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Colombia's Corte Constitucional Deals U.S. a Setback

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Military relations between the US and Colombia—the Pentagon's principal and most committed ally in South America—suffered a strong setback on Aug. 17, when Colombia's Corte Constitucional (CC) ruled that an ambitious treaty signed by the two countries in October 2009 was unconstitutional. The high court said, among other things, that the military pact had not been submitted to Congress for consideration.

The agreement gave the US armed forces the use of seven land, sea, and air bases, and its personnel were granted diplomatic immunity, under the UN's 1961 Vienna Convention on Diplomatic Relations. Former President Álvaro Uribe (2002-2008) signed the treaty despite warnings from his Cabinet regarding its constitutionality and despite clear opposition from Colombian civil society and the majority of countries in the region (NotiSur, July 31, 2009) and (Sept. 18, 2009). The Consejo de Estado—a consultative judiciary body for administrative issues, named by the president but independent from him—had counseled Uribe to "renegotiate" the Supplemental Agreement for Cooperation and Technical Assistance in Defense and Security between the Governments of the United States and Colombia, pointing to its "real implications regarding national sovereignty" and a requirement of prior congressional consideration.

Washington downplays decision

In Washington, both the government and the press reacted as if nothing had happened. The Pentagon, the State Department, and the US Ambassador in Bogotá Peter Michael McKinley said that they were waiting for Colombia's then President-elect Juan Manuel Santos to resolve the matter and that the US would uphold its other agreements that make Colombia the third-largest recipient of US economic aid, after Israel and Egypt.

In a Sept. 8 story from the German news agency Deutsche Presse-Agentur (DPA) datelined Washington, DC, Assistant Secretary of State for Western Hemisphere Affairs Arturo Valenzuela was quoted as saying during the CAF Conference on the Americas that, "with respect to the US, regardless of Colombia's decision, everything will be fine."

A Washington Post editorial praised Santos for demonstrating "that pro-American, pro-free-market politicians still have life in Latin America," and it called on the US government to "demonstrate that friends of the United States will be supported and not scorned in Washington."

Although publically, everyone acted as if nothing had happened, that was not entirely the case. And the proof was the late-October visit of Deputy Secretary of State James Steinberg to Bogotá. Steinberg met with Santos, and an Oct. 25 story from Spanish news agency EFE quoted a significant phrase from his statements after the meeting. In Washington, "we are analyzing future possibilities to resolve this," Steinberg said, "because security has always been central to advancing the agendas of both countries."
Santos government says it will not appeal

Meanwhile, in Bogotá, the government announced that it would not appeal the court decision even though the ruling that the treaty is "unenforceable" (that is, legally invalid) obliges Santos, if he wants to readdress the issue, to submit the text for debate and a vote in Congress.

While the new administration enjoys an ample majority in both houses of Congress, it appears that it will not push the issue. Moreover, Interior and Justice Minister Germán Vargas Lleras suggested that Santos "has no interest in confronting the opposition on especially sensitive matters," and giving the US use of seven bases certainly falls in that category given its effect on national sovereignty.

The opposition recognizes that if the treaty is submitted to Congress it will pass easily. Nevertheless, Sen. Jorge Enrique Robledo of the opposition Polo Democrático Alternativo (PDA) warned that there is a fundamental issue, apart from the legislative process: no article of the Constitution in effect since 1991 allows the construction of military bases or the use of Colombian installations by foreign troops for operations inside the country.

Many analysts question why Uribe insisted on signing the treaty when the opposition, numerous civil entities, and, most importantly, Congress told him that it was unconstitutional and would undoubtedly be struck down by the court.

"First and foremost, Uribe was an extremely authoritarian president and even undemocratic," said Clara López, PDA president.

In fact, the former president tried to confuse society by presenting the agreement as if it were simply an extension of previous treaties. The agreements governing relations between the armed forces of Colombia and the US are not new. In 1952, the two countries signed a military assistance treaty, in 1962 another for economic and technical assistance, and in 1972 a third regarding joint military missions. Commitments were also made within the framework of the 1988 Vienna Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances as well as two UN and Organization of American States (OAS) conventions, one regarding the fight against terrorism and the other to combat organized transnational crime. Most recently there was Plan Colombia, signed in 1999 by former Presidents Bill Clinton and Andrés Pastrana Arango, by which the US intervened in internal Colombian politics through its efforts to fight the guerrillas and drug trafficking.

Investigative journalism paves way for CC decision

Surprisingly, it was neither the opposition parties nor legislators nor judicial structures nor professional colleagues who complained that the treaty violated the Constitution. In that sense, Uribe managed to confuse them all, and if today the agreement dies it is only because a columnist with the now-defunct magazine Cambio, in the July 8, 2009, edition, revealed some secret details that invalidated the pact.

None of the prior agreements authorized the Pentagon to use air or naval bases. Nor did they allow foreign personnel to move freely throughout the country or soldiers or US "contractors" to freely carry weapons. (In the language of the Pentagon, contractors are civilians or war veterans who carry out military tasks under the auspices of specialized private companies, such as those who operate in Iraq or Afghanistan to conduct "special operations," intelligence work, or dirty jobs.) In addition,
the Uribe agreement extended diplomatic immunity to military personnel and citizens working for foreign military personnel.

Only after Cambio published its story did the Comité Permanente por la Defensa de los Derechos Humanos (CPDH) and the Corporación Colectivo de Abogados José Alvear Restrepo (CCAJAR) file a motion with the Corte Constitucional challenging the treaty's constitutionality.

Interestingly, only six months after the Cambio story, in January 2010, the successful magazine was abruptly closed by its owners, the daily El Tiempo (belonging to the family of President Santos, who was defense minister in the Uribe administration) and the Spanish Grupo Editorial Planeta.

It bears repeating. Based on the investigative report in Cambio and the subsequent legal actions by the CCAJAR and the human rights organizations, the CC issued its blunt decision, which said that the agreement was not an extension of prior treaties and that it implied commitments that the Uribe government could not have assumed without congressional authorization.

Among those commitments, the CC mentioned: 1) granting the access and use of military installations to foreign personnel; 2) allowing the free movement of foreign ships, planes, and tactical vehicles without the possibility of inspection and control by national authorities, 3) allowing foreign personnel to carry and use weapons, and 4) extending diplomatic immunity and privileges to contractors under foreign military authority.

While the US government has said that nothing will change in its privileged relationship with Colombia, that is not exactly correct. The Pentagon will continue providing formidable economic support (US$6 billion in eight years), but the loss of the use of the seven Colombian bases is fundamental for US strategy in South America.

The military agreement was obviously negotiated to replace the facilities the US lost when the administration of Ecuadoran President Rafael Correa informed the Pentagon and the State Department that it would not renew the agreement allowing the US to use the installations at the Manta base on the Pacific coast. The US used the facilities to stage flights that, supposedly, carried out intelligence and control operations against the drug cartels that operate in the western region of South America.

The CC's ruling of unconstitutionality regarding the treaty leaves the US without regional operational bases. It will now have to depend on the Fourth Fleet, opportunely reactivated in 2008 (NotiSur, Oct. 24, 2008). But military experts say that this is not enough, that it will have to add aircraft carriers, which were not anticipated in that deployment, to its conventional ships. Thus, the Fourth Fleet will have to go from being an element of persuasion to an operational factor.

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