

ASK A VENEZUELAN: ON THE CURRENT CONSTITUTIONAL SITUATION OF THE COUNTRY, March 2019*

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In Venezuela today, in spite of the general blackout that has darkened since yesterday (March 7, 2019) the whole country, we are currently watching the last act of a Tragedy; the political and socio-economic tragedy that began to be performed 20 years ago, when a group of former paratroopers, commanded by a Lieutenant General Hugo Chavez, assaulted power through an Constitutional Assembly that he unconstitutional convened; after failing, seven years earlier, in 1992, in an attempt of a military *coup d'État*.

This final act of the Tragedy that we are now seen, is the result of a process of progressive and systematic destruction of democracy, and of all the economic and social institutions of the country, which in spite of having been done with all the imaginable fanfare, the democratic world did not want to even examine.

My purpose today is to refer to the institutional situation of Venezuela resulting from such destructive process, not without mentioning, regarding the social and economic situation of the country, the extraordinary miracle – as all miracles are – of having converted in two decades the wealthiest country in Latin America into a factory of poor people. As I remember as being expressed in the title of an article published two years ago in the Washington Post about Venezuela, “There has never been a country that should have been so rich but ended up this poor.” The article described with precision the terrible situation of the country after more than fifteen years of the allegedly “pretty revolution” that intended to implant in Venezuela the so-called “21st Century Socialism,” which eventually turned the country into the current “Failed-State,” “Narco-State,” or “Gangster State.” A situation that is no longer possible to continue to hide behind the official propaganda and the supporting Lobbies used by the government in this country.

That “miracle,” which the Venezuelan authoritarian regime has achieved, has been a man-made disaster, consequence of the “destructive government policy,” expressly designed and deployed for that purpose by the late President Chavez, and by who currently is usurping the Presidency, Nicolas Maduro.

That process of destruction also produced the miracle of demolishing what in the 90’s still was one of the most envied constitutional democracies of Latin America, the Venezuelan democracy that functioned between 1958 and 1998.

We have to remember that the democratic system began to be implemented in Venezuela, based on an Agreement reached by the main political parties of the countries in 1858, the so-called *Pacto de Punto Fijo*; a Pact that must be considered - despite the critics

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disseminated by the Chavez followers – as an outstanding and exceptional political Pact that by setting aside their main interparty differences, achieved the consolidation of a constitutional democracy in the country that, in contrast, in 1958, was the one with less democratic traditions in all Latin America.

That democratic regime, which functioned during forty years, was precisely the one that was systematically destroyed by the authoritarian regime that assaulted power in 1999.

During the past twenty years I have been referring to these matters, renouncing to the “right to be silent,” denouncing since the beginning, what was the happening, what has happened, and what is happening in my country, having published many articles, Papers and books on the matter. In that sense I must mention, in particular, the book I published in 2010, with the title “*Dismantling Democracy: The Chavez Authoritarian Experiment*,” by Cambridge University Press, a time – not so long time ago - when many academic and writers on these matters in the United States, were still admiring the former paratrooper commander that after failing in his assault of power by military force in 1992, after being released from detention, was elected President of the Republic. He then began – as the populist propaganda said – “to take care of the poor,” as is nobody before him did nothing on matters of social justice in the country.

That astonishing and simplistic approach was enough for Chávez to gain admiration from so many in this country, so anybody who dare to denounce the great farce that was being developed in my country, disguised with a democratic veil, was immediately place as a sort of “dinosaur” in the academic archeology.

The fact is that since the Second World War, North Americans and Europeans have fortunately gotten used to democracy, refusing in general to the idea of the possibility for a democratic regime to be transformed into a tyranny through its own democratic means.

And that has being precisely, one of the reason that can explains how difficult has been for the North American and European people, in the academic world and in the government, to understand what has exactly happened during the past two decades in Venezuela, where the democratic institutions have been unmercifully destroyed and removed, following the doctrines of a so-called “new constitutionalism,” based on a fallacious “participatory” or populist democracy, in order to construct a Socialist State in the XXI Century.

The fact is that the relatively stable democratic regime that we had in Venezuela for 40 years, from 1958 and up to 1999, was progressively transformed into a Tyranny, using and misusing the electoral tools.

Chávez in effect, began his assault to the State institutions – in presence of the then already cornered and naïve political parties - , taking over all the branches of government, erasing the principle of separation of powers and eliminating the territorial distribution of State powers, eventually beginning the process of establishing a centralized, militaristic and authoritarian government in the country.

It all began, in 1999, through an unconstitutional constitution-making process that he promoted, based on the convening and election of a Constituent Assembly that was not established nor regulated in the Constitution, which resulted completely dominated and

conducted by the same group of former militaries that accompanied Chávez in his 1992 *coup d'État* attempt, and that still are abusing power. That Constituent Assembly, encouraged by the promoters of the “new Latin American constitutionalism” ideas, was the main tool in order to accomplish the Chavez assault of power, and eventually the militarization of the political institutions, and the dissolution of the constituted powers.

For such purpose, the Constituent Assembly supplanted and usurped the sovereignty of the people, assumed full and unlimited powers to supposedly transform the institutional framework of the State, imposing the Chávez authoritarian ideas.

For such purpose, the Assembly intervened all the constituted powers – with my isolated opposition (I was elected member of the Assembly and with other three we were the only opposition members in an Assembly of 161 members). The Assembly removed and limited the authorities of all the branches of government; replaced all the Justices of the Supreme Court; dissolved the elected Congress, and assumed the legislative functions; intervened the provincial and municipal powers; suspended the municipal elections; removed the members of the Electoral Council and the General Comptroller of the State, and in general, intervened the Judiciary, dismissing almost all the judges and the members of the Public Prosecutor's Office.

Since that constituent process of 1999, the transition from democracy to tyranny began to take shape in a progressive way, while the world in general, and the North America and the European countries in particular, viewed the former Lieutenant General with some sort of sympathy, due in part to his illusionist promises, but ignoring his fraudulent use of the democratic institutions.

In that context we also have to remember how so many countries profited from his performance as a typical and extravagant Caribbean *nouveau riche*, when he dilapidated the country's wealth, even using public money to finance politicians all over the world.

We must not forget, for instance, how he even financed the supply of heating oil for homes in supposedly poor neighborhood in Boston and in South Bronx, in New York, supported by many important local politicians, and even arrived to subsidized public transport in London supported by the Mayor of the City, all delightedly captivated by the sympathetic but erratic military acting as a sort of a XXI Century Robbin Hood.

In a simple way, he was considered as somebody that being elected by the people, began to sell himself as someone that promised to take care of the poor – falsely pretending that that had never happened before in the then richest State of Latin America –, illegally encouraging corruption in the country and financing political parties in many countries in Latin America and Europe with Venezuelan oil resources.

With all his charisma, and misusing the immense wealth the country had due to the boom of the oil prices and income, after eighteen years of authoritarian government, he and his appointed successor Nicolás Maduro, managed to transform the country into a dictatorship or tyranny.

Of course, in all this process, elections took place, now and then, but always controlled by a controlled electoral authority within a centralized power, and a militarized Public Administration; using democratic tools only to destroy the very essence of democracy.

As mentioned, the first task that was assumed by the 1999 Constituent Assembly, besides giving the military deliberative political rights and participation, was to assault the Judiciary – a fact ignored by so many democrats in the world -, dismissing almost all Judges of the country, substituting them all with provisional and temporal judges, thus, ending with the autonomy and independence of the Judiciary.

Within that framework, beginning in 2000, and after, in 2004, 2010 and 2015, the Supreme Tribunal was transformed into the most ominous instrument for consolidating authoritarianism in the country, having been completely packed with government supporters, even with former representatives of the official party in the National Assembly. That explains why the Constitutional Chamber of the Supreme Tribunal, instead of being the guardian of the Constitution, has been the main tool of the authoritarian government for the illegitimate mutation of the Constitution, for the demolition of the rule of law, and even for the persecution and illegitimate prosecution of members of the new National Assembly elected in 2015.

Because not being now controlled by the Government, its members have been systematically attacked and its powers diminished. But nonetheless, that National Assembly is today the only hope we have for the restauration of democracy in the country.

But before 2015, regarding the other branches of government, the assault was completed after 2005 when due to the decision adopted by the opposition to not to participate in the parliamentary election of December that year, the government took complete control of the National Assembly – control that lasted 10 years, until 2016 -, finishing the process of packing all the branches of government with government loyalist, including the Electoral Authority, the Public Prosecutor Office and the Audit General Office.

The following year, in 2006, after the reelection of President Chávez took place, he declared himself Marxist-Leninist and the Official State Party he managed to create, adopted Marxism as its official ideology, proposing then to definitively change the Democratic Rule of Law State, converting it into a Popular or Communal State.

For such purpose new Laws were approved, like the Communal Council Law (2006), and in 2007, the President took the initiative of proposing a Constitutional Reform in order to create in parallel to the Constitutional State, a “State of the Popular Power,” based on a communist economic system, eliminating private property and substituting it by social or communal properties. Although those reforms could not be introduced through the procedure of “constitutional reform” but only by convening a Constituent Assembly, the Supreme Tribunal already coopted by the Executive Power, renounced to even received the judicial review complaints that were filed.

Nonetheless, fortunately, the proposed constitutional reform was rejected but by the people through a referendum held in December 2007, being such the most important political failure suffered by Chávez in his tenure.

But that failure had a disastrous response, and was the aggressive reaction of Chavez against the will of the people, when of course violating the Constitution, he proceeded to impose the rejected constitutional reform by mean of ordinary legislation and decree laws enacted between 2008 and 2011, creating the framework of a Cuban style “State of Popular Power.” In this case, the claims for judicial review against such laws, also remained in the dead files of the Supreme Tribunal, which never processed the requests; being such unconstitutional laws implemented by the government in total impunity without any sort of control or judicial review.

In any case, by 2015 the political, economic and social destruction of the country was already completed, provoking a sort of “popular rebellion,” which was expressed through voting in the parliamentary election held in December 2015; an election that because its results, surprised everybody, including the controlled Electoral body that could not managed to manipulate them.

With such election, the government lost control on the majority in the National Assembly, and the opposition obtained a qualified majority of representatives, being that fact, without doubt, after the failure of the 2007 constitutional reform, the other most important political setback of the authoritarian regime since 1999.

But the regime was already used to exercise absolute power without any sort of control or check or balances, and therefore, an autonomous National Assembly could not be tolerated. The Government then, soon after such election, began to systematically obstruct the opposition from developing its legislative agenda, and gradually began to strip the Legislative body of all its powers and functions – yes, all of them - ; and all that, thanks to an all evil and depraved collusion between the Executive Branch and the Supreme Tribunal of Justice.

That happened even before the new elected National Assembly could had its first session on January 5th 2016, when the former National Assembly enacted in just two days (December 29th and 30th) more than 30 statutes stripping off the new Assembly of its all legal powers; proceeding then to appoint new Supreme Tribunal justices, packing it now entirely with members of the governing party.

Once the Tribunal was completely controlled, it immediately began to prevent the Assembly from exercising its functions, issuing, during 2016 and 2017 more than 100 rulings that transformed the political system into what I called, a “Judicial Dictatorship or Judicial Tyranny,” characterized by the fact that the Executive used, at his will, the subdue Supreme Tribunal as its main instrument to neutralized the National Assembly, absolutely eliminating all its functions in order to consolidate authoritarianism.

The result has been that the Constitutional Chamber of the Supreme Tribunal, acting as constitutional judge, declared the unconstitutionality of practically all – yes, all – the laws or statutes that up to now have been sanctioned by the National Assembly elected on December 2015; and in addition, has reformed the *interna copris* of the Assembly in order to subject the exercise of its legislative functions to the prior approval by the Executive Branch, something never seen in any democratic State; has eliminated the Assembly’s political power of controlling the government and the Public Administration; has imposed the prior

approval by the Executive Vice-President for a Minister to be questioned by the Assembly; has eliminated the possibility for the Assembly to oppose and disapprove the states of emergency that the Executive has successively decreed; has eliminated the possibility for the National Assembly to approve votes of non-confidence against the Ministers; has canceled the constitutional obligation of the President to submit its Annual State of the Nation before the National Assembly, deciding instead that it wave to be submitted before the same Supreme Tribunal; has eliminated the legislative approval of the national budget law, transforming the Budget Law into a mere executive decree to be approved by the Tribunal; has eliminated the Assembly's power to review its own decisions and repeal them, as was the case regarding the unconstitutional appointment of the justices of the Supreme Tribunal made in December 2015; has eliminated the power of the National Assembly even to express political opinion as a result of its debates, having annulled all the major political Bills, Resolutions and Declarations that the Assembly has adopted; and in a few decisions issued in 2017, based on an alleged but absurd "contempt of court" regarding a ruling by the Electoral Chamber of the same Supreme Tribunal, the Constitutional Chamber has systematically – up to this date - declared null and void all – yes all – "present and future decisions" of the National Assembly, even in some occasions, threatening to revoke the popular mandate of its members and to imprison them.

But that was not the end. In one of the most notorious and shameful decisions of the Constitutional Chamber issued in March 2017 (No. 155 of March 27, 2017, and No. 156 of March 29, 2017), it simply decreed in an unconstitutional way a state of emergency; eliminated the parliamentary immunity of the representatives; assumed in an arbitrary way all – yes, all - the parliamentary powers of the National Assembly; and even the Tribunal dare to "delegate" legislative powers upon the President of the Republic, ordering him to reform laws and Codes at his discretion, among them, the Criminal Code and the Organic Code of Criminal Procedure.

All these decisions cannot be considered or qualified in another way but as a permanent and continued *coup d'État*, which gave birth to a new model of authoritarian government, which did not originate itself in a military coup as was the Latin America tradition, but through the manipulation of popular elections, the degradation of judicial review processes and the abuse of all democratic tools, in order to eventually give to the military the factual control of the country; and all this, with the purpose of destroying the rule of law and the democratic principles, using for such purpose a very convenient camouflage of "constitutional" and "elective" masks.

After all these facts, if we have to make a general balance today of the 1999 Venezuelan Constitution it can be considered as one of the most vivid examples in contemporary constitutionalism, of a Constitution that has been violated and infringed since even before it was published. This is the only explanation in order to understand why the Federal State has been transformed into a centralized system of power; the separation between five - not three – five branches of government has been erased and substituted by a political system of total concentration of power; the principle of representativeness has been neglected; the political participation has been denied and ignored; and the economic liberty has been en-

gulfed by an extreme “statization” of all activities and a State capitalism through indiscriminate expropriations and confiscations .

One of the last act or stage of all this institutional Tragedy that is currently affecting the county, began in 2017 with the unconstitutional convening and functioning of a new Constituent Assembly with unlimited powers and duration, which was installed in July 2017 by President Nicolás Maduro violating the provisions of the Constitution. Its purpose, again, is supposedly to transform the State in order to try again to insert in it the Socialist, Popular or Communal State framework; that is, the same constitutional framework that in 2007 was rejected by the people; and the same that was unconstitutionally implemented through ordinary legislation since 2010.

The fact is that violating the Constitution, the Constituent Assembly, composed by more than 500 members was elected through an *ad hoc* electoral system contrary to the universal and direct suffrage guaranteed in the Constitution, based on a territorial (municipal) and corporate or fascist vote established by sectors of the society, institutionalizing discrimination and exclusions.

Although the unconstitutional covenant of such fraudulent Constituent Assembly was again challenged before the Constitutional Chamber of the Supreme Tribunal, eventually the response was, making fun of the Constitution, that a referendum is indeed, needed, in order to change a “comma,” or a word or one phrase in an article of the Constitution, but to change all the Constitution as it is now pretending, it was not necessary to request the people’s approval. As simple as that: eight individuals (the President of the Republic and seven justices of the Tribunal) imposed their will to the people without limits.

Based on such unconstitutional decision, the members of the Constituent Assembly were finally elected on July 2017, being all its members, affiliates to the official party, which explains why all its decisions are only adopted with in a unanimous vote. The Assembly assumed an original constituent power, substituting the people’s will and sovereignty, acting with supposedly supra-constitutional powers, imposing its will to all constituted powers, including the Supreme Tribunal, whose Justices appeared before the Assembly prostrating themselves before it. That is why in other books published last year (*Usurpación Constituyente*), I explain how the “Judicial Tyranny” has been in part transformed into a “Constituent Tyranny,” beginning the Supreme Tribunal to be relatively useless.

In addition, during 2017 and 2018, the Constituent Assembly has acted as sort a Caribbean reincarnation of the 1792 *Comité de Salut Public* of the Terror Regime in revolutionary France established in order to persecute any dissidence, declaring for instance the elected members of the National Assembly that refused to prostrate themselves before it, as traitors to the motherland, in particular after they met, for instance, public officials and representatives in foreign countries in order to explain the situation of the country. This persecution against members of the National Assembly last August 2018 arrived to an extreme situation, when the Supreme Tribunal in collusion with the Constituent Assembly, ordered the incarceration and apprehension of two representatives, unjustly indicting them of magicide and other graves crimes against the State.

All what I have said is not science fiction.

All has happened and is currently happening in my country, being today, nevertheless, the most important factor in all this process, the fact that nobody can pretend to be cheated. That is to say, finally, and tragically, the truth has surfaced regarding all the abuses committed by the Venezuelan government against its own people, and of course, not only by the current Maduro regime but beginning with the Chávez hypocrite regime, both using the democratic veil in order to transform the former Venezuelan democracy into tyranny.

And it has been that truth the one that has surfaced in a clearer way with the last unconstitutional actions taken by the regime, since last year, beginning with the decision adopted by the fraudulent and unconstitutional National Constituent Assembly installed in 2017, to illegitimately convene (supplanting the National Electoral Council), an anticipated presidential election in order to “reelect” Nicolas Maduro for a new term (2019-2025), which was due to begin in January 2019.

That so-called “re-election” of Nicolas Maduro was held on May 20, 2018, through an election process that did not meet with the national and international standards set for democratic, free, fair and transparent election processes. Consequently, the National Assembly, as a political and legislative body that represents the sovereign will of the people, legitimately elected on December 2015, and as the primary interpreter of the Constitution, approved on May 22, 2018 a very important Resolution denouncing the “farce” of said elections process of May 20, 2018, stating that it:

“violated all the electoral guarantees recognized in Human Rights Treaties and Agreements, and in the Constitution of the Bolivarian Republic of Venezuela and the Organic Law of Electoral Processes, considering the effective absence of the Rule of Law; the partiality of the electoral arbiter; the violation of the effective guarantees for exercising the right to vote and the right to be elected to office by popular vote; the lack of effective controls against acts of electoral corruption perpetrated by the government; the systematic breach of the freedom of expression, together with the partiality of mass media controlled by the government, the absence of effective and transparent mechanisms of electoral oversight.”

The National Assembly also construed that if the majority of the “people of Venezuela” refrained from participating in said illegitimate elections process (in which 82% of the Registered electors abstained), it was the people who:

“defending our Constitution and invoking Articles 333 and 350 sanctioned by the Constitution, decided to reject, disavow and not validate the farce called for May 20, in spite of the government’s pressure through the social control media.”

By virtue of the foregoing, the National Assembly in the same date May 22, 2018, resolved “to declare as “non-existent” the farce that took place on May 20, 2018;” “ to disavow the alleged outcome announced by the National Electoral Council, especially, the alleged election of Nicolas Maduro Moros as President of the Republic, who must heretofore be deemed a usurper of said office;” and to “ disavow any null and illegitimate acts of proclamation and swearing” of Nicolas Maduro for the 2019-2025 term.”

This was ratified by the same National Assembly a few months later, on November 13, 2018, issuing a Resolution “to promote a political solution for the national crisis” declaring

that “as of January 10, 2019, Nicolas Maduro continues to usurp the office of President of the Republic, for in spite of not being the president-elect,” being “all the decisions of the National Executive Branch ineffective as of that date, pursuant to the terms of Article 138 of the Constitution.”

This Resolution cannot be perceived in any other way than as a manifestation of civil disobedience and of resistance against illegitimacy, ignoring an election considered as fraudulent, declaring it as un-existent, and ignoring the proclamation of the supposedly elected official.

The Resolution specifically mentioned a Declaration of the “*Grupo de Lima*” issued on May 21, 2018, which was followed by declarations of the same international value expressed by more than 44 governments of America and Europe, rejecting the legitimacy of the election. The “*Grupo de Lima*,” gathering representatives of the governments of Argentina, Brazil, Canada, Chile, Colombia, Costa Rica, Guatemala, Guyana, Honduras, México, Panamá, Paraguay, Perú y Santa Lucía, agreed to contribute to “preserve the attributions of the National Assembly,” expressing that those States:

“Do not recognize the legitimacy of the electoral process that took place in Venezuela and that concluded on May 20, 2019, because not accomplishing with the international standards of a democratic, free, just and transparent electoral process.”

The same day, Mike Pompeo, Secretary of State of the United States, say in a very simple way that:

“The United States condemn the fraudulent election that took place in Venezuela on May 20. Such so-called “election” is an attack to the constitutional order and an affront to the democratic tradition of Venezuela.”

Also, it must be mentioned the reaction of the *G7 Group*, that gathers the leaders of Germany, Canada, United States, France, Italy, Japan and the United Kingdom who on May 23 denounced the presidential election because it “did not meet the international standards” and did not assure the “basic guaranties,” concluding rejecting the “Venezuelan presidential elections and its results because no being representative of the democratic will of the citizens of Venezuela.”

As a consequence of such very much criticized and ignored “reelection,” as qualified by Michael Pentfold in an article published on May 22, 2018, Maduro resulted to be a “President without mandate,” bearing in mind that he was “elected” with “2 million votes, the lowest in all the elections of the past decades.”

So, when that day of January 10, 2019 (day in which the new constitutional term was to begin and the new President was to be sworn), the situation has been clearly announced since May 2018. Consequently, for instance, on January 4th, 2019, the National *Academy of Political and Social Sciences*, the highest consultative entity of the country on institutional matters, issued a proclamation highlighting that due “to the non-existence of the necessary conditions in order to celebrate free and just elections,” the illegitimate presidential “reelection” of May 2019, placed the country in an “unprecedented situation” (which was the one that Venezuelans faced in January 2019), “due to the fact that on next January 10th 2019, date on which, as established in article 231 of the Constitution, the president for the consti-

tutional term 2019-2019 has to be sworn, the country lacks of a president legitimately elected by means of free and just election.”

Consequently, the Academy, facing the grave situation confirmed by those “unconstitutional and illegitimate facts,” and considering that it was necessary to proceed “to comply with the citizens’ duty establish in article 333 of the Constitution,” demanded “the different Branches of Government to respect the Constitution,” and to “proceed to the full reestablishment of the constitutional and democratic order of the country;” a message that in fact was addressed to the National Assembly, recognized as the only State organ with democratic legitimacy in the country, due to the fact that all the other branches of government were totally subdued to the national Executive, in particular the Supreme Tribunal of Justice, the National Electoral Council, and the organs of the Citizens Branch, headed by the General Prosecutor of the Republic.

At that moment and on that situation, the National Assembly, as the peoples representative and as the primary interpreter of the Constitution, had no other choice but to interpret the Constitution in order to start to resolve the political crisis that arose from the unprecedented political event in the country’s history, that on January 10, 2019, there was no legitimately elect president that could be sworn in and pursuant to Article 231 of the Constitution take the office of President of the Republic for the 2019-2025 term. For that purpose, the Assembly applied by analogy Article 233 of the Constitution referring to cases of “absolute lack of the president prior to taking office,” regarding which, the relevant section of this article that governs similar situations provides the following:

“When an elected President becomes permanently unavailable to serve prior to his inauguration, a new election by universal suffrage and direct ballot shall be held within 30 consecutive days. Pending election and inauguration of the new President, the President of the National Assembly shall take charge of the Presidency of the Republic.”

When interpreting the Constitution and applying this rule by analogy, the National Assembly decided that in the situation that occurred on January 10, 2019, since there was no legitimately elected president that could be constitutionally sworn in to said office for the constitutional presidential term of 2019-2025, and as the same National Assembly had decided since May 2018, it should consider, pursuant to Article 233 of the Constitution, in view of the absolute lack of a president-elect, that the president of the National Assembly had the duty to take charge of the Presidency of the Republic, this being precisely one of the functions inherent in his duties in the cases of absolute lack of a president of the Republic, fully by operation of law, without the need for any additional swearing in before the Assembly, for he had already done this when accepting the position as President of the Assembly on January 5, 2019.

The interpretation of the Constitution made by the National Assembly started with a Bill or Resolution issued by the Assembly on the same January 10, 2019, when it decreed the “emergency due to the total disruption of constitutional continuity,” setting the path for the “ceasing of the usurpation.” As the president of the National Assembly stated on that same day, the situation was that: “Today there is no Chief of State, today there is no commander in chief of the Armed Forces, today there is a National Assembly that represents the people of Venezuela.”

A few days later the National Assembly, completed the interpretation of the Constitution by issuing another Resolution on January 15, 2019 reaffirming “the declaration of usurpation of the Presidency of the Republic by Nicolas Maduro Moros and the reinstatement of the Constitution,” adopting a set of “decisions to proceed to restore the force of the constitutional order, on the basis of Articles 5, 187, 233, 333 and 350 of the Constitution.”

The National Assembly, specifically decided to “apply by analogy Article 233 of the Constitution, in order to fill in the absence of a president-elect while concurrently acting to restore the constitutional order based on Articles 333 and 350 of the Constitution, and cause the ceasing of the usurpation by effectively forming a Transition Government and proceeding to organize free and transparent elections.”

In the same Resolution the Assembly decided “to formally declare the usurpation of the Presidency of the Republic by Nicolas Maduro Moros and, consequently, consider the de facto status of Nicolas Maduro as legally ineffective, and declare all the alleged actions of the Executive Branch to be null and void, pursuant to Article 138 of the Constitution,” and also decided

“to adopt, within the frame of the application of Article 233, the measures that allow restoring the conditions of electoral integrity so that, once the usurpation ceases and a Transition Government is formed and installed, to call and hold free and transparent elections within the shortest term possible, as provided in the Constitution and other Laws of the Republic and applicable treaties.”

For this transition process, the National Assembly also enacted on February 5, 2019, a Law called as the “Statute that governs the transition to democracy in order to reinstate the Constitution,” which confirmed, in its Article 14, that “the president of the National Assembly is the legitimate acting president of the Bolivarian Republic of Venezuela in accordance with Article 233 of the Constitution.”

Consequently, after the constitutional interpretation made by the National Assembly in the aforementioned Resolution of January 15, 2019, and in the Statute for the Transition, to apply by analogy Article 233 of the Constitution due to the absence of a legitimate president-elect that could be sworn in as president of the Republic for the 2019-2025 term, this implied that as of January 10, 2019, representative Juan Guaidó, in his capacity as president of the National Assembly, by mandate of the Constitution and without losing his capacity as such president of the Assembly, became by law the interim President of the Republic, which, among other public statements, was expressed by Juan Guaidó himself in a public rally held on January 23, 2019.

By assuming the interim presidency of the Republic in his capacity as President of the National Assembly, Guaidó merely fulfilled a duty imposed by the Constitution, so there was no “self-proclamation” as has been erroneously affirmed, but the assuming of one of the functions that have been constitutionally vested on him as president of the National Assembly. Therefore, the “oath” expressed by Guaidó at a rally on January 23, 2019, although it was a very important political formality, did not replace the formal oath that he did swear as president of the National Assembly on January 5, 2019, to fulfill, among others, the duty of precisely taking charge of the Presidency of the Republic, which is constitutionally according to law under the Constitution, as of January 10, 2019.

This was understood by the country, represented by the majority of its citizens in rallies and demonstrations; this was understood by the international community, acknowledging him as the legitimate acting president of the Republic, and also, without doubt, was recognized for instance by the European Parliament by Resolution of January 31, 2019, when it decided to “acknowledge Juan Guaidó (“the legitimate and democratically elected president of the National Assembly”) as the legitimate interim president of the Bolivarian Republic of Venezuela, in accordance with the Venezuelan Constitution, pursuant to the provisions of its Article 233, and to fully support his road map.”

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