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U.S. State Department Recommends Immunity for ex-President Ernesto Zedillo in U.S. Lawsuit Filed by Survivors of Chiapas Massacre

by Carlos Navarro

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The US State Department has agreed to recommend immunity for ex-President Ernesto Zedillo (1994-2000), who is the target of a lawsuit in a US court over the massacre of 45 Tzotzil Indians near the village of Acteal in Chiapas in December 1997. The massacre was carried out by paramilitary groups who claimed affiliation with the Partido Revolucionario Institucional (PRI), which at that time held the federal government and the Chiapas state government ([SourceMex, Jan. 14, 1998](#)).

The lawsuit was filed in September 2011 in a federal district court in Connecticut by 10 anonymous individuals who claim to be survivors of the massacre ([SourceMex, Jan. 18, 2012](#)). The plaintiffs, who are members of a group called Las Abejas (the Bees), are represented by the law firm of Rafferty, Kobert, Tenenholtz, Bounds & Hess. Attorneys say the names of the plaintiffs—who are seeking US \$50 million in damages from Zedillo—were withheld to prevent reprisals against them in Mexico.

There is some evidence that the PRI played a role in the massacre, although it is uncertain whether Zedillo was involved in any way. The news of the massacre forced then Chiapas governor Julio César Ruiz Ferro, interior secretary Emilio Chuayfett, and local military commander Mario Renán to resign from their posts. There were some reports that Ruiz Ferro might have played an important role in supporting the massacre.

Shortly after the lawsuit was filed against Zedillo, the Secretaría de Relaciones Exteriores (SRE) asked the US government to determine whether the ex-president, a faculty member at Yale University, can be sued for developments that occurred during his tenure in office between 1994 and 2000. In making its case, the SRE said international practices and customs provide for such immunity "with the aim of ensuring respect for the equal sovereignty of states."

"The government of Mexico does not believe that a US law should or can grant jurisdiction to the courts of that country to hear civil suits over deeds committed outside the United States and not involving US citizens," the SRE said.

"The concept of immunity for chiefs of state is well anchored. It is based on the fundamentals of the International Court of Justice," added SRE counsel Arturo Dager.

The SRE did not have to do much convincing to obtain the support of the US government. "This complaint is predicated on former President Zedillo's actions as President, not private conduct," State Department legal adviser Harold Hongju Koh said in a letter to the US District Court in Hartford, Connecticut, which will make the final determination.

Legal experts said the State Department's recommendation was not surprising but also noted that it did not establish any precedents on how US courts should handle complaints against former heads of state.

"In my view, the claim of executive branch authority to make immunity determinations is strongest for sitting heads of state but somewhat weaker for other officials and for former officials," Curtis A. Bradley, a Duke University law professor who studies immunity issues, said in an interview with The New York Times.

In fact, the issue might resurface with another Mexican leader, President Felipe Calderón, who completes his term in December. Calderón, who is known to be considering residence in the US, has been the subject of several lawsuits because his intensive campaign against drug traffickers is linked directly or indirectly with 50,000 deaths during his six-year term. A citizen coalition brought a complaint against Calderón in the International Criminal Court (ICC) in The Hague last year ([SourceMex, Oct. 26, 2011](#)).

Zedillo's attorneys have dismissed the allegations against their client as "unfounded" and "slandrous." The ex-president, who has served as director of the Yale Center for the Study of Globalization, has taught courses in international economics and international trade at the university.

Legal action possible in other venues

With the likelihood that the federal District Court in Connecticut will accept the State Department's recommendation, members of Las Abejas and their supporters are looking to bring legal action against Zedillo in other venues. One possibility is the Inter-American Court of Human Rights (IACHR), an organ of the Organization of American States (OAS).

"Zedillo might have received immunity in the US, but this position is not necessarily universal," said the human rights organization Centro de Derechos Humanos Fray Bartolomé de las Casas (Frayba).

"Because of this, we are continuing to seek ways to attain justice. We do not want atrocious acts like this one to be buried or forgotten."

José Miguel Vivanco, Americas director for the international organization Human Rights Watch (HRW) questioned the Mexican government's decision to request immunity. "We believe that the tribunals, whether they are civil or criminal courts, should review the cases that involve serious violations of human rights," said Vivanco. "They should carry out this task without obstacles of any kind, whether they are political pressures or legal loopholes."

"By invoking the principle of immunity for former heads of state, the Mexican government has created an obstacle to an independent and impartial investigation of this matter on the part of a US civil court," added Vivanco.

The argument found support from a surprising source: syndicated columnist Sergio Sarmiento, who is generally conservative in his political and economic views. "I regret that the US State Department has recommended immunity for former President Ernesto Zedillo. A court should investigate the matter in depth," wrote Sarmiento. "The truth is that there is no evidence that Zedillo had ordered the massacre in Acteal in 1997 or that he knew about it beforehand."

Other observers suggested that the move to dismiss the lawsuit in a US court was the proper one, given the manner in which the suit was filed. "The fact that Zedillo will not have to be tried in a US court is an important victory," Juan Enríquez Cabot wrote in the Mexico City daily newspaper Reforma. "He was being accused by anonymous parties, supported by lawyers who would not reveal who is financing them."

Enríquez Cabot said that he did not necessarily oppose trials for former heads of state but said the accusers must identify themselves and that cases like the Acteal massacre should be judged in Mexico, not in a foreign land. "It would be good if all this effort and money spent to launch this legal action in the US would result in a trial in Mexico," said Enríquez. "And if cases like this one are considered important, the proceedings against Zedillo, and any other president, should go forward."

Enríquez said the worst-case scenario for Zedillo if he lost the case in a US court would have been a major monetary penalty. If the case were to be heard in Mexico, the ex-president could potentially face more serious charges.

Chiapas state government seeks action against ex-president

But others noted that a case has already been brought against Zedillo on Mexican soil. In October 2011, a special prosecutor's office (Fiscalía Especializada para el caso Acteal) appointed by Gov. Juan Sabines filed legal action against the ex-president, labeling him "criminally responsible" for the Acteal massacre. The special prosecutor's office, which comes under the jurisdiction of the Chiapas attorney general's office (Procuraduría General de Justicia del Estado de Chiapas), put together a 126-page report suggesting that Zedillo, his personal secretary Liébano Sáenz, and former attorney general Jorge Madrazo Cuéllar knew well ahead of time about the plans for the massacre, but failed to act to prevent it.

Columnist José Contreras of La Crónica de Hoy said the special prosecutor's office took two fundamental elements into consideration to arrive at this conclusion. One was Chuayffet's declaration on Dec. 20, 2008, in which he acknowledged that the federal government, including President Zedillo "was aware for at least a year that the tensions in the region of Chenalhó [which includes Acteal] raised concerns that violence could intensify."

The other element was the campaign developed by the Secretaría de la Defensa Nacional (SEDENA), which took a series of actions intended to destroy the Ejército Zapatista de Liberación Nacional (EZLN). The campaign included an arrest order for EZLN leaders ([SourceMex, Feb. 15, 1995](#)).

"Based on the information that the special prosecutor's office has compiled, it will be very difficult to charge President Zedillo directly with the massacre of 45 Indians in Acteal," said Contreras.

"But the ex-president, Liébano, and Madrazo could well be charged with such crimes of omission, negligence, and obstruction of justice, among other things."

-- End --