

Eduardo Gonzalez – Training on Truth Commissions  
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Transcript  
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[missing audio] ... with some kind of strategic analysis. We want to understand, based on the best information we have in this group, what the expectations that different groups of people have about RECOM are. Not just your expectations, but also the expectations of other groups. What do politicians think RECOM will be? What are the risks and opportunities that this presents for academics, for churches, for people in different countries in ex Yugoslavia, for the international community? Let's imagine what their expectations are, their fears. And, we will open, then, this training by putting together that information, so that we know what the strategic terrain is where an initiative like RECOM is being proposed. Second, we will have the rest of the day examining three basic issues regarding truth commissions. And, those three issues are important for tomorrow. The first one, which is the second session of the morning, the one starting at 11 a. m., is a discussion on the basic elements of a truth commission. That is, the functions of a commission and what are the parameters for the inquiry. The second session after lunch will be on how to actually establish a commission, and what the powers that a commission should have are, and how the composition of a commission will be determined. And, finally, in the last session of the day, we will briefly examine the impact of truth commissions based on a paper that my colleague, Bogdan Ivanišević, prepared about a month ago, and assimilated into the RECOM council, as I understand it. So, that is the program for today. After today - and I will make this day very light and very easy, so you guys have time for study later - after today, I would like you to read a little bit. And, we have prepared a package of materials for you, and that package has a number of real legislations establishing truth commissions. I am not going to ask you to read everything, but just to read something, and I want to indicate to you what is that you have. You have the mandates of truth commissions of - Jelena, you will correct me, please, if I am wrong - the truth commission of Chile, called the National Commission for Truth and Reconciliation, which is a presidential decree; the truth commission of El Salvador, which is part of the negotiated peace agreement between the guerilla and the government in 1992.; and then you have a presidential decree establishing the truth commission in Peru - and those three, those three, as you will realize immediately, are very short. None of those three decrees exceeds, perhaps, 10 articles. They are very, very simple. I would like you to read at least a couple of these, before tomorrow. Since I think they are in English, you should prepare groups, so that all of you can share the information contained in at least one or two of these. But, have a look at the simple ones, the ones established by a presidential decree, or directly by the parties of a conflict, because they are the simplest ones, and they have the basic elements that we are going to discuss today. You will recognize all that we have discussed today, here. Now, if you are still awake, then have a look at two additional documents. These two additional documents are, also, truth commission mandates. But, these are mandates for recent

commissions that have been established by legislative agreement, by law, or else, after substantive discussion and consultation with civil society. Those mandates are very long, or, at least, I think they are long. And, those are the bill creating the Sierra Leone truth commission, which is a piece of law, an actual piece of law, the difference being that it is more detailed than the presidential decree commissions; and a United Nations regulation establishing a truth commission in East Timor. Those two are longer and more complex. But, if you can read one of them, later tonight, you will realize that the elements are exactly the same. There is a difference in detail. But, I would like you to read some of this tonight, at least the presidential decrees, so that tomorrow we can actually try to write our own decree as an imaginary exercise. Tomorrow, what we're going to do is to divide into groups; we are going to assume certain roles in an imaginary political situation, and then, we will negotiate among yourselves the mandate of a possible truth commission. You have the information about that exercise, that simulation, on two pages, titled: "Negotiating a truth commission in *Colomdor*", Colomdor being an imaginary country that is a mix of Colombia and El Salvador. So, have a look at that later. Tomorrow, we will discuss this in more detail, and tomorrow, also, we will distribute specific individual instructions for different groups that we are going to create. So, that is the logic for the training. I don't know what will happen. Really. But, that is exactly, that is very realistic, because you never know what is going to happen when you actually establish a commission of inquiry. You don't know how long the negotiations are going to take, you don't know whether the negotiations are going to arrive at some good harbor or not. So, in any case, that is what we are going to cover. And, for those of you who don't know me, I am a member of the International Center for Transitional Justice, as Aleksandar just mentioned, and my own experience with this subject is that I was a participant, a staff member, in the Peruvian Truth and Reconciliation Commission. I worked there for two years, directing the interaction of the commission with the victims, organizing public hearings, and writing the final report of that commission. Before that, I participated in the civil society consultations on creation of that truth commission. In the Center for Transitional Justice, I worked supporting the establishment of truth commissions around the world, and I have participated in a few of them. The ones that I remember the most, because I dedicated more time to them, were the truth commission of East Timor and the truth commission of Morocco. So, that is, basically, my experience, and I think that I would like to make this very interactive. Please, ask questions at any time you want. Let's open this discussion, then, with your presentations and, then, with a very, very brief introduction to the subject. Thank you.

[introductions]

Okay, thank you so much for that, for those introductions. Thank you for the reviews of the last presentation I did. Let's go to the presentation itself. As it seems to happen all the time, we are starting a little bit late, so we will accommodate the schedule as appropriate. So, let's start. The first thing that we want to talk about is what the expectations around a truth commission are. And, I just want to make one distinction that I think is pretty important – the distinction between what the explicit expectations that all

the actors share publicly are, and the expectations that are implicit, the expectations that are more properly ... [bad audio] ... speaking, fears, the hopes that the different actors have, and which are sometimes their strategic calculations. So, there is a difference between these two. And, let's have a look, first, at the explicit expectations, which are usually included in the mandates of truth commissions, in the pieces of legislation, decrees that usually establish a commission. Those explicit expectations about a truth commission are what we call the functions of a truth commission, that is, what is it that we establish the commission for. Why do we establish a truth commission? What does the country, or the countries, want to achieve by the work of this institution? And, as you see, basically, and you will read this tonight, basically, when you establish a truth commission, you want four things, in general. There may be some more, but these four seem pretty general. First, you want to establish the truth about certain facts. You want to know what happened. That is a very general formulation, and it doesn't tell you what is truth, and what is a fact. Different commissions understand and interpret this mandate in different ways. But, this is a common expectation. People want to know something. People want to interpret what happened, why is it that something happened. That is the first big expectation, which is usually very publicly articulated. Second, by establishing a commission, you want to create a certain impact in the lives of the victims. Normally, what you see in the mandates of truth commissions, is that people say that they want to recover the rights of the victims, that is, the victims, for example, have the right to know the fate or the whereabouts of the people who were disappeared or killed, and you expect that the truth commission will help these people realize this right. Or, you expect the victims to regain the dignity that was denied to them during the conflict or during the violence. So, that is the second expectation that is, usually, very much shared. And, you can see that expectation in the mandate of the commissions, again. Third, and this is a big one, people want to prevent more violence. People want to stop conflicts from being the way in which disagreements are negotiated in any given region or society. So, people expect that by exposing the violence and the crimes that were committed - future generations, new politicians, new groups of interest, will refrain from violence. But, that is a huge expectation, too, and it is usually included in the mandates. Finally, people expect that truth commissions will, in general, help create a better political society, that is, a political society that is not characterized by authoritarianism or violence, but one that is more peaceful, more democratic, etc. That is what people usually say about why it is that they establish commissions, and that is what you will find in the preambles of truth commission mandates. Let me read a little bit of the preamble of the supreme decree establishing the Peruvian truth commission. In that preamble, and it is called supreme decree number 65, of 2001, in that preamble they state what is it that a truth commission is being created for. And, if you go to article 1, which is at the bottom of the page, you will have all those functions explicitly determined. Article 1: "The truth commission is created, charged with clarifying the process, facts, and responsibilities of the terrorist violence and the violation of human rights, produced from May 1980 to November 2000." So, the first thing that this decree makes, is to tell you the function of establishing the truth. The first thing that the commission will do, will be to establish the truth, to clarify certain facts. Which facts? The facts that the decrees mentions. Terrorist violence and human rights abuse, committed by the state and, obviously, by the terrorist organizations. And, then, what kind of violence, from when to when? May 1980 to

November 2000. So, that's the first thing – establishing the truth. Every mandate of a truth commission will tell you that you have to establish the truth about something that happened. So, if you see, for example, the El Salvador peace agreement – it's another piece that you have – and you go to the second page, and you see article 2, called functions. It reads: "Article 2: Functions - The commission shall have the task of investigating serious acts of violence that have occurred since 1980, and whose impact on society urgently demands that the public shall know the truth." So, here, the definition is even more general. Violence that took place since 1980. That's all it says. And, that is of some exceptional importance. The public should know the truth. Let's go to Chile. The Chilean National Commission for Truth and Reconciliation. Go to the second page, and let's read article 1, the first article of the Chilean mandate. It says: "Let there be created a national truth and reconciliation commission for the purpose of helping to clarify, in a comprehensive manner, the truth about the most serious human rights violations committed in recent years in our country, and elsewhere, if they were related to the Chilean government, or to national political life." So, again, the function of clarifying the truth is clearly established in the first few lines of the decree. We will... In this case, the definition is also very general. Right? Establishing the truth about most serious human rights violations. It doesn't tell you what the most serious human rights violation is, and what is a less serious human right violation, it just says: "Let's examine the most serious ones, and let's clarify them in a comprehensive manner." What is a comprehensive manner? We don't know. The truth commission will determine that. But, as you see, all the mandates have those expectations listed very clearly, very explicitly. They are in the mandate. Now, let's go to the next screen, if we can, Jelena. Well, the next screen I find particularly interesting, which is that people also have certain implicit expectations, expectations that they don't necessarily put in the mandate. People sometimes have expectations that are sometimes reflecting their fears, too. For instance, people may want a commission to manage political tensions in a given society. People want to put the past behind, to put the past behind in a good way, not just by covering it up, but by examining it in a constructive way. So, people may think, for example: "Well, I hope that after the truth commission, we will manage our conflict in a different way, not by violence. We expect that, by establishing a truth commission, the victims will be happy, and that they will not demand trials. We expect that, by establishing a truth commission, people will want reparation, and that we will be able to have reparation. We expect that, by establishing a truth commission, people will focus not just on the crimes, but on the causes, on the structures, and that there will be an opportunity for some structural reform in our society." There are many expectations that people don't put in functions in the mandate, because they are a sort of political calculations, too. But, there are those sorts of expectations. And then, there are fears. Some people may think: "Well, if we talk about the past, people are going to want revenge. If we talk about the past, there is the possibility that some groups will be very scared and they will use violence again. It is possible that, if we talk about the past, we will have instability in the political institutions, or we will have political parties that will be very angry, or we will humiliate our country or our countries. There are a number of risks and fears that people think of, too. So, what we are going to do is, first, examine a little example, and then we are going to divide into three groups to share what we think our expectations are, since the groups come from six countries I counted in the presentation, and as groups that

basically work with civil society. Now, I want you to ask yourselves, first, what you think, you as human rights and civil society groups, what you want, and what you think other groups want or fear. Now, let me give you an example. Some of you may have realized that there is a new government in the United States. If you didn't realize, you haven't been listening to the news. But, the fact is that this new government is presenting itself as being completely different from the last one, and is presenting itself as basically crating everything anew, and redressing all the mistakes and all the abuses committed by the last one. So, the question is - all right, that means that this new government has to work in the economy, in the wars, in the environment, in health reform, etc. - so, the question is: what will this new government in the United States do about the human rights abuses committed by the last government of the United States? So, some people have said that the new government should establish a truth commission. In fact, a Senator of the United States, a democrat, the leading Senator of the judicial committee of the Senate, has proposed that there be a truth commission. Can we go to the next slide, Jelena? That Senator, Patrick Leahy, is the president of the judicial committee of the Senate, which is one of the most important positions in the Senate. Next month, when Sonya Sotomayor is to be examined to be a Supreme Court judge, she will appear before this gentleman on the screen. Senator Leahy has proposed a truth commission. He wants to know what happened during the war on terror. The way he proposes to know that is that he will create a commission where perpetrators will come and talk about what happened, and they will receive an immunity in exchange for talking. This is what he says: "There are some who resist any effort to look back at all, while others are fixated on prosecution, even if it takes all of the next eight years, or more, and further divides this country. Over the last month I have suggested a middle ground to get to the truth of what went on during the last several years, in a way that invites cooperation. I believe that that might best be accomplished through a non-partisan commission of inquiry." So, he's saying that, and this is his expectation, a truth commission will be a middle way between two extremes. One extreme is forgetting all about it, not doing anything about the past, forgetting it. You don't examine torture in Guantanamo, you don't examine the war, you don't examine anything. Let's forget everything and let's work today. And, there are others who say: "Let's put everyone on trial. Let's put George Bush on trial, Dick Cheney, Rumsfeld, etc." So, Senator Leahy is saying: "A truth commission, I expect, will do a middle thing. We will examine the past, but we will not put people on trial." So, that is one model of expectation. Now, let's see what Senator Obama says, now President Obama, of course. President Obama recently spoke about his release of legal memoranda, written by legal advisers to the Department of Defense. Those memoranda, as you may well know, authorized what they called special enhanced interrogation techniques. Most of the people who have read them basically think that those memoranda are authorizing torture. But, the memoranda just say: "We are authorizing special enhanced interrogation techniques." So, President Obama released them, and this is what he says. He says: "I released memos issued by the previous administration's Office of Special Counsel. I did not do this because I disagreed with the enhanced interrogation techniques that those memos authorized, or because I reject their legal rationale, although I do on both counts. I released the memos because the existence of that approach to interrogation was already widely known. The Bush administration had acknowledged it's existence, and I had already banned those methods." So, he's saying

we already know the truth. Everyone knows the truth. The truth is certain information, certain data. He's not saying that the truth is an interpretation. He's saying the truth is data, information, facts. Everyone knows the facts. So, what difference does it make if I publish the memos? There is no difference at all. He used this argument not to defend his publishing of the memos, he uses this argument to defend his not publishing of the photographs. What he's saying is: "Look, we know the facts. Everything is made out of facts. So, here are the memos." But, he's saying – look at his language - he's not saying "torture". He's saying "interrogation". He's saying: "...that approach to interrogation." And, that reveals a problem. He thinks that the truth is just facts, data, what the memo says. But, he himself is using a way of speaking that we call euphemism. And, when you are talking in euphemisms, you know that there is something else. Right? When you just mention the facts, but you don't mention the legal name, in this case torture, you are making clear that there is a difference between knowledge of data, and acknowledgement of wrongdoing. He's thinking that the truth commission is not needed. He disagrees with Senator Leahy. He thinks that the truth commission is not needed, because truth is just data. If he were to realize that the truth commission is about acknowledging what we already know, acknowledging the wrongdoing, then he would be in some kind of trouble. So, let's see how the leader of the opposition in this country responded to the President. Next slide, please, Jelena. That is Dick Cheney. Well, you already know who Dick Cheney is. And, Dick Cheney answered to President Obama immediately after the President's speech. He said: "As far as the interrogations are concerned, all that remains an official secret is the information we gained as a result." Some of his defenders say the unseen memos are inconclusive, which only raises the question why they won't let the American people decide that for themselves. So, this is what Cheney is saying: "Okay, the truth is knowledge, knowledge about data. Now, the President has released the memos." The memos, then, say everything about the interrogation techniques. What the memos don't say is what we learned interrogation the terrorists with these special methods. So, what Cheney is saying is: "If the President is releasing information about the methods of interrogation, let him release everything. Release also the information we got torturing those guys. And, by doing that, the people will judge." So, Cheney is saying: "Okay, mister President, if the truth is the information, and the information should be out because of transparency, then inform everything, and people will see that we actually saved their lives by applying those methods." So, at this level, no one is concerned anymore about the fact that those interrogation techniques may have been criminal. So, that is one example, in one country. There are a number of problems with this example. You see, the three people we have heard are politicians. Very powerful men. Not a single woman, by the way. All are nationals from the United States. That is the country where these crimes took place. And, all the victims in this case are not Americans. They are not American citizens, basically, among the people that were detained and tortured in Guantanamo. And, they are just talking about Guantanamo, they are not talking about Abu Ghraib, they are not talking about Iraq, they are not talking about Afghanistan. So, there are a number of reasons why this case is very, very special. But, this is just an example, and I take it not because I want all of us to discuss about the United States and Obama, but just because I want to show you that even in such a visible case, there are always problems on how to deal with the past politically. Every society, even a society that has not had a political transition or a negotiated peace, has some

complicated issues in the past, and they don't know how to deal with it. Some people think that the past should be given over to the judicial system, some people think that the past should be buried and forgotten. Some people think that there should be a middle way, some people think that the past is about data, some other people think that the past is something more than data. And, that is just one example. We could talk about many examples here. I am sure they are going to emerge. So, now, on the basis of this initial presentation, I would ask Aleksandar to suggest to me how to organize this group in three groups. I think it will be easier to do it by language I assume, so that we can have three groups, and each group will have a couple of questions to answer. Can we go back to slide number 2, Jelena, please? Okay. So, the first question is: "What do you think a commission can do?" And, the second question is: "What do other actors think?" So, if you are, I don't know, Croats, ask yourselves what the Serbs think. If you are Serbian, ask yourself what the Montenegrins think, etc. What do people in governments think? What are their fears? What are their calculations? If you go to your government and then say: "Let's create RECOM", what do you think they will say, why? If you go with RECOM to the European Union and say: "Let's have funding for RECOM", what do you think the EU will say why? If you go to other civil society groups, if you go to other universities, if you go to youth groups, if you go to churches, what will they say, and why? In fact, let's focus on those questions. I don't want to ask you that much about your expectations, but do you think about the others? What do you think will happen? What do you think they are thinking about RECOM? Are they enthusiastic about it? Are they fearful about it? Why? Is it clear for everyone? Okay, so, if there are no more questions about this part of the exercise, I suggest that we go to organizing those groups.

Yes. I suggest that... Let's see, it's 10:30, I suggest that we go straight into the groups for half an hour, and then we go to break. And, after the break, we share the information, and we adjust the rest of the day.

## II

Thank you. I think this is very useful, because it shows us a wide variety of expectations, and also what we think the others are thinking, which is, as Eugen just mentioned, important to have some strategy about the form of establishing RECOM. The first group - I think that it gave us a very nice vision of a comprehensive ambition for RECOM, that is, a commission that will establish facts, that will also investigate all possible crimes over a long period of time, not just limited to one country, to the case of Kosovo, but to all the countries, and they gave us an extensive list of crimes. I was taking notes, and they mentioned imprisonment, killings, displacement, missing persons situations, disappearances, assassinations, etc. So, I think it gave us a very interesting and comprehensive prospective mandate, and they were also very interesting in their presentation, because they don't focus just on the factual recognition of what happened, but, also, on some sort of historical justice, because they say: "Something interesting is that the government should apologize." Not just one government to another, but, I think, I understood this as governments apologizing to the peoples for what had happened. So,

I think the first group gave us an interesting vision of comprehensiveness in the mandate. Now, at the same time, one could say this is extremely ambitious. So, that takes us to the second group, which, I think, was more focused on the political impact. And, I found it very interesting, too, because they were emphasizing what could possibly interest governments to have them accepting such a commission. And, there were a number of hypotheses here, which I think are useful for the strategic planning. And, one of the primary hypothesis was that governments would not automatically accept RECOM unless they see some benefit. And, that benefit would probably be some sort of an enhancement of acceptability internationally for the separate governments in the ex-Yugoslav republics in terms of their acceptance in the EU. So, European ambition, this European idea was part of the primary objectives. Another one was that a commission that would throw light into the past would contribute to have less polarization in societies and among victims. So, I think it was interesting to move to the kind of selling points that RECOM would have to use in front of political elites. And, this issue of European integration was also mentioned in the third group, and they need to identify each stakeholders' rationality in order to have a strategy. Now, the third group, also, mentioned specific groups. You mentioned youth as a critically important constituency, and, I think, that is something that I was waiting for. I was wondering if any of the three groups would, for instance, think of what women think, whether women have a particular interest in the truth to be established that is different from the interests of the society at large, whether there will be more or less resistance to examine the past, more or less interest to examine the past among different age groups. So, the third group seems to suggest that youth will be particularly interested. They didn't have the time to tell us exactly why the youth would be particularly interested. We have here a youth coalition, so it would be interesting to see whether there are specific arguments that youth would be a strategic partner in this enterprise. So, all in all, I think that we have both exposed our ambitions, I particularly saw that in the first group, and they are very big ambitions, but, then, the question is how do you convince the others to support that kind of vision. And, typically what has happened is that that implied some sort of negotiation. There are enormous ambitions on the side of civil society, a very comprehensive investigation over the whole conflict, over all the crimes, and then there needs to be some kind of selling point. Right now, the selling point seems to be to sit down with the governments and say: "You are going to look better after this, and society is going to be less polarized after this." So, is that what you are thinking? Is that the game plan? So, I just want to throw the question, I don't think that we have to answer it right now, unless some of you have some additional comments or interventions. Any additional questions or suggestions on this particular point? Okay, well. If there are not, let's continue to investigate this first question, this first issue, which is particularly the question of functions, that is, what do we want for a truth commission to do. So, Jelena, if we could go to slide number 7? Perfect. So, I think that this is very coherent, what we have in front of us is very coherent, both with what you have just said, that you expect a commission would do, and also what you will read tonight, in the calm, after dinner, when you read the mandates of truth commissions. First of all, the most important thing, the *sine qua non*, is the establishment of facts. But, the establishment of facts is not as simple as it sounds. Right? Because, for instance, just to mention what group 1 was saying. They talk about war crimes. So, they didn't mention just conducts, events. They mentioned some specific valorization of facts. They



say “criminal facts”, right? So, the first thing to do, and I want you to think of this very carefully, is when you say: “We want RECOM to establish facts”, what exactly are you saying? There are a number of possibilities. First is just to make a description of facts. A description is to have a report which says: “This group, or this individual, this party, did this to this other group, or individuals, or parties.” Just a description. For instance: “General X directed a massacre in the township of Y against population of this ethnic characteristic in the year so and so.” That’s a descriptive establishment of facts. Now, when you say: “General X did this”, the obvious question is what is “this”? Can you describe this just by saying: “General X ordered 25 males of military age to be killed.” Is that enough? Because, you could also say: “General X ordered extra-judicial executions.” In the second formulation, when I say “extra-judicial execution” instead of just “killing”, I am making a juridical interpretation. I am giving a name to the fact. So, that is another way of establishing facts. That is, a way that is informed by law. I am classifying the facts according to certain pre-existing legal body. That is a very complicated thing to do, because, if you say that you want to establish facts in this way, that is, facts as crimes, you have to decide by reference to which body of law you will establish these facts. That is, are you going to establish these facts according to international humanitarian law, the law war crimes, are you going to establish these facts according to international human rights law, that is, violations committed by states, or, and, are you going to establish these facts under the penal codes of the different countries, under domestic law. If you want to establish facts calling these facts crimes, you are obligated to say under what body of law are these facts crimes. Is that clear until that point? So, you see, that is an additional level of complication. One thing is just to describe, and another thing is to enrich that description by adding a legal definition. And, if you add a legal definition, the question is - what legal definition? So, to continue with the example of the general who orders killings, then, something that a commission would say, for instance, is: “General X ordered the execution, ordered the killing of 25 males in this township, in this particular year – a fact that constitutes a war crime under the Geneva Conventions, and a fact that constitutes murder in the first degree under the penal code of the territory where this happened.” So, that’s another form of establishing the fact. But, there’s even more, because you can also add the motivations of this general. Why is it that somebody says: “Let’s execute these 25 people.” So, you can add a socio-historical interpretation of the facts. I’m not talking here about root causes or anything, I’m just talking about that fact, the crime. So, one could say, for example, and I will repeat: “General X ordered the killings of 25 males, a fact that is a war crime under the Geneva Conventions, and murder in the first degree under the penal code of Republic X. He did that after taking prisoners that he believed belonged to an enemy group, and after he had expressed on repeated occasions that he wanted to exterminate that group. So, he did that with an intention to exterminate that group.” That’s a possibility. Or, you can say: “He did that only one week after the group had executed his soldiers in a previous massacre.” Or, you can say: “He did that after coordinating with dictator XYZ. Or, you can say: “He did that at the moment of the worst degradation of the conflict. All those are different historical interpretations. And, the problem with historical interpretations is that sometimes they sound as exculpatory. They add some nuances to responsibilities. When you just mention a juridical description of facts, you just talk about a crime. You mention a crime, and you leave it at that. When you add a socio-historical interpretation,

you give some nuance to the crime, and therefore, your interpretation, your establishment of facts is certainly richer, but is also more complex. So, now think of what will the public think with the three interpretations which we just mentioned. Remember, the first one is just descriptive, the second one is legal, and the third one is, on top of that, socio-historical. So, now suppose that you know nothing about RECOM, and you just read a report that will be published by RECOM in three years time, I don't know. So, you read the three possibilities. Which of those three possibilities will create more moral indignation, more outrage? Which of these three possibilities will create more political commitment to do something? Which of these three possibilities will not say anything to the youth? Which of these three possibilities will inspire people to do something, or will cause fear in people to do something? So, that is the first thing. That is the first function. The way in which you describe and establish that function determines the rest of the commission's work. This is the most important question in the definition of what a truth commission will do, because it tells you what your truth is. What is the truth in a truth commission? Is it a basic description of facts, let's say some sort of a catalogue, is it a legal valorization of those facts, is it also a historical interpretation of facts? All those have different pros and cons. So, that is the first function. So, before I go further, let me ask you. What do you think – don't tell me what the best option is, just tell me what you think the pros and cons are for each option. Don't tell me your individual preference. I know that in the first round some of you expressed your preferences. So, apart from your individual preferences, what do you think would be the pros and cons of having a commission that only describes facts, that just gives numbers of people killed, for example, places where people were being held, places where people were killed, names of generals and units that committed killings? Imagine that RECOM does just that. What would be the positive points of such an approach, what would be the negative points of such an approach? Ideas? Could you, please, also say your name so I remember everyone? I know you, Maya, right?

I'm going to talk in Albanian.

[question]

That's an excellent question. I'm not going to answer it. I want to hear more questions about this other option, but later I will come back to it.

[question]

Okay, thank you. Well, as you have seen in just that initial round - I'm so sorry, but I want to proceed because of the time - as you have seen in this initial round of just three interventions, there are a number of interesting problems that we can solve through conversation. The first question is that when we talk about the methodology, we're obviously talking about political implications of any methodology that we choose, which

is why, then, I think it is very appropriate to say that the methodology and the methodological choice depends in part on our capacity, but also in part on our political intentions and prudence. Where do we want to get to? So, this kind of analysis shows that first immediate question. The second question, and the second anxiety, I would say, is the question of objectivity, right? Can you be really objective in any of these three approaches? That was your question, right? Because, we tend to think, for instance, that physics or mathematics are objective, and social sciences are not. Right? Because the danger with social science is, typically, that if I write a historical book, I will impose my interpretation of the facts, and that if you write another one, you will impose a competitive interpretation. Now, the only criterion of objectivity in social sciences is really the status of the conversation, the status of the dialogue, how interactive that dialogue is, how many people do we convince with our paradigm? So, what a commission does is to facilitate that kind of socio-historical analysis over a large group of people and contending interpretations, and propose something that could be seen as a consensus. The question of absolute objectivity is very difficult to answer in social sciences. But, what we can say about what truth commissions have done in the past is that they, at least, have proposed interpretations that are, either consensual, or, at least, discussed among different groups. When I presented to you the mandate of the Chilean truth commission, I should have mentioned, I mention it now, that this commission was created with eight commissioners. Four of those commissioners were anti-Pinochet advocates, and four of those commissioners were pro-Pinochet advocates. And, there were eight of them, so they could not outvote each other. Obviously, the intention in the establishment of such a commission is to force those commissioners to discuss and to reach an agreement. So, as you can see, the notion here is that commissions are going to somehow give society an opportunity to discuss these difficult issues and try to find some sort of consensus. In the case of Chile, they did not go into historical interpretation, because they probably thought that that is going to be impossible. So, what they did, was to establish a description of crimes, without violating the principle of presumptive innocence, because they didn't even mention names. However, they presented the crimes to the population, and they said they were crimes. So, that is one possible approach. There are other commissions that have been more ambitious, that have actually focused on the socio-historical aspects. In the case of Guatemala, and I think I have mentioned this, the truth commission in Guatemala was more focused on the socio-historical, than on the legal aspect. In fact, the strongest point of that commission is that they made a finding that the context of the conflict was racism, and the enormous racism of the institutions in Guatemala against the indigenous Mayan population in Guatemala. And that is why, on that basis of analysis of racism, that they say that what happened in Guatemala was a genocide, a racially induced genocide. So, as you can see, any of those possibilities in that first aspect of the work of a truth commission has a number of questions and scientists' pros and cons. Now, let's see the other functions. They appear to be simpler, but they are not necessarily more simple. Most commissions want victims to recover something. So, that something can be described in different ways. Some people say: "Let's recover information that the victims need." For instance, information about the missing. Why? Because think that that is going to be psychologically important for the victims. "Let's recover rights." For instance, people lost property, lost the possibility of moving freely within their country. "Let's recover that. Let's reparate

victims.” Some other people will think: “Let’s recover the victims’ dignity, because some of these victims have also lost prestige, dignity in their societies, they are stigmatized, they are re-victimized all the time.” Think, for example, of what happened in certain societies with victims of sexual violence, that are stigmatized on top of having been victims of sexual violence. So, commissions usually also ascribe to their functions some sort of recovery, some sort of transformation in the victims’ position. Everyone seems to agree that the victims are in some sort of diminished position, and then a commission will do something to strengthen that diminished position, but that means that we hope a commission will restore a victim from a sort of second class citizenship to real citizenship again. How will that happen is the question. Will it increase the psychological wellbeing of the victim, will it restore the physical wellbeing of the victims, will it give reparation to victims – that is the question. But that’s typically a function. Third typical function – commissions aspire to prevent new episodes of violence. Classically, commissions say “in order to achieve reconciliation, in order to achieve peace, in order to achieve national concord...”. What nobody says is how. How is it that we expect that this will prevent the recurrence of violence? There are some clues in what you were saying. Because, if a commission is a space where we are somehow forced to sit down together and discuss the issues, and negotiate among ourselves some sort of common interpretation, some sort of a common description, some sort of a common juridical assessment - then that forces all of us in our different groups, societies, countries, ethnicities, etc., to agree on certain principles. Obviously, in the case of a truth commission, those certain principles would have to do with human rights. So, possibly, one form of prevention of future violence is to have all societies agreeing that certain values are more important than political disagreements. For instance, the value of the right to life. So, that sounds a little bit idealistic. A text written by a truth commission is not going to do that automatically. It will not happen that governments suddenly read the text and say: “Oh, I feel much more respectful of our human rights now. Let’s not violate human rights.” Well, truth commissions are not just the final text. They are really the process, the two years, the three years of working to get that text, and who is going to sit down around the table to actually do that. And, then, fourth function – usually, truth commissions are established with some hope that they will contribute to some larger societal ideal, be it peace, reconciliation, democracy, justice, etc. And, again, this is very similar to what we just said about preventing the recurrence of violence. How do commissions contribute to this institutional new situation? Well, there are a number of possible hypothesis of how they do that, and therefore why we should, or should not, include these functions in the mandate of a truth commission. I could argue, for example, and I think I could argue convincingly, that if truth commissions examine the reasons that made possible something irrational that happened, if commissions examine that, if commissions examine some sort of deep structural conditions for crimes, then commissions can recommend societies to look into those conditions. For instance, in Colombia, the main question behind Colombian war is, arguably, land, control of land. If, at some point, Colombia has peace, and Colombia examines the history of their long conflict, which is a 60 years long conflict, a commission may say: “Look, the problem in this country is land. The fact that very few have lots of land, and a lot of people have nothing or little.” So, perhaps a commission can say: “Let’s have an agrarian reform to guarantee access to land to most peasant families.” And, that could possibly be a

contribution to stability, to sustainable peace. Let's say that you have peace negotiated by all political parties in Colombia, but you don't touch the business of drugs. What will happen? Probably, conflict will reappear in a different form. Look at Mexico, El Salvador, Guatemala, all those countries in Central America that are now suffering a security crisis because of organized crime, and around the issue of drugs. So, perhaps a function of a commission is to identify the reasons why violence is possible. Perhaps to identify why not just violence, but extreme violence is possible. So, a commission could say: "Look, it is clear that in our society the way in which males imagine their masculinity is very violent. Male identity is about exercising violence. If we raise boys in a different way, we could probably prevent some of the worst violations and crimes." That's another possibility. So, but all of those possibilities contributing to peace, reconciliation, democracy, have to do with some kind of finding that the commission does. Another thing that a commission could find, for example, is: "Look, in our society, the judiciary doesn't administer justice. The judiciary, the judicial power, usually gives justice only to those who have money, only to those who have power. And, because people don't trust in law, then people take matters into their own hands. So, let's reform the judiciary." That could be also a contribution to a more stable, democratic form of life. So, all those are possibilities, and I'm sure there are many more. My question to you is – how do you think that in your case the findings of a commission could contribute to either peace, democracy, reconciliation, etc.? And, this is a very particular case, because the conflict in the former Yugoslavia ended up not in peace in a unified country. It ended up in peace, but by separation. So, what is the risk? The risks could be either internal conflict in each of the individual entities that were created, or renewed international conflict among those entities. Separation, by definition, means that each national group, each ethnicity, received a national homeland of its own, therefore making the international conflict less likely, because now, apparently, people are not as mixed as before. So, then what is the risk for the future, and how do you prevent that risk? Is the question clear? So, if you don't have a single country, where people are living together and the risk is that people are going to hate each other again, but you have already seven different countries – then what is the risk? And, if you tell me what the risk is, then how is RECOM going to prevent that risk? Imagine, not Yugoslavia, but imagine Rwanda. In Rwanda, neighbors killed neighbors because of an ascribed ethnic identity. The Hutu majority committed a genocide against the Tutsi minority. The war ended, not the war, the genocide ended when a Tutsi guerilla invaded the country from Uganda, and expelled the Hutu power, and the Hutus escaped to Congo. As a result, then, you have a country where a small minority of Tutsi survivors, and a large majority of Hutus continue to live together. They have not divided the country in two – Hutu land and Tutsi land. No. They live together in the same place. And, most of the leaders of the government are Tutsi. So, the risk is very obvious. The risk is – they are still living together, they may have another moment of conflict. It's like talking about a divorce. Okay, they hate each other, they throw dishes at each other's heads all the time, the guy hits the woman all the time, and she hits back, but they have decided to reconcile. What is the risk? The risk is that they are going to fight again. But let's suppose that they divorced completely. She went to live to Zagreb, and he went to live to Skopje. So, what is the risk? They are not going to see each other again. So, then, you question, and my question to you, is: "Okay,

there was a divorce here. Everyone is living in a different country. So, what is the risk, and what is the risk that you want to prevent?” Is the question clear? Any takers?

...

Okay. Okay. So, I just want to make a methodological clarification. My point, and my question to you is about a different thing. It's about prevention. So, my question to open the – I know and I appreciate the intervention, and it deals with the strategic issues that we were dealing with before – but, right now, I would prefer to focus on the question ahead of us, which is one of the functions, or presumptive functions of a commission is to prevent something. To prevent the re-ignition of conflict. So, in your case, my question is – well, if the conflict is apparently contained through the desegregation of the ethnic identities in different homelands, then what is the risk? And, if you tell me what the risk is, then how could the commission contribute to prevent that risk? Or, you can tell me: “Well, the risk is different. There is a different kind of risk. It's not of conflict re-ignited among the different countries, but within the different countries. For example, the subsisting minorities within each of those separate national entities. But, in any case, I would like to focus on that particular questions.

We'll start here, and then we have questions ...

[question]

Do you want to continue?

Yes. So, just one comment on this particular discussion. When we talk about prevention, it isn't always clear what kind of hypothesis we are going to have. There are many different hypotheses to explain prevention. Some people will prioritize institutional hypotheses. That is, for example, we will create a mechanism to prevent violence or to encourage democracy. For example, institutional reforms. We will change the form in which the security sector works in our country or countries, the judicial sector, education, etc. Other people prefer to explain prevention by talking about political interactions. That is, we will create a different kind of interaction between actors. That is why the issue of trust becomes so important. So, there will be more trust in the state, and there will be, therefore, less inclination towards violence. Some others may explain prevention by referring to external actors. That is, we are going to prevent the recurrence of violence because others will prevent us to do that. For example, the international community, other countries, markets, etc. So, the question is which of those hypotheses are in our minds, or is it a mix of things? How is it that the work of a commission that establishes a number of facts actually prevents the recurrence of violence, or prevents in any case conducts that unleash violence, either between our different countries, or within our different countries. Because, you have just mentioned a number of hypotheses of risk. One risk is that the separation was not perfect. People still continue to have minorities and majorities in the different entities that were created. Second, it's not that a country

was moved to Africa, and another country was moved to Asia. They are still together. They are in the next place. So, it's like a large family that had a horrific fight, and they divided the house into seven different parts. Each room has a stair to the street, and each room has organized a garage, and some of the people are living in the garage. So, this is still very complicated. So, what you are saying is – the risk is still there. Some of the hypotheses of risks have lessened, but the fact is that there is still a risk. So, then the question which continues to be a question from me to you, not to be solved right here – is how do you think that by establishing facts you actually prevent more violence? It's not apparent, and I must say that I am not completely satisfied with the different hypotheses. We need to continue thinking about that. One argument that I find particularly interesting, is an argument that I think you mentioned, which has to do disputing the discourse, the political discourse that still exists in many of our countries. That is, after a conflict has taken place, there are a number of justificatory discourses, there are a number of justifications that the different parties give themselves. So, for instance, in Chile, still, some people who supported Pinochet say: "Yes, all those crimes took place, but those happened because we were defending Chile from falling into the claws of communism. So, yes, it's a pity that 2,000 people had to die, but the end justified those means." That's a justificatory discourse. The truth commission's message is: "Whatever your objective is, you can not disappear, torture and kill people." So, what a truth commission does is to dispute that interpretation, to dispute that justification, and propose an alternative way of living. Some people will say: "We were defending our homeland." Some people will say: "We were defending our nation." Some people will say: "We were defending our families." Okay, so, the question is – is a truth commission, or a RECOM, going to dispute that language, that discourse, and propose alternative discourses? That is the question. So, as you see then, there is something else about establishing facts. It's not just a list of crimes that the commission will establish, but it's also some kind of an argument that will, perhaps, be even more than socio-historical and juridical. It's, perhaps, moral. There will be some kind of moral message in this story that will prevent the recurrence of violence. Let's suppose that you have a divorce, and the people are living separated. So, perhaps they are not going to hit each other again, but they have a kid. And, because they have a kid, they have to see each other all the time, because they are co-parents. So, perhaps, what you are saying is that even in such a situation, people would need to, at least, sit together and recognize some mistakes, so that they will never live together again as a couple, but they will be good parents. It's some sort of a negotiation. Okay, we're never going to live together again, but let's make an effort for our kids. So, you see, that would indicate some kind of alternative discourse. Instead of saying: "You are terrible, you never clean the dishes", and, "You are terrible, you are not faithful", you say, "Okay, we're not going to talk about that, and we are going to talk just about how to discuss our relationship in a different way, so that we can raise the kids in a better situation." So, that is another hypothesis that I find particularly interesting, but cannot answer that right now. So, let's move ahead and let's focus on the next slide, please, Jelena, which is the definition of the inquiry itself. As you see, you will remember, the first big question, and a very complicated one, was – what are those facts that we are going to talk about? What are those facts we are going to do an inquiry about? And, as you see, and you will remember, it was very difficult to define them. One of the difficulties can be reduced a little bit by establishing some kind of parameters,

giving some form to the question. And, those parameters are particularly four in number. The first parameter is what is the material object of our investigation, that is, what is the kind of conduct that we are going to examine. Group 1 gave a position. They said: "RECOM should focus on killings, torture, disappearances, forced displacement", and they mentioned a couple of other crimes. So, that is a possibility, to limit the facts to a given list. So, when you go to the Chilean truth commission report, sorry, mandate, and you go to article 1 of the Chilean truth commission mandate, they define what the violations that they have to investigate are. They say: "Serious violations are here to be understood as situations of those persons who disappeared after arrest, who were executed or who were tortured to death, in which the moral responsibility of the state is compromised as a result of actions by its agents, or persons in its service, as well as kidnappings and attempts on the lives of persons committed by private citizens for political purposes." So, the phrase is very weird, but let me explain what it says here. It says that the truth commission of Chile is going to analyze only the following conducts: disappearances, executions and torture to death, those three conducts, when the author of these three conducts is the state. And, in addition, two other conducts – kidnappings and attempts on life, committed by non-state actors, basically the guerillas that acted against Pinochet. So, the truth commission of Chile, in the material focus of its inquiry, focused on only five possible acts. And, those acts are clearly defined here – disappearances committed by the state, torture to death committed by the state, executions committed by the state, and attacks on life committed by guerilla groups, and kidnappings committed by guerilla groups. Those are the five things. Nothing more. There's no indication of anything more. If you were raped by a member of the police, you don't have a case in front of this commission. If you were tortured, but you were not killed, you don't have a point before this commission. You see? Every focus implies putting something under the focus of the commission, and something out. So, in this case, there are clear exclusions. Does anyone think of an additional exclusion, an additional crime that is not here? Okay, let's continue. The decree of the commission of Peru, in article 3, says: "The commission shall focus its work on the following acts, as long as they are imputable to terrorist organizations, state agents or paramilitary groups." And, then, they make a list: a – murders and abductions; b – forced disappearances; c – torture and other serious injuries; d – violations of the collective rights of the countries and Andean native communities; e – other crimes and serious violations of the rights of individuals. What is the difference between this mandate, the Peruvian mandate that I just read, and the Chilean mandate? Can you give me a difference? That's right, the Peruvian mandate has an open ended list, because it says "other" violations. Who defines those other violations? The commission. So, which commission has more power? Obviously, the second one. Now, which mandate is more extensive? Obviously, the second one. Remember what happens with torture? The Chilean commission limits torture to one case and one case only – torture that ends in death. Moreover, torture that ends in death committed by a state agent. That is the only case of torture that enters into the mandate of the Chilean truth commission. The Peruvian commission says "torture and other serious injuries". So, that's wider. And, at the beginning it said: "...all of the following acts, as long as they are imputable to terrorist organizations, state agents or paramilitary groups." So, it's torture not just committed by the state. It could be also torture committed by the guerilla. And, it's not just torture that ends in death. It's any kind of



torture. So, let's go back to the first point – the material focus of the inquiry. You can either have a short list or a long list. You can say: "Okay, we will focus on three crimes, and three crimes only." Or, you can say: "we will focus on 10 crimes." Moreover, you can make a closed list, or an open list. The way to make an open list is to leave a little article saying "and other similar violations". In law, that is called analogy. You establish an open list by analogy, saying, for example, "torture and other serious injuries", meaning that you, when you are in your commission, you will receive testimony and think: "Aha, is this torture? No? If this is not torture, is it a serious injury comparable to torture?" As you see, the second mandate does not say a word about rape or sexual violence. However, the truth commission of Peru has two chapters on sexual violence. Why? Because the mandate says: "...torture and other serious injuries." And, the commission interpreted that "other serious injuries" include sexual violence. So, my question to you, not right now, but my question to you is what is preferable – small list or a long list? Open list or a closed list? See? Homework. Let's continue. You can also limit the inquiry by limiting the persons you are going to investigate. Who are the agents you are going to investigate? Typically, in a conflict, you have many kinds of agents, especially in an internal conflict. In this case, it ended up being international, but anyway, you have a conflict, and you typically have state agents and non-state agents. And, sometimes, it is very clear who is a state agent, and who is a non-state agent. But, sometimes, there are a number of other agents that are very unclear. You have paramilitary groups, you have death squads, you have secret groups, you have self-defense units, you have criminal groups, you have individuals that commit opportunistic crimes – you know, I hate my neighbor, we're in the middle of a war, so I go out and kill my neighbor, and I disappear. Right? That's an opportunistic crime. Or, I always wanted to rob that bank. And, there is a war, I go and crash the bank, I rob the bank, and people are going to believe that I did it for a political purpose, but I just did it because I wanted to rob the bank. So, there are all those kinds of persons committing these acts. So, the question is how do you limit that for your investigation. As you see, the first mandate, the Chilean mandate said: "...state agents, persons working for the state, and particulars, private individuals, who acted for a political purpose." So, the Chilean commission, in that second line, is saying: "We are going to investigate crimes committed by three agents, and three agents only." State agents can be a policeman, a minister, you know, a member of the army. Agents working for the state – that can be a contractor, it can be a mercenary, it can be any person that you determine has a relation with the state. That's not always easy to prove, but the Chilean commission is saying that you can do it, as far as you can prove that that person working for the state. And, then, private individuals with a political purpose. In the case of Chile, that was the guerillas fighting against Pinochet. But, there may be others. There were also right wing assassination squads. So, you see, that second level is also something that may limit the investigation, or may open the investigation. If you don't make a personal parameter, and you say: "The commission will investigate all the crimes that ended in killing, committed by any kind of an agent", what will be the problem? The problem is that you will not have any way to discriminate between crimes that are human rights violations and war crimes, and regular crimes. So, somebody could come and say: "My husband was killed in a bank robbery. He was in a bank, the robbers came, they started a shootout, and my husband was killed." And, you can say: "But that's not a crime

committed in the context of the war, or with a linkage to the war”, but because your mandate is so extensive, you don’t have a legal way to discriminate against that. And, it’s important to do that, because, if you don’t do that, then your mandate is so enormous that you will never finish, or you will never focus, really. It depends also on how much time you are going to have to work. If you have a small mandate, then you can work very quickly. The Chilean commission had six months to work, and an extension of three more. So, in total, nine months to work. In that context, you can imagine, well, that they may have been very grateful that they had those five crimes and those three agents to examine. The Peruvian commission had two years to work. So, in that context, you can think: “Well, it makes sense to have a wider mandate.” So, those two things are related. Let’s go to the third focus, and that is incredibly complicated. That is the temporal focus of the inquiry. What time period are we going to investigate? The first group was saying since 1991, I believe. Right? To 2001. Okay. Is there a particular conflict that is left out by that period? Yes there is. Which one? All right. So, what would be the consequence of leaving that out? Precisely. That is, you see, when you focus materially, there are crimes you leave out. When you focus temporally, there are conflicts you leave out. And, if you leave out a conflict, then you are also leaving out a certain group of victims, who are going to say: “What about us?” There may be reasons to do that. I’m not saying that you have to do everything. But, I am saying that whatever you do will have a certain consequence. That’s one question about limiting. Another possibility is to say: “We are going to cover everything. From the first bullet that was shot, to the last one.” Right? So, you will go until the last moment of the conflict in Kosovo, everything. So, you will cover until the last possible moment. That’s a possibility. Now, one risk, then, of establishing limits is that you will leave out certain conflicts, and therefore certain victims. That’s one possibility, and that’s one risk. Another risk, in this temporal parameter, is that, depending on what time limit you establish, you also change the possible explanation for the conflict. Let’s go back to the divorce example. If I am divorcing, and I’m having a big dispute with my wife, everything changes depending on what moment I choose as relevant for our dispute. I can say: “You know what? This started, marriage started to suck the moment you cheated on me, and therefore, my historical interpretation is – you cheated, therefore this marriage started to suck.” But, she can say: “Wait a second. You are forgetting that I cheated on you after two years during which you were cheating on me every day.” That’s another explanation. And, her time limit will be: “No, no, we won’t start in 2006 when I cheated, we will start in 2004, when you cheated. Not with one, but with seven different women.” Right? So, as you see obviously, there is a very clear problem in the form in which you establish that mandate, be it at the beginning, or be it at the end. Now, one inclination would be: “Let’s do something very comprehensive. Let’s start very early, even before this marriage. When I met you, you were already very coquettish.” Right? Or, we can even go far behind, and we can say: “You know what your problem is? Your parents are crazy.” And then you are going back, and back, and back in time. There is also a problem with going too far back in time. Right? You never end. Let’s imagine the conflict in Colombia. You could investigate the current conflict in Colombia starting in the eighties, when the paramilitary groups were created, and when the drugs started to impact the country. That is one explanation. But, then you can start the conflict by saying: “Wait, wait, wait. The paramilitary started acting because there was a guerilla, a left wing

communist guerilla.” So, you start the investigation in 1964, when the guerilla started. And that makes another explanation whatsoever. And, the result of that c commission would be: “Well, this conflict started because there were communist guerillas. And, some people would say: “Wait a second. You don’t start in ’64. Let’s start in ‘48, when the two big parties in the country, the Liberals and the Conservatives, started a civil war between themselves.” Depending on where you put the starting point, that has an effect on you explanation, and the implicit allocation of guilt and responsibility. And, depending on when you finish, your description, you will also have obvious impacts. So, that question there, the temporal focus of the inquiry, is particularly important. Finally, the fourth parameter that you can establish in your investigation is territorial. What territory are you going to cover, what nation, what region? How about people living in other countries? How about investigating other countries, too? For instance, I could see as a possible situation that when you discuss in Serbia the crimes and issues that should be discussed in RECOM, some people will say: “Well, what about the NATO bombings that occasioned a number of civilian killings?” Well, should that be included? Because, that depends on all those four things – A – the material - are we going to include civilians killed as a result of foreign nations bombing the territory of Yugoslavia? ; B - Personal – are we going to include state agents from third countries? ; C – temporal – are we going to include that particular time? ; D – territorial – are we going to include nationals of different countries outside of the region of the former Yugoslavia? You see the question? So, as you see, then, you will need to argue, and you will need to explain what your four parameters are. So, if you say: “No, no, no, we are not going to include the NATO bombings”, you need to have an answer for that - why? If you say: “We are going to go up to 2001 only”, the question is – why? If you say: “We will start in 1995, not in 1991”, the question is – why? There are no rules in terms of saying you have to do this, that and that, because both extremes have their own risks. If you have a very small mandate, very parametered, perhaps the investigation will be more effective, more complete, but, also, it will leave many aspects out of the picture. If you have a wider investigation, perhaps the results will be more comprehensive, but, also, you will have a number of other political fronts. You will have to deal not with one constituency, but with many constituencies. So, that is the second question here – how do you limit, in some way, your commission and your analysis. We have a number of experiences to deal with this. There have been twenty-something commissions already. All of them have made a different attempt to establish parameters on the investigation, and all of those attempts have specific risks. It depends, again, on the question of capacity, political willingness, political risks, and your evaluation of the situation. Look, in the case of Liberia, for example, a truth commission that I know well – after the civil war in Liberia was over, and after they elected President Johnson, the first woman President in Liberia, and, I think, of Africa, they created a truth commission. And, they created a commission that had almost no material parameters. They said the commission was going to investigate all war crimes under international law. So, basically, the commission investigates all of the 72 possible crimes under the Rome Statute of the ICC, and corruption. So, it’s a commission that has a very, very wide material mandate. And, the question for you is – do you think that Liberia has the human resources to do such an investigation? The answer is, obviously, not. So, but because you made such material mandate, then you are creating a commission that will, in all effect, be highly dependent on international aid. Otherwise, it will not be conducted

properly. And, even with international aid, it is a commission with a number of very big problems. We will see it, because it is supposed to publish its report in the next few weeks. But, then, as you see, all those four parameters should be seen as aids, as help to you, to focus your inquiry. But, at the same time, they should be seen critically, as helping tools that also entail certain risks, each of them. So, let's go to lunch, and we will continue the conversation after that.

### III

Jelena, could we go to slide number 10?

So, it looks like it's true, what they say about black cats. *Crna mačka*. So, anyway, we need to discuss three things now, and each of those three things, as the ones we just discussed, are very easy. I'm kidding, they're not easy. Each of them carries a number of issues and opportunities, but also problems. The three things we are going to discuss. First, the mechanism for establishing a commission – how do you actually create a commission. Second, the composition of a commission and what are the options to actually integrate a commission – how do you choose the people who will be there. And, the third one is the kind of powers you want to give to a commission – that is, what instruments do they have in their hands to discharge their mandate. We have discussed previously, this is just a reminder, we have discussed previously what they are supposed to do, the functions they are supposed to have, and the kind of investigation that they are supposed to carry out. Now, we are going to have a look at the enabling instruments that they will have in order to carry out their mandate. Again, this discussion is impossible without the first discussion, which is why this is the order we do it in. So, the first thing is - how do you establish a truth commission? What cases do we have at hand, what are the pros and cons of the different possibilities. In principle, classically, there are two ways of establishing a truth commission. One is by the political decision of the executive, whatever form executive, and the other one is by law, that is, after parliamentary action. Those are the two forms. Either an executive action, or a legislative action. Or, at least, the classic forms. There has been on truth commission established as a result of a judicial action – I'm going to mention that later. But, let's just examine the first two cases, because 90 percent of the cases belong to either one of those. So, the first possibility is that the executive creates a truth commission, and that can have many different forms. Typically, in a presidential regime, the President has, under the constitution, the capacity to issue decrees. In order to issue decrees, depending on the subject matter of that decree, sometimes, the President can issue a decree of his or her own motion, and sometimes, the President needs to ask for legislative authorization. That depends on the constitutional regime. I don't know what the constitutional regime is in each of these seven countries, successors to the former Yugoslavia. So, what are the issues on which the President in Serbia, Montenegro, etc., can establish something like this by decree? Anyone can tell me? Do you think that there is any place among the seven countries where the President could, actually, establish by decree a specialized inquiry commission? Is the question clear? By decree. One person. It's not possible. I

thought that Kostunica had... It failed, but this is the thing. It depends on the constitution and the powers of the President. That's the first task. I'm leaving you a number of homeworks. This would be an additional one. Constitutionally, what are the powers of the Presidents of the region? Are the constitutions very different?

Answer:

I don't think so, since most of the countries are having the same... Most of the countries in the region of former Yugoslavia – actually, countries of former Yugoslavia, they originated from the same legal system, so, more or less, I believe, more or less, they have a similar legal system as the previous one. So, the presidential powers are very limited. They are limited to the foreign policy, limited to the army issues, and, to some extent, to amnesties and pardons. But, anonymous decree without any authorization, in a form of a law passed by the parliament – I don't think it's possible in all countries in the region. That's because it's a parliamentary democracy, so the power is in the parliament.

I imagined that if the system is parliamentary, then the role of the President is lesser. Now, it's still an interesting question. Look, in the case of many Latin American countries, which, again, are very similar in their constitutional outlook, those countries are very presidentialistic. Presidents are usually very strong in Latin America. That means that when you see their authority in the constitution, you have a long list of the things they can do, and then, on top of that, you have something like an open ended clause, such as "other issues under the constitution". It's something very, very vague. The Peruvian President is the best, because you can do, actually, whatever you want, actually. Right? It has very open description, very loose descriptions of what they can do. And, that is how they used it in order to create the truth commission of Peru by decree. The same happened in Chile, for obvious reasons. The presidential institution was made in the constitution of Pinochet, before the transition to democracy. So, again, that's a constitution with a very strong President. Now, even in cases where the Presidents are very strong, sometimes, depending on the subject matter of his action, he need to ask for authorization from parliament. Now, the fact that the President needs to ask authorization of parliament doesn't mean that the President has his hands tied. In fact, sometimes parliament gives authorizations, because parliament is incredibly lazy. So, I have had a number of places where I have seen Presidents issuing what they call decree laws, because parliament has authorized them to do that. For example, all over Latin America, when it came to economic structural adjustment, in order to adjust the economy to whatever the international economy to whatever the international community wanted, International Monetary Fund, World Bank, etc., the President would ask authorization to issue decrees regarding the economy. And, the parliament would say: "Okay, on this particular issue, on this particular subject, the President has the authority to legislate by decree, and the parliament will pass those decrees as law." That happens, and I'm pretty sure that that also happens in some other countries. I don't think that absolutely every law in your country passes by parliament. I'm pretty sure that there may be some elements of norms that are the result of executive action delegated by parliament. So, that's the first issue to examine. Now, the advantage of passing a commission decree by presidential power is that this is usually the fastest possible way. That depends, of course, on your analysis of the situation. In the case of Peru, the regime

of mister Alberto Fujimori, our dictator, you may have heard of him, collapsed in a very catastrophic way. The President escaped the country, his ministers started to go to the airport. They were arrested. It was very peaceful, nobody died, but it was a very catastrophic thing and a very fast collapse. And, therefore, a transitional government was established that would last only six months and call for new elections. Now, the human rights movement thought: "What do we do? Do we wait for the next government, or do we act now?" An, then they thought: "They are going to call for new elections, we don't know who is going to win. We don't know what will be the composition of parliament. It is a big risk. This President is OK, even if it is a transitional President – let's act now." So, the transitional President was the one who created the commission. So, the advantage of a decree creation is that it's usually very fast. In that advantage, there's also the disadvantage, as you can obviously see, because it all depends on who is the President. If you have a nice President, that's excellent. Somebody who is going to hear the human rights movement, and is going to issue a decree that is positive in general – that's fabulous. What happens if the President will just want to impose his or her agenda? Then, you can have a very complicated problem. But, typically, the difference and the advantage continues to be the fact that this is expeditious. Now, what happens with the legislative approach? Let's suppose that, for whatever reason, we don't want a presidential decree, or a royal decree, or a UN resolution. The East Timor decree that I have given you is actually a UN administrative resolution, written and approved by the UN administrator of the territory of Timor Leste, Sergio Vieira de Mello. Basically, he issued the resolution. But, anyway, let's suppose you don't want to do that, and you want a legislative approach. Well, the advantage of a legislative approach is that parliament usually can create bodies that are very strong. Parliament can create a body that has delegated powers, for example. Since parliament usually has the authority to, in practice, interpret the constitution, parliament can decide what powers are actually constitutional to give. So, typically, for example, legislatively created commissions have powers of subpoena, powers of seizure, and powers of examination, in place without previous advice. So, parliamentarily established commissions can carry a number of powers. Disadvantages – they are very slow to be established, and, second, they depend a lot on the changing environment of parliament minorities and majorities. Obvious, right? So, that can go, sometimes, very, very wrong. The case I usually mention to explain how bad it can go, is Indonesia. In Indonesia, you may remember, in 1998, the economic crisis that hit Asia, provoked the fall of a 30 year long dictatorship, the dictatorship of general Suharto. Suharto went home after an economic scandal. And, immediately, people started to talk about a truth commission. Since the memories of the South African truth commission were so fresh, what they did was to translate the law of the South African truth commission into Indonesian, and they took it to parliament as a proposal. So, parliament took it, and started to discuss, and discuss, and discuss, and discuss. They took six years discussing that. And, after six years, they issued something that had the name truth and reconciliation commission, but that was something entirely different. And, that is, not because they were very creative, but because the composition of parliament was extremely problematic. To begin with, Golkar, the party of mister Suharto, that is the party of the dictator, controlled about 25 percent of parliament, which is a very important number of parliamentarians. And, if you want to do something in Indonesia, you need to negotiate with Golkar. So, a truth commission had to be

negotiated with the party of the main perpetrator. Then you have three or four other parties, some which were also very nervous about these issues. So, at the end, it was a truth commission legislation that was extremely bad. It was so bad that the constitutional court actually cancelled the legislation, voided the legislation, saying that it violated the constitution in many places. Just to give you one example – since they said that they were inspired by South Africa, and its notion of exchanging rights, the Indonesian truth commission gave perpetrators amnesty if the direct victims forgave them. And, it gave reparations to victims only if the perpetrator received an amnesty. So, if you were a victim in Indonesia, under that proposed truth commission, and you wanted reparations, you had to forgive the perpetrator, because, if you forgive the perpetrator, he receives amnesty, and if he receives amnesty, you receive reparations. Cool. That was so obviously a violation of human rights that it was, the whole legislation fell in the examination in the constitutional court. It was an absolute disaster. So, then, obviously, you can not go to the creation of a commission with blind eyes. You have to know who is the President, who are the ministers, who are the parliamentarians, and what is the balance of power in the parliament. Who is going to support this, and what are the likely forms of supporting it? An additional complication with parliamentary establishment – you have seen, can we go to the previous slides, Jelena, please – we have seen in... The one before. Thank you so much. You have seen how many variables exist here, right? You can change the subject matter of the investigation, the time the persons, the territory. What do you think the parliamentarians are going to negotiate about? Obviously, about this. So, you may have a party saying: “All right, you can have all the conducts you want in the truth commission legislation. Let’s put all the crimes under the Rome Statute, 72 crimes. But, we will only study this kind of agents, or we will only study this particular period of time. And, if you want my vote for the first thing, you have to give me your vote for the second thing. Parliamentary procedure is horse trading. So, you can see the numerous aspects that you have, where the parliamentary procedure can be very tricky. Can we go back to where we were? Okay. So, advantages and disadvantages. Truth commissions have been created, more or less, half and half. Many truth commissions were established by decree, many by law. The way in which it is established doesn’t necessarily imply that the commission is going to succeed or to fail. Commissions have succeeded and failed in both those ways. There are commissions created by presidential power, for instance, Koštunica, which completely failed, precisely because it’s just a presidential action without any kind of consultation, without any kind of political process. Obviously, it falls. The Indonesian commission falls completely by the whole, because of excessive kind of negation. So, the thing is, there are risks, in either too much consultation or too little consultation. In both cases you have lots of risks. Now, is there an alternative? Well, a couple of years ago, Canada created a truth commission by judicial decision. This is called the Indian Residential Schools Truth and Reconciliation Commission. In case you haven’t heard about it, let me just tell you in a few words what it is about. Canada has had, for about a century and a half, a policy of forced assimilation of indigenous population. By this policy of forced assimilation, they tried to destroy the cultural identity of the Canadian Indians, what Canadians call first nations. What they did was that they passed laws of compulsory education, by which every family had to surrender to the state their children when they were found. The state would forcefully take the children from those families who didn’t want to give them up. The state would

take the children to residential schools for 13 years, and they would not send them back home, until they came back. They were adults, they didn't remember their families, their names, their language, their culture, anything. So, they were taken to some other place, they were given another name, they were severely punished if they made any kind of attempt to recover their culture. Basically, Canada exterminated culturally the Indians. Of course, what happened is that people who were raised in this way, were profoundly traumatized, not to mention the fact that the schools were awash with sexual violence, and just violence of every kind over the children. So, you have, in indigenous communities in Canada, incredibly high levels of suicide, drug addiction, alcohol addiction and family violence, because people never learned how to be parents, to begin with. So, what started to happen about 20 years ago is that some survivors of those schools started to pursue law suits against the Canadian government and against the churches that ran these schools. At some point, there were 8,000 law suits at the same time against the government, demanding millions and millions of dollars, and against the churches. If those law suits continued, basically, all the churches of Canada would declare bankruptcy, because it was impossible to pay. And, the other thing that happened was that the judiciary was completely overwhelmed by the quantity of law suits. So, then, the government, the churches and the victims agreed to have a negotiated peaceful settlement. By the settlement the lawyers of the three parties met and decided what to do. After the end of that settlement, they submitted their agreement to the judges of the provinces where these things happened, and the judges had to decide whether the settlement was legal or not. So, the negotiation also takes place, this time not between the parliamentarians, but between the lawyers of the parties. And, they submit that claim to the judge, and the judge says: "Yes, this is legal. No, this is not legal." The judge said that the agreement was legal, and created two things – a reparations process, and Canada accepted to pay one thousand nine hundred million Canadian dollars, 1,900,000,000 Canadian dollars to the surviving victims. And, on top of those almost two billion Canadian dollars, Canada accepted to establish a truth commission, so that the survivors would have a place where to talk about what happened to them. That has been created by law. And, I think I have included the mandate of the Canadian commission in your package, and if not... Is the Canadian mandate? Yeah, I have included the Canadian mandate. So, that is an example of a judicially negotiated mandate. Now, pros and cons. We don't know yet, because the commission is just starting. Now, one thing that is very problematic with this particular commission is that every disagreement in the commission or about the commission needs to be decided by the judges that created it, because this is part of an agreement subject to judicial review and judicial ward. So, if anything happens in the commission, it goes back to the judges. That indicates a very slow, complicated and legalistic process. Last year, Canada named three commissioners. Two months after they were named, they started to fight with each other. As a result, the chair of the commission quit. Because the mandate didn't say what to do when one commissioner quits, it had to go back to the judges. And, the judges and the lawyers, because they are lawyers, I'm sorry for the lawyers here, I say this with all respect, the lawyers took one year more to discuss what to do when one commissioner resigns. So, only last month, they nominated three new commissioners to replace the first three. We hope that they are not going to fight again. So, you see, all of those are advantages and disadvantages. The advantage of a judicial agreement, of course, is that it isolates the commission from



political pressure. It's not a creation of politicians. It's a creation of the parties and the judicial ward, which is an entirely different thing. So, all those three possibilities have pros and cons. Now, let's ask a question, the first question that you have in your minds, which is how do you do that, not with one country, but with seven, or with six, with five, with four, with three? How do you do that, when you have to coordinate more than one country? First question – could you establish everything at the same time? Is that a possibility, that is, let's convince seven parliaments or seven Presidents to do this, all at the same time, so that one single international institution is established by seven decisions that are supported by a treaty. So, that is the first hypothesis, right? Another hypothesis would be – perhaps you don't need to establish it in the seven countries under exactly the same authority. You could have a presidential commission where that is possible, a parliamentary commission where that is possible, etc., etc., etc., and then have a treaty or an understanding, or a memorandum of understanding, or whatever it is between the different countries to have them working together. Is that possible? I don't know. But, let's examine other possibilities. But, what happens if the Presidents can not get into any kind of agreement, and all of them want to establish their own commission? So, you have three or four parallel commissions, let's say. Would it be possible to have four commissions or five commissions with exactly the same mandate, that is, exactly the same parameters, time, kind of crimes, persons of crimes, territory of crimes? Those are the questions. But, then, and supposing then that you actually obtain some kind of decision in four or five countries – how do you achieve the coordination of the four or five decisions? We have one previous experience. Only one, and it was between two countries. That is a commission that was established by East Timor and Indonesia in 2005, called the Commission of Truth and Friendship. That is a commission that was established because those two governments were in full agreement, that is, there had been a UN commission that found massive crimes committed by Indonesia, and Indonesia was completely unhappy with that. East Timor's government was also unhappy with that finding, because East Timor's government wanted, most of all, to fix the relationship with Indonesia, because East Timor was independent, but it still depends on Indonesia completely for everything. There is not a single manufactured good in East Timor that is produced in East Timor. Everything is produced in Indonesia. So, East Timor and Indonesia were in complete agreement, quote unquote, because Indonesia is 99 times the size of East Timor, and they agreed that both Presidents would establish a commission. How did they do it? Not even by a decree. Simply, the Presidents met, they made an announcement, and they created a commission. They didn't send that agreement to parliament, they didn't have it ratified, it was just a memorandum of understanding between the two ministers of foreign affairs. Something as simple as that can be done when there is enormous political willingness. In this case, they were so much in agreement, that they didn't need to do anything else. They didn't need to do anything else. They just needed to express this agreement, write a memorandum of understanding, sign it, and start creating the commission. Why? Because both Presidents have very strong presidential powers in their constitutions. Second, because they were completely in agreement. And, who is going to complain? Nobody in Indonesia is going to complain because they are the perpetrator country, and nobody in East Timor is going to complain, because there is simply no strong political society and no strong civil society in East Timor, and because the leaders of East Timor are all former guerilla fighters, who

are still very respected by the population. So, if they are doing it, it's because it's probably good. So, that's the only previous case we have. So, then, in your case, you are saying: "All right, let's do it for the region." Right? I'm not saying this to discourage you. I'm saying this to get the problem as it is. So, then, let's desegregate the question and let's look into it. The plan is to have a general investigation. The function, if I understand it correctly, is to establish the facts, particularly those that have to do with the disappeared, because that is the actual wound. And, we want, if we are lucky enough, to dislodge from the public sphere, these militaristic, nationalistic arguments that keep funning the conflict. Does that necessitate a seven country established commission? And, if that is the case, in what ways do you navigate that? Is it necessary to do it with seven Presidents, or with seven parliaments, or with seven supreme courts, or with a mix? And, if you do that, what kind of ratification you may need? Or, you don't need a ratification, but just an agreement. That is the question. Any takers?

[answer]

Thank you, that's a very ingenious response. Very, very smart. I was thinking that the response would be, I mean, obviously, when you pose the question only in terms of national entities, the response becomes very difficult. In your case, you are using as a leverage the fact of common aspirations of most of these countries to be part of the EU. I was thinking as a Latin American, and therefore I was thinking of something a little bit similar. I mean, I was not thinking of countries that want to be part of Latin America, because nobody wants to be a part of Latin America, but I was thinking about the Inter-American Court of Human Rights, which has established a number of standards that apply compulsorily to all Latin American countries who are a part of the court. And, there are decisions of the Inter-American Court of Human Rights that order countries to establish the truth, for example. They have never decided to establish a truth commission, but they have decided to establish commissions of inquiry over certain issues and cases. It has happened in Latin America on many occasions. Now, the only thing I was wondering was whether it would be possible to go to the European court of human rights with some kind of case that demonstrates the denial of the right to truth for victims. That is, for example, the disappeared – can they take cases about disappearances, which are cases where there is strong jurisprudence by the European court after Kurt vs. Turkey, and argue on the basis of Kurt vs. Turkey that this is an issue where the governments are violating the right of the victims, so that the court would issue a mandate? Would that be applicable for more than one country at the time? I don't know. It has never been tried. So, in any case, I don't pose the question to discourage you, I pose the question to actually try to find ingenious answers. Now, we don't know where this is going, but it's interesting to look at it. Let's take another opinion, and let's move on. You have a...?

[question]

Yes. Both suggestions are very interesting and it is initially a perfect idea which has to be developed. I, personally, follow this second suggestion through the jurisprudence of the European court for human rights, especially given the reconstruction of the procedures of the court, where there are some initiatives to impose court decisions to be binding not only for the concerned state, but for all states having the same issues, the same cases in front of the court. So, once this mechanism gets established, and it will happen, sooner or later, this might be a powerful mechanism for the region, for the whole region. Thank you.

[question]

Thank you. That's very, very interesting. This is a fascinating subject, and I don't think we have the answers right away, but the important thing is to, kind of, sit down and discuss them. There is a... I want to change the question now. What happens if one of the countries decides to act independently from the rest, and launches its own truth commission? So, what happens if, you know, you are here in RECOM, discussing how to make a common truth commission, and you find tomorrow that Montenegro established its own truth commission on its own? So, what do you do then? I will leave this question to you. Let's go to the next slide, please. This is a question that is also related. Obviously, because, how you compose a truth commission obviously has to do with what kind of realities you want to represent in that commission. The initial truth commissions, the Latin American truth commissions, that is, the classic truth commissions, created by decree, very, very simple, very limited in their parameters, also were very simple about composition. They created commissions based on the individual merit and individual prestige of their members. That was all. They were not representative commissions. They were commissions of important people, who were considered to be very prestigious, very respectable. Do you have a question on this point? Go ahead, please.

[question]

Thank you so much. That helps and clarifies the first point a lot. Now, let's go back to the question of composition. Then, there are two big possibilities with composition. You either create a commission based on some kind of representation criteria, or without representation criteria. Classically, commissions were established without representation criteria. They were commissions of notables. So, you choose the three individuals that everyone in the country respects. And, it doesn't matter if the three are men, the three are old and white and live in the capital city. It's just a matter of you respecting these three individuals. But, over time, there has been more attention to representativity, because of an obvious reason. The conflicts have to do with identities, be them social, class, ethnic, religious, etc., and if you establish a commission after that kind of a conflict that does not

pay attention to that matter, then, probably, people will think that that commission is not neutral enough, not objective enough. Examples. As I mentioned before, the commission of Chile names eight individuals. Four of those are *Pinochetista*, four of those are not *Pinochetista*. Four democrats, four pro-Pinochet lawyers. All of them were lawyers, by the way. So, the decree doesn't say: "We are going to name four and four." It just names the names. But, everyone knew that it was a parity composition. So, this is a case of representation by political indicators. "Four and four" meaning the two main political divisions in our country. There are commissions where you have an indicator of a quota of women that you want to have in the commission, or commissions where you are paying attention to the question of religious or ethnic identity. It would be very difficult, for instance, to have a commission, let's say, in Liberia, where you don't represent all the ethnic groups in Liberia, because the conflict was so interlinked with ethnicity. But there is a problem, though, and a danger. The danger is that you go for a representative approach forgetting completely the question of prestige and individual merit. That is, there is a problem in the possibility that the different groups, parties, in this case countries, just put commissioners forward, without attention to their individual merits. And, that is perfectly possible. There are many truth commissions that have failed, and I will mention these examples liberally, so you can have an idea of where it is that failures can happen. One of those cases is the Democratic Republic of Congo. In the DRC, after they negotiated the peace, in the peace agreement, they agreed to create a truth commission. So, they said: "All the parties of the Sun City agreement will nominate a commissioner." So, that basically means that all the different parties that were in conflict, in this case political/ethnic groupings, will have a commissioner. That basically means that each warlord has a commissioner. And, as a result, you had a commission of, I think, 12 people, many of which are directly suspected of alleged violations of human rights. And, as a result, nobody wants to work with that commission. The international community did not give a single dime for that commission, the victims did not go to commission's activities, and the different parties boycotted each other at the conduction of that commission. As a result, you don't have any commission in the DRC. So, the risk is that too much representation may affect the basic need for merit and individual prestige and expertise. Now, when you go for representation, and everything indicates that there has to be some form of representation - obviously, it's easier to have a representative sample if you have a larger commission. It is very difficult to have identity politics played right if you only have three commissioners. It's easier if you have 15. What is the difference between having a commission of three and a commission of 15? What do you think will be the problem of going from three to 15? Can you choose the... ?

Answer:

I think the main problem will be in the decision making of any kind when there are 15, rather than three, and disagreements.

Any other?

Okay. One other reason why going from three to 15 may be a problem - there is a very evident one – money. It’s easier to pay three commissioner than to pay 15. And, because commissioners are the position of prestige, and the position that is the most difficult one, that is usually the one that is better paid. A commissioner in South Africa earned 6,000 dollars a month, and that’s South Africa. So, you have 15 of those, that’s 90,000 a month in salaries only. One million dollars a year in salaries only for commissioners, not counting staff. So, let’s say that you have seven countries, and two commissioners per country, that’s 14. Three commissioners per country – 21. 6,000 each, 126,000 dollars a month, for 12 months, almost a million and a half dollars per year only for salaries of commissioners. Right? That’s an additional problem. So, you may want more to play representation correctly, but everything, every one of those decisions will have a tag cost. Because, the other thing that we discussed previously was how to agree, six or seven countries agreeing at the same time on the commission. How are they going to agree on paying? Who is going to pay for the commission? Are they all going to pay the same quota, or should one state pay more than another one? Are all exactly the same in terms of wealth? So, if you have 21 commissioners, who will pay for that? The seven states? Will they pay for all the commissioner, or only for theirs? You see, there are lots of little tricks here. So, the question of composition is linked to a number of other questions. It’s linked to the way in which you see the conflict, the objectivity that you want to have, the consensus that you aim to create, and also to some of the political decisions about the establishment of this institution. Is that clear, until that point? All right. So, let’s go to the next one. So, this is the third question I wanted to deal with in this session. The powers that the commission is going to have at hand. So, as we saw, and you remember, all commissions need to establish certain truths about facts. We have decided that there are many ways to establish that truth. It can be judicial, historical, just descriptive, it can be a mix of things, etc. But, you need to establish certain facts. Now, to establish facts in any kind of investigation, what do you need? When you want to determine what happened, what do you need? What do you need? Information. That information is the question. And, if you need information, you find information in sources. Those sources can be of different kinds. You can have testimonial sources, that is individuals who are going to tell you something, you can have archival sources, that is documents that are going to tell you something, and then you have pure evidence, non-archival. For instance, a math grade, a cache of arms, a barracks – that is also going to tell you something. All those are sources. And, if you ask the commission to establish the facts, the commission will need the power, the authority to obtain all those forms of sources. That’s the most essential question at hand. So, the first power a commission must have is the power to obtain those sources. That means that a commission needs to be able to interview people review archives and visit places. There’s no commission without those three powers. I repeat, because it seems pretty obvious, but let’s repeat them. Interview people, review archives and visit places. Those three authorities are things that usually prosecutors do. You are not forced to answer to anyone, unless that person is a prosecutor. If I go and I ask you: “What did you do during the war?” You don’t need to answer to me, because I am a private individual. But if I am a prosecutor, you need to have a lawyer next to you. So, a commission is a special mechanism by which certain function traditionally given to prosecutors and to judicial operators, are given to an ad-

hoc body, in this case, a commission of inquiry, or a truth commission, or a RECOM, however you want to call it.

Question:

Sorry, what about classified archives.

Ahh, let me get there. Typically, too, prosecutors have powers to seize and subpoena certain sources that are usually not directly available. Every country that I know has some sort of archival law. There are national archives established, and there is a law on archives that prescribes how state originated information is archived after a certain time. And, states also have, typically, laws on freedom of information and transparency, meaning that citizens are supposed to have access to state generated information. At the same time, every state in the world has some kind of exclusion clause. Typically, national security clauses or privacy legislation. So, not all information in the power of the state is directly available because of those two reasons, and perhaps some others. National security, which is usually a decision by the executive that doesn't tell anyone why something is national security, or privacy, that can be determined as such by a judge. So, then, when we talk about human rights violations, let's say, for example, payrolls for an army unit that was active in a place where a massacre took place – it's perfectly possible that that information is declared to be of national security, even if it is for an absurd reason, because there's nothing that affects national security in prosecuting a perpetrator, but let's say it has been named as a national security issue. Who has normally, under your constitution, the authority to challenge that kind of definition? A judge. So, one possible power for a truth commission could be to have within the commission, or ascribed to the commission, or related to the commission, a judge, a special judge that acts for the commission as some sort of a judicial agent to issue subpoenas, or to issue orders of seizure. You see the point? The Liberian truth commission, which was in many respects a very problematic commission, had one thing that was very interesting. They had the commissioner, and they had, as commissioner, a privileged relationship with one judge. That was a judge who basically worked for the commission. That judge issued subpoenas for the commission. So, that is one possibility – to create in the mandate of the commission the power of the commission to actually request that kind of thing to judges, so that judges can interpose an action that will result in the production of the material document that you need. Now, that is for documents, but it could also have the same implication for testimony. What happens if I call general so and so, and general so and so doesn't want to come? How do you make general so and so come? Again, what do you do when witness, or when a person of interest doesn't want to come? Again, you need a subpoena. That is not a magic response, as anyone with a little bit experience in human rights knows, because you can subpoena a perpetrator, and he comes with his lawyers and says: "I refuse to declare." Right? Because of an obvious protection against self-incrimination. But, that is also a possibility. And, again, you have a third case here, which is a visit to places. So, the commission should be able to visit every different place in the country without any impediment to do that. So, that is a little bit different from the other two cases, because, you know, a mass grave cannot say to a truth commission: "Don't come here." A place is

open. What that implies, though, is that there needs to be a certain kind of protection for places that hold evidence. In your case, because of the jurisdiction of the ICTY, there is already abundant experience in terms of protection of places, chain of custody, etc. But, again, these issues will need to be brushed again, in order to examine how to deal with it. So, the first power a commission needs are those things that I have put in the first item – to be able to seek testimony, with or without subpoena power, to be able to seek cooperation from the authorities, and to be able to conduct examination of sources or locations to obtain evidence. If a commission does not have that, then it can no carry out its work, quite obviously. Guys, can you... for a second? So, a commission can not conduct its work without those three things. Those three things can be strong or weak. We have commissions where there's simply no power of subpoena. They depend entirely on the voluntary presence of the witnesses. The voluntary disclosure of archives. That sounds weak. But, that depends, again, on the political environment. The Peruvian commission, you will see, has a very, very simple mandate, and the Chilean commission, again, very simple mandate, did not have any kind of judicial or quasi judicial power. They were very simple commissions, their decree only talks about seeking cooperation, seeking protection, seeking information. But, because they operated in a favorable political environment, it was very difficult for people with information not to go to the truth commission. So, the way of obtaining power may be judicial, or may be political, may be even diplomatic. Again, that shows how important it is going to be to have good commissioners. Because, if you have terrible commissioners, that don't inspire confidence in anyone, people are not going to go voluntarily. And, if people don't go voluntarily, you will have to issue subpoenas, and if you issue subpoenas, what's the situation? It's a complete legalistic and judicial chaos, and you're not going anywhere. So, it's better, in my opinion, not to need a subpoena, and use that only sparsely, when you really, really need it. So, the first group of power have to do with examinations of the commissioners. Now, what happens when the commission gets the information? Let's say this is a commission, we have gotten abundant information, we have the information in our hands, and we are preparing our report. And, then we realize that we have lots of information that is valuable for trials, for judicial inquiries. What do you do with that? An additional possibility, then, if you go to the fourth item that I have put there, is to actually contribute to judicial inquiries, that is a commission can take the decision and say: "Okay, we have here judicial information, judicial value information." So, the commission should be able to decide what to do with that. Again, the commission is not a prosecutor. In some countries - and I'm talking about Latin America, when a prosecutor gets information of criminal nature, the prosecutor is obligated to open an inquiry - in some countries, like the US, a prosecutor is not under an obligation to open an inquiry, because prosecutors in the US can negotiate with perpetrators on plea bargains and cooperation. So, I don't know what the system is here, but the commission is not a prosecutor, so it's not under an obligation to immediately share the information with the court. You see the point? That is an interesting thing, because then it would be interesting to see whether the commission should immediately go to the prosecutor every time it gets the information, or the commission could, and I think that this is more rational, actually wait, get everything together, prepare the case, and then go to the prosecutor and say: "Look, these are the 17 documents and testimonies we have found regarding the massacre of X, where general so and so killed 25 males."

But that, then, is another possibility of a specific power for the commission, and it would be useful to actually put that in the norm establishing the commission. Otherwise, there are doubts. If it is unclear what a commission should do, then the commission on a collision course with the judicial authorities. Because, the judicial authorities may be saying, for instance the international court, or a local court in Bosnia and Herzegovina, may be saying: "So, you have a truth commission, what have you heard of case Y?" And, you are forced to answer, and forced yourself to answer on that case, you may affect your capacity to work on your case. Or you may say: "Okay, I want to make a public hearing with these generals." And, a court comes and says: "Look, I can not authorize you to have hearings with those generals because these are persons of interest for the court. And, if you use the testimony of those generals, you are going to affect the procedure." So, that's a very complicated issue that has to do with procedural fairness that needs to be addressed. An additional power. What do you do to protect your commissioners from defamation cases, libel cases. It's perfectly possible, if you didn't think of it, that, by issuing a report and indicating the guilt of some individual or some institution, that individual or that institution is going to come and sue you. So, you say: "Political party ABC decided to carry a criminal policy of war, whatever it is." Okay, does that political party still exist? Probably. And, that political party can say: "You are defaming my good name", and therefore open a lawsuit against you. If you think that I am fantasizing, I will give you the case of South Africa. When you go to the final report of the South African truth commission, you find many chapters and pages that are blacked out. That is, you open the page, and it's black, because of a judicial decision against the truth commission. So, a party went to the court and said: "We have been notified of an adverse finding by the truth commission. We think that that finding is libelous, that it affects our reputation and name, and we ask the court to protect our rights by deleting that finding." And, the court can say: "Yes." In the case of South Africa it said: "Yes." So, the South African commission decided to publish its report showing the blacked out parts, to, at least, put some kind of moral humiliation on those parties, because it was obvious that those parties were suppressing parts that were damning for their political interests. So, as you can see, the question of certain kind of protection for the commission as such, and the commissioners individually, may also be necessary. All the commissioners of Peru received lawsuits for defamation after the finalization of the work of the truth commission. All of them, and some members of the staff, too. Because general XYZ said: "I'm offended by this finding. I think that this is completely libelous, and the commission is basically playing the game of terrorists." So, he goes to the prosecutor, and since the prosecutor in our country does not have the authority not to open a case, just to open it, then the case is open, an even if the case is frivolous, the commissioners need to be dragged in front of a court for, sometimes, nothing. And, they have to wait for the judge to declare the case absurd, null or frivolous. But, that takes you a good year of your life, going every week to a court to engage in this issue. How about the question of functioning? Another power that seems to be extremely important, and in your case, again, particularly important, is the power of working in an autonomous way. That is, a commission needs to have state support and authority cooperation, but, at the same time, it needs to be independent. And, it seems it seeks to even appear to be independent. Right? It needs to look independent. It needs to walk independent. How do you do that? First of all, you have to say it, that the commission is independent, that



is, that the commission is not a ministry, or an office within a ministry. The commission is not in dependency of the President of the republic, or something like that, politically. That raises a little question that I want to explain to you here. In order to work with public funding, a commission, unless it's an NGO, but a commission, an official commission, working with public money, money from your budget, money from the taxpayers, needs to have certain standards of accountancy, of administration of resources, etc. Typically, those mechanisms of administration are enforceable only if you are part of the state. In your case, the question will be – which of those states. And, supposing you have an agreement, it's still the state, right? And, when the commission makes its activities, you need to have a budget, you need to pay salaries, you need to spend money in a public hearing. And, then you need to give that to an authority to show that you are not stealing public money. So, the commission is linked to the state, functionally, for issues of management, administration. But, it, at the same time, and this is the tricky part, it should not be linked for issues of deciding how to conduct its investigation. That is, the state needs to take care of the cleanliness of the administration of the commission, but at the same time, the state must be totally hands off in terms of how the commission actually designs and applies its investigation. How to do that? Again, it's not impossible. Many states have independent institutions that work within the state. For example, the ombudsman office. How many countries in the former Yugoslav republics have ombudsmen? All of them? I think it's part of the, as we were talking about, EU standards, etc. All the ombudsmen institutions have a functional relation with the state. They have to comply with the state cleanliness and administrative practices, and, at the same time, they are independent. That is the kind of agreement you want. In fact, in some countries, people have decided not to have a truth commission, but to charge the ombudsman office with the truth commission role. That's another possibility. In Latin America, they have many, many commissions, of course, under many different ways. In the case of Honduras, a little country in Central America, it was the ombudsman who carried out the investigation, and he issued the report, as an ombudsman report. So, that's another possibility. Because, what you want is an independent institution, that is generally regarded as independent and respectable, issuing a finding. So, that's another question – autonomy. Again, forgive me for coming back to this issue again and again, but you need money. So, because an official commission, a commission established by the states is an institution, it will certainly have some kind of public funding. The question is sometimes raised whether a public institution can raise additional money, and from where. Typically, that is not a problem, but I don't about you cases, and you may need to look into that. Typically, let's say, the education ministry, has a budget that is in the national budget, but also typically, the education ministry can go to the World Bank and get a donation of 20 million dollars for computers for schools. Perfectly possible under certain condition. So, the commission, typically, if it does not want to depend completely on a state administered budget, would have to be able to fundraise, meaning that the commissioners would have to be able to travel to donor countries, or write to donor institutions, philanthropic institutions - I don't know, Bill Gates, Open Society, Macarthur, Ford, EU, I don't know - and get extra money. So, that needs to be included. Otherwise, the commission is entirely dependent on national budgets – in your case, seven. And, that seems to be very complicated. I didn't mention something because I thought it was obvious, but I think I should mention it, which is that the commission

should have the authority to publish its report. Sounds ridiculous, right? Sound very obvious, that you have to enumerate even the fact that the commission is going to issue a report. But, it's not so obvious. Some truth commissions just handed the report to the President of the republic, and then the President decides what to do, and that is a problem. Suppose that the commission, that RECOM gives report to the six Presidents. And, you know, they say: "Ahh, thank you so much, we'll deal with that." And, they publish it in their own time, or they are not in agreement to publish it and they don't publish it, or they publish it six years later. So, it is possible that you want to consider the power, the basic power of the commission to issue its own report, to have a website, to have a publication. In the case of Peru, we gave the report to the President, and, at the same time and hour we gave the report to the President, our website showed the entire report, so that anyone in the country, in fact, in the world, could see it. The same applies to a number of other activities. For instance, you can authorize the commission to have public activities. Again, it sounds ridiculous, but some commissions, in fact, all the initial commissions before South Africa, conducted their work in a private, confidential manner. So, there were never public interviews of witnesses. Only after South Africa, you had public interviews of witnesses in so-called public audiences or public hearings. So you may want to authorize the commission to have that particular power, the power of having a public hearing. Why is a public hearing important? Because of enormous impact that they can create. So, those are possibilities of powers. Is there any power that you think a commission should have, that we are not showing there, or powers that could be problematic, or powers that could clash with other institutions' powers? Up to this point?

Question:

I have, maybe, a question in relation to fundraising that relates to what you said earlier. If the government, if it, for instance, if the commission is formed, established by the governments, but then they cannot subsidize, they can't do fundraising, but you seek funds from donor community, then what's going to happen with the legitimacy of the commission, because people might ask, like with NGOs, like your donor driven NGOs, and if you go for the western policies, but, you know, that might raise the question, I don't know, of legitimacy?

Yes, absolutely, that's a very good point, and if you were in Africa, they would say exactly the same. Oh, so, western imposition over Africa to neo-colonize us, right? The same happens in Latin America, and, basically, that is a risk that I don't think you can completely suppress. There is always be some angle by which the friends of impunity, the enemies of the commission will find some angle of attack. I think that it is a fact that governments usually cannot contribute with all the money a commission needs, and it's also a fact that, when a commission needs extra money, just going to governments to get extra money, and you will need extra money, raises problems of independence. Because, you don't go to a minister and say: "Okay, I need an extra million dollars." No, you go to a minister and you say: "We are finding very important information, we have decided that we need 300 additional testimonies from generals, and we would need to pay some extra salaries, so we need an extra million dollars." Well, the minister is going to say:

“Really, 300 generals? Tell me more.” Its’ perfectly possible, when you interact with the state there are so many angles that are unpredictable. So, asking for money is always a problem, be it the state, or be it an international donor, an independent donor. It’s always an issue that somebody is going to say: “Follow the money”, and is going to find some kind of supposed impropriety. Now, there are some ways to at least minimize a bit that risk. I don’t think the risk can be completely eliminated, but it can be at least minimized in certain ways. First is the issue that the commission needs to have very clean administrative practices, and very transparent administrative practices. For instance, a commission may decide to publish on their website the salaries of all the commissioners and all the staff, from the head commissioner to the watchman at the door of the commission’s office. It’s perfectly possible, it’s a measure of transparency. So, then, the commission says: “Independently of where we have received the money from, which we are going to list, here’s also how we are spending this money.” Transparency helps in reducing some of the angles of attack against a commission. The more you hide, the more you can be attacked, because, typically, attacks exploit areas of opaqueness, right? Now, additional things. Sometimes, you may need an external fiscal agent to take care of the finances of the commission. Look, some countries have such complicated and poor institutional realities, that they cannot manage their own accounts. So, for instance, in Sierra Leona, which was totally destroyed by the war, the UNDP was the office that received the money for the commission, and managed the money for the commission. I know that UNDP is an institution to be loved, but, sometimes, people have problems with that. But, in cases like Sierra Leone, that was an issue, and that was a possibility, that was useful for them, because they could have a trusted external administrator that would do something that the state couldn’t, and that the truth commission shouldn’t do. So, that is also a measure that can result in some sort of transparency. Another thing, you have to publish the names of your donors. I mean, even if that appears to give fodder to the enemies of the commission, just saying it shows that you have nothing to hide. Okay, so, we have received three million dollars from Soros. Okay, what’s the problem with that? It’s here, we acknowledge it, and we have asked for it, here’s the donation agreement. There are no links, there are no strings attached. So, all that is perfectly possible. But, again, the only thing you can do, I think, is to increase your transparency, in order to be in a better position to respond to attacks when they come, because they will come. I have never been so clear. It’s impossible. Yes?

Sorry, I was proposing that we go to the break, and then we will reconvene, I think we’re good... It’s 16:20, more or less. We’re a little bit late, that’s fine. Can we come back here at 16:45? It’s ok? Yeah? So we can have an hour for the last session. 16:45? Excellent.

#### IV

In case you’re wondering, I’m as tired as you are. So, I think that I want to actually have a very brief last session, so that, also, you have some time to review those mandates, and I can tell you a little bit about what we are going to do tomorrow. The other reason is that we actually have a very good document on the subject of the last session, that I strongly suggest that you revise. Review. Revise? Remember, English is not my first

language either. So, in any case, it's a paper written by our colleague, Bogdan Ivanišević, and Bogdan, I think, made a very interesting comparative analysis of, about 12 different truth commissions, and the impacts that they have. And, I want to finalize the day with reference to this document on impacts of truth commissions, because I think it's a very logical way of finalizing the day. We started the day talking about expectations, and we went on to examine how is it that those expectations form the functions that we want to give to the commission. Then, we discussed what the instruments you need to discharge those functions are, and I think now we should discuss, logically, what can actually be expected, that is, in what way commissions actually had impacts that are relevant to the functions that they were issued. I think that we don't want to suggest in any way possible that all truth commissions are successful, and that all truth commissions have their recommendations implemented automatically. That doesn't happen, obviously. And, I say this because during the discussions we had today, some of the groups, I think, one of the groups, if I'm not wrong, the second group, actually mentioned the possibility of giving some force to the recommendations, so that recommendations of RECOM or any other commission of inquiry has some kind of real impact on the political life of the countries. Now, obviously, implementation of recommendations and impacts are two different things. And, let me explain why. A truth commission is active for a number of years. Let's say two years. And, during those two years, a truth commission carries out a number of processes, testimony, public activities, memorialization, writing a product, charging a number of authors with essays, interviewing victims, mobilizing victims – during that entire process of work, the truth commission is interacting with societies. And, when it is doing that, it creates some kind of expectation, some kinds of agitation, interest, ideas, reactions. That is part of the work of a truth commission. The functions, as written in the mandate, usually don't focus that much on that process. Usually, the mandates are looking at the end, saying the commission will issue a report, the commission will clarify the fate of the disappeared, the commission will tell us what happened. But, between the moment when you create the commission and the moment when you have those final impacts, there is something in the middle, and that process actually can, also, create some impact. So, I usually want to talk about impacts of your final products and impacts of your process. And, I think it's a useful way to look at it. It's like talking about democracy. You know, in democracy, the impacts of a democratic regime are not just that you have an election every four or five years, and you elect somebody in a democratic manner – it's also what happens in the middle, which proves whether you are truly a democracy or not. The fact that citizens participate in the public debate, the fact that citizens demand certain things and negotiate those things in a democratic manner. So, the same thing happens with a truth commission. It's true that the main impacts will happen with the final report, and the final products of a commission, but it's also true that in the middle, there will be, if a commission is smart enough, there will be impacts, because of the interaction with society. So, what do truth commissions do? Truth commission work by giving a certain space, a public space, a public platform to victims. Truth commissions receive testimonies primarily from victims, because victims are the ones who want to give testimony. Typically, the ones who don't want to give testimony, are the ones who are not victims, and, very typically, too, the ones that fear to have some responsibility on the issues that the commission is examining. But, victims usually want to give testimony.

Because of that, then, a commission actually empowers victims very much. It gives victims a space in the public sphere, it gives them a day in court, so to speak, the possibility of interacting with the public at large, and that is no small thing. In a country such as my country, where most of the victims were indigenous peasants from the highlands, usually coming from the poorest regions of the country, the fact of having victims interviewed on national TV, being respected and honored by the truth commission in prime time national radio, TV and the news media, actually did a lot to empower those communities. So, that is an impact that is a result of the process. A commission, for example, may work in a consultative manner. Again, in the case of Peru, our commission had the mandate of proposing reparations. We didn't know how to propose reparations, so we consulted. The commission would organize a number of meetings with victims' institutions and victims' groups to find out what the best way to issue reparation to victims was. Because of that, because of the call of the commission to receive information, many new victim groups were created. So, at the beginning of our work there were six or seven victims' groups recognized in the country. At the end, we had about 200 victims' groups, all of which were created to have a process of dialogue with the truth commission, because they were interested in the subject of reparation. So, that growth of civil society from six to 200 groups, is directly related to the work of the truth commission. The fact that you disseminate information about rights, also, has important effects on public education. So, the process, then, creates certain impacts. Now, the end result of a commission, typically the final report, will also have certain impacts. What is a final report is a publication in which the commission establishes the facts that happened. It's as simple as that. But, then, also, a commission typically, on the basis of those facts, makes recommendations of policy. Classically, truth commissions have made recommendations in a number of areas. Truth commissions have made recommendations of justice and reparations, that is they have recommended to open cases, to issue reparations to victims, that's one set of recommendations, and truth commissions have proposed a number of institutional reforms. So, commissions have, for example, recommended to reform the police apparatus, when the police was found to be one of the agencies responsible for violations, or security sector reform, or judicial reform, or, in some cases, educational reforms. Those are recommendations that come at the end of the work of a truth commission. But then, via the process, or via the end, commissions are going to have certain impacts. Bogdan's paper, I think, argues very credibly, with information from a number of commissions, that in general commissions have been fairly successful to create processes of public pedagogy, of public learning, and those processes of public learning have happened because commissions, more and more, have been public, have worked in public. Before South Africa, most of the Latin American commissions, operated in private, confidentially. After South Africa, all commissions have carried out their work in public. By doing that, they have actually forced the public to learn, even if the public wanted to change the channel, it's impossible not to hear what's going on. And, commissions, then, have been very successful in, at least, letting people know, because, even when we think, in the human rights community, that everyone knows what happened, it is true that there are certain parts of society which don't know, particularly among the youth. The youth will, for youth, some of these cases are issues that happened when they were kids, even before they were born, and they don't feel that they need to know. So, there are always certain sectors of society for which it is

positive to get to know, and truth commissions usually do that. Then, there are other sectors that know, but interpret things in different manners, sometimes in justificatory manners. So, what happens with truth commissions is that sometimes they give the facts in such a way that they take out the possibility of justifying crimes. So, for example, in South Africa, of course everybody knew very well that there was resistance to apartheid, and that in resistance to apartheid, and in the suppression of that resistance, there were crimes committed. Everyone knew that, but it was always others who did those crimes. When the commission acted, and you have actually perpetrators with a face and an identity confessing to crimes, that was incredibly impactful for the white communities in South Africa, because suddenly, it was no longer some unnamed institution or some secret apparatus committing things. It was actual people committing things, committing crimes. It was not all the whites committing crimes, it was some people who committed crimes. And, it's important for the process of justice to be made, that this kind of responsibility is clearly identified. Another thing that has happened is that then, I just want to recapitulate those last two things I have mentioned – one the one side you want knowledge to go out, particularly for people who have zero knowledge of things, and I am thinking about the youth – but on the other side, you want acknowledgement, that is, people who already know, they need to realize that, not only this happened, but also that that thing that happened was wrong. So you need acknowledgement that that was wrong, that that should not have been done. And, some states, as the result of the work of truth commissions, have actually apologized to populations or to victims. Apologies are a form of symbolic recognition that something was wrong. It is a symbolic form of reparation. Some people may think that those are very weak as forms of reparation. But, anyone who has received an apology knows that symbolic reparations are also reparations. To have somebody recognizing that what was done was wrong, is very important because it takes out the political environment for justificatory discourses and for denial. Last year, and I was mentioning Canada earlier to you, last year, the Canadian government publicly apologized to the indigenous population of Canada for the abuses committed in the Indian residential schools. They did that, since Canada is a parliamentary system, by calling a solemn session of parliament, in which the cabinet, led by the prime minister, read a statement of apology in front of the representatives of the victims, who were invited to parliament for that particular session. Prime minister Harper read the statement of apology, he included in all the Canadian native languages the word “I am sorry for what happened”, offered the apology to the victims, and gave the floor to all the political parties who, in turn, also apologized to the victims, and then to the victims who talked about this. And you may think: “Well, an apology is not enough.” It's not enough, but it's part of the process. And, some commissions have been successful in creating such a level of recognition of the crimes, that they have resulted in specific apologies for past abuse. Now, there is an issue in which, perhaps, a commission in the Balkans region will be different from other commissions in other parts of the world. You see, in other parts of the world, commissions have emerged, typically, because there was no possibility of trials. There were no courts available to actually carry out prosecutions. And, in the case of the Balkans, there has been, for a long while, experience with international trials, and now, also, experience with national trials. So, it is an ad-hoc case, it's a case in which criminal justice is already taking place, or has already taken place. So, then, you would say then: “Why a truth commission”, if the

truth is coming out through courts of law. Well, there are a number of possible arguments to argue for truth. To begin with, it is more and more recognized today that truth, and access to truth, is a right in itself, and that the work of a judicial system, the work of a court, will give you some aspect of truth, but not all. What a court usually does, is to determine facts according to a judicial procedure. A court usually gives you the facts that can be proven with evidence. And, those facts are usually a small part of all the real facts that took place. A court, for example, usually does not give you a historical interpretation. A court, for example, unless it's a civil court, will not assess the damages to the victims. Criminal processes are not about damages. Criminal processes are about responsibility, criminal responsibility. So, commissions can actually do that, commission can actually do more than just establishing the facts that took place. They can receive people, and they can recognize the experiences of people in a way that courts will never do. So, I will put an example. In the truth commission of South Africa, there were many cases in which it was unclear who had committed the crimes. And, there was not enough evidence to decide that a crime had been committed, and that it was attributable to one specific force in the conflict. There was one case, but there were many cases like this, but I'm going to tell you just about this one case, there was one case of an anti-apartheid activist called **Sifigo**, I'm going to find out the name, let's call him **Sifigo** because it's a name I remember, but it's a longer name, who was a young student activist fighting against apartheid. He was kidnapped by the police forces and released after a while. When he was released, he showed signs of extreme weakness and debilitation, and he was being taken care of by his mother. And, his mother realized, during the rehabilitation process, that he was losing his hair. So, the mother collected the hair. After a while, **Sifigo** was kidnapped for a second time, and this time, he never reappeared. The mother was convinced that he had been poisoned during the first detention, because there had been many cases of poisoning of activists during apartheid, and the use of doctors to torture. So, when the truth commission came, she went to the truth commission and she testified with the hair of her son in her hand. Now, in a court of law, that kind of evidence would have been contaminated. A court of law, typically, would not accept that kind of evidence, because it was not evidence obtained through a prosecutorial system. It was not a prosecutor who went there and, picked the hair, as in CSI, I don't know, and examined it in a lab. It was a mother who took the hair in the bed of her son. That evidence was obviously judicially valid, and in a court of law, that mother probably didn't have a strong case, but in a truth commission, what the truth commission did was to acknowledge the individual truth of that mother. The truth commission did not have authority to declare that hair a valid evidence, or real proof, but the truth commission did recognize the evident truth of that mother's suffering, and the fact that that child was not there anymore. So, you see, commissions usually produce acknowledgement of things that go beyond what courts can do. So, even in cases like Yugoslavia, where there is already of measure of judicial truth, there may be cases in which some other truths that are waiting to be told and to be recognized. I think I mentioned in Belgrade a couple of months ago a case that took place in my commission, in the Peruvian commission. We went to a small mining town, where violence was very, very strong during the war, and a woman came to the public hearing, whose husband had been disappeared. Nobody saw what happened, so nobody knew what kind of force was behind the disappearance of the husband. Nobody knew if it was the *Shining Path* which disappeared people, or the

army, which disappeared people, too. Because he worked in a private company, he could have been the object of both sides. He could have been the object of the army, because the army hated unions, and he was a member of a union, he could have been a victim of the *Shining Path*, because he worked in a private company. Everything was possible. So, this woman came, and she said: "I have the proof that my husband was disappeared." And, she said in the public hearing: "My husband speaks to me in dreams every night, since he was disappeared. And, in those dreams, he tells me that he was disappeared and in those dreams, he encourages me, he inspires me to stay alive. Because, after he disappeared, I wanted to commit suicide, and to kill all my kids." This woman was extremely poor. Her husband was the only sustenance for her family. When her husband disappeared, she thought that she didn't have any reason to be alive, and she actually planned to kill herself and kill her kids. It was that dream that kept her alive. So, if this woman went to a prosecutor, and said: "Look I know my husband has disappeared because I have dreamt of him", what would happen? Obviously, she wouldn't have a case. The truth commission was actually a space where we could listen to her, give her some sort of solidarity, and give her the chance to talk in front of others. Nobody treated her like she was crazy. People treated her as a survivor, that is, a person who had all the right in the world to talk about her dreams, and whose dreams could be taken seriously by a state institution. Why not? Isn't mental health a basic human right? So, you see, commissions, may have also that impact, may have some impact in empowering victims, in giving the civility to victims, and giving victims an opportunity to educate the larger public. Now, commissions also give a number of recommendations of policy, as I have mentioned. Let's reform the armed forces, let's reform the educational system, let's reform the judiciary. And, that kind of recommendation usually depends enormously on political willingness and political conditions that are beyond commission's power. Governments change, parliamentary majorities change all the time. The political environment in which the commission was launched is not the same as the political environment of the commission when its work finishes. So, recommendations usually are not guaranteed at all. It depends enormously on the political evolution in the country. So, recommendations are an area where commissions can not control the environment, which is why, then, commissions need to take a clear decision about the ambition of the recommendation they want to issue. If the commission issues recommendations that are extremely ambitious, it may be setting itself for non-implementation. On the contrary, if the commission issues recommendations that are too doable, then, perhaps, the recommendations will be implemented, but they won't mean any change. So, that act of balance is extremely important at the time of assessing whether a commission actually had an impact on institutional reform. I want to recommend to you Bogdan's paper, too, because in the first part, Bogdan did a nice job, I think, on examining the public acceptability about truth commissions after the work of truth commissions. So, you can see whether a truth commission was successful or not, in terms of how much the public supports the work of the truth commission after the end of its work. Because, something that will happen is that at the end of a truth commission there will be many sectors that are angry about the truth, and will say terrible things about the commission. So, you want to know what the public, in general, thinks. And, the paper shows that in most countries where truth commissions have happened, most of the population gets very positively impacted by the commission, and supports the work of the truth commission.



Even in countries where there is enormous polarization, in general, people recognize that having had a look at the truth has had an important and positive impact. So, have a look at that part of the paper, which I think is particularly relevant. I think that we'll finish here. Perhaps there will be some time for questions, not that much, but perhaps 10 minutes, for questions either about this, or about what we have discussed during the day. Again, I tried to have the day be very logical in its linkage of issues, starting by the specific expectations, going to the actual functions of a truth commission, the mechanisms to achieve those functions, and then, the actual results of the work of truth commissions. So, up until here, are there any questions, issues, interventions that we would like to do? Right...

[questions]

I think I will take those five questions first, and I don't know if we will have more time, but this is a very significant sample of issues. Let me see. I think that there is one issue, which is the interaction of commissions and courts, that I think is extremely important. I think we mentioned it a couple of times during the day. It's not a simple relationship, that needs to be very clear from day one, but one question is whether commissions have actually contributed in the fight against impunity. And, the fact is that they have, because of a number of reasons. First, because impunity usually benefits from ignorance or lack of interest. People usually think: "Look we have other problems that are important. We have an economic crisis, we have unemployment, we have education, why are we worrying about crimes that took place 10 years, 15, 20 years ago?" So, a truth commission, by making those crimes visible, in fact, changes the environment, and makes the environment a bit easier for prosecutions. Now, again, in your case, in the case of Yugoslavia, sometimes the courts have already taken action. But, in most cases, that is not the situation, because courts always take just a fraction of what happened to be examined. So, in any case, commissions usually help the tasks of criminal justice by widening the acceptance of criminal justice among the public. It could also happen that commissions help re-open cases – that's your specific question – that have been closed. And, that has happened in many cases in Latin America, because cases, before truth commissions, were subject to amnesties. So, in Latin America, there were many cases in which the military governments that ruled during the seventies and eighties issued self-amnesties for the crimes that they had committed, often in the name of national reconciliation, concord, harmony, whatever it is, they issued pieces of legislation granting themselves amnesties for the crimes. What commissions have done ... Oh, sorry, before I go there, even in countries where there have not been amnesties, there have been fraudulent trials. For instance, trials in a military court, where there's no real possibility for the victim to have justice done, because military courts, in some countries, basically operated as a mechanism to whitewash the situation. So, there are many cases, not a few, but many cases, where truth commissions have eroded the legitimacy of military courts or amnesties. In fact, when you read the work of some commissions, the truth commission of Guatemala, the truth commission of Peru, they examine what happened, not just in the crime, but also in the judicial treatment after the crime. And,

they show how, on top of the crime, there was judicial impunity, and that has contributed to re-open cases, because cases were covered by amnesties, or covered by de facto amnesties through mechanisms such as this. So, it has happened. Now, that doesn't mean that commissions do not have shortcomings. They do. And, those shortcomings may be part of the reality that existed at the time at which you created the truth commission. The truth commission of Chile, as you see, had a very limited mandate. There is a reason for that. The reason is that the political environment in Chile, immediately after the end of the military regime, was very limited for this. The military did not want any truth commission. So, the fact that you obtained at least some, was already progress in Chile in 1990. In 1990, Pinochet was no longer the President, but he still was the chief of the armed forces. And, he had actually been awarded, basically, with the command of the armed forces for seven more years. So, the President of the republic was not the chief of the armed forces. The former dictator was the chief of the armed forces. For seven long years. So, at that point, what the Chileans could do – was this commission. That meant for Chile that they wouldn't attend to all the victims of torture, for example. Only 10 years later, in 2,000, Chile created a second truth commission to cover the cases of torture that did not result in death. Because, as you remember, the Chilean commission was only for cases of torture that ended in death. Only 10 years later, Chile created a second commission on torture. And, that brings me to an important point. This issue, the issue of truth-seeking and its contribution in the fight against impunity, is not a short term strategy. This is not an issue of short term tactics. It requires long term vision, and a long term strategic vision. In Chile, they took eight years from the moment in which Pinochet fell from power, to the moment in which Pinochet was indicted by a court of law in his country. And, it took a bit more for the actual arrest of Pinochet, because of his own audacity to go outside of the country. At the time, it was a surprise. Now, I don't think any person with this kind of antecedence actually tries to travel around. And, Pinochet, after his return to Chile, spent the rest of his life in front of judges. So, but the point is not just Pinochet, the point is that there are about 400 high officers, high level officers of the Chilean army who have been tried in Chile, and many of them are in jail right now. There are hundreds of officers in Chile on trial, it's not just Pinochet. And, that happened because there was a long process of patient aggregation of elements to get to that point. The Chileans did not say: "Okay, since it is long, we are going to sit on our hands and not do anything in 20 years, and we will try in 20 years." They did not do that. They kept fighting for 20 years. And, that is why you have the measures of justice that you have in Chile now. So, there are limitations, and there will be shortcomings, but the only way to overcome those shortcomings is to have a long term vision, a long term strategy in the fight against impunity. What are, in your countries, the enclaves of impunity? What are the more clear sectors where impunity exists? Is it possible to take on all of them at the same time, or, will you start with some cases, with some issues, with some parties? What is the long term strategy here? So, that's one of the key issues. Now, at the same time, there are going to be a number of dangers and risks over this process. Because a truth commission is first and foremost a communicational exercise, it is an exercise on arguments, on information, on the circulation of information, on the interpretation of information – because it is that, there are a number of dangers. The main danger is that a commission or civil society do not control the discourse enough, do not have a strong discourse that

will resist efforts of re-interpretation by the partisans of impunity. If a truth commission just did give facts, and it doesn't have a strong moral argument, a strong scientific argument, a strong judicial analysis of the situation, it is perfectly possible that its facts can be distorted. The findings of a commission can be perfectly distorted. As I told you, in Chile, even the Pinochet right wing accepts the fact that there were killings, but some of them justify them. Because, they say: "Well, yeah, there were killings, but, you know, it's only 2,000. Look at Guatemala, they had 100,000. Or, look at Peru, they had 68,000. In Chile, it's only 2,000. That is what we had to pay to save the country from communism." So, there are many dangers, and denial, revisionism, continue to be dangerous, along the time of the work of the truth commission, even after the work of the truth commission, because the commission works with a very complicated subject, which is information, arguments, voices, and information about very complicated issues, which are issues of violence. So, the communicational risks are very high, and this also should form apart of a strategic evaluation by RECOM, by the coalition, etc., on a long term. One of the dangers of the work of a truth commission is that sometimes, even with the best of intentions, you can end up re-traumatizing or re-victimizing the victims. If a truth commission does not work paying enough attention to the actual situation of victims, for example mothers, who have been the object of terrible processes of trauma, a truth commission can actually re-open a wound just to leave it open, and it should not happen in that way. Or, if you have victims who are still in danger because they are under threat, and you, irresponsibly, take these victims to the national stage, you may be re-victimizing them. Those things happen. If you have a victim who is too fragile, and you take the victim to a situation that is beyond the victim's control, you may re-victimize this victim. I have actually heard of a case in Ghana, in West Africa, where the commission simply had a very demanding process of public hearings without much support for the health of victims, and they had a victim who was so nervous that she had a heart attack and died. I think that's terrible. That's incredibly, in my opinion at least, that's very irresponsible. Truth commission need to focus around the wellbeing of victims, and that is mental, psychological and physical wellbeing. So, if a commission is going to do work on something as delicate as victims' memories, as mother's memories, for instance, the commission should have some kind of specialized support to deal with the needs of the victims. That means that the commission needs to examine very carefully the different types of victims it is going to receive. It is not the same to listen to a former soldier who suffers from post-traumatic stress disorder, and to listen to a civilian woman who was raped. It's not the same to listen to a victim who was a child when the crimes were committed, and to listen to a victim who was an adult when the crimes were committed. All those present specific aspects of risk, and they should be taken into account, and a commission should have something to actually give in terms of actual value to the different kinds of victims. I, particularly, tend to think that if victims just come to talk, and they just go, sometimes they will be very disappointed and will be even cynical. So, once again, the state is asking me questions. What for? Even the act of just saying thank you, formally, to a victim, can be very satisfactory to many people. I have seen victims who are the poorest of the poor in very marginalized situations and marginalized areas - I'm talking about extremely poor countries, third world countries where victims come from the poorest regions of society - just the fact of having people from the capital, from the government, from the state, actually listening to them, actually thanking them, was

important, and was some kind of added value to them. You will have to think, in the concrete realities of your society, what the added value is in mental health, in wellbeing, in recognition that victims will need. I can not say that in advance, but that will obviously depend on a concrete assessment. And, because commissions have worked so much in public recently, in recent years, after South Africa, those possibilities and those risks have grown exponentially. When you have a closed organization, when, let's suppose, we are the commission, and we work two years writing the report, and nobody knows outside, our work will have small impact, because nobody knows that we exist, but, also, small risks, because we can't create that terrible damage if nobody knows that we exist. But, a commission that is very visible, a commission that has public hearings or example, has enormous possibilities to do good, to have strong impacts, because everyone will know about the commission, but also strong dangers of re-victimization, as I have just mentioned in the cases of victims. Imagine that, in my truth commission, that mother with the dream came and the commissioners cross examined her. "Can you tell us more about that dream? Do you have any indication that the dream is true?" You know, they would have ridiculed the mother. We organized the hearings in a way in which the hearing was a space just for the victim to talk. Our commissioners did not do any kind of cross examination. The commissioners just listened in respect, and thanked the victim. There are commissions in which commissioners ask questions. In our commission, we didn't have questions. The commissioners just listened. And, we did that precisely thinking of victims being in very weak psychological state, where it was enough for victims to just be heard, and believed, validated. So, yes, public hearings can be enormously risky, they are enormously impactful, they can really affect, in a very positive way, public education, but at the same time, because you deal with persons that have been victimized and that are opening their soul to you, you have an enormous responsibility to make sure that you are not in risk of re-victimization. Also, because, if a public hearing, or this kind of public activity, just issues dramatic information that the public can not process, you can also be accused of sensationalism, of being a yellow kind of enterprise, a headlines commission, that issues scandalous information every day, but doesn't create any learning. Just exposing the facts does not educate. You know, when all of us have been to some form of education, and you know perfectly well that, when you just receive the information, that does not educate you. What educates you, is the debate, the discussion about that information, the interpretation of that information. So, if a truth commission creates a public hearing, and you have 10 people coming to the hearing just exposing terrible situations, but there isn't any kind of message thought out and articulated by the commission, that may be just an exercise in voyeurism. So, there are, also, those risks, the risks that a truth commission may just be a sensationalistic exercise. And, it has happened. It has happened that commissions just invite people without any kind of criteria, and then hearings become some sort of a publicity situation, in which individuals just talk about whatever they want, in ways that are not constructive and create national scandal, etc. So, it's not just visibility for the sake of that, it's visibility for the sake of education. So, I don't think we have time for more question, we have ended a very packed day, but I do think that we have covered some basic issues. And, tomorrow, what we are going to do, is actually to take the basic elements that we have discussed today, the functions of a truth commission, the powers of a truth commission, the form of composition of a truth commission, and we're going to imagine,

in an exercise, how would it be to actually do it. So, we're not going to do it with the case of RECOM, because it's just too complicated, we are going to take an imaginary simple case. That imaginary simple case is a combination of Latin American cases that I have just mixed together. So, it's not a real case, but it has some elements that are real. So, I want you guys to read the exercise, so that you know what it is. We have invented an imaginary country, Colomdor, that has some out of a separatist conflict, and in which there is an attempt to create a truth commission. So, I want you to read that, and to think of ourselves in that situation in different positions. What if you represented the interests of the government of Colomdor? What if you represented the interests of the rebel groups? What if you are a civil society organization? That is not going to be too difficult. Think of what it would be like if you were a part of the government. What if you were a mediator, that needs to have an independent position? So, think of those possibilities, and tomorrow, we will have three rounds of discussion, in groups, to participate in this exercise, and we will see if we can do it with an imaginary case. I'm sure that if we can do it with an imaginary case, we can think of something else. Okay, thank you for the first day.

V

Good morning. I hope you slept well and read your exercise, because we are going to use it a lot today. So, we are going to do a simulation exercise. I don't know how many of you have experience with simulations, ;but this can be very common in a number of places as a learning instrument. You may have heard, for example, of simulation exercises for trials, mock court exercises. They are very popular in law schools. People do organized teams of the defense and for the prosecution, and their teachers are the judges. So, that's what we are going to do, but with a truth commission, to make it a little bit more fun. And, basically, the simulation implies the creation of an imaginary case. We are talking about a post conflict society that I have completely invented on the basis of some real elements, all of them brought from Latin America, Africa and a number of other conflict places. At the result of the contextual background that we will create here, we will imagine that we have four groups negotiating the mandate of the truth commission. Two of those groups are politicians, the former parties of a conflict, who have come together because they have a common interest in finding an alternative to trials, and so they have some stimulus in creating a truth commission. Then, you have a third group that is going to be representative of human rights organizations and victims. And, you also have, that third group has an interesting, some specific form of a truth commission. And, then the fourth group is very special, it's what we call the mediators. In every society as divided as it is, there are usually a couple of sectors that have some kind of prestige, and that are used as mediators when conflict appears. So, we are going to imagine that in this society the religious community are the mediators. It's not always the case, but sometimes it is, particularly in Latin America, where that happens a lot. So, we are going to have a fourth group of mediators, and each of those groups is going to have a specific power and a specific weakness. The two groups of politicians which are going to represent an imaginary government and an imaginary rebel movement, have the

power of proposing initiatives for the truth commission. These people can actually write mandates, and negotiate those mandates, and they will have votes at the final exercise, which is going to be some sort of an imaginary parliament. The civil society groups do not have initiative. They cannot propose in this imaginary parliament a truth commission, but they can give suggestions to both negotiating parties. And, finally, the mediators do not have vote, sorry, they do not have a capacity to initiate legislation, but they can visit absolutely every group, and they can find out information about what's going on everywhere. The groups work separately, so some things may be secret, some tactics may be secret, but the mediators have the right to know everything. They can participate in the groups, they can listen to the groups, and then they get together and take decisions. The role is to facilitate the dialogue between the groups. And, at the end of the exercise, when we get together and vote on the truth commission mandate, the mediators have double vote. So, that gives them a special, added power. So, to understand it, let's read this very carefully, and I will give you an explanation of what's going on here. So, we are, imaginarily, please, try to make an effort to feel very Latin American now, music and everything, so, right now, all of you are Latin Americans. Exactly. *Todos somos Latino-americanos*. All right. So, we are in the capital of a country called Colomdor, which is a mixture of Colombia and El Salvador, and the name of the capital is Limacas, which is a mixture of Lima and Caracas. So, we're in Limacas, Colomdor, and this is the national consultative round table of Colomdor on the establishment of a truth commission. So, this is our country. Colomdor is a vast nation of 13 million inhabitants, located in South America. The country is rich in national resources, such as arable land, oil and gas. However, ethnic discrimination and inequity have created political tension, and, at some points in Colomdorian history, armed conflict. The country is strategically important for the international community due to its immense energy reserves, particularly oil, exploited by the international corporation Enercol. Colomdor has suffered an internal armed conflict for the last 15 years, basically, around the oil rich region of Ikiago, inhabited by an indigenous people, the Dorians. Frustrated by what they see as an aggression to mother Earth, and lack of respect of foreign companies and the national government, a small guerilla movement was launched – the Dorian Liberation Front, DLF, claiming independence of Ikiago. Over time, the DLF obtained the support of other indigenous groups of Colomdor, and was able to conduct guerilla and terror acts in several areas of the country, including the capital Limacas. So, the DLF obtained the support of other indigenous groups, and was able to conduct guerilla acts and terror acts in several areas of the country, including the capital. However, massive counterinsurgency campaigns, conducted by the government, with aid from western governments, basically the US, contained the insurgency. According to credible national and international sources, the government crushed the insurgency by committing mass atrocity, including disappearances of persons, massacres and forced transfer of population. The Dorian insurgents also committed serious crimes including political assassinations, kidnappings, hostage taking and indiscriminate bombings against civilian targets. Under the auspices of the organization of American states, and the UN, the government of Colomdor and the DLF held negotiations in Oslo, to reach a peace agreement. Under the agreement, the DLF will renounce its aspirations of independence, and the government will reform the constitution to create an autonomous region of Ikiago, with full powers to regulate economic activity, public services, and the

administration of justice, while recognizing Colomdor's external sovereignty, security functions and the power of constitutional review. Okay? So, there has been an agreement, you have an autonomous region, no independence, and a peace accord by which the government retains the unity of the state, but is giving autonomy to a specific region. This is based on the example of Ache in Indonesia, where the region of Ache got exactly this kind of autonomy. The comprehensive peace agreement states that, attention here, please, impunity for the human rights violations committed during the armed conflict is not acceptable. However, nobody will be punished for the mere act of participating in combat, or supporting armed actions. Consequently, an amnesty has been issued for DLF fighters. The amnesty covers only participation in the DLF guerilla, but all combatants have applied for it, and weak law enforcement makes it difficult to separate DLF members who committed war crimes from those who did not. You understand the situation? There's an amnesty, which is a war related amnesty, that is, you will not go to jail for belonging to a guerilla movement. However, nobody knows how to filter the combatants, so everyone is receiving amnesty anyway. The army has conducted processes, that is, trials, under military law, against members of the Colomdorian armed forces, but it has generally never punished soldiers accused of human rights violations. So, there have been trials against soldiers accused of human rights violations, but there has never been a single conviction, because they have been tried in military courts. So, this is directly from Peru and Colombia, it is exactly what happened there. Nobody knows how to try the military, because they are tried in military courts. The situation of impunity was broken when the massacre of Ikiago case, accusing the Colomdorian armed forces, was taken to the Inter-American Commission of Human Rights. This is a real, existing body. After failing to find justice in the national justice system - a little bit of history here: Latin America has two international mechanisms for human rights. One is the commission of human rights, and the other one is the court of human rights. When you have a case in which your national judicial system has not given you justice, you can go to this system, just like in Europe. So, you first go to the commission, the commission declares if your case deserves to be seen in the court, and if goes to the court, the court can impose specific decisions against the government. So, the situation of impunity was broken when the massacre of Ikiago, accusing the Colomdorian armed forces was taken to the Inter-American Commission of Human Rights, after failing to find justice in the national system. In its decision issued after the comprehensive peace agreement, the commission declared that, I quote, attention: "No internal norm, such as an amnesty or pardon, can impede the pursuit of effective justice for the victims of crimes against humanity, war crimes and genocide." And, the commission took the case to the Inter-American Court of Human Rights, demanding that the government of Colomdor reviews the amnesty for the DLF, and the military trials, in order to carry out justice. Under a well established judicial procedure, Colomdor offered a friendly settlement of the disputes, a conciliation. This is something that happens all the time in the inter-American system, and I think, also, under the European system. Governments can go with a friendly solution to avoid the court giving a decision. If the victims are in agreement, then the court lets the case go. The proposal of the government of Colomdor included the establishment of a truth commission. That truth commission will make final recommendations on cases and crimes that should be prosecuted. The government demands of the victims and human rights groups to abstain from presenting cases to the

inter-American system, because the government says that those cases could re-ignite the conflict and the suffering of the Colomdorian people. The DLF has won the first autonomous elections in Ikiago, and it has indicated its support in general for the government's proposal. Next month, the Inter-American Court will hold a public hearing to listen to the different parties and examine the fate of the massacre of Ikiago case. The international community, and, that also, Jelena, the international community, including Colomdor's main donors have announced that they would like to see firm steps toward peace and justice, in an environment of stability and national dialogue. In this situation, an ecumenical alliance of Christian churches – Catholic, Anglican and Methodist – representing 99 percent of national religious affiliation, has called for a national consultative round table on the proposal to establish a truth commission. All stakeholders have accepted, due to the enormous moral influence of the Christian churches in Colomdorian society. So, all of you believe in some Christian church, which is why the Christian churches have such a moral power. So, you must prepare your arguments about the proposal of the Colomdor government “for”, or “against”. Then, you will participate in a national consultative round table to negotiate proposals. There will be four groups, and those are: representatives of the government, representatives of the Dorian autonomous regional government – you used to be rebels, now you are a regional government, representatives of the victims' organizations and mediators of the alliance of Christian churches, so, a number of bishops, and female bishops will be needed. Each of these groups will have different sets of exclusive information. We have prepared information for each group that is secret, known to just that one group. Okay, so, when you are separated into groups, you will receive your own information, and you need to keep that information secret, it contains information only for you. So, what you are going to discuss is – you need to articulate a position, a draft paper about the truth commission. I just need one page. That is why I wanted you to read the mandates. You just need one page with essential elements of your truth commission proposal. And, that is: First - the nature and characteristics of a truth commission that suits your interests – so, what is the truth commission you want? Remember, what functions do you want, what kind of composition do you want, what kind of time period, agents of violations, territory of violations, etc. That's what you decide. What composition, and what powers. All right? You know, now, all that. You know what the alternatives are. You want to establish a commission, and you want to put in that commission whether you want a wide mandate or a small mandate, all agents or just a few agents, long timer or short time, etc. You decide that in your groups. B – the composition and appointment mechanisms of this truth commission. Do you want it to be established by a treaty, by a decree, in parliament – you decide. And, C – you want to put language in that truth commission regarding trials. Remember, the general agreement is that the truth commission will make recommendations about trials. Right? If you want, you can stick to that, or you can include some other language. You think of what the relationship between truth and justice that you want to make is. Then, we are going to dedicate the first session of this morning just for you to work in each internal group, and you will make up your position. What is the position, what is the truth commission that is convenient for your individual group? So, each party is going to discuss internally. The civil society also needs to prepare their position. And, the priests are going to visit everyone to find out what everyone is thinking. You have already been allocated, so don't laugh too much. Some



of you are priests already. And, by the way, priest are celibate in Latin America, so you don't marry. So, there are three sessions, okay? The first session, then, is this presentation that I am making. Then, you will have your instructions given to each group, and you will have your internal discussions in the group. When we finish that session, we will take a break, and then we will go to the second session. In that second session, you will organize yourselves and take turns to negotiate with each other. So, each group needs to have a representative, or representatives, according to your traditions. If you are the government, you need to name a minister of the interior, I assume. If you are the rebel indigenous groups, you will have a council of elders, I don't know, you decide, and you need to establish these discussions and negotiations. And, then, you decide internally what you want to do with that negotiation, where you want to get. Then, we will go to lunch. At lunch, the leaders of each party are going to be forced by the international community to sit at the same table. I'm sorry, I know you don't want that, but the international community has the power of money. So, as you know, you know, I'm sorry, but your country owes a lot of money to the international monetary fund, and you need our money. So, I am Sweden here, this guy is Germany, and somebody else is the US or Canada, whatever you want, and we have lots of money. If you want the money, you sit down at the freakin' table like I tell you. All right? So, at lunch, the leaders of each party are going to sit together at the table, because the international community says so, and you're going to have to work on that. So, after lunch, we have a last meeting. If there is unfinished business there, you will have to finish it then. The idea is that in the third meeting, we are going to have a list of proposals, only two per point. So, functions – A, B, C, D, E, F, G – if there's a disagreement in function F, we vote. So, if somebody says: "Okay, the truth commission will have a mandate of national reconciliation", and the other party says, "there has not been an agreement, the truth commission will not have a mandate of national reconciliation", then we vote on that. And, we will do that for each aspect – material mandate, temporal mandate, personal mandate, all of that, all of that. If we have time, we can vote even on the name of the truth commission. If you want to call it Justice Commission, Truth and Justice Commission, Reconciliation, Friendship and Love Commission – that's your issue. Okay? But, that has to be decided here. And, at the end of that third session, we are going to actually vote. If there is agreement, we will only vote on the only proposal we have at hand. If we have agreement on 60 percent of the issues, but, you know, there are four or five issues where there's no agreement, we vote on that. At the time of the vote, every person here will have one single vote. But, in order to approve something, you won't need a simple majority, you will need 60 percent of the vote. Okay? So, you really need to have an agreement. And, the churches are going to have double votes. So, you need to make sure that the churches are on your side. All right? And, if you are a bishop, you are celibate, but you have double vote. So, anyway, now, the voice of destiny and TV shows is going to announce the different groups. First, the government of Colomdor, second, the Dorian Liberation Front, now, excuse me, the autonomous regional government of Ikiago, third, the representatives of civil society, and fourth, the bishops of the Christian churches of Colomdor. Remember, Jelena, Aleksandar and I are the international community here. Something that you should know is that we can approach any individual directly and give that individual specific instructions or pressure. So, if there are some rebel groups which are really bad,

we are going to sit down with them, and we will give them specific instructions. So, let's have fun, and listen to the definition of the groups. The groups, then, will meet separately. Don't let the other group listen to what you are saying, except for the priests, and you will receive your instructions. Jelena, do you have the instructions for every group? Yup. Okay, perfect.