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Benjamin Witte-Lebhar

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Jesuit Massacre: El Salvador’s Corte Suprema de Justicia Shields Accused Soldiers from International Prosecution

by Benjamin Witte-Lebhar

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El Salvador’s Corte Suprema de Justicia (CSJ) has chosen to let sleeping dogs lie when it comes to the 1989 murders of six Jesuit priests, their housekeeper, and her teenage daughter, using technicality arguments in a late August ruling to wash its hands of the infamous massacre.

The high court decided Aug. 24 to neither arrest nor extradite nine ex-soldiers implicated in the murders, putting to rest any questions about whether it might break with Salvadoran tradition and allow legal proceedings involving one of the country’s numerous civil-war-era human rights cases to go forward.

El Salvador’s civil war, which pitted the US-backed military against leftist guerilla groups known collectively as the Frente Farabundo Martí para la Liberación Nacional (FMLN), lasted from 1980 until 1992. An estimated 75,000 people—many of them civilians—were killed in the conflict. Another 8,000 disappeared.

The ruling came less than three weeks after the accused men, to avoid a pending arrest on an Interpol warrant, turned themselves in to Salvadoran military authorities (NotiCen, Aug. 18, 2011). The ex-soldiers spent the next 17 days in the San Salvador Army facility Brigada Militar de Seguridad Especial (BESM). The group included Rafael Humberto Larios, a former defense minister; Orlando Zepeda, an ex-vice minster of defense; and Rafael Bustillo, an ex-Air Force commander.

Interpol issued the warrants at the behest of Judge Eloy Velasco of Spain’s Audiencia Nacional. The nine were among 20 Salvadoran ex-military officials Velasco charged in late May with murder, terrorism, and crimes against humanity for their alleged ties to the Jesuit massacre (NotiCen, July 28, 2011). The Spanish judge is working the case under the doctrine of universal jurisdiction, which holds that certain very serious crimes can be prosecuted anywhere.

Velasco would eventually like to try the men in Spain. El Salvador’s CSJ did its part, however, to make sure that won’t happen, basing its ruling not on the allegations against the ex-soldiers but on what it sees as procedural missteps by its Spanish counterpart, the Audiencia Nacional.

The CSJ contends that only the Spanish government can request extradition. Given that Spain’s Ministerio de Asuntos Exteriores y de Cooperación (MAEC) never issued such a request, the court reasoned, Salvadoran authorities have no cause to arrest and detain the men in question. The Interpol warrant, the CSJ went on to explain, never technically called on local authorities to arrest the men, only to "locate them." In that regard, El Salvador fulfilled its obligations, the high court insisted. "Here, for us, the case is closed," Justice Ulises del Dios Guzmán told reporters.

The CSJ’s rationale has left more than a few legal observers scratching their heads. El Salvador’s own penal code seems to suggest that international arrest warrants are, as their named would suggest, orders to arrest, not just locate, a subject. Sources in Spain’s Audiencia Nacional insist
Judge Velasco had been following proper procedure. Legal protocol, according to the Spanish high court, is to file an extradition request only after the subject in question is formally placed under arrest. In this case, Salvadoran police never arrested the accused ex-soldiers, who were allowed instead to remain in military confinement. Velasco, therefore, was waiting for the CSJ to act, hoping it would order the arrest of the ex-soldiers so that he, in turn, could issue a formal extradition request.

Hear no evil, see no evil

As perplexing as the CSJ’s arguments may be, they are not, most observers agree, particularly surprising. Universal-jurisdiction cases of this kind are rarely successful. And in El Salvador specifically, courts have long stayed clear of cases involving the civil war’s numerous human rights violators, who enjoy protection under an 18-year-old amnesty law.

At the behest of then President Alfredo Cristiani (1989-1994), the unicameral Asamblea Legislativa (AL) passed the Ley de Amnistía General para la Consolidación de la Paz in 1993, just five days after El Salvador’s post-war truth commission released its findings. Although atrocities were committed on both sides, the Comisión de la Verdad Para El Salvador (CVES), formed as part of the 1992 UN-brokered peace accords, concluded that approximately 85% of the acts of violence were committed by state-security forces.

Cristiani, who has been implicated in some civil-war abuses, continues to lead the powerful Alianza Republicana Nacionalista (ARENA), El Salvador’s main opposition party. The governing party is the FMLN, the former guerilla conglomeration, which transitioned into politics after the war.

"All of this shows that the state and government remain the same as they were 20 years ago when the war ended," Salvadoran human rights activist Benjamín Cuéllar explained in an Aug. 26 interview with Radio Nederland. "This is a state that protects high-level criminals and belittles the legal claims of victims."

Cuéllar directs the Instituto Nacional de Derechos Humanos for San Salvador’s Universidad Centroamericana (UCA), the same school where, on the night of Nov. 16, 1989, soldiers from the infamous Batallón Atlacatl murdered the school’s rector, Ignacio Ellacuría, along with five other Jesuit priests, their housekeeper Elba Ramos, and her daughter Celina.

"The soldiers tried to force their way into the pastoral center. When the priests realized what was happening, they let the soldiers in voluntarily. The soldiers searched the building and ordered the priests to go out into the back garden and lie face down on the ground. The lieutenant in command, José Ricardo Espinoza Guerra, gave the order to kill the priests," the CVES report reads.

The CVES concluded that the soldiers received direct orders from on high to execute Ellacuría and leave no witnesses. Ellacuría had been urging the government to negotiate with FMLN guerillas, which just days before had launched its "final offensive."

"That was the fundamental motive for the killing," Judge Velasco wrote in a report dated May 30. "The key leaders of La Tandona [the 1966 graduating class of the Gerardo Barrios Military School, especially Vice Minster of Defense Juan Orlando Zepeda, Gen. Chief of Staff Emilio Ponce, and his ally Air Force Gen. Juan Bustillo], supported a return to total war, opposing the negotiations."
A 21,000 sq km prison

Velasco plans to pursue the case, despite the CSJ’s ruling. Earlier this month, the Spanish judge—as he had done previously with the nine ex-soldiers holed up last month in the BESM—ordered an additional seven former Salvadoran military officials to appear before his court. As anticipated, the men did not appear. Velasco will now request a new round of international arrest warrants.

Legal proceedings are also pending in the US against another man included on Judge Velasco’s original 20-person indictment list. On Aug. 23, federal agents in Massachusetts arrested Inocente Orlando Montano, a colonel at the time of the Jesuit massacre, on charges of immigration fraud. Authorities there claim Montano tried to cover up his military background on US immigration forms. He is currently under house arrest in the Boston suburb of Saugus.

Technically, there’s a possibility he could be extradited to Spain. Another option—considering he was stopped on immigration charges—is that he will eventually be deported to El Salvador, where, as last month’s CSJ ruling illustrated, he would likely be protected from Velasco’s legal maneuverings. The CSJ decision would also presumably protect the seven men to be named on the judge’s next list of Interpol arrest warrants. If they are in El Salvador, in other words, they will be free to stay there.

Many on the country’s political right defend the CSJ decision on sovereignty grounds, arguing that El Salvador—not Spain, the US, or any other country—has the sole right to choose how best to deal with its violent past. Thanks to the amnesty law, which continues to enjoy bipartisan support in government, that has meant keeping a legal lid on the wartime atrocities. The alternative, argue the amnesty’s many backers, would be to reopen old wounds and thus compromise El Salvador’s ongoing reconciliation process.

Human rights groups and family members of the war’s many victims say, however, that those wounds never healed in the first place—precisely because the courts have so far refused to hold anyone accountable for the atrocities.

"The wounds of the victims and their family members are still open because Salvadoran society has done nothing to heal and close them. No one has thought about or even looked for paths to reconciliation," UCA rector Andreu Oliva said during an Aug. 31 press conference.

The UCA’s Benjamín Cuéllar suspects that, in the end, Velasco may have no choice but to try the accused soldiers in absentia. Family members of the military’s many civil-war victims would prefer the human rights violators face real consequences, namely jail time. Still, a conviction ruling from Spain’s Audiencia Nacional—even if the accused "aren’t sitting on the bench," would send an important symbolic message.

It would also place real physical restrictions on the ex-military men, Cuéllar recently told the Inter Press Service. "If they are convicted in absentia, the soldiers would be international legal fugitives and would be stuck in [El Salvador], a 21,000-square kilometer prison," he said.