



Special Update: Ecuador

WASHINGTON OFFICE ON LATIN AMERICA

U.S.-Ecuadorian Relations as a New President Takes Office

Sandra G. Edwards

December 2002

A new president for Ecuador: a major shift from old party politics

A political cartoon published two days after the second round of the presidential elections in Ecuador has the winner, ex-colonel Lucio Gutiérrez, standing on a chair which is precariously balanced on a tightrope tied between two poles, that of the Opposition and that of the Demands of his supporters.¹ All analysts point to the incredibly difficult position in which Gutiérrez finds himself after winning the elections on Sunday, November 24 (Gutiérrez won with just over forty-seven percent of the vote. His opponent, Alvaro Noboa, took 40.24 percent, and 10.98 percent of the population voted null). One of the most immediate challenges he faces is a congress whose majority has made no pledge to join with his leadership. The Christian Social Party (PSC), the strongest party in the country and representative of the country's economic elite, holds a solid majority in congress. PSC's leader, Leon Febres-Cordero, will most likely become president of congress, which in many people's minds, can be a more powerful position than the presidency of the republic. Febres-Cordero was president of Ecuador from 1984 to 1988 and mayor of Guayaquil, the largest city in Ecuador, for several terms. He is probably the most powerful politician in the country and the congress under his leadership will be a complex dynamic with which Gutiérrez will have to negotiate.

On the other side are Gutiérrez's supporters, the largest of which is Pachakutik, the political arm of the national indigenous federation, CONAIE (Council of the Indigenous Nations of Ecuador). The indigenous, through Pachakutik, played a significant role in Gutiérrez's win during the first round of elections and they consider themselves his direct partners in his bid for the leadership of the country. In October, Gutiérrez signed a political pact with Pachakutik, confirming his and his party's agreement to work together with Pachakutik toward similar goals. The agreement touches upon the concerns of CONAIE and Pachakutik about the social costs inherent in the demands made within any package offered by the International Monetary Fund (IMF). Pachakutik has often questioned the necessity of negotiating with the IMF at all. Pachakutik and CONAIE have also insisted that the treaty Ecuador holds with the United States for use of the Manta airbase be reconsidered. And finally, the Pachakutik and CONAIE platform has

Sandra G. Edwards has lived in Ecuador since 1991, working for international NGOs and as an independent consultant in human rights and forced migration issues. She is presently a WOLA consultant, monitoring U.S. drug policy and its impacts on human rights and democracy in Ecuador's northern border region. Previous to moving to Ecuador, she lived in Honduras and Central America. She holds an M.Ed. from Harvard University.

This is a publication of WOLA's "Drugs, Democracy and Human Rights" project, which examines the impact of drug trafficking and U.S. international drug control policies on human rights and democratization trends throughout Latin America and the Caribbean. The project is supported in part by grants from the Open Society Institute, the Ford Foundation and the John Merck Fund.

consistently called for the Ecuadorian government to petition the Colombian government to halt all fumigations within a specified number of miles from the Ecuadorian border, and CONAIE has taken a general stand against Plan Colombia as a U.S. policy.

However, Gutiérrez's campaign during the second round of elections found him dialoguing with the IMF and stating that his administration would continue to respect all international treaties now in force, including U.S. support for Plan Colombia as it is being implemented in that country (Gutiérrez strongly supports the outgoing government's stance on Plan Colombia and its refusal to become involved in Colombia's internal armed struggle, militarily or economically). During his final campaign for the presidency, Gutiérrez began to clearly move toward the center over the more left-leaning stances taken by Pachakutik. Such movement calmed the fears of the global market and the established powers in the country—fears mostly based on the initial comparisons of Gutiérrez with Venezuela's Chávez made in the international press. This modification of Gutiérrez's message probably won him the presidency. At the same time, Pachakutik and other social movement groups who have supported Gutiérrez from the beginning are clearly keeping a close eye on the direction he now takes once in office. Their vigilance has recently paid off: Pachakutik and CONAIE have been included in the process that Gutiérrez's political party is now initiating to develop the new government's policies for various government ministries as well as a list of candidates for the president-elect's cabinet.

An analysis of Gutiérrez's presidential win in *El Comercio*, a Quito-based newspaper, summed up the key concerns now facing Gutiérrez in one question: "Does he [Gutiérrez] have enough talent to maneuver around the pressures from his bases and achieve consensus with [Ecuador's] traditional political class?"² The analysis contends that it is hard to imagine that Gutiérrez will be satisfied with sustaining the status quo simply to stay in office (it is important to remember that Gutiérrez played a leading role in the January 2000 coup which toppled the Mahuad government). At the same time, it is unlikely that he will make decisions based on a collective process as proposed by Pachakutik.³

These questions regarding the direction Gutiérrez's leadership will take are being asked in the context of the extreme economic, political and social uncertainty that Ecuador now faces. Over sixty percent of Ecuador's population lives in poverty, the country faces one of the largest foreign debts in the region and it shares an important length of border with Colombia, whose long-standing conflict and its ramifications have started spilling over onto its southern neighbor. Gutiérrez has already visited his Colombian counterpart, Alvaro Uribe, and proposed the formation of a peace commission connected with the UN, made up of representatives from friendly nations—not unlike the Group of Guarantors that orchestrated the peace treaty between Ecuador and Peru at the end of the last decade. Uribe has politely declined Gutiérrez's proposal as he claims that the Colombian/UN partnership is sufficient to support any peace initiatives Colombia might undertake.

Finally, the direction Gutiérrez's leadership will take is key to the development of Ecuador's relationship with the United States, which at this point is cautiously making positive statements regarding Gutiérrez's win. The relationship between the two nations continues to be shaky, even tense, on several fronts. Even with the arrival of a new U.S. ambassador to Ecuador, Kristie Kenney, the relationship only promises to become more complex as regional dynamics such as Plan Colombia, the implementation of U.S. anti-narcotic policies and regional treaties on

trade become more entwined with the newly developing global realities of the war on terrorism and troubled world markets.

U.S.-Ecuador relations become more complicated as a new administration steps in

On November 15, the Ecuadorian minister of defense, Hugo Unda, reacted publicly and strongly to statements made by Gen. James Hill, chief of the U.S. Southern Command (SouthCom) during his October visit to Ecuador. Unda's clear statements once again distanced Ecuador from any direct military collaboration in Colombia's conflict and therefore any deeper involvement in Ecuador's cooperation in Plan Colombia. As reported in WOLA's *Update* on Ecuador in June 2002, the relationship between the United States and Ecuador continues to be tense and difficult.

During his visit on October 13, 2002, Gen. Hill stated that Colombia's "problem" was not only Colombia's but that of Ecuador, Brazil, Venezuela, Peru and the United States. Hill stated, "We can only solve this problem if we fight it together." Unda later responded that "we [the United States and Ecuador] do not have good relations because we [Ecuador] do not directly meddle in...the Colombian problem." Even before Unda stepped up to clarify Ecuador's position after SouthCom's visit, Gen. Oscar Ish, commander of Ecuador's joint chiefs of staff, called the press after Hill's visit to counter any misimpressions Hill might have given the press and to reiterate that Ecuador will not provide any direct support to Colombia's armed struggle.⁴

Another point of contention that arose during Hill's visit was the possibility of the re-negotiation of the United States/Ecuadorian treaty that provides the U.S. government with the right to establish and operate a forward operating location (FOL) at the Ecuadorian airbase in Manta. The treaty allows for intelligence reconnaissance flights along the coastal areas of Ecuador, Peru and Colombia to search for drug-carrying planes and boats. However, the treaty prohibits the US from physically interdicting suspicious planes or boats in Ecuadorian territory. While here in October, Hill insinuated that conversations were taking place which would expand U.S. interdiction rights within Ecuador. Hill and Ambassador Kenny's comments to the press suggested that the expansion of such rights would be part of including Ecuador as a partner in U.S. anti-terrorism efforts—a role, they claim, that all U.S. allies should be willing to undertake. Defense Minister Unda, again, strongly denied the existence of any formal proposal to reconsider the terms of the bilateral treaty.⁵ However, in early December, Ambassador Kenny once again stated the United States desire to expand its interdiction rights within Ecuadorian territory, especially regarding maritime interdiction rights.

Legal complications for U.S. policy

The tensions arising between Ecuadorian and U.S. military authorities around the parameters of Ecuadorian military cooperation in the area of U.S. anti-drug/anti-terrorist operations within the region provide an interesting backdrop to a legal case now raising concrete questions regarding U.S. interdiction activities in Ecuadorian territorial waters. In January 2002, attorney Stephen F. Rosenthal of Podhurst Orseck Josefsberg Eaton Meadow Olin & Perwin, P.A. of Miami, Florida filed a formal legal complaint against the United States on behalf of Captain Carlos Enrique Llorente Guale. Captain Llorente of Guayquil has worked in the Ecuadorian fishing industry for over forty years. He owns several fishing vessels that trawl on a regular basis in Ec-

cuadorian waters. On June 30, one of Captain Llorente's fishing vessels, the Daiki Maru, was boarded by officers of the U.S. Coast Guard from the frigate USS McInerney.

The Daiki Maru was fishing in Ecuadorian waters near the Galapagos Islands when it was circled by a U.S. Coast Guard helicopter and subsequently boarded by Coast Guard officials. The Daiki Maru crew was detained below ship by the boarding Coast Guard officials and taken back to Manta, a three day trip, during which time the Coast Guard officials searched the ship for illegal narcotics, drilling holes in the vessel which damaged the vessel's interior and spoiled its cargo of fish. No drugs were found. Once in Manta, the crew of the Daiki Maru was detained on shore while the U.S. Coast Guard and DEA agents conducted a further search of the boat, causing further damage. After two days more of on-shore detention and once it was confirmed that no drugs were aboard the vessel, the Daiki Maru crew was released. An inspection of the ship by Ecuadorian judicial officials after the U.S. search and seizure documented damages to the vessel, its cargo and Captain Llorente's business operation totaling \$2,068,250.

The bilateral treaty between Ecuador and the United States regarding the establishment of the U.S. FOL in Manta expressly prohibits the United States from engaging in drug interdiction activities in Ecuadorian territory. The treaty includes procedures for claims to be made for damages by an injured third party. U.S. maritime law also allows for compensation for damages made "by the negligent or reckless maritime acts of the United States armed forces, including the United States Coast Guard..."⁶ By boarding the Daiki Maru in Ecuadorian waters for the purpose of a search and seizure for drugs, the U.S. Coast Guard was clearly in breach of the unambiguous terms of its bilateral treaty with Ecuador which denies the United States jurisdiction to make such interdictions in Ecuadorean territory. The legal claim filed on behalf of Captain Llorente is based on both the breach of the treaty and U.S. federal law that permits suits against the United States for the wrongful acts of the Coast Guard.

As serious as the claim of January 2002 was, it was not the last time that the Coast Guard would both breach the treaty and cause damage to Captain Llorente's fishing business. On March 3, 2002, within weeks of the date that Llorente's lawyers formally notified U.S. military officials in Manta of their intent to file a claim, a partially repaired Daiki Maru fishing in Ecuadorian waters, was, once again, boarded by a U.S. military vessel. This time the Daiki Maru and its crew were detained for thirteen hours at sea and then released after the Daiki Maru's captain informed the U.S. officials that they were located in Ecuadorean territorial waters. However, the next day it was seized again by the same U.S. military vessel. This time the Coast Guard brought a letter from the general commander of the Ecuadorian navy which authorized U.S. officials to board the Daiki Maru if the United States had evidence that pointed to the transport of narcotics. The letter also clearly stated that the U.S. military would take full responsibility for any damages resulting from such search and seizure. Again, no drugs were found, but the Daiki Maru suffered damages to both its vessel and its commercial product. The initial seizure occurred prior to such permission being granted. However, even with the letter from the Ecuadorian military granting permission for the third boarding of the Daiki Maru, questions remain regarding the legality of the interdiction. The letter states that the United States could board if there was evidence of drugs on the vessel. It is unclear what evidence the Coast Guard had previous to boarding but it is clear that no drugs were found. It is also clear that, according to the letter, the United States would be responsible for all damages caused by the interdiction.

Captain Llorente has already initiated an administrative claim for the June 2001 incident with the Coast Guard, the preliminary step to filing a federal lawsuit of this nature. His U.S. attorneys shortly intend to file a similar administrative claim for the March 2002 incident for damages incurred in the incident. When one sues any department of the U.S. government for wrongful activity, they are essentially suing the U.S. government itself. Federal law requires that a plaintiff prove that the U.S. officials lacked discretion to act in the way that they did (which caused the damages) in order to recover money damages. When those officials are involved in police or military action, courts often award them wide discretionary latitude. That discretion does not exist where a clear rule prohibits the conduct. Llorente's lawyers contend that because the treaty governing the U.S. FOL in Ecuador so clearly prohibits U.S. interdiction in Ecuadorian territory, the Coast Guard had no discretion whatsoever to seize the Daiki Maru in Ecuadorian territorial waters. The Coast Guard has six months, until March 2003, to respond to the claim before Llorente's attorneys can file suit in U.S. federal court.

Questions remain as to why the U.S. Coast Guard targeted Captain Llorente. An Ecuadorian in his seventies with years in the fishing business, his lifestyle betrays no more resources than those obtained by a successful fishing business. Another question arises regarding the actual number of illegal search and seizures that have taken place in Ecuadorian waters. Have other interdictions taken place, but of fishermen who may not have Llorente's resources or determination to protect their rights by taking on the U.S. government? Also, if it is against the terms of the United States/Ecuador bilateral treaty for U.S. military to interdict in Ecuadorian waters, why are there numerous military ships present in those waters at any one time? What is their mission?

On August 2, 2001, then-minister of trade Richard Moss wrote to Ecuador's chancellor of foreign affairs, Heinz Moeller, "These types of actions, supposedly within the framework of Plan Colombia, constitute violations of the sovereignty of the republic of Ecuador. The proliferation [of such actions] without the required precautions and corresponding evidence, not only damages the honor of our national fishermen but adds an additional burden on our shipbuilders under the complicated circumstances of our national economy."⁷

Other questions have arisen around the U.S. presence in Ecuadorian waters apart from those created by the Llorente case. During General Hill's October visit, he was also quoted by the Ecuadorian press as stating that, thanks to United States-Ecuadorian cooperation through its Manta operation, 505 narcotraffickers have been identified and detained. Civil and human rights organizations in Ecuador want to know who these detainees are, what their nationalities are and where they are being detained. For months, an Ecuadorian fishing vessel and its crew has gone unaccounted for. No one has accused U.S. or Ecuadorian military officials of being responsible for their disappearance, but it would be helpful to obtain a list of any Ecuadorians detained for narcotrafficking by the Manta operation, not only to eliminate the possibility that these missing fishermen are on the list, but to also assure that all detainees are receiving due process, such as the right to *habeas corpus*.

Further troubles for Washington?

The waters may get even muddier for U.S. operations in Ecuador as another legal suit may be on the horizon. Much of what is now the Manta military complex was developed over years through the confiscation by the Ecuadorian military of privately owned land that was then

claimed for military use. By law, the military must pay compensation for this land. Legal suits by landowners whose property was confiscated to create the Manta military base have been in Ecuadorian courts for years, basically ignored by both the Ecuadorian military and the Ecuadorian justice system. The particular land granted the United States for the establishment and operation of its FOL belongs to a single landowner who is now seeking legal action in the United States based on the fact that the land granted by the Ecuadorian military for use by the United States was not the military's to grant. It has not yet been determined if the case has legal merits to take it to a U.S. court.

In addition to the troubles facing U.S. operations in Ecuador from individual legal claims, on the national front, legal groups in Ecuador are looking to the Llorente case as a precedent to claim breach of the bilateral treaty and once again place the Manta FOL before the Ecuadorian public. As noted in WOLA's June *Update*, the United States/Ecuadorian treaty is considered illegal by many constitutional lawyers in Ecuador. All international treaties must be approved by congress, yet the Manta treaty was not passed by the congress but signed by government ministers only. There is a proposal before congress to reconsider its legality, but it has been placed on the backburner for over a year. The Llorente case may place it on the front burner once again. As also noted in WOLA's June 2002 *Update*, the treaty briefly received widespread attention in both the Ecuadorian congress and press when DynCorps was contracted for maintenance services at the Manta base. Because of DynCorps' history in Colombia and in Central America in the 1980s, both eyebrows and questions were raised regarding its presence in Ecuador. Now with Lucio Gutiérrez in office, legal groups are looking to his association with Pachakutik which is calling for a review of the treaty. Some attorneys are hoping that the Llorente case might be a way to raise the treaty's reconsideration. The Llorente case, in combination with the ongoing tensions between the Ecuadorian and U.S. militaries, may lead to major challenges that the U.S. government must overcome before it can continue to implement its anti-drug policy in Ecuador, let alone expand that policy to include anti-terrorism initiatives which might involve Ecuador in Colombia's internal armed struggle.

Potential ramifications of the Llorente case

A possible consequence for the United States if they lose this case and are forced to pay economic remuneration is the potential that a long line may form of others unjustly interdicted or detained by U.S. military. Ecuadorian fishermen have already appeared at the offices of the attorney in Manta who referred the case to the Podhurst firm in Miami. Their cases, if documented, would be that much stronger if Captain Llorente wins his suit.

The Llorente case could also strengthen the growing reluctance on the part of the Ecuadorian government, as well as other Latin American governments, to continue to allow the United States free reign to implement its anti-narcotic/anti-terrorist policies in their territories. With the victory of "Lula" in Brazil and Gutiérrez in Ecuador, both Latin American leaders who have questioned important aspects of U.S. foreign policy, the Llorente case may provide them fodder to strengthen their calls for greater respect for the national sovereignty of Latin American nations.

Ecuador's Northern Border Feels the Effects of Plan Colombia

by Fredy Rivera⁸

The recent discovery in Ecuadorian territory of a FARC camp with high-tech communications equipment and the capacity to provide logistics and combat training for 400 persons has again raised the issue of Ecuador's role in the Colombian conflict.⁹ The U.S. government has long advocated and supported increased security on the northern border.¹⁰ President-elect Lucio Gutiérrez, however, faces pressure from popular and indigenous sectors to have Ecuador draw back from the regional conflict. His commission on security and defense emphatically proposes the withdrawal of the country from Plan Colombia, that the state institutions responsible for formulating security policies be revised and restructured, and that an autonomous national security agenda be established. Gutiérrez has also expressed support for requiring monetary compensation from the United States for the use of the air base in Manta and strict oversight of the base to ensure that it be used only for purposes specifically related to the combat of drug trafficking.¹¹

Such positions are backed by the numerous civil society organizations that participated in drawing up a report on Plan Colombia's impact on different areas of the country. According to a report presented to the Interior Ministry in 2001 by eleven Ecuadorian human rights, environmental and ethnic NGOs,¹² 2,560 hectares of cultivated land belonging to small-scale *mestizo* and indigenous farmers living on the border have been affected. One-thousand small-scale Ecuadorian farmers are awaiting a response to an *amparo*, similar to a *habeas corpus* petition, presented to the government which calls for the suspension of fumigation and respect for a ten-kilometer-deep no-spray zone in Colombia running along the border.¹³ The same report states that the ongoing fumigations in Colombia have caused as many as 3,500 farmers to abandon their land. The ombudsman in [Colombia's] Guamuez Valley and the towns of Puerto Leguizamo y Mocoa confirmed that people have left these areas for Ecuador.¹⁴

The free cross-border movement of people agreed on in treaties between Colombia and Ecuador has also been affected. The nighttime closing of the border at Rumichaca in Carchi province [Ecuador] has affected commerce and transportation. Border crossing points in the Esmeraldas province have been militarized, and Ecuadorian citizens have had to tolerate increasing insecurity in their border towns stemming from murders and reprisals carried out among armed Colombians operating in Ecuador. These phenomena are engendering xenophobia and racism against Colombians, independent of whether these are refugees, displaced persons or migrants. According to research conducted by FLACSO-Ecuador, such attitudes have spread to institutions such as the National Police, which has recently come under scrutiny for human rights violations.¹⁵ These forces receive resources, infrastructure and training from the U.S. government.

The situation on the border is further complicated by the gradual increase in the presence of refugees and displaced Colombians in Ecuadorian territory. The office of the UN High Commissioner on Refugees (UNHCR) reports that 7,200 people have requested refugee status in recent years. Further research will help determine more precise numbers of displaced persons which can then be used in the design of an operating plan to be presented to the Ecuadorian government.

The Washington Office on Latin America (WOLA) promotes human rights, democracy and social and economic justice in Latin America and the Caribbean. WOLA facilitates dialogue between governmental and non-governmental actors, monitors the impact of policies and programs of governments and international organizations, and promotes alternatives through reporting, education, training, and advocacy. Founded in 1974 by a coalition of religious and civic leaders, WOLA works closely with civil society organizations and government officials throughout the hemisphere.

Washington Office on Latin America

1630 Connecticut Avenue, NW

Washington, D.C. 20009

Tel: (202) 797-2171 Fax: (202) 797-2172

e-mail: wola@wola.org web: www.wola.org

Notes

¹ *El Comercio*, 26 Nov. 2002, A2.

² Ibid.

³ Ibid.

⁴ All information and quotes included up to this point are taken from the article, “Unda Propone un Sistema de Defensa Continental; El Ministro de Defensa comentó que el país no tiene buenas relaciones con EEUU. Recalcó que Ecuador no entrará en el conflicto colombiano,” *El Comercio*, 15 Nov. 2002, A8.

⁵ Ibid., *El Comercio*, 15 Nov. 2002.

⁶ Letter of legal complaint from Mr. Stephen Rosenthal to Colonel Juan Maurtua of the U.S. Air Force, chief of the FOL, Manta, Ecuador, 16 Jan. 2002 (citing 46 USC 781; 14 USC 89[a]).

⁷ Juan Carlos Calderón (chief of investigative reporting), “Los Buques de EEUU Ya Están en Manta Desde 2000,” *Diario Expreso de Guayaquil*, 27 Oct. 2002.

⁸ Translation by WOLA. Fredy Rivera Vélez is a sociologist and research professor at FLACSO, Ecuador, and editor of the magazine *Ecuador Debate*.

⁹ Statement by General Miño, commander of the Amazonas IV Army Division, 6 Nov. 2002.

¹⁰ The Chief of the Ecuadorian Armed Forces’ Central Command has also underlined the lack of economic support received to maintain the armed forces in spite of requests made. It is estimated that securing the border area would require fifty million dollars in communications equipment, helicopters, troop transport vehicles, advanced digital systems for intercepting communications. Support for development activities is also needed.

¹¹ *El Universo*, “Las propuestas presidenciales,” 13 October 2002.

¹² Acción Ecológica, et al., *Report on verification mission: Impacts in Ecuador of fumigations in Putumayo as part of Plan Colombia*, October 2002.

¹³ Ricardo Soberón, *Informe de Fronteras*. Bogota, Colombia: Project Counseling Services, October 2002.

¹⁴ Ibid. Statement made on 21 Oct. 2002.

¹⁵ Amnesty International’s most recent report names Ecuador’s National Police as an institution that violates human rights. For example: “Allegations continued that police officers were carrying out extrajudicial executions, particularly in Guayaquil where some 26 people were found dead in the city’s outskirts during the first 10 months of the year. All had been shot in circumstances suggesting extrajudicial execution. Many appeared to have been tortured before being killed. One human rights organization stated that 65 bodies have been found in the area since 1999.” See <http://web.amnesty.org/web/ar2002.nsf/amr/ecuador!Open>.