

THE LEGAL ADVISER
DEPARTMENT OF STATE
WASHINGTON

December 23, 2004

Mr. Daniel Meron
Principal Deputy Assistant Attorney General
Civil Division
United States Department of Justice
10th Street and Constitution Avenue, N.W.
Washington, D.C. 20530

**Re: *Luis Alberto Galvis Mújica, et al. v. Occidental Petroleum Corp., et al.*
CV 03-2860-WJR(JWJx)**

Dear Mr. Meron:

By letter of February 3, 2004, United States District Judge William Rea asked for the views of the Department of State in connection with the above-captioned lawsuit. Specifically, Judge Rea requested the Department's views on "whether the adjudication of this action would affect United States foreign relations; and, if so, the nature and extent of that impact - in light of defendants' stated intention to bring a motion to dismiss based upon the act of state, political question, and foreign affairs doctrines."

On March 30, Acting Legal Adviser James H. Thessin wrote to Assistant Attorney General Peter D. Keisler, asking him to advise Judge Rea that the Department of State would be unable to respond to the court's questions by the requested deadline but might be able to do so later, when the facts and legal arguments became clearer and more focused. The Department of Justice responded to Judge Rea on April 2 by submitting a Statement of Interest enclosing Mr. Thessin's letter.

I am writing now to request that you bring the following views to Judge Rea's attention. We want to affirm at the outset, of course, that the State Department neither takes any position with respect to the merits of the litigation, nor do we condone or excuse any violations of human rights or humanitarian law which may have occurred in connection with the incidents on which the suit is based. Our views are confined to responding to the question posed to us by the court. For reasons stated below, and in light of the views communicated to us by the Colombian government, the State Department believes that the adjudication of this case will have an adverse impact on the foreign policy interests of the United States.

Allegations related to those involved in the suit before the court are currently being handled in the Colombian legal system. In May 2004, an administrative court in the Arauca Department of Colombia ruled that the Colombian government must pay approximately \$700,000 in damages to the plaintiffs in this case. This decision is currently under appeal in the Colombian judicial system. While that action was brought against the Colombian government, Defendant Occidental has, in its motion to dismiss on grounds of *forum non conveniens*, stipulated to service of process and consented to jurisdiction in Colombia. In addition, certain Colombian military personnel who were allegedly involved in the incident in question have been dismissed from their positions and face criminal investigation. On January 3, 2003, the U.S. Embassy in Bogotá

informed the Colombian government of the U.S. decision to suspend assistance to CACOM-1, the Colombian Air Force unit involved in the Santo Domingo incident.

The Department believes that foreign courts generally should resolve disputes arising in foreign countries, where such courts reasonably have jurisdiction and are capable of resolving them fairly. An important part of our foreign policy is to encourage other countries to establish responsible legal mechanisms for addressing and resolving alleged human rights abuses. Duplicative proceedings in U.S. courts second-guessing the actions of the Colombian government and its military officials and the findings of Colombian courts, and which have at least the potential for reaching disparate conclusions, may be seen as unwarranted and intrusive to the Colombian government. Moreover, it may also be perceived that the U.S. Government does not recognize the legitimacy of Colombian judicial institutions. These perceptions could potentially have negative consequences for our bilateral relationship with the Colombian government.

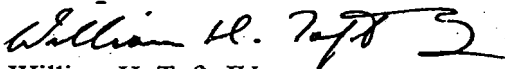
Colombia is one of the United States' closest allies in this hemisphere, and our partner in the vital struggles against terrorism and narcotics trafficking. President Bush recently reaffirmed the importance of our relationship with Colombia when he visited the country in November. Colombia's role in helping to maintain Andean regional security, our trade relationship, and our national interests in the security of U.S. persons and U.S. investments in Colombia, rank high on our foreign policy agenda. Important U.S. foreign policy objectives also include support for the rule of law and human rights in Colombia.

Lawsuits such as the one before Judge Rea have the potential for deterring present and future U.S. investment in Colombia. Reduced U.S. investment, particularly in the oil and other extractive industries, could harm Colombia's economy in several ways, including by increasing unemployment and reducing the Colombian government's revenues from taxes and royalties. Downturns in Colombia's economy could have harmful consequences for the United States and our interests in Colombia and the Andean region. Specifically, such downturns could damage the stability of Colombia, the Colombian government's U.S.-supported campaigns against terrorists and narcotics traffickers, regional security, our efforts to reduce the amount of drugs that reach the streets of the United States, promotion of the rule of law and human rights in Colombia, and protection of U.S. persons, government facilities, and investments. Finally, reduced U.S. investment in Colombia's oil industry may detract from the vital U.S. policy goal of expanding and diversifying our sources of imported oil.

I have attached two letters from the Colombian Ministry of Foreign Relations to the U.S. Ambassador in Colombia. The first letter (Attachment 1), dated February 25, 2004, informs the embassy that the Colombian judiciary is investigating the responsibility of Colombian officials in this case. The second letter (Attachment 2), dated March 12, 2004, states that "any decision in this case may affect the relations between Colombia and the [United States]."

We hope the Court will find the foregoing responsive to its request.

Sincerely,


William H. Taft, IV

Attachments:
As stated.

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