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THE CICIG AND GUATEMALA'S CONSTITUTION

The CICIG

The most significant presence in Guatemala's recent governance has been the International Commission Against Impunity, best known by its Spanish-language acronym CICIG.

According to the United Nations, which invented the commission and its mandate, the CICIG “aims to investigate illegal security groups and clandestine security organizations in Guatemala – criminal groups believed to have infiltrated state institutions, fostering impunity and undermining democratic gains”¹⁷

The CICIG enjoys diplomatic immunity and other privileges of diplomatic status. By the same token, and on paper anyway, it is subject to diplomatic limitations. The first of these is that no diplomat may interfere in the ordinary workings of the host country.

In 2015, CICIG commissioner Iván Velásquez started a series of “dialogue tables” in which he invited a series of citizen groups to construct a campaign for changing Guatemala's constitution.

Such were the CICIG's prestige and power that rather few people asked the obvious question. As a diplomatic entity, what business did the CICIG have in planning changes to Guatemala's constitution, or to its social order?

The Battle in Congress

In 2016 President Jimmy Morales announced that he himself would send the CICIG proposals to Congress. Without explaining his reasons, Morales did not follow up on this pledge. But a number of participants commented that the CICIG's text was different from what had been approved in the discussions.

The CICIG's response was to direct the justice ministry to file corruption charges against Morales's son and brother.

In Congress, 52 members sponsored the CICIG's proposals. After easily approving a few articles, Congress confronted the CICIG's major initiative: to replace Guatemala's unitary justice system with a myriad of zones which would observe “indigenous rights” and “ancestral authorities.”

17.- <http://www.un.org/undpa/en/americas/cicig>

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The effect, in a poor nation with manifold ethnic differences, would have been to impose a legal regime of “different strokes for different folks.”

CICIG commissioner Velásquez, Attorney General Thelma Aldana and Human Rights Ombudsman Jorge De León attended the session of Congress at which members debated the controversial article. Despite the heavy-handed presence of those authorities, the measure failed to gain the necessary votes.

Velásquez took to meeting with party leaders in hotels – the very definition of “lobbying” – while national and international media reported that US Ambassador Todd Robinson was working in his own way to garner support for the proposals.

The CICIG next proposed to change the Constitution’s procedure for appointing judges. A National Judiciary Board was proposed in which, among other things, lower-court judges and lay persons would nominate judges for the highest courts.

The members of the proposed board would have power over all judiciary nominations. The effect would be to upset the balance that the Constitution had carefully crafted in its separation of powers. In its place would be a judicial monolith, with all power given to the present occupants of judicial posts—those occupants nearly all partisans of the CICIG.

In a word, the CICIG would be running the judicial branch of government, and the judicial branch would have dominion over the other branches.

This proposal generated so much opposition that its partisans never even tried to bring it to a vote.

The Political Battle

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Congressman Fernando Linares requested an injunction against Velásquez attending sessions of Congress, on grounds that no foreigner – Velasquez being a Colombian national – could take part in Guatemala’s congressional matters.

Linares also sought an injunction against Aldana’s uninvited presence in Congress, which he termed an effort to intimidate the deputies.

Shortly thereafter, Aldana presented a criminal complaint against Linares, thereby proving his point about intimidation.

18.- See Part 9 of this series, “The Lawlessness of Guatemala’s Justice.”

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The attorney general's brief accused Linares of discrimination on grounds that, as a member of Congress, he had spoken against a bill which would allocate funds to groups helping disabled persons. The attorney general further demanded that Congress revoke Linares's immunity from prosecution, so he could be criminally charged.

This was an open attack on Linares's rights as a member of Congress; the ministry demanded removal of the Constitution's allowance that congresspersons freely express their opinions in legislative debates.

The United States piled on this effort in an obvious and insidious way. In April 2017 the US consulate, abruptly and without explanation, canceled Congressman Linares's right to travel to the United States.

By this time, Donald Trump had become president while Ambassador Robinson, an Obama appointee, falsely claimed to be representing the president's policies. Congressman Linares, a known Trump partisan, better represented American values than did the US ambassador.

Conclusion

The CICIG's effort to change Guatemala by changing its Constitution turned out a failure. But it perpetrated numerous illegalities.

Following President Morales's decision not to present the CICIG's proposal, fifty-two members of Congress sponsored it. Their sponsorship was illegal because it led them to act as a front for the authors of a foreign intervention – Velásquez and the CICIG.

The attorney general and the human rights ombudsman broke the law in their interventions with Congress, because their offices did not give them the power to propose changes to the Constitution.

The attorney general's charges against the president's brother and son, as well as against Congressman Linares, were illegal for being blatant attempts to bully lawmakers into voting for the CICIG's program.

As for Commissioner Velásquez, his activity did more than simply go beyond the CICIG's mandate. With Attorney General Aldana as his sidekick and US Ambassador Robinson as his sponsor, he misused his position to lead what could easily be described as an attempt to subvert democracy.