

Barco defies Colombian Constitution, seeks to eliminate military justice

by Javier Almarío

Colombian President Virgilio Barco, in open political alliance with the Patriotic Union (UP)—the electoral front of the Communist FARC guerrillas—and with the consent of the Supreme Court, is moving to eliminate the constitutional precept of military justice, under which crimes committed by active-duty military men are to be judged by courts martial. In a March 7 televised address to the nation, the President boasted that one of his administration's great successes in fighting violence has been "the ruling of public order judges that members of the Armed Forces suspected of criminal acts may be arrested" and tried under civil penal law.

Barco's effort to castrate his own Armed Forces should surprise no one. Just as he has capitulated time and again to the demands of foreign creditors and the International Monetary Fund in gutting the Colombian economy to pay foreign debt, so too has he groveled at the feet of such entities as Amnesty International and Inter-American Dialogue, which have targeted Ibero-America's military forces for elimination.

Barco's cozy relations with the Communists date back to his first days as President, when he set up the Presidential Office for Human Rights Affairs to which he named Marxist historian Alvaro Tirado Mejía. Tirado Mejía's first act—in the midst of a wave of narco-terrorist bloodshed—was to lecture the Armed Forces on why they must cease to "violate human rights."

During that same period, the Supreme Court changed longstanding jurisprudence and decided that civilians could no longer be judged by military courts, *not even under a state of siege regimen*, thus depriving the Armed Forces of one of its few remaining weapons against Soviet-sponsored narco-terrorism. President Barco issued not a peep in protest.

The administration's strategy to eliminate military justice was openly presented in a forum on human rights sponsored by office of the presidency. Former Minister Jaime Castro used that forum to demand reform of military penal justice, starting with the naming of civilian judges to formerly military tribunals, and reducing the field of action of military justice to dealing only with those crimes involving "military indiscipline." Castro also proposed the creation of a special oversight agency whose sole function would be investigating military men accused of violating human rights. Castro's

proposal was an echo of earlier oversight demands by Attorney General Horacio Serpa Uribe, a known Communist sympathizer.

The Communist UP took this forum as a green light to start blaming the military for every imaginable crime, and especially for any and all assaults against its own members. A compliant civilian judiciary has, in turn, conducted not a single inquiry into the countless and often bloody seizures of towns by guerrillas. What it has done, in collaboration with the DAS—the state security agency under direct control of the presidency—has been to launch highly publicized probes of alleged military offenders, relying heavily for testimony on UP members.

In the latest such scandal, a civilian judge indicted five active-duty military men for alleged participation in a massacre in the town of Segovia. Although the military demanded that the accused be court-martialed, as the Constitution specifies, the Supreme Court chose instead to apply ex-minister Castro's advice without resort to an amendment of the highest law in the land. The Court determined that three of the defendants would be tried by civilian justice under charges of terrorism, and were suspended from active duty. The other two were remanded to court martial, under charges of "cowardice."

President Barco's mid-February decision to forward to Defense Minister Gen. Jaime Guerrero Paz a letter from the UP demanding the "purge of the Armed Forces" and investigation of the military high command for criminal behavior, apparently proved the last straw. General Guerrero Paz sent the letter on to the Attorney General's office, and then issued a warning that military justice was guaranteed under the National Constitution, and that "Those who seek to distort or deflect its scope with sensationalist zeal, or perhaps with the insidious intent of creating confusion within the Armed Forces, are mistaken in their ill-fated design. Today more than ever we wish to reaffirm the highly combative spirit which inspires our soldiers and police."

In a recent conference, former defense minister and retired general Fernando Landazábal Reyes asserted that the Barco government has stripped the military forces of "their privileges, to grant them instead to the guerrillas." The Armed Forces, he warned, "are being driven to insurrection because

as their military justice has been removed, they have been left unprotected." Landazábal has just registered a new political party, called the Colombian Integrationist Movement, which is expected to serve as an electoral vehicle for his presidential bid in 1990.

Barco has responded to the military protests. In a March 5 message to Colombia's economic associations, which had recently expressed their concern to him over the growing violence in the country, the President asserted that "the behavior of the Armed Forces and that of the police are under the constant vigilance of public opinion, of the Attorney General of the nation, and of the judges of the republic, in addition to the military courts as well as disciplinary mechanisms. Further, international organizations also exercise permanent vigilance. The public forces are obliged to meet the highest standards in conformity with our Constitution, and in accordance with internationally adopted practices. Various uniformed men have been the object of investigations by civilian justices or specialized courts. The campaign in favor of human rights is an effort to banish from our midst everything that is primitive or inhuman."

Documentation

What is military justice?

The following excerpt is from the editorial of the January issue of the Colombian military's newspaper Fuerzas Armadas:

In the implacable fight [against subversion] which faces the nation, its Armed Forces constitute the bastion which guarantees the stability of a state of law, becoming thereby the principal target of the terrorists not only in the military field but also ideologically. And there is nothing better to achieve their dangerous and brutal ends than to undermine institutional morale, for the purpose of breaking its fighting spirit through defamatory campaigns. . . . In this context, in recent days there have appeared in the written press commentaries on military justice, and concretely on the collision of authority presented before the Supreme Court. Since these writings suffer from a lack of objectivity, giving rise to erratic interpretations, we feel it is opportune to specify the basic concepts concerning military justice.

What is military justice? According to jurisprudence and doctrine, military justice is related to the concept of jurisdiction, which is nothing less than the responsibility assigned to a specific judge or court to administer justice.

In the case that concerns us, Military Justice is the right of military personnel to be judged under military penal jurisdiction, given the functions they exercise. In this regard, Article 170 of the Constitution enshrines the concept thus: "Crimes committed by active-duty military personnel, which are linked to that same service, will be heard by martial or military courts, in accordance with the prescriptions of the Military Penal Code."

The normative content of this canon is of such precision and clarity that no mistaken interpretations are permissible.

Article 26 of the same juridical code indicates: "No one can be judged except in conformity with laws that preexisted the action imputed, and before the indicated court, in full observance of the procedures appropriate to each trial."

It is thus clear that active-duty military personnel who commit crimes linked to that same service are covered by Military Justice and, consequently, the responsibility for judging them belongs to military penal jurisdiction.

Let us now look at what is understood by crimes linked to that same service. Article 166 of the Political Charter decrees: "The Nation will have a permanent army for its defense." And Article 20 of the National Defense Law states: "The Armed Forces have as their mission of national defense: to guarantee national independence, the national institutions and internal order."

If this be the case, criminal behavior committed by military personnel within the constitutional and legal obligations and duties aforementioned, should be judged by courts martial or military tribunals, in accordance with military penal law.

Apart from the constitutional range of Military Justice as already expressed, the Military Penal Code, number 2 of article 308, guarantees an aspect of military justice by extension, in stating:

"Military penal jurisdiction encompasses crimes established by common penal law, which are committed by active-duty military personnel or by civilians who are in the service of the Armed Forces, in time of war, perturbation of public order or internal disorder."

This norm was declared functional by a September 1971 Supreme Court ruling.

Backed by this determination, we feel that this aspect of Military Jurisdiction remains in force as long as the military penal statute remains in force, despite the fact that the Supreme Court in a recent ruling altered its own jurisprudence on the matter. We respect and observe the finding of the High Court, although we do not share it, since in our understanding, the aforementioned article 308-2 of the Military Penal Justice Code does not contradict the Constitution. . . .

It is worth stressing that members of the National Police are also covered by Military Justice, and subject to the norms of article 284 of the Military Penal Code. This norm was declared functional by the Supreme Court in rulings of Sept. 20, 1973 and Sept. 26, 1975. . . .

This is the true essence of Military Justice. . . .