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GUATEMALA: IMPUNITY & THE MILITARY-DRUG NEXUS

We re-circulate this in-depth article that looks at a major aspect of how the impunity of the military is deeply entrenched in Guatemala, notwithstanding assurances that it is a democratic country based on the rule of law.

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THE UNTOUCHABLE NARCO-STATE: GUATEMALA'S MILITARY DEFIES THE DEA
by Frank Smyth (smyth.frank@gmail.com)

The alert went out across the state this past July. A McAllen-based FBI analyst wrote a classified report that the Department of Homeland Security sent to U.S. Border Patrol agents throughout Texas. About 30 suspects who were once part of an elite unit of the Guatemalan special forces were training drug traffickers in paramilitary tactics just over the border from McAllen.

The unit, called the Kaibiles after the Mayan prince Kaibil Balam, is one of the most fearsome military forces in Latin America, blamed for many of the massacres that occurred in Guatemala during its 36-year civil war. By September, Mexican authorities announced that they had arrested seven Guatemalan Kaibiles, including four "deserters" who were still listed by the Guatemalan Army as being on active duty.

Mexican authorities say the Kaibiles were meant to augment Las Zetas, a drug gang of soldiers-turned-hitmen drawn from Mexico's own special forces. It's logical that the Zetas would turn to their Guatemalan counterparts. In addition to being a neighbor, "Guatemala is the preferred transit point in Central America for onward shipment of cocaine to the United States," the State Department has consistently reported to Congress since 1999. In early

November, anti-drug authorities at the U.S. Embassy in Guatemala told the Associated Press that 75 percent of the cocaine that reaches American soil passes through the Central American nation.

More importantly, perhaps, the dominant institution in the country – the military – is linked to this illicit trade. Over the past two decades, the U.S. Drug Enforcement Administration (DEA) has quietly accused Guatemalan military officers of all ranks in every branch of service of trafficking drugs to the United States, according to government documents obtained by The Texas Observer. More recently, the Bush administration has alleged that two retired Guatemalan Army generals, at the top of the country's military hierarchy, are involved in drug trafficking and has revoked their U.S. visas based on these allegations.

The retired generals, Manuel Antonio Callejas y Callejas and Francisco Ortega Menaldo, are Guatemala's former top two intelligence chiefs. They are also among the founders of an elite, shadowy club within Guatemala's intelligence command that calls itself "la cofradía" or "the brotherhood," according to U.S. intelligence reports. The U.S. reports, recently de-classified, credit la cofradía with "engineering" tactics that roundly defeated Guatemala's Marxist guerrillas. A U.N. Truth Commission later found the same tactics included "acts of genocide" for driving out or massacring the populations of no less than 440 Mayan villages.

Guatemala's military intelligence commands developed a code of silence during these bloody operations, which is one reason why no officer was ever prosecuted for any Cold War-era human rights abuses. Since then, the same intelligence commands have turned their clandestine structures to organized crimes, according to DEA and other U.S. intelligence reports, from importing stolen U.S. cars to running drugs to the United States. Yet not one officer

has ever been prosecuted for any international crime in either Guatemala or the United States.

There is enough evidence implicating the Guatemalan military in illegal activities that the Bush administration no longer gives U.S. military aid, including officer training. The cited offenses include "a recent resurgence of abuses believed to be orchestrated by ex-military and current military officials; and allegations of corruption and narcotics trafficking by ex-military officers," according to the State Department's 2004 report on Foreign Military Training.

While some in the Bush administration and Congress want to restart foreign military training, others are concerned about the inability of the Guatemalan government to rein in its military. "The reason that elements of the army are involved so deeply in this illicit operation is that the government simply does not have the power to stop them," said Texas Republican Congressman Michael McCaul, who sits on the Western Hemisphere Subcommittee of the Committee on International Relations and is the Chairman of the Department of Homeland Security Subcommittee on Investigations.

Guatemala is hardly the first military tainted by drugs; senior intelligence and law enforcement officers in many Latin American nations have been found colluding with organized crime. But what distinguishes Guatemala from most other nations is that some of its military suspects are accused not only of protecting large criminal syndicates but of being the ringleaders behind them. The Bush administration has recently credited both Colombia and Mexico with making unprecedented strides in both prosecuting their own drug suspects and extraditing others to the United States. But Guatemala, alone in this hemisphere, has failed to either prosecute or extradite any of its own alleged drug kingpins for at least 10 years.

For decades, successive U.S. administrations have tried and failed to train effective Guatemalan police, while saying little or nothing about the known criminal activities of the Guatemalan military. That finally came to an end in the past three years under Republican Rep. Cass Ballenger, a staunch conservative from North Carolina, who served as chairman of the Western Hemisphere Subcommittee.

"Clearly, the Guatemalan government has not taken every step needed to investigate, arrest, and bring drug kingpins to justice," said then-Chairman Ballenger in 2003 before he retired. Echoing his predecessor, the new Chairman, Indiana Republican Rep. Dan Burton, commented through a spokesman that he wants to see the same alleged ringleaders finally brought "to full accountability."

Until that happens, drugs from Guatemala and the attendant violence will continue to spill over the Texas border.

Guatemala has long been sluggish in efforts to take legal action against its military officers for human rights violations. That impunity has since spread to organized criminal acts as well. The turning point came in 1994, when Guatemala's extraditions of its drug suspects came to a dead stop over a case involving an active duty army officer. The case highlights both the terrible price for those who seek justice in Guatemala and the timidity of the United States in demanding accountability.

A military intelligence officer back in the early 1980s, Lt. Col. Carlos Ochoa briefly trained at the U.S. Army Command and General Staff College in 1988. Two years later, the DEA accused him of smuggling drugs to locations including Florida, where DEA special agents seized a small plane with half a metric ton of cocaine, allegedly sent by the colonel.

State Department attorneys worked for more than three years to keep

Guatemala's military tribunals from dismissing the charges, and finally brought Ochoa's extradition case all the way to Guatemala's highest civilian court. The nation's chief justice, Epaminondas González Dubón, was already well respected for his integrity. On March 23, 1994, Guatemala's Constitutional Court, led by González Dubón, quietly ruled in a closed session (which is common in Guatemala) four-to-three in favor of extraditing Ochoa.

Nine days later, on April 1, gunmen shot and killed González Dubón behind the wheel of his own car in the capital, near his middle-class home, in front of his wife and youngest son. On April 12, the same Constitutional Court, with a new chief justice, quietly ruled seven-to-one not to extradite Ochoa. The surviving judges used the same line in the official Constitutional Court register—changing the verdict and date, but not the original case number—to literally copy over the original ruling, as was only reported years later by the Costa Rican daily, La Nación.

The Clinton administration never said one word in protest. The U.S. ambassador in Guatemala City at the time, Marilyn McAfee, by her own admission had other concerns, including ongoing peace talks with the Guatemalan military. "I am concerned over the potential decline in our relationship with the military," she wrote to her superiors only months before the assassination. "The bottom line is we must carefully consider each of our actions toward the Guatemalan military, not only for how it plays in Washington, but for how it impacts here."

Four years after the murder, the Clinton administration finally admitted in a few lines buried in a thick report to Congress: "The Chief Justice of the Constitutional Court had approved [the] extradition for the 1991 charges just before he was assassinated. The reconstituted court soon thereafter voted to deny the extradition."

Ochoa may not have been working alone. "In addition to his narcotics

trafficking activities, Ochoa was involved in bringing stolen cars from the U.S. to Guatemala," reads a "SECRET" U.S. intelligence report obtained by U.S. lawyer Jennifer Harbury. "Another military officer involved with Ochoa in narcotics trafficking is Colonel Julio Roberto Alpírez de Leon."

Alpírez, who briefly trained at the U.S. School of the Americas in 1970, served "in special intelligence operations," according to a U.S. Defense Intelligence Agency (DIA) report. A White House Oversight Board investigation later implicated him in the torture and murder of a Marxist guerrilla leader who was married to the Harvard-trained lawyer Harbury, and in the torture and mysterious decapitation of an American hotelier named Michael Devine. Col. Alpírez, since retired, has denied any wrongdoing and he was never charged with any crime.

But Ochoa, his former subordinate, is in jail today. Ochoa was arrested – again – for local cocaine dealing in Guatemala City, where crack smoking and violent crimes, especially rape, have become alarmingly common. Ochoa was later sentenced to 14 years in prison, and he remains the most important drug criminal ever convicted in Guatemala to date.

Until now, the DEA had never publicly recognized the bravery of Judge González Dubûn, who died defending DEA evidence. "The judge deserves to be remembered and honored for trying to help establish democracy in Guatemala," said DEA senior special agent William Glaspy in an exclusive interview. Since the murder, the DEA has been all but impotent in Guatemala.

The impunity that shields Guatemalan military officers from justice for criminal offenses started during the Cold War. "There is a long history of impunity in Guatemala," noted Congressman William Delahunt, a Democrat from Massachusetts, who is also a member of the Western Hemisphere Subcommittee.

"The United States has contributed to it in a very unsavory way dating back to 1954, and also in the 1980s," he added, referring to a CIA-backed coup d'État in 1954, which overturned a democratically elected president and brought the Guatemalan military to power, and to the Reagan administration's covert backing of the Guatemalan military at a time when bloodshed against Guatemalan civilians was peaking.

It was also during this Cold War-era carnage that the army's *la cofradía* came into its own. "The mere mention of the word '*cofradía*' inside the institution conjures up the idea of the 'intelligence club,' the term '*cofradía*' being the name given to the powerful organizations of village-church elders that exist today in the Indian highlands of Guatemala," reads a once-classified 1991 U.S. Defense Intelligence Agency cable. "Many of the 'best and the brightest' of the officers of the Guatemalan Army were brought into intelligence work and into tactical operations planning," it continues. Like all documents not otherwise attributed in this report, the cable was obtained by the non-profit National Security Archives in Washington, D.C.

According to the 1991 cable, "well-known members of this unofficial *cofradía* include" then army colonels "Manuel Antonio Callejas y Callejas" and "Ortega Menaldo." (Each officer had briefly trained at the U.S. School of the Americas, in 1970 and 1976, respectively.)

The intelligence report goes on: "Under directors of intelligence such as then-Col. Manuel Antonio Callejas y Callejas back in the early 1980s, the intelligence directorate made dramatic gains in its capabilities, so much so that today it must be given the credit for engineering the military decline of the guerrillas from 1982 to the present. But while doing so, the intelligence directorate became an elite 'club' within the officer corps."

Other Guatemalan officers called their approach at the time the practice of "draining the sea to kill the fish," or of attacking civilians suspected of

supporting leftist guerrillas instead of the armed combatants themselves.

One former Guatemalan Army sergeant, who served in the bloodied province of Quiché, later told this author he learned another expression: "Making the innocent pay for the sins of the guilty."

CIA reports are even more candid. "The commanding officers of the units involved have been instructed to destroy all towns and villages which are cooperating with the guerrilla[s] and eliminate all sources of resistance," reads one 1992 Guatemala City CIA Station report formerly classified "SECRET." The CIA report goes on, "When an Army patrol meets resistance and takes fire from a town or village it is assumed that the entire town is hostile and it is subsequently destroyed." Forensic teams have since exhumed many mass graves. Some unearthed women and infants. More than 200,000 people were killed in Guatemala in what stands as Central America's bloodiest conflict during the Cold War.

The violence left the military firmly in control of Guatemala, and it did not take long for this stability to catch the attention of Colombian drug syndicates. First the Medellín and then the Cali cartels, according to Andean drug experts, began searching for new smuggling routes to the United States after their more traditional routes closed down by the mid-1980s due to greater U.S. radar surveillance over the Caribbean, especially the Bahamas.

"They chose Guatemala because it is near Mexico, which is an obvious entrance point to the U.S., and because the Mexicans have a long-established mafia," explained one Andean law enforcement expert. "It is also a better transit and storage country than El Salvador because it offers more stability and was easier to control."

DEA special agents began detecting Guatemalan military officers running drugs as early as 1986, according to DEA documents obtained through the U.S.

Freedom of Information Act. That's when Ortega Menaldo took over from Callejas y Callejas as Guatemala's military intelligence chief. Over the next nine years, according to the same U.S. documents, DEA special agents detected no less than 31 active duty officers running drugs.

"All roads lead to Ortega," a U.S. drug enforcement expert said recently. "Even current active-duty officers may have other ties with retired officers. They have a mentor relationship."

U.S. intelligence reports reveal the strong ties that *cofradía* high-level officers cultivated with many subordinates, who are dubbed "the operators." "This vertical column of intelligence officers, from captains to generals, represents the strongest internal network of loyalties within the institution," reads the 1991 U.S. DIA cable. "Other capable officers were being handpicked at all levels to serve in key operations and troop command," this U.S. report goes on. "Although not as tight knit as the *cofradía*, the 'operators' all the same developed their own vertical leader-subordinate network of recognition, relationships and loyalties, and are today considered a separate and distinct vertical column of officer loyalties."

Cofradía officers extended their reach even further, according to another U.S. intelligence cable, as the mid-level officer "operators" whom they chose in turn handpicked local civilians to serve as "military commissioners [to be] the 'eyes and ears' of the military" at the grassroots.

Few criminal cases better demonstrate the integration between the Guatemalan intelligence commands and drug trafficking than one pursued in 1990 by DEA special agents in the hot, sticky plains of eastern Guatemala, near the nation's Caribbean coast. This 15-year-old case is also the last time that any Guatemalans wanted on drug charges were extradited to the United States.

Arnoldo Vargas Estrada, a.k.a. "Archie," was a long-time local

"military commissioner," and the elected mayor of the large town of Zacapa. U.S. embassy officials informed (as is still required according to diplomatic protocol between the two nations) Guatemalan military intelligence, then led by Ortega Menaldo, that DEA special agents had the town mayor under surveillance.

Vargas and two other civilian suspects were then arrested in Guatemala with the help of the DEA. Not long after, all three men were extradited to New York, where they were tried and convicted on DEA evidence. But the DEA did nothing back in Guatemala when, shortly after the arrests, the military merely moved the same smuggling operation to a rural area outside town, according to family farmers in a petition delivered to the U.S. Embassy in Guatemala City in 1992 and addressed simply "Señores D.E.A."

"[B]efore sunrise, one of the planes that transports cocaine crashed when it couldn't reach the runway on the Rancho Maya," reads the document which the peasants either signed or inked with their thumbprints. The document names the military commissioners along with seven local officers, including four local army colonels whom the farmers said supervised them.

One of the civilian military commissioners the peasants named was Rancho Maya owner Byron Berganza. More than a decade later, in 2004, DEA special agents finally arrested Berganza, along with another Guatemalan civilian, on federal "narcotics importation conspiracy" charges in New York City. Last year, the DEA in Mexico City also helped arrest another Guatemalan, Otto Herrera, who ran a vast trucking fleet from the Zacapa area. Then-Attorney General John Ashcroft described Herrera as one of "the most significant international drug traffickers and money launderers in the world."

Yet, not long after his arrest, Herrera somehow managed to escape from

jail
in Mexico City. Not one of the Guatemalan military officers the
farmers
mentioned in their 1992 petition has ever been charged. As the DEA's
Senior
Special Agent Glaspy explained, "There is a difference between
receiving
information and being able to prosecute somebody."

In 2002, then-Chairman Ballenger forced the Bush administration to
take
limited action to penalize top Guatemalan military officials thought
to be
involved in drug trafficking. "The visa of former Guatemalan
intelligence
chief Francisco Ortega Menaldo was revoked," confirmed State
Department
spokesman Richard A. Boucher in March 2002, "under a section of the
Immigration and Nationality Act related to narco-trafficking, and
that's
about as far as I can go into the details of the decision."

By then, Ret. Gen. Ortega Menaldo had already denied the U.S. drug
charges,
while reminding reporters in Guatemala City that he had previously
collaborated with both the CIA and the DEA dating back to the 1980s.
Indeed,
a White House Intelligence Oversight Board has already confirmed that
both
the CIA and the DEA maintained at least a liaison relationship with
Guatemalan military intelligence in the late 1980s and early 1990s
when it
was run by Col. Ortega Menaldo.

The CIA, through spokesman Mark Mansfield, declined all comment for
this
article.

Eight months after revoking Ortega Menaldo's visa, the Bush
administration
again cited suspected drug trafficking to revoke the U.S. entry visa
of
another Guatemalan intelligence chief, Ret. Gen. Callejas y Callejas.
But
after the news broke in the Guatemalan press, this cofradía officer
never
responded publicly, as Ortega Menaldo did, to the U.S. drug
allegation.

Rather than confront the impunity that allows Guatemalan military

officers to traffic drugs, many of the country's elected officials seem to be going in the opposite direction. Not long after the Bush administration named the two retired intelligence chiefs as suspected drug traffickers, members of the Guatemalan Republican Front, or FRG party, which was founded by another retired army general, introduced legislation in the Guatemalan Congress that would remove civilian oversight over the military in criminal justice matters.

Throughout the Cold War period, Guatemala's civil justice system seldom had the opportunity to try officers for any crime. Instead officials submitted themselves to military tribunals. In the 1990s, civilian courts began for the first time tentatively to exert their authority to process military officers for crimes like drug trafficking. But the proposed legislation stipulates that any officer, whether active duty or retired, may only be tried in a military tribunal, no matter what the alleged crime. A court martial is normally reserved for crimes allegedly committed by military personnel in the course of their service. If this law is passed, however, it would ensure that Guatemalan officers accused of any crime, from murder to drug trafficking, could once again only be tried by their military peers.

"This would be a new mechanism of impunity," noted JosÈ Zeitune of the Geneva-based International Commission of Jurists and author of a 2005 report on the Guatemalan judiciary.

As Chairman, Ballenger accused the FRG party, which enjoys a plurality in the Guatemalan Congress, of drug corruption. The FRG was founded by Ret. Gen. Efraim RÌos Montt. A controversial figure, he launched a coup d'etat in 1982 to become president of Guatemala just as the intelligence

officers of
la cofradía were rising.

The new vice-chairman of the Western Hemisphere subcommittee is Jerry Weller III, a Republican from Illinois. He recently married Zury Ríos Sosa, who is Ret. Gen. Montt's daughter. Unlike other members of the Subcommittee, Weller, through his spokesman, Telly Lovelace, declined all comment for this article.

Congressman Weller's father-in-law groomed Guatemala's last president, an FRG member named Alfonso Portillo, who fled the country in 2004 to escape his own arrest for alleged money laundering, according to a State Department report. During President Portillo's tenure, one of his closest companions inside the National Palace was the cofradía co-founder Ortega Menaldo, according to Guatemalan press accounts.

Today the shadowy structures of Guatemala's intelligence commands are so embedded with organized crime that the Bush administration, for one, is already calling in the United Nations. Putting aside its usual criticisms of the international body, the administration supports a proposal to form a U.N.-led task force explicitly called the "Commission for the Investigation of Illegal Armed Groups and Clandestine Security Apparatus" in Guatemala. So far the only nation to yield its sovereignty to allow the United Nations a similar role is Lebanon, where U.N. investigators are digging into the murder of a former prime minister.

The proposed U.N. plan for Guatemala also enjoys the support of its new president, Oscar Berger, a wealthy landowner and lawyer who is well respected by the U.S. administration. But the proposed U.N. Commission is encountering resistance from FRG politicians like Weller's wife, Ríos Sosa, who is also an FRG congresswoman.

So what are U.S. officials and Guatemalan authorities doing to stop

the
military officers involved in drug trafficking?

"In terms of public corruption against both the army and others, [Guatemalan authorities] have a number of investigations underway, right now," then-Assistant Secretary Robert B. Charles said earlier this year at a State Department press conference. But, in keeping with past practices, not one of these suspected officers has been charged in either Guatemala or the United States.

More troubling still is a recent case involving those Mexican soldiers-turned-hitmen, the Zetas. This past October 22, seven members of the Zetas were arrested in a Guatemalan border town with weapons and cocaine. The Associated Press reported that, according to Guatemalan authorities, the Zetas came to avenge one of their members who had been killed in Guatemala. Despite the evidence against the men, a little more than a week after their arrests, Guatemalan authorities inexplicably set them free.

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Frank Smyth is a freelance journalist who has been writing about Guatemalan drug trafficking since 1991 in publications including The Progressive, The Sacramento Bee, The Washington Post, The Village Voice, The New Republic, Salon.com and The Wall Street Journal. He has been a special correspondent for The Fort Worth Star-Telegram and The Economist. He is a contributor to Crimes of War: What the Public Should Know, edited by Roy Gutman and David Rieff. His clips are posted at www.franksmyth.com, smyth.frank@gmail.com.

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