Management. Oxford: Claredon Press.

HOROWITZ, D., 1990. Comparing Democratic System. JOURNAL OF DEMOCRACY, 1(4): 73-79.

HUBER, D., The Council of Europe (1989-1999) – A decade that made history. <http://wcd.coe.int/ViewDoc.jsp?id=123021&BackColorInternet=9999CC&BackColorInternet> (19/12/06).

HUGGINS, M., 1998. The United States and Latina America, Durham: Duke University Press.

HUMAN RIGHTS QUARTERLY, 1997. The Rise of the Inter-American Human Rights Regime: No Longer a Unicorn, Not Yet an OX. In Human Rights Quarterly, vol.19, n.3. The Johns Hopkins University Press.

HUMAN RIGHTS WATCH, 1985. With Friends Like These: The American Watch Report. Human Rights and US Policy in Latin America. New York: Pantheon Books.

HUNGARIAN HELSINKI COMMITTEE, 2000. Police in Transition [CD-ROM], Budapest.

HUNT, P., 1997. Reclaiming Social Rights: International and Comparative Perspective. Aldershot: Dartmouth.

HUNTINGTON, S., 1993. The Third Wave – Democratisation in the Late Twentieth Century. University of Oklahoma Press.

HUNTINGTON, S., 1965. Political Development and Political Decay”, in World Politics, vol. 17, April, pp.386-430.

HUNTINGTON, S., 1968. Political Modernization: America X Europe, in Political Order in Changing Societies, New Haven: Yale University Press.

HUNTINGTON, S., 1968. Political Order in Changing Societies. New Haven: Yale University Press.

HUNTINGTON, S., 1972. Modernización Política: América X Europe, in El orden político en las sociedades en cambio, Buenos Aires: Ediciones Paidós.

HURRELL, A. and KINGSBURY, B., 1992. The International Politics of the Environment. Oxford: Oxford University Press.

HYDE-PRICE, A., 1996. The internacional politics of East Central Europe, Manchester: Manchester University Press.

IBARRA, H., 2003. El rumbo de una democracia militar. En ECUADOR DEBATE, Quito: CAAP, diciembre del 2003, pp. 39-50.

IACHR, Report on the Situation of Human Rights in Argentina, OEA/Ser. L/V/II.49, Dec.19 corr.1, 11 April 1980.

IACHR, Report on the Situation of Human Rights in Ecuador, OEA/Ser. L/V/II.96, Doc.10 Rev. 1, 24 de Abril de 1997.

IACHR, Report on Citizen Security and Human Rights, OEA/Ser. L/V/II, Doc.57, 31 December 2009.

IDB, 2004. <http://www.idb.org>.

INREDH (1997). "El Ocaso de la Dignidad: La Tortura en el Ecuador – 7.- Estudio del Caso Putumayo: La Tortura en casos de presos de consciencia." (<http://www.derechos.org/inredh/doc/ocaso/7.html#97>).

INSTITUTO DE RELACIONES EUROPEO-LATINOAMERICANAS, 1998. La Nueva Realidad Andina y la Unión Europea: las Relaciones birregionales hacia en año 2000. Londres, 26-27 de mayo de 1998. Documento preparado para el Foro Euro-Andino 98 (DB-LON/98).

INTER-AMERICAN DIALOGUE, 1994. The Organization of American States: Advancing Democracy, Human Rights, and the Rule of Law - A Report of the Inter-American Dialogue Commission on the OAS. Washington, DC, sep. 1994.

INTERNATIONAL HELSINKI FEDERATION FOR HUMAN RIGHTS.[HTTP:IHF-HR.ORG/CMS/CMS.PHP?SEC-ID=1](http://ihf-hr.org/cms/cms.php?sec-id=1) (17/09/06).

INTERNATIONAL INSTITUTE OF HUMAN RIGHTS. 1995. Collection of Lectures - Texts and Summaries. Strasbourg: Twenty-Sixth Study Session.

INTERNATIONAL INSTITUTE OF HUMAN RIGHTS, 1995. The Inter-American System of Human Rights Proteccion: Evolution, Current State and Perspectives. In Collection of Lectures - Texts and Summaries, International Institute of Human Rights, Twenty-Sixth Study Session. Strasbourg.

ITHACCA. Universal Human Rights Theory and Practice. 1989. Ithacca: Cornell University Press.

JACKSON, D., W., 1997. The United Kingdom Confronts the European Convention on Human Rights. Gainesville: University Press of Florida.

JACKSON, R., H. and JAMES, A., (eds.), 1993. *States in a Changing World: A Contemporary Analysis*. New York: Oxford University Press.

JACOBS, F. and WHITE, R., 2002. *The European Convention on Human Rights*. Oxford: Oxford University Press.

JACOBSON, H., K. 1982. The Global System and the Realization of Human Dignity and Justice. *International Studies Quarterly*, 26. pp. 315-332.

JANKOWSKI, M. and SIEMASZKO, Andrzej, 1999. *Administration of Justice in Poland*, Warsaw: Institute of Justice, Oficyna Naukowa.

JARRÍN, O. (comp.), 2004. *Memoria de proyecto Política Pública de Seguridad Ciudadana – Primera fase*, Quito: FLACSO Sede Ecuador y Fundación Esquel.

JARRÍN, O., CARRIÓN, F. y PALOMEQUE, E., 2003. *Informe: Ecuador, Seguridad Ciudadana y Violencia*. Quito: FLACSO Sede Ecuador.

JARRIS, M., KAY, R. and BRADLEY A., 1995. *European Human Rights Law*. Oxford: Oxford University Press.

JEPPERSON, R., and et. al., 1996. Norms, Identity, and Culture in National Security. In P. KATSENSTEIN (ed.): *The Culture of National Security*, New York, Columbia University Press, pp. 33-75.

JOCHEN F., 1992. Fact-Finding by the European Commission of Human Rights. In R. LILLICH (ed.). *Fact-Finding Before International Tribunals*, p. 237.

JON, E., 1996. Introduction. In E. JON (ed.): *The Roundtable Talks and the Breakdown of Communism*. Chicago: The University of Chicago Press.

JON, E., OFFE, C. and PREUSS, U.K., 1998. *Institutional Design in Post-Communist Societies. Rebuilding the Ship at Sea*. Cambridge: Cambridge University Press.

JONES, D.M., 1995. Democracy and Identity: The Paradoxical Character of Political Development. In D. BELL, D. BROWN, K. JAYASURIYA and D.M. JONES (ed). *Towards Illiberal Democracy in Pacific Asia*. London: MacMillan Press, pp. 41-77.

JOURNAL OF LAWS, 1990. Law of 6 April 1990 on the Police, *Journal of Laws* No 30 item 179 with amendments, in CD-ROM *Police in Transition*.

KÁDÁR, A. (ed.), 2001. *Police in Transition: Essays on the Police Forces in Transition Countries*. Budapest: Hungarian Helsinki Committee and Central University Press.

KAHLER, M., 1997. Inventing International Relations Theory After 1945. In M. DOYLE and G. J. IKENBERRY: *New Thinking in International Relations Theory*, Boulder: Westview Press, pp. 20-53.

KELMAN, H., C.1997. The Conditions, Criteria, and Dialectics of Human Dignity: A Transnational Perspective. *International Studies Quarterly*, 21, pp. 529-552.

KEOHANE, R. and NYE, J., 1988. *Poder e Interdependencia*. Buenos Aires: GEL.

KEOHANE, R. (ed.), 1986. *Neorealism and its Critics*. New York: Columbia University Press.

KEOHANE, R., 1988. *Después de la Hegemonía*. Buenos Aires: GEL.

KING, G., KEOHANE, R., O. and VERBA, S., 1994. *Designing Social Inquiry – Scientific Inference in Qualitative Research*. Princeton: Princeton University Press.

KINGMAN, E., 2006. *La Ciudad y los Otros – Quito 1860-1940 – Higienismo, ornato y policía*. Quito: FLACSO Sede Ecuador.

KINLEY D., 1993. *The European Convention on Human Rights: Compliance without Incorporation*.

KRASNER, S., 1984. Approaches to the State: Alternative Conceptions and Historical Dynamics. *Comparative Politics*, 16 (January 1984), pp.223-246.

KRASNER, S., 2001. *Soberanía, hipocresía organizada*. Princeton: Princeton University Press.

KRIESI, H.; KOOPMANS, R.; DYVENDAK, J.W.; and GIUGNI, M., 1995. *New Social Movements in Western Europe – A Comparative Analysis*, Minneapolis: Univeristy of Minnesota Press.

KRYGIER, M. and CZARNOTA, A., 1999. *The Rule of Law After Communism: Problems and Prospects in East-Central Europe*. Darmouth Publishing Company.

KYMLICKA, W., 1996. *Ciudadanía multicultural*, Barcelona: Paidós.

KYUNG WON K., 2000. Trade, Monetary Policy, and Democracy. In M. PLATTNER and A. SMOLAR (eds.): *Globalization, Power, and Democracy*. Baltimore, The Johns Hopkins University Press, pp.117-132.

LA POLÍTICA, REVISTA DE ESTUDIOS SOBRE EL ESTADO Y LA SOCIEDAD. *La democratización y sus límites – Después de la Tercera Ola*.

LAFER, C., 1988. *A Reconstrução dos Direitos Humanos - Um Diálogo com o Pensamento de Hannah Arendt*. São Paulo: Cia. das Letras.

LAWYERS COMMITTEE FOR HUMAN RIGHTS, 1995. *The World Bank: Governance and Human Rights, Second Edition – Revised and Updated*. New York.

LEFTWICH, A. (ed.), 1996, *Democracy and Development – Theory and Practice*, Cambridge: Polity Press.

LEFTWICH, A., 1993. Governance, Democracy and Development in the Third World, *Third World Quarterly*. Vo. 14,3, pp. 605-624.

LETOWSKA, E., 1991. The Commissioner for Civil Rights Protection – Poland. Materials, Institute of Law Sciences (PAN), Warsaw.

LETOWSKA, E., 1996. The Commissioner for Citizens' Rights in Central and Eastern Europe: The Polish Experience. *Saint Louis-Warsaw Transatlantic Law Journal*, Volume 1996 – Constitutional Developments in Poland.

LEVITT, B., 2006. "A Desultory Defence of Democracy: OAS Resolution 1080 and the Inter-American Democratic Charter", *Latin American Politics and Society*, Fall 2006.

LEWANDOWSKI, E., R., 1984. *Proteção dos Direitos Humanos na Ordem Interna e Internacional*. Rio de Janeiro: Ed. Forense.

LIJPHART, A., 1996. The Puzzle of Indian Democracy: a Consociational Interpretation. *American Political Science Review* 90, no2 (June 1996), pp. 258-268.

LIJPHART, A., 2000. *Modelos de Democracia – forma de gobierno y resultados en treinta y seis países*, Barcelona: Ariel.

LINDHOLT, L. et al. (eds.), 2003. *Human Rights and the Police in Transitional Countries*, The Hague: The Danish Institute for Human Rights, Kluwer Law International.

LINZ, J. and STEPAN A., 1996. *Problems of Democratic Transition and Consolidation: Southern Europe, South America and Post-Communist Europe*. Baltimore: Johns Hopkins University Press.

LINZ, J., 1992. La crisis de las democraciAs. In M. CABRERA, J. SANTOS, and P. M. ACEÑA, eds., *Europa en crisis, 1919-1939*, Madrid, Editorial Pablo Iglesias, pp.231-180.

LIPPERT, B., UMBACH, G. and WESSELS, W., 2001. "Europeanization of CEE executives: EU membership negotiations as a shaping power. In *Journal of European Public Policy* 8:6 December: 980-1012.

LIPSET, S., 1959. Some Social Requisites of Democracy: Economic development and political legitimacy. In *The American Political Science Review*, Vol. 53, Issue 1 (Mar.1959), pp. 69-105.

LIPSET, S.M., 1994. The Social Requisites of Democracy Revisited: 1993 Presidential Address, *American Sociological Review*, Vol. 59, Issue 1 (Feb., 1994), pp.1-22.

LOS, M. and ZYBERTOWICZ, A., 2000. *Privatizing the Police-State – The Case of Poland*. New York: St. Martin's Press.

LOWENTHAL, A.F., 1991 (ed.), *Exporting Democracy: The United States and Latin America*. 2 Vols. Baltimore: John Hopkins University Press.

LUNDENBERG, E., 1994. The Protection of Social Rights in the European Community. In K. DRZEWICKI, KRAUSE AND ROSAS (eds.). *Social Rights as Human Rights: A European Challenge*.

LYNN, J. AND MILLER, S. (eds.), 1995. *Global Dangers – Changing Dimension of International Security*, Cambridge, MIT Press.

LYNN-JONES, SEAN M., and MILLER, S.E. (ed.), 1994. *The Cold War and After - Prospects for Peace*. Cambridge: Massachusetts, the MIT Press.

MACDONALD, M., and PETZOLD (eds.), 1993. *The European System for the Protection of Human Rights*.

MAHONEY, J. and RUESCHEMEYER, D., 2003. (eds.): *Comparative Historical Analysis in the Social Sciences*. Cambridge: Cambridge University Press.

MAHONEY, P. 1988. Does Article 57 of the European Convention on Human Rights serve any useful purpose? In F. MATSCHER & H. PETZOLD, (ed.). *Protecting Human Rights: The European Dimension*. Studies in Honour of Gérard J. Wiard. Koln. P 373-93.

MAHONEY, P., 1990. Judicial Activism and Judicial Self-Restraint in the European Court of Human Rights: Two Sides of the Same Coin. 11 *Hum. Rts. L. J.*, pp. 57-80.

MAINWARING, S; O'DONNELL, G AND VALENZUELA, J.S. (eds.), 1992. *Issues in Democratic Consolidation: The New South American Democracies in Comparative Perspective*. Notre Dame: University of Notre Dame Press.

MALDONADO, J., 1988. *Taura – Lo que no se ha dicho*. Quito: El Conejo.

MALLOY, J. and SELIGSON, M., 1987. *Authoritarians and Democrats: Regime Transition in Latin America*. Pittsburg: University of Pittsburgh Press.

MARCH, J. and OLSON, J., 1984. The New Institutionalism: Organizational Factors in Political Life. In: *American Political Science Review*, vol. 78(1984), pp. 734-749.

MARKS, G., DIAMOND, L. 1992. Reexamining Democracy. In *Essays in Honor of S. M. Lipset*. London: Sage Publications.

MARSHALL, T.H., 1992. *Citizenship and Social Class*. London: Pluto Press.

MARSTON, 1993. The United Kingdom's Part in the Preparation of the European Convention on Human Rights. 42 *ICLQ* 796

MARTIN, I., 1993. *The New World Order: Opportunity or Threat for Human Rights?* Cambridge: Harvard Law School Human Rights Program.

MASTNY, VOJTECH, HELSINKY, 1986. Human Rights and European Security. Durham: Duke University Press, Durham.

MATSCHER F. and PETZOLD (eds.), 1990. Protecting Human Rights: The European Dimension (2nd ed).

MCADAMS, A.J., 1997. Transitional Justice and the Rule of Law in New Democracies. Notre Dame Press.

McBRIDE, J. and BROWN, 1981. The United Kingdom, the European Community and the European Convention on Human Rights, 1 Yearbook of European Law.

McCORMICK, J., 1999. Understanding the European Union – A Concise Introduction. London: Macmillan.

MCGREW, A., 1997. The Transition of Democracy? Globalization and Territorial Democracy. Cambridge: Polity Press.

MCGREW, A., Transnational Democracy: Theories and Prospects. <http://www.polity.co.uk/global/pdf/Global%20Democracy.pdf>

MEARSHEIMER, J., 1992. Disorder Restored. In A. GRAHAM and G. TREVERTON, (eds.). Rethinking America's Security: Beyond Cold War to New World Order. New York: Norton, pp. 213-237.

MEARSHEIMER, J., 1994. The False Promise of International Institutions. In International Security, Vol. 19 No.3, 1994, pp. 5-49.

MEARSHEIMER, J., 1995. A Realist Replay, in International Security, 20/1: 82-93.

MÉNDEZ, J., E. and COX, F., (eds.), 1998. El Futuro del Sistema Interamericano de Protección de los Derechos Humanos. San José: Instituto Interamericano de Derechos Humanos.

MÉNDEZ, J., O'DONNELL, G. and PINHEIRO, P. (eds.), 1999. The (Un)Rule of Law and the Underprivileged in Latin America. Notre Dame: University of Notre Dame Press.

MERRILS J. G., 1993. The Development of International Law by the European Court of Human Rights (2nd ed).

MICHTA, A. (Ed.), 1999. America's New Allies – Poland, Hungary and the Czech Republic in NATO. Seattle: University of Washington Press.

MILLER, L., 1994. World Order: Power and Values in International Politics, Boulder: Westview.

MONTUFAR, C., 2002. Hacia una teoría de la asistencia internacional para el desarrollo – Un análisis desde su retórica. Centro Andino de Estudios Internacionales, Universidad Andina Simón Bolívar, Corporación Editora Nacional.

MOON, B.E., 1987. The Foreign Policy of the Dependent State. En *International Studies Quarterly*, No.27.

MORAVCSIK, A., 2001. Why is U.S. Human Rights Policy so Unilateral? In Shepard Forman and Patrick Stewart (eds.), *The Cost of Acting Alone: Multilateralism and U.S. Foreign Policy*, Boulder: Lynne Reiner Publishers.

MORAVCSIK, A., 2001. The New Abolitionism: Why does the U.S. practice the death penalty while Europe does not? *European Studies Newsletter*. The Newsletter of the Council for European Studies Bridging a Wider Atlantic. <http://www.europamet.org>.

MORAVCSIK, A., 2000. The origins of International Human Rights Regimes: Democratic Delegation in Postwar Europe, *International Organization*, Spring 2000.

MOWER, A. G., 1991. *Regional Human Rights: a Comparative Study of the West-European and Inter-American Systems (Studies in Human Rights)*. London: Greenwood Press.

NATIONAL PLAN FOR DRUG PREVENTION AND CONTROL 2004-2008, Republic of Ecuador, March 2004.

NAVIA, N., (ed.), 1994. *La Corte y el Sistema Interamericano de Derechos Humanos*. San José: Corte IDH.

NEF, J. and NUÑEZ, X., 1994. *Las relaciones interamericanas frente al siglo XXI*, Quito: FLACSO Sede Ecuador.

NEME, C., 1999. *A instituição policial na ordem democrática: o caso da Polícia Militar do Estado de São Paulo*, dissertação de mestrado, Faculdade de Filosofia, Letras e Ciências Sociais, Universidade de São Paulo.

NEUMANN, S., 1998. Subaltern Realism: International Relations Theory Meets the Third World. In S. NEUMANN, ed. *International Relations Theory and the Third World*. New York: St. Martin's Press.

NEW BRUNSWICK, *The Grand Strategy of the United States in Latin America*. 1988. New Brunswick, New Jersey: Transaction Books.

NEWBURN, T. (ed.), 2003. *Handbook of Policing*. Cullompton: Willan Publishing. 2005 *Policing Key Readings*. Cullompton: Willan Publishing

NEWSOM, D., (ed.), 1986. *The Diplomacy of Human Rights*. New York: University Press of America.

NODIA, G., 1994. Nationalism and Democracy. In L. DIAMOND and M. PLATTNER (eds.): *Nationalism, Ethnic Conflict, and Democracy*. Baltimore: The John Hopkins University Press, pp. 3-22

NOLAN, C., 1993. *Principled Diplomacy: Security and Rights in US Foreign Policy*. Westport: Greenwood.

NUÑEZ, J., 2006. *Cacería de brujos: drogas 'ilegales' y sistema de cárceles en el Ecuador*. Quito: FLACSO Sede Ecuador.

NYE, J., "Neorealism and Neoliberalism", in *World Politics*, 40/2: 235-51.

OAS, 2007. Program – Budget of the Organization 2008, AG/RES.2353 (XXXVII-O/07).

OAS, 1994. *Advancing Democracy and Human Rights in the Americas: What Role for the OAS? Conference Report*, Washington, D.C.

OAS, 1980. OAS/Ser.L/V/II.49, Dec. 19 corr.1, 11 April 1980.

O' DONNELL, G. and SCHMITTER, P. C., 1986. *Tentative Conclusions about Democracies*. Baltimore: John Hopkins University Press.

O' DONNELL, G., 1973. *Modernization and Bureaucratic Authoritarianism: Studies in South American Politics*. Berkeley: Institute of International Studies, Politics of Modernization Series.

O' DONNELL, G., 1994. Delegative Democracy. In *JOURNAL OF DEMOCRACY*, 5(1), pp. 55-69.

O' DONNELL, G., 1996. Illusions about Consolidation. *JOURNAL OF DEMOCRACY* 7(2), 1996, pp. 34-51.

O'DONNELL, G., 1989. *Transitions to Democracy: Some Navigation Instruments*. In R. A. PASTOR, ed. *Democracy in the Americas: Stopping the Pendulum*. New York: Holmes and Meier.

O'DONNELL, G., VARGAS CULLELL, J. and IAZZETTA, O. (eds.), 2004. *The Quality of Democracy – Theory and Applications*. Notre Dame: Notre Dame Press.

O'DONNELL, G.; SCHMITTER, P.; and WHITEHEAD, L. (eds.), 1986. *Transitions from Authoritarian Rule: Comparative Perspectives*. Baltimore: Johns Hopkins University Press.

OFFE, C., 1997. *Varieties of Transition: The East European and East German Experience*. Cambridge, MA: MIT Press.

OFFE, C., ELSTER, J., and PREUSS, 1997. *Institutional Design in Post-Communist Societies: Rebuilding the Ship at Sea*. Cambridge: Cambridge University Press.

OLIVIERO, M.B. and SIMMONS, A., 2002. Who's Minding the Store? Global Civil Society and Corporate Responsibility. In M. GLASIUS et. al. (eds.), *Global Civil Society*. Oxford, Oxford University Press, pp.77-107.

OLSON, M., 1993. Dictatorship, Democracy, and Development. In *American Political Science Review*, Vol. 87, No 3, Sep. 1993, pp. 567-576.

ONUF, N. G., 2001. The Strange Career of Constructivism in International Relations, Centre of International Studies, University of Southern California, Seminar: (Re)Constructing Constructivist IR Research.

ONUF, N.G., 1989. *World of Our Making*, Columbia: University of South Carolina Press.

ORGANIZAÇÃO DOS ESTADOS AMERICANOS. ASAMBLEA GENERAL, 1997. Informe del Consejo Permanente sobre la Evaluación del Funcionamiento y el Perfeccionamiento del Sistema Interamericano de Protección y Promoción de los Derechos Humanos (AG/RES. 1404 - XXVI-O/96). OEA/Ser.P. Washington, D.C.

OSCE. The Organization of Security and Co-operation in Europe (OSCE) - Office for Democratic Institutions and Human Rights (ODIHR), <http://www.osce.org/odihr/>

PACHANO, S. (com.), 2003. *Ciudadanía e identidad*, Quito: FLACSO Sede Ecuador.

PALOMARES, G., 2004. *Relaciones Internacionales en el Siglo XXI*, Madrid: Tecnos.

PANIZZA, F. and BARAHONA de BRITO, A., 1998. "The Politics of Human Rights in Democratic Brazil: 'A lei não pega'" *Democratization* 5, no. 4 (1998): 20-51.

PAZMIÑO, P., 2003. *La Disciplina y la Moralidad Policial*. Monografía, XXVIII Curso de Estado Mayor, Escuela de Estado Mayor, Quito.

PEASE, K., and FORSYTHE, D., 1993. Human Rights, Humanitarian Intervention, and World Politics. *Human Rights Quarterly*, 15, pp. 290-314.

PENTASSUGLIA, G., 2002. *Minorities in International Law: An Introductory Study*. Strasbourg: Council of Europe.

PERRY, M., 1998. *The Idea of Human Rights: Four Inquires*. New York: Oxford University Press.

PETER L., 1988. The Protection of Human Rights by Political Bodies: The Example of the Committee of Ministers of the Council of Europe. In M. NOWAK, STEURER and TRETTER (eds.). *Progress in the Spirit of Human Rights: Festschrift fur Felix Ermacora*, pp. 95-96.

PETERSON, S., 1997. Whose Crisis? Early and post-modern masculinism. In S. GILL and J. MITTLEMAN: *Innovation and Transformation in International Studies*, Cambridge: Cambridge University Press.

PHILIP, A., 1992. The Emerging European-Wide Human Rights Regime: Too Much of a Good Thing? In V. BORNSCHIER and P. LENGYEL (eds.). *Waves, Formations and Values in the World System*.

PIOVESAN, F., 1998. *Temas de Direitos Humanos*. São Paulo: Ed. Max Limonad.

PLATTNER, M. and SMOLA, A., 2000. *Globalization, Power and Democracy*. John Hopkins University Press.

POLICÍA NACIONAL DEL ECUADOR, 2005. *Informe Anual acerca de la Ley Orgánica de Transparencia y Acceso a la Información*, Quito: Policía Nacional del Ecuador.

POLISH POLICE 2004. *Wydawnictwo Wyzszej Szkoły Policji, Szczytno*. CD-Rom.

POLLIS, A. and SCHWAB, P. (ed.), 2000. *Human Rights: new perspectives, new realities*. Boulder: Lynne Rienner.

POTTER, D., 1997. Democratization at the same time in South Korea and Taiwan. In D. POTTER; D. GOLDBLATT, M. KILOH and P. LEWIS (eds.): *Democratization*. London: Polity, pp. 219-239.

POTTER, D., GOLDBLATT, D.; KILOH, M., and LEWIS, P. (eds.), 1997. *Democratization*, London: Polity.

PRAZMOWSKA, A., 2004. *A History of Poland*. London: Palgrave.

PRIBAN, J. and YOUNG, J., 1999. *The Rule of Law in Central Europe – The Reconstruction of Legality, Constitutionalism and Civil Society in the Post-Communist Countries*, Aldershot: Ashgate.

PRIBAN, J., 2002. *Dissidents of law: on the 1989 velvet revolutions, legitimations, fictions of legality and contemporary version of the social contract*. Aldeshot: Hampshire: Ashgate/ Darmouth.

PRIBAN, J., and YOUNG, J., (eds.). 1999. *The Rule of Law in Central Europe: The Reconstruction of Legality, Constitutionalism and Civil Society in the Post-Communist Countries*. Social Legal Studies Series, Dartmouth: Ashgate.

PRIDHAM, G. (ed.), 1990. *Securing Democracy: The International Context of Regime Transition in Southern Europe*, London: Routledge.

PRIDHAM, G. and VANHANEN, V. (eds.), 1994. *Democratization in Eastern Europe – Domestic and interntational perspectives*. London and New York: Routledge.

PRIDHAM, G., (ed.), 1991. Encouraging Democracy: The International Context of Regime Transition in Southern Europe. Leicester, London: Leicester University Press.

PRIDHAM, G. HERRIN, E, and STANFORD, G., (eds), 1997. Building Democracy? The International Dimension of Democratisation in Eastern Europe. Leicester – London: Leicester University Press.

PRILLAMAN, W., 2000. The Judiciary and Democratic Decay in Latin America – Declining Confidence in the Rule of Law. Westport: Praeger.

PRZEWORSKI, A. and LIMONGI, F., 1995. Modernization: Theories and Facts. Working Paper No. 8, University of Chicago Center on Democracy.

PRZEWORSKI, A., 1991. Democracy and the Market: Political and Economic Reform in Eastern Europe and Latin America. New York, Cambridge: Cambridge University Press.

PRZEWORSKI, A., 1995. Sustainable Democracy, CUP.

PRZEWORSKI, A., 1996. What makes democracies endure, in Journal of Democracy 7 (January 1996)39-55.

PUBLIC INTEREST LAW INITIATIVE, BULGARIA HELSINKI COMMITTEE, POLISH HELSINKI FOUNDATION FOR HUMAN RIGHTS and INTERIGHTS, 2003. Access to Justice in Central and Eastern Europe, Country Reports, Hungary.

PUTZEL, J., 1997. Why has democratization been a weaker impulse in Indonesia and Malaysia than in the Philippines? In D. POTTER; D. GOLDBLATT; M. KILOH, AND P. LEWIS (eds.), Democratization. London: Polity, pp. 240-268.

QUIROGA, C., M., 1991. El Derecho de Queja Individual ante la Comision Interamericana de Derechos Humanos; algunos problemas de derecho y de practica. In: C., QUIROGA, (org.), Cuadernos de Análisis Jurídico. Curso de Entrenamiento en Derecho Internacional de los Derechos Humanos para Jueces y Abogados de Sudamérica, La Haya, 16 de septiembre 4 de octubre, Conferencias Escogidas, 26, serie seminarios, Escuela de Derecho Universidad Diego Portales, pp. 147-185.

RANDALL, V., 1997. Why have the political trajectories of India and China been different? In D. POTTER, D. GOLDBLATT, M. KILOH, AND P. LEWIS (eds.), Democratization, London: Polity, pp.195-217.

RAWLS, J., 1999. The Law of Peoples. In The Belgrade Circle (ed.), The Politics of Human Rights, London: Verso, pp.16-45.

RAWLS, J., 1999. A Theory of Justice. Oxford: Oxford University Press.

REVISTA DE LA ESCUELA MAYOR DE LA POLICÍA NACIONAL DEL ECUADOR. Enlace Policía-Sociedad Edición Especial, Julio 2005. Revista de la Escuela de Estado Mayor de la Policía Nacional del Ecuador, Quito.

RICHARD, R. CHRISTIAN, H., 1994. New Democracies Barometer III: Learning from What is happening. Studies in Public Policy No230. Questions 22-42.

ROBERTSON, A.H., and MERRIELLS, J.G., 1996. Human Rights in the World. Manchester: University Press.

ROBERTSON A. H. and MERRILS., 1993. Human Rights in Europe: a Study of the European Convention on Human Rights (3rd ed).

RODRIGUES, H. W., 1989. O discurso dos direitos humanos como veículo da dominação exercida pelos países centrais. In C., G., CAUBET, (ed.). O Brasil e a Dependência Externa. São Paulo: Editora Acadêmica, pp. 35-56.

ROJAS, F. (ed.), 2003. La Seguridad en América Latina pos 11 de Septiembre. Santiago: Nueva Sociedad, FLACSO Sede Chile.

ROSAS, A. and HELGESEN, J. (eds.), 1990. Human Rights in a Changing East/West Perspective.

ROTH, A., 1995. El Sistema Interamericano de la unión política a la protección internacional de los derechos humanos. In Boletín - Comisión Andina de Juristas, n. 45, pp. 27-49.

ROTHSCHILD, J. and WINGFIELD, N., 2000. Return to Diversity - A Political History of East Central Europe Since World War II. Oxford: Oxford University Press.

RUDOLF, B., et al., 1994. Report on the Conformity of the Legal Order of the Russian Federation with Council of Europe Standards. Reprinted in 15 Hum. Rts. L.J., pp. 249- 287.

RUESCHEMEYER, D. HUBER, and E. STEPHENS, J. D., 1991. Capitalist development and democracy. Cambridge: Polity Press.

SALOMÓN, M., 2002. La Teoría de Relaciones Internacionales en los albores del siglo XXI: diálogo, disidencia, aproximaciones. En Revista D'Afers Internacionals, Barcelona. www.cidob.org/Castellano/Publicaciones/Afers/56alomon.html.

SANFORD, G., 2002. Democratic Government in Poland – Constitutional Politics Since 1989, London: Palgrave.

SARTORI, G. y MORLINO, L. (comp.), 1994. La Comparación en las Ciencias Sociales, Madrid: Alianza Editorial.

SHELLING, T., 1996. The Diplomacy of Violence. In R. Art and R. Jervis (eds.), International Politics, New York: Harper Collins, pp.168-182.

SCHLAGER, E. B., 1991. The Procedural Framework of the CSCE: From the Helsinki Consultation to the Paris Charter, 1972-1990. 12 Hum. Rts. L. J. 22.

SCHRAEDER, P. (ed.), 2002. Exporting Democracy – Rethoric vs. Reality. Boulder: Lynne Rienner Publishers.

SCHUMPETER, J., 1947. Capitalism, Socialism and Democracy. New York: Harper and Bros.

SELIGSON, M.A. and PASSÉ-SMITH, J.T. (eds.), 2003. Development and Underdevelopment – The Practical Economy of Global Inequality, London: Lynne Riener Publishers.

SEN, A. 1995, Wrongs and Rights in development. In Prospect, Oct. 1995, pp.28-35.

SERRANO, E. G., 1994. Legitimación y racionalización- Weber y Habermas: la dimensión normativa de un orden secularizado. México: Anthropos Editorial del Hombre y Universidad Autónoma Metropolitana.

SHELTON, D., 1988. Improving Human Rights Protections for Enhacing the Effectiveness of the Inter-American Commission and the Inter-American Court of Human Rights. In American University Journal International Law & Policy, vol.3:323, pp. 323-336.

SIEMASKO, A. (ed.), 2000. Crime and Law Enforcement in Poland – on the threshold of the 21st century. Warsaw: Institute of Justice, Oficyna Naukowa.

SIKKINK, K., 1993. Human Rights, Principled Issues-Networks, and Sovereignty in Latin America. International Organization, pp. 411-442.

SKOCPOL, T., 1985. Bringing the State Back In: Strategies of Analysis in Current Research. In M. EVANS, D. RUESCHMEYER AND T. SKOCPOL (eds.) Bringing the State Back In, Cambridge: Cambridge University Press, pp. 3-37.

SKOGLY, S., I., 2001. The Human Rights Obligations of the World Bank and the International monetary Fund. London: Cavendish Publisher.

SMITH, H., 2000. Democracy and International Relations – Critical Theories/Problematic Practices. London: MacMillan Press.

SMITH, H., 2000. Why is there no International Democratic Theory? In H. SMITH (eds.): Democracy and International Relations – Critical Theories, Problematic Practices, London: Macmillan Press, pp. 1-30.

SMITH, K., 1999. The Making of EU Foreign Policy: The Case of Eastern Europe. Macmillan.

SMITH, K. and LIGHT, M., 2001. Ethics and Foreign Policy, Cambridge: Cambridge University Press.

SMITH, K., 2003. European Union Foreign Policy in a Changing World. Cambridge: Polity Press.

SMITH, H. (eds.), 2000. *Democracy and International Relations – Critical Theories, Problematic Practices*, Basingstoke: Macmillan Press, pp. 71-89.

SMITH, P., 1995. *Latin America in Comparative Perspective – New Approaches to Methods and Analysis*, Boulder: Westview Press.

SMITH, P., 1996. *Talons of the Eagle – Dynamics of U.S. – Latin American Relations*, Oxford: Oxford University Press.

STEINER, H. and ALSTON, P., 1996. D. Punishment, Amnesty, Truth Commission. In *International Human Rights in Context - Law, Politics, Morals*, Oxford: Clarendon Press, pp. 1084-1109.

STEINER, H., 2002. The University's Critical Role in the Human Rights Movement. *Harvard Human Rights Journal*, Vol. 15, Spring 2002.

STEINER, H. J., 1991. *Diverse Partners - Non-Governmental Organizations in the Human Rights Movement*. Cambridge: Harvard Law School Human Rights Program.

STEPHEN, S., and SAMPSON, A. B., 2002. The New Abolitionism: American or European Exceptionalism regarding the Death Penalty. *European Studies Newsletter*. The Newsletter of the Council for European Studies Bridging a Wider Atlantic. <http://www.europamet.org>.

STEVES, F., 2000. *Regional Integration and Democratic Consolidation in the Southern Cone of Latin America*. Colchester: University of Essex.

STIGLITZ, J., 2002. *Globalization and its Discontents*. New York: Norton.

TARROW, S., 1994. *Power in Movement – Social movements, collective action and politics*, Cambridge: Cambridge University Press, 1994.

TARROW, S., 1996. Social Movements in Contentious Politics: A Review Article. In *American Political Science Review*, Vol. 90, No 4, December 1996, pp. 874-883.

TEITEL, R., 2000. *Transitional Justice*, Oxford: Oxford University Press.

THAROOR, S., 1990. The Universality of Human Rights and their Relevance to Developing Countries. In *NJIL*, n.59, pp. 139-152.

THE EUROPEAN COMMISSION, *Handbook on Promoting Good Governance in EC Development and Co-operation (Draft)*: Available from: <http://europa.eu.int/geninfo/query/resultaction.jsp>.

THE EUROPEAN GROUP FOR STUDY OF DEVIANCE AND SOCIAL CONTROL, 1999. *Europe in Transition: Past Trends and Future Perspective*, Warsaw.

The internationalization of Human Rights, 1991. Lexington: Lexington Books.

- THE NATIONAL SECURITY ARCHIVE: Available from: www.gwu.edu/~narchiv
- THE UNITED NATIONS UNIVERSITY, 2000. Human Rights and Comparative Foreign Policy.
- THE WORLD BANK. Governance and Human Rights. Tratado de Direito Internacional dos Direitos Humanos, vol. I, vol. II. SERGIO, A., F., Ed.
- TILLY, CH., 1986. The Formation of National States in Western Europe. Princeton: Princeton University Press.
- TILLY, CH., 2004. Social Movements, 1768-2004. Boulder: Paradigm Publishers.
- TOMUSCHAT C., 1992. Quo Vadis, Argentoratum? The Success Story of the European Convention on Human Rights - and a Few Dark Stains, 13 Hum. Rts. L. J. 401.
- TRIBUNAL PENAL INTERNACIONAL PARA LA EX YUGOSLAVIA: Available from: <http://www.un.org/icty/index.html>
- TRIBUNAL PENAL INTERNACIONAL PARA RWANDA: Available from: <http://69.94.11.53/>
- TRINDADE, A. A. C. , 1997. Mecanismos Jurídicos de Proteção Internacional dos Direitos Humanos: Balanço e Perspectivas. I Conferência Internacional de Direitos Humanos, Conselho Federal da Ordem dos Advogados do Brasil. Brasília, pp. 14-17 (mimeo).
- TRINDADE, A.A.C., 2001. El Derecho Internacional de los Derechos Humanos en el Siglo XXI, Santiago, Editorial Jurídica de Chile.
- UILDRIKS, N. and VAN REENEN, P., 2003. Policing Post-Communist Societies – Police-Public Violence, Democratic Policing and Human Rights. Antwerp, Oxford, New York: Intersentia, Open Society Institute.
- Ungar, M., 2002. Elusive Reform: Democracy and the Rule of Law in Latin America. Boulder: Lynne Rienner.
- UNICRI, <http://www.unicri.it>.
- UNIÓN EUROPEA. http://europa.eu/pol/rights/index_es.htm
- UNION EUROPÉENNE, 1998-1999. Rapport annuel sur les droits de l'homme. Conseil de la Union Européenne : Secrétariat Général.
- UNITED NATIONS, 1993. Vienna Declaration and Programme of Action, World Conference on Human Rights, pp. 14-25. General Assembly, A/Conf. 157/23.
- UNITED NATIONS, 1979. UN Code of Conduct for Law Enforcement Officials.

UNITED NATIONS, www.undp.org/bcpr/jssr/3_projects/index.htm.

UNITED NATIONS COMMISSIONER FOR HUMAN RIGHTS, 1996. *International Human Rights Standards for Law Enforcement: A Pocket Book on Human Rights for the Police*. Geneva, United Nations.

US GENERAL ACCOUNT OFFICE (GAO), 1976. *Report to the Congress about Stopping US Assistance to Foreign Police and Prisons – Department of Defence and State Agency for International Development*, Washington, 19 February 1976 (ID-76-5).

US GENERAL ACCOUNT OFFICE (GAO), 1992. *Report to Congressional Requesters, Foreign Aid – Police Training and Assistance*, Washington, 5 March 1992 (GAO/NSIAD-92-118).

US GENERAL ACCOUNT OFFICE (GAO), 1993. *Report to Congressional Requesters, Foreign Assistance – Meeting the Training Needs of Police in New Democracies*, Washington, 21 January 1993 (GAO/NSIAD-93-109).

US GENERAL ACCOUNT OFFICE (GAO), 2000. *Briefing Report to the Chairman, Caucus on International Narcotics Control, US Senate. Drug Control – International Counterdrug Sites Being Developed*, Washington, 28 December 2000 (GAO-01-63BR).

VAN DIJK P. and VAN HOOFF G. J., 1990. *Theory and Practice of the European Convention on Human Rights* (2nd. Ed.)

VARKS, VIRON and MUÑOZ, 1993. *The Future of the OAS*. NYC: The 20th Century Fund Press.

VASAK, K., and ALSTON, P. (eds.), 1982. *The International Dimensions of Human Rights* 455 (Vol. 2,).

VÁSQUEZ, J., 1994. *Relaciones Internacionales - El pensamiento de los clásicos*, Barcelona: Limusa.

VATTA, A., 2001. *The Enlargement of the European Union and Social Dialogue in Central and Eastern Europe*. In *Perspectives on European Politics and Society*, 2:1, Leiden.

VÁZQUEZ, S.; LOLA y SALTOS, G.N., 2004. *Ecuador y su realidad 2004-2005 edición actualizada*, Quito: Fundación “José Peralta”.

VEILLETTE, C., 2005. *Andean Counterdrug Initiative (ACI) and Related Funding Programs: FY2005 Assistance*, Updated May 10, 2005, CRS Report for Congress, Received through the CRS Web (Order Code RL32337).

VILLEGAS, Pilar Domingo, 1994. *Rule of Law and Judicial Systems in the Context of Democratization and Economic Liberalisation: A Framework for Comparison and Analysis in Latin America*, Mexico, D.F., CIDE.

VINCENT, R. J., 1986. *Human Rights and International Relations*, Cambridge, Cambridge University Press.

VIOTTI, P. and KAUPPI, M., 1987. *International Relations Theory – Realism, Pluralism, Globalism and Beyond*, Boston, Allyn and Bacon.

WACQUANT, L., 2002. La Penalización de la Miseria – de la importación de políticas de seguridad. In *Regionales* 51, Mayo-Agosto de 2002.

WALDMANN, P., 1996. *Justicia en la Calle – Ensayos sobre la policia en America Latina*. Medellín: Fundacion Konrad Adenauer Stiftung, Centro Interdisciplinario de Estudios sobre Desarrollo Latinoamericano (CIEDLA), Instituto de Investigación sobre España y América Latina de la Universidad de Augsburg (ISLA) y Biblioteca Jurídica Diké.

WALT, S., 1998. *International Relations: One World, Many Theories*. In *Foreign Policy*, Spring Issue.

WALTZ, K., 1988. *Teoría de la Política Internacional*, Buenos Aires: GEL.

WEFFORT, F. C. (org.), 1989. *Os Clássicos da Política – vol. 1*. São Paulo: Ed. Ática.

WEILER, J., 1986. Burocracy and Distrust: Some Questions Concerning the Role of the European Court of Justice in the Protection of Fundamental Human Rights Within the Legal Order of the European Communities. P 61 *Wash. L. Rev.* 1103.

WEILER, J., and LOCKHART, N., 1995. Taking Rights Seriously: The European Court and Its Fundamental Rights Jurisprudence. 32 *Common Market L. Rev.* 51.

WEISS, T., G. and GORDENKER, L. (eds.), 1996. *NGOs, the UN, and Global Governance*. London: Lynne Rienner Publishers.

WEISSBRODT, D., 1977. The Role of the International Nongovernmental Organizations in the Implementation of Human Rights. In *Texas International Law Journal*, vol. 12:293, pp. 293-317.

WENDT, A., 1992. Anarchy is what states make of it. In *International Organizations*.

WESTON, B., 1992. Human Rights. In R., P. CLAUDE and B. WESTON, (eds.). *Human Rights in the World Community*. Philadelphia: University of Pennsylvania Press. Pp. 14-30.

WHITE, S., BATT, J. and LEWIS, P. (eds.), 2003. *Developments in Central and East European Politics*. London: Palgrave.

WHITEHEAD, L., 2001. *The International Dimensions of Democratization: Europe and the Americas*. Oxford: Oxford University Press.

WHITEHEAD, L., 2003. Democratization – Theory and Experience. Oxford: Oxford University Press.

WHITEHEAD, L., 2002. Democratization – Theory and Experience. Oxford, Oxford University Press.

WIARDA, H. (ed.), 2002. New Direction in Comparative Politics. Boulder, Westview Press, pp. 1-15.

WIARDA, H., 1992. American Foreign Policy Toward Latin America in the Eighties and Nineties: Issues and Controversies from Reagan to Bush. New York: New York University Press.

WORLD BANK, 2006.
<http://web.worldbank.org/external/projects/main?pagePK=64312881&piPK=64302848&theSitePK=40941&Projectid=P036056>.

WORLD BANK, World Bank Institute website 2004.
(www.worldbank.org/wbi/governance/).

WORLD BANK, WDI 2002 CD-ROM

WORLD BANK, 1999. Consultations with the Poor report, Washington.

WRIGHT, A. and MAWBY, R., 1997. Civilian Oversight of Policing in Transitional States: The Case of Hungary. *International Journal of the Sociology Law* 27, pp.335-348.

WRIGHT, M. (ed.), 1996. Morality and International Relations – Concepts and Issues. Aldershot: Avebury.

WRIGHT, M., 1991. *International Theory – Three Traditions*. London, Continuum.

WYN, J.R., 1999. Security, YÁNEZ-BARRIONUEVO, J.A. (coord.). *La Justicia Penal Internacional: una perspectiva iberoamericana*. Casa de América, Madrid.

YOUNG, A. and ROSIN, E. (ed.), 2005. *Drugs and Democracy in Latin America – The Impact of U.S Policy*. Boulder: Lynne Rienner Publishers.

ZAKARIA, F., 1997. The Rise of Illiberal Democracy. In *Foreign Affairs*, Nov.-Dec. 1997, pp.22-43. vol. 76, no 6.

ZAKARIA, F., 2003. *The Future of Freedom – Illiberal Democracy at Home and Abroad*. New York: E. E. Norton & Company.

ZIEGLER, M., and NIELD, R., 2002. *From Peace to Governance – Police Reform and the International Community*. WOLA: Washington.

ZIELONKA, J. and PRAVDA, A., 2001. *The Impact of International Factors on Democratic Consolidation in Eastern Europe*. Florence: EUI Press.

ZIELONKA, J. ed., 2001. Democratic Consolidation in Eastern Europe. Vol. 2-
International and Transnational Factors, Oxford; New York: Oxford University Press.