

## Insulza's Wrongful Actions in Honduras

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### ***Insulza's wrongful "Mission of Accompaniment" for president Zelaya and his misleading statements to the U.S. Congress and the OAS Permanent Council***

- The Human Rights Foundation's legal report reveals that there were informal talks between President Zelaya's administration and the OAS General Secretariat, discussing what sort of mission the OAS could send to observe President Zelaya's "opinion poll" and report back to the OAS. By the time this informal discussion took place, the Attorney General and Congress had been publicly expressing outrage over President Zelaya's consultation/poll for over two months. By June 3, the Administrative Court of Tegucigalpa had issued three highly publicized court orders (two preliminary injunctions and a court notice) enjoining President Zelaya from carrying out the poll.<sup>1</sup>
- On June 8, the Honduran foreign minister formalized the outcome of this discussion by sending a letter to the OAS, requesting "international observers" to "accompany" the "important popular consultation." On June 16, Insulza responded through a letter "congratulating the government for seeking mechanisms that foster citizen participation," and informing that a "Mission of Accompaniment shall be sent to witness such act."
- Insulza's letter specified that the mission "shall [then] proceed to report to the General Secretariat about the results of its task." In light of this assertion, on June 26, a representative of Insulza (V́ctor Rico) misleadingly told the OAS Permanent Council that the OAS Mission "was simply one of accompaniment, to witness [the poll], and that, naturally, this mission *would not generate any subsequent act which would eventually be submitted* to the bodies of this Council."<sup>2</sup>
- The June 26 misleading statement by Insulza's representative was made after the U.S. Permanent Representative at the OAS requested the Secretary General to "clarify" what his role had been in Honduras. Specifically, this request followed a Permanent Council discussion about the June 23 resolution by the Honduran Congress, expressing "profound outrage" and requesting the OAS to "immediately withdraw" its Accompaniment Mission. The resolution was delivered through a letter to the OAS, and was formally received on June 25.<sup>3</sup>
- On July 13 and 14, the Adjunct Secretary General of the OAS, Albert Randim falsely told a U.S. Congress body (the Congressional Hispanic Caucus, consisting of 24 congressmen) that "before the coup d'état" the OAS "had a proactive role" in seeking to "prevent the growing confrontation" between the "government and the opposition" and in "supporting a pacific settlement of the dispute." He did not mention anything about the Mission of Accompaniment or the "outrage" letter by Congress that ensued.<sup>4</sup>

### ***Insulza's phone conversation with the president of the Supreme Court of Honduras***

- On June 28, after the military expatriated President Zelaya but before Congress met, the president of the Supreme Court (who was in a meeting with the presidents of Congress and the Electoral Tribunal) called Insulza on the phone to tell him he was "examining" the way to restore the constitutional order. HRF's legal report contends that, at this point, Insulza—without justifying or condoning the coup—should have recognized President Zelaya's repeated anti-democratic actions and offered his good offices to: (1) gain as much support from the international community for the Supreme Court, so that they could duly declare the coup d'état void and unconstitutional; and (2) gain support from the international community for the Supreme Court, so that any criminal proceedings against President Zelaya, and his eventual suspension or removal from office as a result of a presidential trial, would be carried out according to the Honduran constitution and with full international support.<sup>5</sup>

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<sup>1</sup> JAVIER EL-HAGE, THE FACTS AND THE LAW BEHIND THE DEMOCRATIC CRISIS OF HONDURAS, 114, 160-162 (Human Rights Foundation & HRF Center for Research on Democracy, 2010). Available at: [http://thehrf.org/HRF\\_TheFactsAndTheLaw\\_Honduras2009.pdf](http://thehrf.org/HRF_TheFactsAndTheLaw_Honduras2009.pdf)

<sup>2</sup> *Id.*, at 112, 123, 161-62 (HRF received the original copies of the June 8 and 16 letters on the week following the publication of its report).

<sup>3</sup> *Id.*, at 111, 159, 170.

<sup>4</sup> *Id.*, at footnote 218 (the quotes by Albert Randim are translated from the official Spanish versions of July 13 (C-227) and 14 (C-229) General Secretariat releases, because there are no English releases posted on the OAS official website where those two specific ones should be.).

<sup>5</sup> *Id.*, at 127, 169, 172, 182-84.

○ But no, Insulza circumvented the issue of President Zelaya’s anti-democratic actions and the possibility of an internationally-endorsed trial against him. Throughout his phone conversation with the president of the Honduran Supreme Court, Insulza acted as if he did not know about the multiple court orders against President Zelaya’s poll, and about how the OAS’s Accompaniment Mission had contributed to the escalation of the crisis. Hours later, Micheletti was sworn in by Congress and two days later the Supreme Court validated the coup, by issuing a set of documents including “secret search and arrest warrants” that, nevertheless, failed to provide for President Zelaya’s expatriation to Costa Rica, or for his suspension or removal from office as a result of the proceedings.<sup>6</sup>

***Insulza’s wrongful interpretation of the General Assembly’s July 1 resolution and his diplomatic initiatives***

○ Pursuant to the OAS General Assembly July 1 Resolution that “instructed the Secretary General to carry out the necessary diplomatic efforts in order to restore democracy and the rule of law,” on July 3, the Secretary General traveled to Honduras. Insulza met with a group of representatives of civil organizations, but he did not meet with Congress, nor with the Attorney General’s Office, nor with the Supreme Electoral Tribunal. He only met with justices of the Supreme Court because he thought they did not have “a direct role in the coup d’état.” In virtue of this one conversation, the report prepared by the Secretary General concluded that “the behavior displayed by the de facto regime is extremely rigid, without a willingness to change their position, but rather, to strengthen it;” and that “presented with the inflexible attitude of the de facto regime, there seems to be no other choice than to adhere to the position assumed by this Assembly [on July 1] and apply Article 21 of the Inter-American Democratic Charter, with the resulting implications.”<sup>7</sup>

○ It is true that reverting the anti-democratic events in Honduras became far more difficult after June 30—when the Supreme Court validated the coup by the armed forces and the unconstitutional removal by Congress. However, the OAS should have tried to achieve this goal by performing good offices precisely with the former president of Congress, with the current Congress, and, especially, with the Supreme Court. Nevertheless, the Secretary General wrongfully interpreted the July 1 General Assembly resolution as a prohibition to perform good offices before the democratically-elected Congress and the Supreme Court, including them in what he broadly called “the de facto regime.” On the contrary, both the Secretary General and, later, the General Assembly treated President Zelaya at all times as an exemplary democratic leader. Considering this biased approach by OAS officials and organs throughout the crisis up to July 4, all diplomatic initiatives between June 28 and July 4 were expectedly fruitless in reverting any of the anti-democratic events in Honduras. Instead, they likely caused most Honduran institutions affected by President Zelaya’s previous actions to become further entrenched in their positions. As a result, the General Assembly applied the ultimatum and suspended Honduras from the OAS.<sup>8</sup>

○ Unlike the actions taken by the OAS throughout the crisis, the diplomatic initiatives carried out by the president of Costa Rica since mid-July were appropriate as they were aimed at reverting the three—and not just one—anti-democratic events in Honduras, without ruling out the possibility to carry out a presidential criminal trial against President Zelaya. Specifically, the San José Accord proposal called on President Zelaya to refrain himself from “calling for a constituent assembly, in a direct or indirect way;” and called for the “return of the branches of government, to their composition before June 28.” It specifically called on Congress to reinstate President Zelaya “until the conclusion of his term, on January 27, 2010,” but did not rule out the possibility of criminally trying President Zelaya for the crime of abuse of authority, upon the completion of his term in January 2010. Unlike the position adopted by the OAS Secretary General, the San José Accord also called on all parties involved in the crisis to sit around the negotiation table and the president of Costa Rica explicitly offered his good offices before the democratically-elected Congress and the new chief of the executive, Roberto Micheletti—who had from the outset been recognized as president by the Congress and the Supreme Court. In the following weeks, many member states and the General Secretariat of the OAS aligned themselves with this new diplomatic approach by President Arias. On August 8, OAS envoys traveled to Honduras exclusively to meet with Micheletti.<sup>9</sup>

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<sup>6</sup> *Id.*, at 71-92.

<sup>7</sup> *Id.*, at 139, 142, 151, 180-85.

<sup>8</sup> *Id.*, at xiii, 145, 184-185 (In order to avoid Insulza’s continuous wrongful interpretation, the July 4 General Assembly Resolution expressly stated that “No [diplomatic] initiative will imply recognition of the regime that emerged from this interruption of the constitutional order.”)

<sup>9</sup> *Id.*, at 106-07, 145-47, 181-87, 190.

### *Insulza's wrongful failure to monitor the November 29 elections*

○ According to a 2003 study prepared by a group of experts on collective protection of democracy (edited by Madeleine Albright), under the auspices of the Council on Foreign Relations, when the restoration of democracy can not be achieved through reverting the anti-democratic events that caused the breakdown of democracy, the international community must get the anti-democratic regime to agree to hold democratic elections in the shortest timeframe possible, and to allow the international community to monitor them. Accordingly, the OAS should have decidedly promoted and monitored the elections of November 29 in order to foster the restoration of democracy in that country. However, in early November, the Secretary General of the OAS publicly stated that a team of OAS observers for the upcoming elections of November 29 “is truly something we could not even consider.” This is the same Secretary General that five months earlier, in spite of the lack of any international legal provision allowing for this type of mission, and against a formal request by the Honduran Congress to withdraw it, did not hesitate in putting together an unprecedented “Accompaniment Mission of the OAS” that would “observe an opinion poll” that, “if victorious,” would have led to the election of a Constituent Assembly on November 29.<sup>10</sup>

### *Conclusion*

○ HRF's legal report contends that if Secretary General Insulza had acted in adherence to his obligations, all anti-democratic events that led to the interruption of democracy in Honduras could have been avoided. It is reasonable to assume that if Insulza—instead of encouraging and endorsing a poll that went against multiple court orders—had refrained from rendering legitimacy to President Zelaya's anti-democratic actions, the OAS could have deterred the June 28 coup d'état and the unconstitutional removal of the president by Congress, as well as the Supreme Court validation of these anti-democratic events later. Sadly, however, throughout the Honduran crisis, Insulza acted as a mere international agent of President Zelaya, rather than as the leader of an international organization called to promote and protect democracy in its member states.<sup>11</sup>

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<sup>10</sup> *Id.*, at 107-09, 113-14, 147-48, 155, 163, 187, 191.

<sup>11</sup> *Id.*, at 17, 166, 170-176, 179-191.