



INITIATIVE REPORT

ROUND TABLE DISCUSSION ON REFORM OF INTELLIGENCE AND SECURITY SERVICES IN GUATEMALA

HARVARD LAW SCHOOL
MARCH 31 - APRIL 2, 2000

The Project on Justice in Times of Transition of Harvard University held a round table meeting at Harvard Law School from March 31 to April 2 to discuss the reform of security and intelligence services in Guatemala. This gathering, held at the request of senior members of the Guatemalan government, provided a forum in which the four ministers/deputy ministers in charge of Guatemalan intelligence, who were selected by the Portillo administration, met with 13 experts in intelligence and security issues from Argentina, Canada, the Czech Republic, Spain, South Africa and the United States. The meeting's open exchange of relevant information among participants resulted in concrete suggestions for possible ways to reorganize Guatemala's intelligence activities so that they: (1) reflect the current needs of the country; (2) uphold the rule of law; and (3) make a successful transition from military to civilian services.

The detailed agenda on intelligence and security issues, developed and moderated by The Project's faculty chairperson, Philip Heymann, covered the functions of intelligence, formal rules and powers, organizational systems and culture, oversight mechanisms, and critical steps in the process of transition. In the course of the round table discussions the participants commented on each subject with respect to their own countries' experiences, and the Guatemalan ministers raised questions putting key issues into the Guatemalan context. The diverse group, bringing together a unique blend of perspectives and personal experience, engaged in three days of lively and productive conversation. The following individuals were active and thoughtful participants:

- **Sandy Africa** - General Manager of the South African Intelligence Academy, South Africa
- **César Balguerías** - Analyst of Political and Strategic Affairs for Latin America, Higher Center of Defense Information, Spain
- **Oldrich Cerny** - Executive Director of Forum 2000 Foundation, former Director General of Czech Foreign Intelligence Service, former National Security Advisor to President Havel, Czech Republic
- **Vaughn Collins** - Detective Chief Superintendent, Canada
- **Michael DeFeo** - Assistant Director, Federal Bureau of Investigation, United States
- **Edgar Gutierrez** - Minister of Strategic Analysis, Guatemala
- **Manuel de Jesus Flores Hernandez** - Vice Minister of Governance, Guatemala
- **Ricardo Marroquin** - Minister of Administrative and Security Affairs for the President, Guatemala
- **Kate Martin** - Director of the Center for National Security Studies, United States
- **Ernest May** - Charles Warren Professor of History at Harvard University, United States
- **Siyabulela Mlombile** - General Manager of Support Services at the National Intelligence Coordinating Committee, South Africa
- **Morris Panner** - Deputy Chief of the Narcotics Section of the Criminal Division, Department of Justice, United States

- **Elizabeth Rindskopf Parker** - former General Counsel of the Central Intelligence Agency, United States
- **Alfredo Rabbé** - Vice Minister of Military Intelligence, Guatemala
- **Dario Richarte** - Vice Minister of Intelligence, Argentina
- **Anna Maria Salazar** - Deputy Assistant Secretary of Defense for Drug Enforcement Policy and Support, United States

Background and Challenges for the Guatemalan Intelligence Community

Following his Friday morning opening remarks, program moderator Philip Heymann asked the four Guatemalan ministers to summarize the histories of the Guatemalan intelligence and internal security services. Edgar Gutierrez, Minister of Strategic Analysis, explained that the Guatemalan intelligence services, most notably the Army Intelligence Directorate (G-2), were instrumental in the evolution of counterinsurgency policy during the 1970s and 1980s, and responsible for much of the bloodshed during the nation's long civil war. He noted that the goal of the Portillo administration to restructure the intelligence agencies and make a transition to civilian control is based on the need both to overcome the legacies of the agencies' past and also to redirect their activities to address current concerns and threats. For example, he explained, the Guatemalan Peace Accords call for a clearly defined separation between intelligence gathering and analysis. Therefore Mr. Gutierrez's ministry was created to analyze information and make recommendations to the President; it has no responsibility for the collection of information.

Ricardo Marroquin, Minister of Administrative and Security Affairs for the President (also known as the *Estado Mayor Presidencial*, or EMP), stated that the restructuring of the intelligence and security services in Guatemala is extremely controversial, and strongly opposed by many military personnel who fear losing power under a new civilian mandate. For years the EMP, created to provide protection for the

president, coordinated closely with both military and police forces, using access to privileged information to assert power over civilian presidents and to carry out unlawful operations which resulted in many deaths, disappearances, and human rights violations. Mr. Marroquin stated his desire to restructure the EMP, integrate civilians into the ministry, and establish a new set of objectives that will enable the office to perform administrative and security functions without the unlawful practices and power abuses of the past.

Alfredo Rabbé, Vice Minister of Military Intelligence, stated that the end of the civil war in Guatemala and the signing of the peace accords marked a transition in the functions and practices of the military's branch of intelligence. According to Mr. Rabbé, during the war the focus of military intelligence was on arresting and prosecuting subversive individuals who threatened the stability of the state. Now that these threats no longer exist, he continued, protecting Guatemala's national territorial sovereignty is the chief concern of the military intelligence. He also said that many reforms, including the forced retirement of a number of high-ranking military officials, have already been effected. In addition, he stated, the intelligence networks of the military, which once exerted control over various sectors of society, have ceased to exist.

Manuel de Jesus Flores Hernandez, Vice Minister of Governance, described his ministry as a newly established civilian intelligence unit that will be responsive to internal threats such as organized crime and drug trafficking. While noting the problematic nature of Guatemalan intelligence, Mr. Flores said that intelligence and security services are necessary for the stability and protection of every democratic nation. Mr. Flores expressed his opinion that a strong system of internal controls and legislative oversight mechanisms, currently missing from the Guatemalan intelligence apparatus, could help eradicate abuses of power within the services.

PART ONE: CREATING A MODEL

The Functions of Intelligence Gathering in Post-Conflict Guatemala

The group's discussion of the functions of intelligence gathering served as a springboard for considering the appropriate role of intelligence activities in post-Cold War Guatemala. Starting with biblical times, Ernest May, Charles Warren Professor of History at Harvard University, provided an historical snapshot of military, political, and internal intelligence, noting in particular the changing functions of intelligence and the transformations of intelligence apparatus which have occurred during the last century. He pointed out that during the recent Cold War the entire structure of US intelligence was focused on opposing the military and political threats of communism: 90% of all information collected was basically for military purposes. Since the break-up of the USSR, he noted, US intelligence agencies are concentrating more on terrorism, organized crime, and drug trafficking.

Based on specific problems such as criminal activity, military threats, and terrorism that their nations face, participants outlined their respective countries' needs for intelligence gathering and analysis. Vaughn Collins, Detective Chief Superintendent of Canada, stated that Canadian intelligence is currently focused on threats similar to those faced by the US. To combat these threats, each of the three Canadian intelligence services has distinct responsibilities: police intelligence combats criminal activity; military intelligence focuses on national defense; and the civilian security intelligence engages in counter-intelligence and counter-terrorism activities.

Sandy Africa, General Manager of the South African Intelligence Academy, explained that following the 1994 end of apartheid government, South Africa outlined a new role for intelligence services. The "White Paper on Intelligence," written to provide a framework for understanding the philosophy and role of intelligence in democratic South Africa, states that the mission of the intelligence community is to safeguard the new democratic constitution, uphold the individual rights outlined in the Bill of Rights, promote security, help achieve national prosperity, and advise the

government about foreign threats. Four intelligence functions have been defined and assigned to different agencies:

1. The (civilian) South African Secret Service is responsible for collecting foreign intelligence related to external threats.
2. The (civilian) National Intelligence Agency is responsible for providing domestic intelligence and counter-intelligence.
3. The Crime Intelligence Division of the South African Police is responsible for collecting intelligence about criminal activities and, additionally, is authorized to make arrests and prepare cases.
4. The Intelligence Division of the South African National Defense Force is responsible for protecting South Africa's territorial integrity. (Ms. Africa noted that given the current increase in crime, the military may be authorized to act in some domestic circumstances, but, if so, there will be strict boundaries to those actions.)

As in South Africa, the roles of the intelligence services in Argentina and Spain have been transformed with the changes in their respective governments. César Balguerías, Analyst of Political and Strategic Affairs for Latin America at the Higher Center for Defense Information of Spain, explained that until the death of President Francisco Franco in 1977, Spanish intelligence had a purely military mandate to counteract subversion against the state. Subsequently, functional changes within the intelligence mission occurred as Spain made its transition to democracy. Dario Richarte, Argentina's Vice Minister of Intelligence, responded that the role of the Argentine intelligence services, previously focused on protecting Argentina's military regime, has also changed and is now committed to confronting narco-trafficking, terrorism, organized crime, and corruption.

Edgar Gutierrez commented that Guatemala, like Spain, South Africa, and Argentina, must also outline

the new functions for intelligence and create lawful institutions, supported by civil society, which reflect the current needs of the nation. Alfredo Rabbé noted that organized crime and narco-trafficking are some of the leading threats to his country. And Ricardo Marroquin added that foreign attack, espionage by foreign agents, and renewed guerrilla warfare were no longer significant national concerns in Guatemala.

Formal Rules and Powers

During Friday afternoon's session the round table participants discussed whether a special set of rules was necessary for internal security agencies to limit abuses of power. Moderator Philip Heymann noted that uncontrolled actions can be hazardous to a democracy as they often "discourage legitimate political opposition to the government, create great personal insecurity regarding the powers of the police, distort the decisions of even high government officials, and create widespread cynicism and fear about all the activities of the government." However, Professor Heymann said, while every democratic nation has a set of rules for police investigation of criminal suspects, only certain nations, such as Germany, Canada, and Great Britain, have freed intelligence agencies from these rules and vested additional intelligence powers in the police or other internal security agencies. He noted that it is important for Guatemala to assess whether the establishment of formal rules for internal security activities is appropriate, and, if so, what types of rules or powers should be granted. He then asked each participant to describe the special rules that govern their respective internal security services.

Ricardo Marroquin said that, at present, no such rules exist in Guatemala. Oldrich Cerny, former Director General of the Czech Foreign Intelligence Service, stated that the internal security agencies in the Czech Republic, now focused on terrorism, organized crime, and counter-intelligence, have powers to investigate and wire tap but can not interrogate or make arrests. Dario Richarte added that police interrogation and electronic surveillance without judicial orders are illegal in Argentina.

While separate rules exist for internal security organizations in Canada, Vaughn Collins explained, the rules are neither extensive nor very different from those of other agencies. Elizabeth Rindskopf Parker, former General Counsel of the US Central Intelligence Agency, outlined the rules for US intelligence agencies and noted that an important distinction must be made between the rules for intelligence gathering and analysis on the one hand and those for intelligence based on covert action on the other. Covert actions, she continued, are only 3% of CIA activities.

Issues of authority within and among intelligence services, and budgetary controls both from outside and within those services, were explored. Michael DeFeo, formerly US Department of Justice Representative in Italy, and now Director of the FBI's Office of Professional Responsibility, stressed the importance of a country having a single body to unify intelligence analysis and to coordinate any resulting military and political actions of that country. Mr. DeFeo said that the National Security Council assumes this role in the United States; Oldrich Cerny noted that the Czech Republic has its own National Security Council with similar decision-making powers.

Anna Maria Salazar, US Deputy Assistant Secretary of Defense for Drug Enforcement Policy and Support, emphasized that within intelligence agencies there must be an individual with political responsibility for the expenditure of funds. She also noted that budgetary oversight by an outside governmental agency is critical. Ms. Salazar, who oversees an annual budget of \$1 billion to support the US Department of Defense's counter-narcotic programs, said that a delicate balance must be struck which allows transparency but also ensures the protection of information.

Organizational Systems and Cultures

Saturday morning's discussion concentrated on the organizational systems and cultures of intelligence services: how to establish coordination between agencies; what are the different types of internal controls and what are their objectives; and finally, what are effective leadership and management

techniques for personnel systems. Siyabulela Mlombile, General Manager of Support Services at the National Intelligence Coordinating Committee, described the process and guidelines which South Africa follows to hire new intelligence personnel, and noted that while qualifications were extremely important, it was also essential to balance issues such as gender and race in order to hire a staff that is reflective of the society at large. Sandy Africa provided examples of the internal controls outlined in South African legislation: security clearance at all levels; an internal audit mechanism accountable to the South African Department of State; operational procedures such as the target authorization policy to eliminate the potential for double payments; and procedures regarding the handling and destruction of official documentation.

Manuel de Jesus Flores Hernandez said that he was particularly interested in the procedures used for hiring and monitoring activities of personnel in other countries. Michael DeFeo described the extensive procedures employed by the FBI to monitor activities of intelligence personnel. These ongoing processes begin with the background checks that are part of the agency's hiring process. He noted that while Scotland Yard is moving toward universal testing in integrity matters, the FBI uses targeted testing. Although incentives such as favorable retirement packages are provided to maintain the motivation and productivity of employees, most important, he stressed, is the fact that because the FBI is a respected agency it attracts and retains skilled professionals. FBI personnel receive good pay, have status within their professional communities, and are sought after by private agencies when they retire.

Ricardo Marroquin asked the other participants about establishing financial controls and dealing with security files from previous administrations. Several people described the powerful role that the audit function plays in increasing effectiveness and upholding the rule of law in their countries. According to Vaughn Collins, in Canada the Inspector General audits intelligence agencies, monitors complaints, and gives periodic reports to the president. Michael DeFeo added that in the United States criminal and managerial misconduct that occurs within the FBI must be reported to the

Inspector General's Office in the US Department of Justice. And Mr. Cerny commented that the Special Investigator's Office in the Czech Republic performs a similar function. He also noted that the Czechs have established a new office to investigate past crimes and to deal with the security files of the communist police.

Oversight

Saturday afternoon's discussion concentrated on developing mechanisms of oversight to ensure adequate transparency, accountability, and compliance with established rules. (This topic had been touched upon a number of times during the previous sessions.) The Guatemalan ministers explained that there is neither budgetary, legislative, or presidential oversight of Guatemalan intelligence and security services, nor are there any outside agencies that oversee intelligence activities. This lack of intelligence oversight contrasted sharply with the variety of oversight mechanisms that other round table participants said were employed in their respective countries.

Legislative oversight in the Czech Republic, South Africa, Canada, and the US is a key element for upholding lawful practices of intelligence agencies. Oldrich Cerny pointed out that the Independent Investigative Commission of the Czech Republic's parliament is an important oversight body; and Vaughn Collins outlined the oversight roles of the Solicitor General, the Inspector General, and the Security and Intelligence Review Committee within the Canadian parliament. In South Africa, the Joint Standing Committee on Intelligence and the Standing Commission on Public Accounts are two examples of legislative oversight. Elizabeth Rindskopf Parker explained that the US Congress has a budgetary oversight function, and noted that the House and Senate Permanent Select Committees on Intelligence, as well as the Ethics Laws and Authorization Acts, are examples of US legislative oversight. However, not all intelligence agencies of the countries represented have such extensive legislative oversight: César Balguerías noted that there are limited controls on Spain's intelligence services.

Ms. Rindskopf Parker drew a chart outlining the various legislative, executive, and judicial oversight mechanisms in the United States and explained the function of each. Kate Martin, Director of the Center for National Security Studies of the United States, added that NGOs must also be recognized as a critical form of oversight in democratic nations. Ms. Martin explained that organizations outside the government are responsible for bringing to light violations by an intelligence agency, as well as for helping decide what the rules and legitimate functions of intelligence should be. She said that the public has a responsibility for demanding legitimacy and lawfulness of intelligence and security services in a democracy. Edgar Gutierrez agreed that "the [Guatemalan] public needs to know the basic alphabet of intelligence, including how it functioned in the past and how it should function in the future".

PART TWO: TRANSITION

Critical Steps

Sunday morning's final discussion concentrated on critical steps - such as restricting military intelligence activities, ending covert action by the military, and dismantling counter-insurgency agencies - that must be taken during Guatemala's transition to civilian intelligence services. The group suggested that Guatemala clearly define the role of military intelligence, limiting it solely to military threats and assigning other intelligence agencies, such as the Guatemalan Ministry of Governance, with the responsibility for internal threats such as terrorism, violence by dissidents, and coup attempts. Elizabeth Rindskopf Parker emphasized that a distinction must be made between intelligence gathering, analysis, policy implementation, and law enforcement; and that military intelligence should not have the lawful right to assume all of these roles.

Sandy Africa urged Guatemala to make efforts to establish credibility of prosecution, often extremely difficult in nations like Guatemala and South Africa which suffer from the legacy of an oppressive military regime where civilians continue to fear military and police forces. Ms. Africa described the recently created special prosecution unit known as the

Scorpions as an accomplishment for South Africa. She explained that a major purpose of endowing this new unit with investigative and prosecution capabilities is to strengthen the practices and reputation of South African law enforcement. Morris Panner, Deputy Chief of the Narcotics Section of the US Department of Justice's Criminal Division, agreed that a special prosecution unit is a powerful force for change and that Guatemala could benefit greatly from an organization like the Scorpions.

Toward the end of the meeting Philip Heymann asked the Guatemalan ministers to describe the anticipated problems and challenges during the transition within their intelligence and security services. Edgar Gutierrez pointed to the serious problem of the public's lack of understanding of and support for the transition. In addition, he noted that threats of criminal and political violence could diminish the probability of an effective transformation and reorganization of Guatemala's intelligence systems. Ricardo Marroquin explained that, although the Peace Accords make a division among Guatemalan intelligence agencies separating the functions of military and civilian intelligence, this may be difficult to put into practice.

Conclusion

The three days' discussions concluded with responses by the four Guatemalans to Professor Heymann's question, "What can we do to help?" Edgar Gutierrez replied that the agenda of the past few days provided a basic menu. However, he continued, a critical mass of Guatemalan society must demand change. Therefore Guatemala needs:

1. Public debate. The public must learn the ABC's of intelligence: how it worked in the past; how it will work in the future.
2. Guatemala must develop new intelligence regulations.
3. Training: The old staff must be trained in new regulations. Intelligence can not be abusive; it can not overstep agreed upon boundaries.

4. Guatemala must create a new culture for its intelligence agencies.
5. Guatemala must develop new ways of choosing personnel to staff its intelligence agencies.

First and foremost, then, Mr. Gutierrez would like The Project on Justice in Times of Transition and the round table participants to help the ministers promote public debate on intelligence.

Alfredo Rabbé agreed that Guatemala must develop clear cut rules for its intelligence agencies and that the legislature must supervise the intelligence community. Manuel de Jesus Flores Hernandez asked if the South Africans could give the Guatemalans documentation of the information they shared during the round table meetings. And Ricardo Marroquin, while stating that some initial transitions in Guatemalan social, cultural, political and economic practices date as far back as 1982, emphasized that there are still changes that must be made as part of the peace process. For example, the intelligence services are self-regulated and lack real mechanisms of internal control; and some units of the military work on their own, with no real control from higher-ups. Therefore, he concluded, there is a real possibility of regression; creating change is a difficult task.

Many of those in attendance responded to their Guatemalan colleagues' remarks by offering specific assistance, such as written documentation of the

legislation and reforms passed in their countries, and/or offering to continue the dialogue begun by the round table.

Outcomes of the Round Table Discussion

Based on the written evaluation forms and discussion with program participants, it is evident that, while the three day meeting was a successful beginning, it was not sufficient time to consider all of the relevant issues and details related to the reorganization of Guatemalan intelligence. There was consensus during the round table that follow-up work is necessary in order to look at many of the issues in greater depth and continue to assist the Guatemalans with their reorganization process. The Guatemalans suggested a number of ways that The Project on Justice in Times of Transition could be of assistance to them in the immediate future, including organizing a round table discussion in Guatemala which would allow a wider group of Guatemalan officials to meet with leaders from around the world and examine in greater depth issues related to reform of security and intelligence services; facilitating interaction among Guatemalans and their South African counterparts; and drafting and translating documents that could assist the Guatemalans as they work to institute change in their intelligence and security agencies. The Project is currently considering these follow-up possibilities and expects to develop additional programming in the coming months.

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This report was written by Jenny Ellis.

The Project on Justice in Times of Transition

The Project on Justice in Times of Transition is an inter-faculty initiative of Harvard University under the auspices of the Kennedy School of Government, The Harvard Law School, and the Faculty of Arts and Sciences. Originally founded in 1992 as part of the New York-based Foundation for a Civil Society, The Project assists states emerging from repression or conflict to engage in dialogue across national, ethnic, religious and ideological boundaries with the intention of preventing legacies of the past from jeopardizing their progress toward democracy and peace. The March - April round table discussion was the 22nd of The Project's distinct initiatives which have provided an extraordinary stimulus to pragmatic problem-solving by offering a broad spectrum of individuals exposure to international experiences in ending conflict, establishing peace, and building civil society. Among the countries and regions in which The Project has worked are South Africa, Northern Ireland, Central and Eastern Europe, and Central America.

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