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"Summit of the Americas: A Regional Strategy for Democratic Governance against Corruption in the Hemisphere"

Good morning, Chairman Rubio, Ranking Member Cardin, and Members of the Committee. Thank you for the opportunity to appear before you today on behalf of the Woodrow Wilson Center.

As you may know, the Wilson Center was created by an act of Congress as our nation's living memorial to President Woodrow Wilson. In the words of Vice President Pence, the Wilson Center is "an institution of independent research and open dialogue and actionable ideas, truly a bi-partisan stalwart here in Washington D.C."

With that in mind, I offer the following thoughts and suggestions regarding the upcoming Summit of the Americas, and more specifically about the urgent need for a regional strategy to build democratic governance and weaken the grip of corruption in our hemisphere and around the world.

Let me begin by stating unequivocally that the need for action on democratic governance, strengthening the rule of law, and the fight against corruption is as urgent today as ever. From Mexico to Brazil, Central America to Venezuela, the Andes, Southern Cone, and the Caribbean, democratic protections are being eroded, the rule of law is being challenged, and corruption is undermining security, human rights, and economic prosperity throughout the hemisphere. Each country is at a different stage in their development with some enjoying a modicum of success. Nevertheless, the challenge is daunting and, at times, discouraging when democratically elected presidents, congressional representatives, and ministers of state participate in corruption schemes, like the Odebrecht scandal, and act more like criminals than representatives of the people.

It is ironic that the agenda previously agreed upon for the Summit of the Americas is about democratic governance and regional anti-corruption efforts, and is being held this week in Peru, where former President Kuczynski was the latest and most visible casualty of the Odebrecht scandal. You have to give the region's leaders credit for not shying away from this discussion and agenda, despite the awkwardness for many, including the hosts. Furthermore, the region has largely stood together in denying a seat at the table to Venezuela, where democratic institutions have been systematically eroded and corruption runs rampant.

An historical perspective:

The hoped for benefits of a transition from military and authoritarian rule in the region have been uneven at best, in too many cases hijacked by corruption and undemocratic practices. While there has been progress, it is undermined by cases of grand systemic corruption like those making headlines in Peru, Brazil, Mexico, and Guatemala, among others. Confronting these acts of corruption could ultimately contribute to a strengthening of democracy if countries and politicians take the right lessons, but in many cases corruption and the persistence of the un-rule-of-law have only served to weaken democracies.

A quick review of regional attitudes about democratic governance and corruption provides some worrisome evidence. According to Vanderbilt University's Latin American Public Opinion Project (LAPOP) *Americas Barometer* 2016/2017, support for democracy and democratic institutions is declining.[1] The report found "support for democracy decreased by almost 9 percentage points between 2014 and 2016/17." The survey also found that "the average citizen is more likely to support extralegal actions (i.e., coups) to remove elected leaders from office."

According to Transparency International's Corruption Perception Index 2017, the Americas region continues to receive low marks for corruption perceptions. Honduras fell 12 places to rank 135th out of 180 countries, and Venezuela was the regional country with the highest perceptions of corruption and occupies the 169th place globally.

According to the 2015 biennial national victimization survey (ENVIPE) in Mexico, just over six percent of all crimes are reported to authorities—meaning that roughly 94 percent go unreported. The two most common reasons given for not reporting crime are "it's a waste of time" (33%), and "distrust in authorities (16.6%).

Despite these dismal findings, not all of the news is bad.[2] There have been important advances in some countries: Brazil and especially its judicial institutions have taken the lead by investigating government corruption. While not yet complete, they have held very senior government officials and powerful business interests accountable. These investigations have contributed to cases and trials across the region as the tentacles of the Odebrecht case have slowly become visible.

Chile faced a number of scandals early in President Michelle Bachelet's second term, so she appointed a "Presidential Advisory Council on Conflict of Interest, Influence Peddling, and Corruption," led by Eduardo Engel, president of Espacio Público, a leading Chilean think tank. In April 2015, the Council made a series of recommendations, many of which have been enacted into law as part of an "integrity agenda" embraced by the executive and legislative branches.

Sadly, these types of experiences are the exception and not the rule. Significant problems in democratic governance, rule of law, and grand corruption exist in many areas, but especially Venezuela, Mexico, and Central America.

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[1] The Political Culture of Democracy in the Americas, 2016/17: A Comparative Study of Democracy and Governance.

[2] The Wilson Center's Latin American Program celebrated its 40th Anniversary in 2017 with a conference devoted to analyzing the challenges of corruption to democracy in the region, and the opportunities for overcoming it. A forthcoming publication based on the conference will be available soon. Video from the conference can be found here: https://www.wilsoncenter.org/event/latin-americas-domestic-and-international-challenges.

In Venezuela, a government that once enjoyed broad popular support, won relatively free elections, and had independent democratic institutions systematically eroded these same institutions. The Venezuelan government has closed down most independent press, politicized the judiciary and electoral institutions, outlawed political parties, harassed and jailed political opponents, and ultimately destroyed the National Assembly through fraudulent elections for a "constituent assembly." In this environment, there are no remaining checks and balances on the regime and corruption is widespread—the very scourge that Hugo Chávez was originally elected to address.

Mexico is a mixed bag. Important efforts to transform a corrupt and inefficient criminal justice system have been underway since 2008 with strong support from two Mexican presidents and two U.S. administrations. However, the process has been slow with multiple setbacks, and complaints about criminals taking advantage of weak and inexperienced police and prosecutors have abounded.

In addition, there have been major corruption scandals involving federal authorities and a dozen current and former governors; escalating homicides that set a record last year; and horrific human rights problems—such as the disappearance of 43 students from a rural normal school followed by a botched criminal investigation. As a result, Mexico's July 1 presidential election is a referendum on the government's record on corruption, rule of law, and security.

In addition, Central America, especially the Northern Triangle Countries of El Salvador, Guatemala, and Honduras, continue to struggle with these issues. In El Salvador, several former presidents have been under investigation for corruption with one essentially fleeing the country and seeking asylum in neighboring Nicaragua. In Honduras, the government-appointed police purge commission has dismissed nearly half of the police force for allegations of corruption or failure to meet minimum standards. In addition, in Guatemala, there is an ongoing attempt to undermine the independence of the Attorney General's office and pass new laws to guarantee congressional impunity for corruption.

Interestingly, Guatemala and Honduras are the only countries in the world to also experiment with unique and innovative approaches to fighting impunity and corruption through multilateral mechanisms designed to accompany each country's chief prosecutors. In Guatemala, the United Nations mechanism known as CICIG—the International Commission Against Impunity in Guatemala—has carried out far-reaching investigations, alongside the Attorney General's office, leading to prosecutions against many political and business leaders. In one instance, the investigation actually brought down a sitting president and vice-president, unprecedented in the country and much of the region.

Honduras has also agreed to a roughly comparable mechanism with the Organization of American States—the Support Mechanism to Confront Corruption and Impunity in Honduras (MACCIH). As with the CICIG in Guatemala, the goal is to

use the political independence and expertise of international judges and prosecutors to assist a weakened Prosecutor's office and judiciary to carry out sensitive investigations into powerful political and business interests. Just in the last couple of months the MACCIH and the country's Attorney General's office were able to bring important criminal charges against a former first lady, several members of the Honduran legislature, and one of the alleged masterminds behind the murder of Bertha Cáceres, an internationally recognized indigenous rights and environmental activist.

Despite successes by both CICIG and MACCIH, and Attorneys General in both countries, elites have struck back in various ways by passing laws that shield politicians from investigation, or threaten the functioning of both institutions.

U.S. Policy:

Thankfully, the United States Congress and both the Obama and Trump Administrations have continued strong support for the CICIG in Guatemala and MACCIH in Honduras. Continuing this political and financial support is essential as long as the governments, and especially the Congresses in both countries, continue to cooperate with CICIG and MACCIH in good faith and do not continue to block investigations through nefarious laws and political maneuvers.

Promoting rule of law, strengthening democratic governance, and fighting corruption have been central to U.S. foreign policy for decades. The rule of law is the super-structure on which democracy is built. Yet, despite these good intentions and hundreds of millions spent on rule of law programming, there is little evidence that these efforts have succeeded.

This is the conclusion of a far-reaching study entitled "Frontier Justice: A New Approach for U.S. Rule of Law Assistance," conducted by two former State Department officials, Ambassador Donald Planty and Mr. Robert Perito. They look not only at what has undermined and hampered U.S. rule of law programming, but also outlined a series of steps to address these problems. We plan to present this report publically for the first time at the Wilson Center in May, and I hope it can serve as the basis of a longer and deeper conversation about what needs to change in U.S. policy to make rule of law promotion and anti-corruption efforts more effective. For now, let me just provide you with a teaser from their study.

Among the authors' major findings:

- There is no shared or consensus definition within the U.S. government about what "rule of law" promotion is or should be;

- There is no unified "rule of law" policy despite the importance attached to the principle in U.S. foreign policy.

- There is no central or coordinated repository of expertise or knowledge about rule of law within the federal government; and

- There is no overall coordinator of rule of law policy or programming within the government.

All this leads to divergent views, strategies, and programming to promote rule of law and, at times, these are even contradictory in purpose and execution leading to great confusion on the part of recipient countries.

Finally, the United States often seeks to promote rule of law when there is no real political will or capacity on the part of partner nations to take the necessary and difficult steps to promote it. Take, for instance, the issue of an independent judiciary and prosecutors. Many countries are willing to receive training for judges and prosecutors, engage in exchange programs, and upgrade court infrastructure and technology. However, the legal and political steps that would create a truly independent attorney general, one outside the political control of a governing political party, is much more difficult. Clearly, this is not happening and unlikely to happen in Venezuela. In Brazil, prosecutors and judges have acted surprisingly independently from the political elite of the country. In addition, these are critical issues in Guatemala and Honduras, where selection processes for new Attorneys General are already underway.[3] If the selection process goes well, we can expect democratic governance to improve and the battle against corruption to continue. If not, then the cycle of corruption, impunity, and weakened democracy could start anew.

Policy Options for the Future:

Given this landscape, I would recommend the following for consideration by the Committee:

1) Congress should consider a series of hearings that assess the extent to which rule of law promotion in U.S. foreign policy has succeeded or failed over the last 40 years.
2) Conclusions from these hearings should form the basis of new legislation that would establish a consensus rule of law policy for the U.S. government, and suggest new ways to organize American foreign policy so it is consistently applied across the government.
3) In the short term, the U.S. Congress should continue to fund programs to strengthen the independence of judiciaries, depoliticize attorney general's offices, and strengthen investigative capacity across the board.

[3] For background on the selection process for Guatemala's next Attorney General see: "Selecting Guatemala's next Attorney General: What's at Stake?" https://www.wilsoncenter.org/event/selecting-guatemalas-next-attorney-general-whats-stake

4) Additionally, support for independent, civil society-based mechanisms of oversight and accountability is essential. Independent journalism and academic and non-governmental organizations devoted to greater transparency in government can be invaluable tools in the fight against corruption.
5) Finally, Congress should continue its strong support for the anti-corruption and anti-impunity lead by the UN Commission (CICIG) in Guatemala and the OAS Mission (MACCIH) in Honduras.

Thank you, and I am happy to take your questions.