INTERNATIONAL COURT OF JUSTICE

CASE CONCERNING
AERIAL HERBICIDE SPRAYING

ECUADOR
V.
COLOMBIA

MEMORIAL OF ECUADOR

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ANNEX 1

American Treaty on Pacific Settlement, "Pact of Bogotá"
30 UNTS 55 (30 Apr. 1948)



Multilateral Treaties

[Signatories and Ratifications] [text in Spanish]

AMERICAN TREATY ON PACIFIC SETTLEMENT
"PACT OF BOGOTÁ"

Signed at Bogotá, April 30, 1948

In the name of their peoples, the Governments represented at the Ninth International Conference of American States have resolved, in fulfillment of Article XXIII of the Charter of the Organization of American States, to conclude the following Treaty:

CHAPTER ONE
GENERAL OBLIGATION TO SETTLE DISPUTES BY PACIFIC MEANS

ARTICLE I. The High Contracting Parties, solemnly reaffirming their commitments made in earlier international conventions and declarations, as well as in the Charter of the United Nations, agree to refrain from the threat or the use of force, or from any other means of coercion for the settlement of their controversies, and to have recourse at all times to pacific procedures.

ARTICLE II. The High Contracting Parties recognize the obligation to settle international controversies by regional procedures before referring them to the Security Council of the United Nations.

Consequently, in the event that a controversy arises between two or more signatory states which, in the opinion of the parties, cannot be settled by direct negotiations through the usual diplomatic channels, the parties bind themselves to use the procedures established in the present Treaty, in the manner and under the conditions provided for in the following articles, or, alternatively, such special procedures as, in their opinion, will permit them to arrive at a solution.

ARTICLE III. The order of the pacific procedures established in the present Treaty does not signify that the parties may not have recourse to the procedure which they consider most appropriate in each case, or that they should use all these procedures, or that any of them have preference over others except as expressly provided.

ARTICLE IV. Once any pacific procedure has been initiated, whether by agreement between the parties or in fulfillment of the present Treaty or a previous pact, no other procedure may be commenced until that procedure is concluded.

ARTICLE V. The aforesaid procedures may not be applied to matters which, by their nature, are within the domestic jurisdiction of the state. If the parties are not in agreement as to whether the controversy concerns a matter of domestic jurisdiction, this preliminary question shall be submitted to decision by the International Court of Justice, at the request of any of the parties.

ARTICLE VI. The aforesaid procedures, furthermore, may not be applied to matters already settled by arrangement between the parties, or by arbitral award or by decision of an international court, or which are governed by agreements or treaties in force on the date of the conclusion of the present Treaty.

ARTICLE VII. The High Contracting Parties bind themselves not to make diplomatic representations in order to protect their nationals, or to refer a controversy to a court of international jurisdiction for that purpose, when the said nationals have had available the means to place their case before competent domestic courts of the respective state.

ARTICLE VIII. Neither recourse to pacific means for the solution of controversies, nor the recommendation of their use, shall, in the case of an armed attack, be ground for delaying the exercise of the right of individual or collective self-defense, as provided for in the Charter of the United Nations.

CHAPTER TWO
PROCEDURES OF GOOD OFFICES AND MEDIATION

ARTICLE IX. The procedure of good *offices* consists in the attempt by one or more American Governments not parties to the controversy, or by one or more eminent citizens of any American State which is not a party to the controversy, to bring the parties together, so as to make it possible for them to reach an adequate solution between themselves.

ARTICLE X. Once the parties have been brought together and have resumed direct negotiations, no further action is to be taken by the states or citizens that have offered their good offices or have accepted an invitation to offer them; they may, however, by agreement between the parties, be present at the negotiations.

ARTICLE XI. The procedure of mediation consists in the submission of the controversy to one or more American Governments not parties to the controversy, or to one or more eminent citizens of any American State not a party to the controversy. In either case the mediator or mediators shall be chosen by mutual agreement between the parties.

ARTICLE XII. The functions of the mediator or mediators shall be to assist the parties in the settlement of controversies in the simplest and most direct manner, avoiding formalities and seeking an acceptable solution. No report shall be made by the mediator and, so far as he is concerned, the proceedings shall be wholly confidential.

ARTICLE XIII. In the event that the High Contracting Parties have agreed to the procedure of mediation but are unable to reach an agreement within two months on the selection of, the mediator or mediators, or no solution to the controversy has been reached within five months after mediation has begun, the parties shall have recourse without delay to any one of the other procedures of peaceful settlement established in the present Treaty.

ARTICLE XIV. The High Contracting Parties may offer their mediation, either individually or jointly, but they agree not to do so while the controversy is in process of settlement by any of the other procedures established in the present Treaty.

CHAPTER THREE
PROCEDURE OF INVESTIGATION AND CONCILIATION

ARTICLE XV. The procedure of investigation and conciliation consists in the submission of the controversy to a Commission of Investigation and Conciliation, which shall be established in accordance with the provisions established in subsequent articles of the present Treaty, and which shall function within the limitations prescribed therein.

ARTICLE XVI. The party initiating the procedure of investigation and conciliation shall request the Council of the Organization of American States to convoke the Commission of Investigation and Conciliation. The Council for its part shall take immediate steps to convoke it.

Once the request to convoke the Commission has been received, the controversy between the parties shall immediately be suspended, and the parties shall refrain from any act that might make conciliation more difficult. To that end, at the request of one of the parties, the Council of the Organization of American States may, pending the convocation of the Commission, make appropriate recommendations to the parties.

ARTICLE XVII. Each of the High Contracting Parties may appoint, by means of a bilateral agreement consisting of a simple exchange of notes with each of the other signatories, two members of the Commission of Investigation and Conciliation, only one of whom may be of its own nationality. The fifth member, who shall perform the functions of chairman, shall be selected immediately by common agreement of the members thus appointed.

Any one of the contracting parties may remove members whom it has appointed, whether nationals or aliens; at the same time it shall appoint the successor. If this is not done, the removal shall be considered as not having been made. The appointments and substitutions shall be registered with the Pan American Union, which shall endeavor to ensure that the commissions maintain their full complement of five members.

ARTICLE XVIII. Without prejudice to the provisions of the foregoing article, the Pan American Union shall draw up a permanent panel of American conciliators, to be made up as follows:
a) Each of the High Contracting Parties shall appoint, for three year periods, two of their nationals who enjoy the highest reputation for fairness, competence and integrity;
b) The Pan American Union shall request of the candidates notice of their formal acceptance, and it shall place on the panel of conciliators the names of the persons who so notify it;
c) The governments may, at any time, fill vacancies occurring among their appointees; and they may reappoint their members.

ARTICLE XIX. In the event that a controversy should arise between two or more American States that have not appointed the Commission referred to in Article XVII, the following procedure shall be observed:

a) Each party shall designate two members from the permanent panel of American conciliators, who are not of the same nationality as the appointing party.

b) These four members shall in turn choose a fifth member, from the permanent panel, not of the nationality of either party.

c) If, within a period of thirty days following the notification of their selection, the four members are unable to agree upon a fifth member, they shall each separately list the conciliators composing the permanent panel, in order of their preference, and upon comparison of the lists so prepared, the one who first receives a majority of votes shall be declared elected. The person so elected shall perform the duties of chairman of the Commission.

ARTICLE XX. In convening the Commission of Investigation and Conciliation, the Council of the Organization of American States shall determine the place where the Commission shall meet. Thereafter, the Commission may determine the place or places in which it is to function, taking into account the best facilities for the performance of its work.

ARTICLE XXI. When more than two states are involved in the same controversy, the states that hold similar points of view shall be considered as a single party. If they have different interests they shall be entitled to increase the number of conciliators in order that all parties may have equal representation. The chairman shall be elected in the manner set forth in Article XIX.

ARTICLE XXII. It shall be the duty of the Commission of Investigation and Conciliation to clarify the points in dispute between the parties and to endeavor to bring about an agreement between them upon mutually acceptable terms. The Commission shall institute such investigations of the facts involved in the controversy as it may deem necessary for the purpose of proposing acceptable bases of settlement.

ARTICLE XXII. It shall be the duty of the parties to facilitate the work of the Commission and to supply it, to the fullest extent possible, with all useful documents and information, and also to use the means at their disposal to enable the Commission to summon and hear witnesses or experts and perform other tasks in the territories of the parties, in conformity with their laws.

ARTICLE XXIV. During the proceedings before the Commission, the parties shall be represented by plenipotentiary delegates or by agents, who shall serve as intermediaries between them and the Commission. The parties and the Commission may use the services of technical advisers and experts.

ARTICLE XXV. The Commission shall conclude its work within a period of six months from the date of its installation; but the parties may, by mutual agreement, extend the period.

ARTICLE XXVI. If, in the opinion of the parties, the controversy relates exclusively to questions of fact, the Commission shall limit itself to investigating such questions, and shall conclude its activities with an appropriate report.

ARTICLE XXVII. If an agreement is reached by conciliation, the final report of the Commission shall be limited to the text of the agreement and shall be published after its transmittal to the parties, unless the parties decide otherwise. If no agreement is reached, the final report shall contain a summary of the work of the Commission; it shall be delivered to the parties, and shall be published after the expiration of six months unless the parties decide otherwise. In both cases, the final report shall be adopted by a majority vote.

ARTICLE XXVIII. The reports and conclusions of the Commission of Investigation and Conciliation shall not be binding upon the parties, either with respect to the statement of facts or in regard to questions of law, and they shall have no other character than that of recommendations submitted for the consideration of the parties in order to facilitate a friendly settlement of the controversy.

ARTICLE XXIX. The Commission of Investigation and Conciliation shall transmit to each of the parties, as well as to the Pan American Union, certified copies of the minutes of its proceedings. These minutes shall not be published unless the parties so decide.

ARTICLE XXX. Each member of the Commission shall receive financial remuneration, the amount of which shall be fixed by agreement between the parties. If the parties do not agree thereon,. the Council of the Organization shall determine the remuneration. Each government shall pay its own expenses and an equal share of the common expenses of the Commission, including the aforementioned remunerations.

CHAPTER FOUR
JUDICIAL PROCEDURE

ARTICLE XXXI. In conformity with Article 36, paragraph 2, of the Statute of the International Court of Justice, the High Contracting Parties declare that they recognize, in relation to any other American State, the jurisdiction of the Court as compulsory *ipso facto,* without the necessity of any special agreement so long as the present Treaty is in force, in all disputes of a juridical nature that arise among them concerning:
a) The interpretation of a treaty;

b) Any question of international law;

c) The existence of any fact which, if established, would constitute the breach of an international obligation;

d) The nature or extent of the reparation to be made for the breach of an international obligation.

ARTICLE XXXII. When the conciliation procedure previously established in the present Treaty or by agreement of the parties does not lead to a solution, and the said parties have not agreed upon an arbitral procedure, either of them shall be entitled to have recourse to the International Court of Justice in the manner prescribed in Article 40 of the Statute thereof. The Court shall have compulsory jurisdiction in accordance with Article 36, paragraph 1, of the said Statute.

ARTICLE XXXIII. If the parties fail to agree as to whether the Court has jurisdiction over the controversy, the Court itself shall first decide that question.

ARTICLE XXXIV. If the Court, for the reasons set forth in Articles V, VI and VII of this Treaty, declares itself to be without jurisdiction to hear the controversy, such controversy shall be declared ended.

ARTICLE XXXV. If the Court for any other reason declares itself to be without jurisdiction to hear and adjudge the controversy, the High Contracting Parties obligate themselves to submit it to arbitration, in accordance with the provisions of Chapter Five of this Treaty.

ARTICLE XXXVI. In the case of controversies submitted to the judicial procedure to which this Treaty refers, the decision shall devolve upon the full Court, or, if the parties so request, upon a special chamber in conformity with Article 26 of the Statute of the Court. The parties may agree, moreover, to have the controversy decided *ex aequo et bono.*

ARTICLE XXXVII. The procedure to be followed by the Court shall be that established in the Statute thereof.

CHAPTER FIVE
PROCEDURE OF ARBITRATION

ARTICLE XXXVIII. Notwithstanding the provisions of Chapter Four of this Treaty, the High Contracting Parties may, if they so agree, submit to arbitration differences of any kind, whether juridical or not, that have arisen or may arise in the future between them.

ARTICLE XXXIX. The Arbitral Tribunal to which a controversy is to be submitted shall, in the cases contemplated in Articles XXXV and XXXVIII of the present Treaty, be constituted in the following manner, unless there exists an agreement to the contrary.

ARTICLE XL. (1) Within a period of two months after notification of the decision of the Court in the case provided for in Article XXXV, each party shall name one arbiters of recognized competence in questions of international law and of the highest integrity, and shall transmit the designation to the Council of the Organization. At the same time, each party shall present to the Council a list of ten jurists chosen from among those on the general panel of members of the Permanent Court of Arbitration of The Hague who do not belong to its national group and who are willing to be members of the Arbitral Tribunal.

(2) The Council of the Organization shall, within the month following the presentation of the lists, proceed to establish the Arbitral Tribunal in the following manner:

a) If the lists presented by the parties contain three names in common, such persons, together with the two directly named by the parties, shall constitute the Arbitral Tribunal;

b) In case these lists contain more than three names in common, the three arbiters needed to complete the Tribunal shall be selected by lot;

c) In the circumstances envisaged in the two preceding clauses, the five arbiters designated shall choose one of their number as presiding officer;

d) If the lists contain only two names in common, such candidates and the two arbiters directly selected by the parties shall by common agreement choose the fifth arbiter, who shall preside over the Tribunal. The choice shall devolve upon a jurist on the aforesaid general panel of the Permanent Court of Arbitration of The Hague who has not been included in the lists drawn up by the parties;

e) If the lists contain only one name in common, that person shall be a member of the Tribunal, and another name shall be chosen by lot from among the eighteen jurists remaining on the above-mentioned lists. The presiding officer shall be elected in accordance with the procedure established in the preceding clause;

f) If the lists contain no names in common, one arbiter shall be chosen by lot from each of the lists; and the fifth arbiter, who shall act as presiding officer, shall be chosen in the manner previously indicated;

g) If the four arbiters cannot agree upon a fifth arbiter within one month after the Council of the Organization has notified them of their appointment, each of them shall separately arrange the list of jurists in the order of their preference and, after comparison of the lists so formed, the person who first obtains a majority vote shall be declared elected.

ARTICLE XLI. The parties may by mutual agreement establish the Tribunal in the manner they deem most appropriate; they may even select a single arbiter, designating in such case a chief of state, an eminent jurist, or any court of justice in which the parties have mutual confidence.

ARTICLE XLII. When more than two states are involved in the same controversy, the states defending the same interests shall be considered as a single party. If they have opposing interests they shall have the right to increase the number of arbiters so that all parties may have equal representation. The presiding officer shall be selected by the method established in Article XL.

ARTICLE XLIII. The parties shall in. each case draw up a special agreement clearly defining the specific matter that is the subject of the controversy, the seat of the Tribunal, the rules of procedure to be observed, the period within which the award is to be handed down, and such other conditions as they may agree upon among themselves.

If the special agreement cannot be drawn up within three months after the date of the installation of the

Tribunal, it shall be drawn up by the International Court of Justice through summary procedure, and shall be binding upon the parties.

ARTICLE XLIV. The parties may be represented before the Arbitral Tribunal by such persons as they may designate.

ARTICLE XLV. If one of the parties fails to designate its arbiter and present its list of candidates within the period provided for in Article XL, the other party shall have the right to request the Council of the Organization to establish the Arbitral Tribunal. The Council shall immediately urge the deliì~'quent party to fulfill its obligations within an additional period of fifteen days, after which time the Council itself shall establish the Tribunal in the following manner

a) It shall select a name by lot from the list presented by the petitioning party.

b) It shall choose, by absolute majority vote, two jurists from the general panel of the Permanent Court of Arbitration of The Hague who do not belong to the national group of any of the parties.

c) The three persons so designated, together with the one directly chosen by the petitioning party, shall select the fifth arbiter, who shall act as presiding officer, in the manner provided for in Article XL.

d) Once the Tribunal is installed, the procedure established in article XLIII shall be followed.

ARTICLE XLVI. The award shall be accompanied by a supporting opinion, shall be adopted by a majority vote, and shall be published. after notification thereof has been given to the parties. The dissenting arbiter or arbiters shall have the right to state the grounds for their dissent.
The award, once it is duly handed down and made known to the parties, shall settle the controversy definitively, shall not be subject to appeal, and shall be carried out immediately.

ARTICLE XLVII. Any differences that arise in regard to the interpretation or execution of the award shall be submitted to the decision of the Arbitral Tribunal that rendered the award.

ARTICLE XLVIII. Within a year after notification thereof, the award shall be subject to review by the same Tribunal at the request of one of the parties, provided a previously existing fact is discovered unknown to the Tribunal and to the party requesting the review, and provided the Tribunal is of the opinion that such fact might have a decisive influence on the award.

ARTICLE XLIX. Every member of the Tribunal shall receive financial remuneration, the amount of which shall be fixed by agreement between the parties. If the parties do not agree on the amount, the Council of the Organization shall determine the remuneration. Each Government shall pay its own expenses and an equal share of the common expenses of the Tribunal, including the aforementioned remunerations.

CHAPTER SIX
FULFILLMENT OF DECISIONS

ARTICLE L. If one of the High Contracting Parties should fail to carry out the obligations imposed upon it by a decision of the International Court. of Justice or by an arbitral award, the other party or parties concerned shall, before resorting to the Security Council of the United Nations, propose a Meeting of Consultation of Ministers of Foreign Affairs to agree upon appropriate measures to ensure the fulfillment of the judicial decision or arbitral award.

CHAPTER SEVEN
ADVISORY OPINIONS

ARTICLE LI. The parties concerned in the solution of a controversy may, by agreement, petition the General Assembly or the Security Council of the United Nations to request an advisory opinion of the International Court of Justice on any juridical question.

The petition shall be made through the Council of the Organization of American States.

CHAPTER EIGHT
FINAL PROVISIONS

ARTICLE LII. The present Treaty shall be ratified by the High Contracting Parties in accordance with their constitutional procedures. The original instrument shall be deposited in the Pan American Union, which shall transmit an authentic certified copy to each Government for the purpose of ratification. The instruments of ratification shall be deposited in the archives of the Pan American Union, which shall notify the signatory governments of the deposit. Such notification shall be considered as an exchange of ratifications.

ARTICLE LIII. This Treaty shall come into effect between the High Contracting Parties in the order in which they deposit their respective ratifications.

ARTICLE LIV. Any American State which is not a signatory to the present Treaty, or which has made reservations thereto, may adhere to it, or may withdraw its reservations in whole or in part, by transmitting an official instrument to the Pan American Union, which shall notify the other High Contracting Parties in the manner herein established.

ARTICLE LV. Should any of the High Contracting Parties make reservations concerning the present Treaty, such reservations shall, with respect to the state that makes them, apply to all signatory states on the basis of reciprocity.

ARTICLE LVI. The present Treaty shall remain in force indefinitely, but may be denounced upon one year's notice, at the end of which period it shall cease to be in force with respect to the state denouncing it, but shall continue in force for the remaining signatories. The denunciation shall be addressed to the Pan American Union, which shall transmit it to the other Contracting Parties.

The denunciation shall have no effect with respect to pending procedures initiated prior to the transmission of the particular notification.

ARTICLE LVII. The present Treaty shall be registered with the Secretariat of the United Nations through the Pan American Union.

ARTICLE VLIII. As this Treaty comes into effect through the successive ratifications of the High Contracting Parties, the following treaties, conventions and protocols shall cease to be in force with respect to such parties:
Treaty to Avoid or Prevent Conflicts between the American States, of May 3, 1923;
General Convention of Inter-American Conciliation, of January 5, 1929;
General Treaty of Inter-American Arbitration and Additional Protocol of Progressive Arbitration, of January 5, 1929;
Additional Protocol to the General Convention of Inter-American Conciliation, of December 26, 1933;
Anti-War Treaty of Non-Aggression and Conciliation, of October 10, 1933;
Convention to Coordinate, Extend and Assure the Fulfillment of the Existing Treaties between the American States, of December 23, 1936;
Inter-American Treaty on Good Offices and Mediation, of December 23, 1936;
Treaty on the Prevention of Controversies, of December 23, 1936.

ARTICLE LIX. The provisions of the foregoing Article shall not apply to procedures already initiated or agreed upon in accordance with any of the above-mentioned international instruments.

ARTICLE LX. The present Treaty shall be called the "PACT OF BOGOTÁ."

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, having deposited their full powers, found to be in good and due form, sign the present Treaty, in the name of their respective Governments, on the dates appearing below their signatures.

Done at the City of Bogotá, in four texts, in the English, French, Portuguese and Spanish languages respectively, on the thirtieth day of April, nineteen hundred forty-eight.

[Signatories and Ratifications]

ANNEX 2

Pact of Bogotá, Signatories and Ratifications



Multilateral Treaties

[Treaty] [text in Spanish]

A-42: AMERICAN TREATY ON PACIFIC SETTLEMENT (PACT OF BOGOTA)

ADOPTED AT: BOGOTA, COLOMBIA

DATE: 04/30/48

CONF/ASSEM/MEETING: NINTH INTERNATIONAL CONFERENCE OF AMERICAN STATES

ENTRY INTO FORCE: 05/06/49, IN ACCORDANCE WITH ARTICLE LIII OF THE TREATY

DEPOSITORY: GENERAL SECRETARIAT, OAS (ORIGINAL INSTRUMENT AND RATIFICATIONS)

TEXT: OAS, TREATY SERIES, NOS. 17 AND 61

UN REGISTRATION: 05/13/49 No. 449 Vol. 30

OBSERVATIONS: As this Treaty enters into force through the successive ratifications of the Parties, the treaties, conventions and protocols mentioned in Article LVIII cease to be in force with respect to such Parties.

GENERAL INFORMATION OF THE TREATY: A-42

COUNTRY	SIGNATURE	RATIFICATION/ACCESSION	DEPOSIT	INFORMATION*
Antigua & Barbuda	-	-	-	-
Argentina	04/30/48	-	-	Yes
Bahamas	-	-	-	-
Barbados	-	-	-	-
Belize	-	-	-	-
Bolivia	04/30/48	-	-	Yes
Brazil	04/30/48	11/09/65	11/16/65 RA	-
Canada	-	-	-	-
Chile	04/30/48	08/21/67	04/15/74 RA	Yes
Colombia	04/30/48	10/14/68	11/06/68 RA	-
Costa Rica	04/30/48	04/27/49	05/06/49 RA	-
Cuba	04/30/48	-	-	-
Dominica	-	-	-	-
Dominican Republic	04/30/48	08/04/50	09/12/50 RA	-
Ecuador	04/30/48	03/03/08	03/07/08 RA	Yes
El Salvador	04/30/48	08/15/50	09/11/50 RA	Denunciation
Grenada	-	-	-	-
Guatemala	04/30/48	-	-	-
Guyana	-	-	-	-
Haiti	04/30/48	08/21/50	03/28/51 RA	-
Honduras	04/30/48	01/13/50	02/07/50 RA	-
Jamaica	-	-	-	-
Mexico	04/30/48	11/23/48	11/23/48 RA	-

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Nicaragua	04/30/48	06/21/50	07/26/50 RA	Yes
Panama	04/30/48	04/17/51	04/25/51 RA	-
Paraguay	04/30/48	05/23/67	07/27/67 RA	Yes
Peru	04/30/48	02/28/67	05/26/67 RA	Yes
St. Kitts & Nevis	-	-	-	-
St. Lucia	-	-	-	-
St. Vincent & Grenadines	-	-	-	-
Suriname	-	-	-	-
Trinidad & Tobago	-	-	-	-
United States	04/30/48	-	-	Yes
Uruguay	04/30/48	08/17/55	09/01/55 RA	-
Venezuela	04/30/48	-	-	-

*DECLARATIONS/RESERVATIONS/DENUNCIATIONS/WITHDRAWS

A-42. AMERICAN TREATY ON PACIFIC SETTLEMENT

"PACT OF BOGOTA"

1. Argentina:

(Reservation made at the time of signature)

The Delegation of the Argentine Republic, on signing the American Treaty on Pacific Settlement (Pact of Bogotá), makes reservations in regard to the following articles, to which it does not adhere:

1) Article VII, concerning the protection of aliens:
2) Chapter Four (Articles XXXI to XXXVII), Judicial
Procedure:
3) Chapter Five (Articles XXXVIII to XLIX),
Procedure of Arbitration;
4) Chapter Six (Article L), Fulfillment of Decisions.

Arbitration and judicial procedure have, as institutions, the firm adherence of the Argentine Republic, but the Delegation cannot accept the form in which the procedures for their application have been regulated, since, in its opinion, they should have been established only for controversies arising in the future and not originating in or having any relation to causes, situations or facts existing before the signing of this instrument. The compulsory execution of arbitral or judicial decisions and the limitation which prevents the states from judging for themselves in regard to matters that pertain to their domestic jurisdiction in accordance with Article V are contrary to Argentine tradition. The protection of aliens, who in the Argentine Republic are protected by its Supreme Law to the same extent as the nationals, is also contrary to that tradition.

2. Bolivia:

(Reservation made at the time of signature)

The Delegation of Bolivia makes a reservation with regard to Article VI, inasmuch as it considers that pacific procedures may also be applied to controversies arising from matters settled by arrangement between the Parties, when the said arrangement affects the vital interests of a state.

3. Ecuador:

(Reservation made at the time of signature)

The Delegation of Ecuador, upon signing this Pact, makes an express reservation with regard to Article VI and also every provision that contradicts or is not in harmony with the principles proclaimed by or the stipulations contained in the Charter of the United Nations, the Charter of the Organization of American States, or the Constitution of the Republic of Ecuador.

4. United States:

(Reservations made at the time of signature)

1. The United States does not undertake as the complainant State to submit to the International Court of Justice any controversy which is not considered to be properly within the jurisdiction of the Court.

2. The submission on the part of the United States of any controversy to arbitration, as distinguished from judicial settlement, shall be dependent upon the conclusion of a special agreement between the parties to the case.

3. The acceptance by the United States of the jurisdiction of the International Court of Justice as compulsory ipso facto and without special agreement, as provided in this Treaty, is limited by any jurisdictional or other limitations contained in any Declaration deposited by the United States under Article 36, paragraph 4, of the Statute of the Court, and in force at the time of the submission of any case.

4. The Government of the United States cannot accept Article VII relating to diplomatic protection and the exhaustion of remedies. For its part, the Government of the United States maintains the rules of diplomatic protection, including the rule of exhaustion of local remedies by aliens, as provided by
international law.

5. Nicaragua:

(Reservation made at the time of signature)

The Nicaraguan Delegation, on giving its approval to the American Treaty on Pacific Settlement (Pact of Bogotá) wishes to record expressly that no provisions contained in the said Treaty may prejudice any position assumed by the Government of Nicaragua with respect to arbitral decisions the validity of which it has contested on the basis of the principles of international law, which clearly permit arbitral decisions to be attacked when they are adjudged to
be null or invalidated. Consequently, the signature of the Nicaraguan Delegation to the Treaty in question cannot be alleged as an acceptance of any arbitral decisions that Nicaragua has contested and the validity of which is not certain.

Hence the Nicaraguan Delegation reiterates the statement made on the 28th of the current month on approving the text of the above mentioned Treaty in Committee III.

(Reservation made at the time of ratification)

With the reservation made at the time of signature.

6. Paraguay:

(Reservation made at the time of signature)

Paraguay stipulates the prior agreement of the parties as a prerequisite to the arbitration procedure established in this Treaty for every question of a non-juridical nature affecting national sovereignty and not specifically agreed upon in treaties now in force.

7. Peru:

(Reservation made at the time of signature)

1. Reservation with regard to the second part of Article V, because it considers that domestic jurisdiction should be defined by the state itself.

2. Reservation with regard to Article XXXIII and the pertinent part of Article XXXIV, inasmuch as it considers that the exceptions of res judicata, resolved by settlement between the parties or governed by agreements and treaties in force, determine, in virtue of their objective and peremptory nature, the exclusion of these cases from the application of every procedure.

3. Reservation with regard to Article XXXV, in the sense that, before arbitration is resorted to, there may be, at the request of one of the parties, a meeting of the Organ of Consultation, as established in the Charter of the Organization of American States.

4. Reservation with regard to Article XLV, because it believes that arbitration set up without the participation of one of the parties is in contradiction with its constitutional provisions.

Peru confirmed the reservations at the time of the ratification.

On February 27th, 2006, Peru notified the General Secretariat of the OAS of the withdrawal of the reservations made to articles V, XXXIII, XXXIV, XXXV and XLV of the American Treaty on Pacific Settlement, "Pact of Bogota".

8. Chile:

(Reservation made at the time of ratification)

Chile considers that Article LV of the Pact, in the part that refers to the possibility that some of the Contracting States would make reservations, must be interpreted in the light of paragraph No. 2 of Resolution XXIX adopted at the Eighth International Conference of American States.

Permanent Panel of American Conciliators

(Information provided in accordance with Article XVIII)

On August 19, 1987, the Government of Chile notified the General Secretariat the appointment of Messrs. Julio Phillipi Izquierdo and Helmut Brunner Noerr to be members of the Permanent Panel of American Conciliators for a three year period. Such period started on October 21, 1987, the date on which the General Secretariat received from Messrs. Phillipi and Brunner the acceptance of their appointments.

9. El Salvador

DENUNCIATION

Pursuant to article LVI the American Treaty on Pacific Settlement, "The present Treaty shall remain in force indefinitely, but may be denounced upon one year's notice, at the end of which period it shall cease to be in force with respect to the state denouncing it, but shall continue in force for the remaining signatories.

The denunciation shall be addressed to the Pan American Union, which shall transmit it to the other Contracting Parties".

Similarly, that article states that such "denunciation shall have no effect
with respect to pending procedures initiated prior to the transmission"

¬
1. El Salvador notified denunciation November 24, 1973

Text of the denunciation:
San Salvador, November 24, 1973

His Excellency Galo Plaza
Secretary General of the
Organization of American States
Washington, D.C.

Excellency,

I hereby wish to notify the General Secretariat which you head, the successor to the Pan American Union, that the Republic of El Salvador is denouncing the American Treaty on Pacific Settlement, or "Pact of Bogotá," adopted at the Ninth International Conference of American States, held in Bogotá, Colombia, from March 30 to May 2, 1948. I would ask you to kindly transmit a copy of this note to the other High Contracting Parties.

The reasons that have prompted the Government of El Salvador to withdraw
from this collective agreement, thus freeing it from the obligations
it thereby assumed with respect to the other contracting parties,
are essentially the following:

On numerous occasions, El Salvador has expressed its absolute willingness and its firmest intent to work to develop an effective instrument for the peaceful settlement of disputes among the countries that make up the inter-American regional system.

ANNEX 2

It would take a long time indeed to cite the numerous proofs which would justify that assertion– which demonstrate the undeniable desire for peace that has characterized El Salvador in the past and distinguishes it in the present, and that it will doubtless preserve in the future, as one of the best traits of a people with a strong yearning to achieve the goals of individual and collective progress.

El Salvador participated with great interest and enthusiasm in the deliberations of the Ninth International Conference of American States, and the Salvadorian delegates to that important regional meeting signed the instrument that is now being denounced, which was ratified soon thereafter by the corresponding authorities of the Government of the Republic.

The signing and ratification by El Salvador of that multilateral agreement entailed an obligation, based on reciprocity, with all the other countries of the Americas, through the structure and mechanisms of an appropriate instrument consistent with the purposes for which it was designed.

Despite the spirit of complete solidarity that reigned when the Pact of Bogotá was signed by the delegates of the 21 participating states, only a few of them have ratified it to date, in other words, 25 years after its adoption.

The realities that have become apparent over time as a result of the failure of a large number of signatory states to ratify it show that the system developed in the Pact of Bogotá has not proven effective for the purposes that inspired it, and that it is not acceptable to many states of the Americas, since several of them signed or ratified it with reservations and not all new members of the Organization have acceded to it.

This has led El Salvador to reconsider its position within a multilateral treaty that, because of circumstances, has found itself immersed in the aforementioned realities–a reconsideration that has led it to adopt a new attitude vis-à-vis the views of the states that make up the inter-American system.

2. On the other hand, the application of some provisions of the Pact of Bogotá could put the Republic of El Salvador in situations that are contrary to the spirit and the letter of constitutional principles currently in force that enshrine its sovereignty and integrity and that did not exist when the Pact was ratified by our Republic. The foregoing has also been a powerful reason for the current Government of El Salvador, inspired at all times by the purpose to solve its international disputes directly and peacefully, to watch at the same time over the preservation and effective implementation of the constitutional principles that govern the life of the Republic and that reflect the feelings and the desires of the Salvadorian people.

3. Although El Salvador has decided to denounce the Pact of Bogotá, this does not mean that it is rejecting all forms of peaceful settlement of international disputes, as it is aware of the need for these forms and recognizes that there are other pertinent provisions within the inter-American

system, in particular in the Charter of the Organization of American States and in the Inter-American Treaty of Reciprocal Assistance, as well as in the Charter of the United Nations, that prohibit the use of force except in cases of legitimate defense, guard against aggression, and make resources available to states to settle disputes through specific peaceful procedures.

The situation mentioned above is precisely that of the states of the Americas that signed but did not ratify the Pact of Bogotá, that signed and ratified it with reservations, or that did not even accede to it.

Lastly, my government wishes to place on record that if El Salvador is now denouncing the Pact of Bogotá for the reasons expressed–a denunciation that will begin to take effect as of today, it reaffirms at the same time its firm resolve to continue participating in the collective efforts currently under way to restructure some aspects of the system in order to accommodate it to the fundamental changes that have occurred in relations among the states of the Americas.

I would ask you once again to arrange to have this denunciation circulated to the other High Contracting Parties.

Accept, Excellency, the renewed assurances of my highest consideration.

Mauricio A. Borgonovo Pohl
Minister of Foreign Affairs of El Salvador

[Text of the Treaty]

ANNEX 3

United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances,
U.N. Doc. E/CONF.82/15 (20 Dec. 1988), reprinted in 28 I.L.M. 493 (1989)



UNITED NATIONS CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES, 1988

UNITED NATIONS

ANNEX 3

FINAL ACT OF THE UNITED NATIONS CONFERENCE FOR THE ADOPTION OF A CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

1. The General Assembly of the United Nations, by its resolution 39/141 of 14 December 1984, requested the Economic and Social Council of the United Nations, "taking into consideration Article 62, paragraph 3, and Article 66, paragraph 1, of the Charter of the United Nations and Council resolution 9 (1) of 16 February 1946, to request the Commission on Narcotic Drugs to initiate at its thirty-first session, to be held in February 1985, as a matter of priority, the preparation of a draft convention against illicit traffic in narcotic drugs which considers the various aspects of the problem as a whole and, in particular, those not envisaged in existing international instruments . . .".

2. In furtherance of the foregoing request, and the follow-up action by the Commission on Narcotic Drugs and the Economic and Social Council, the Secretary-General of the United Nations prepared the initial text of a draft Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. On the basis of the comments made thereon by Governments and the deliberations of the Commission on Narcotic Drugs on that draft at its thirty-second session in 1987, the Secretary-General prepared a consolidated working document, which was circulated to all Governments in April 1987 and was considered at two sessions of an open-ended intergovernmental expert group. On 7 December 1987, the General Assembly adopted resolution 42/111, which gave further instructions for advancing the preparation of the draft Convention. As the time available to the expert group had not permitted thorough consideration of all the articles, the General Assembly requested the Secretary-General to consider convening a further intergovernmental expert group, meeting for two weeks immediately prior to the tenth special session of the Commission on Narcotic Drugs in February 1988, to continue revision of the working document on the draft Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and, if possible, to reach agreement on the Convention. At its tenth special session, held at Vienna from 8 to 19 February 1988, the Commission on Narcotic Drugs reviewed the text of the draft Convention and decided that certain articles thereof should be referred to the Conference to be convened to adopt a Convention. The Commission also recommended certain means to the Economic and Social Council to further the preparation of the draft Convention.

3. The Economic and Social Council, by its resolution 1988/8 of 25 May 1988, having recalled the preparatory work undertaken pursuant to General Assembly resolution 39/141 by the competent United Nations organs, decided "to convene, in accordance with Article 62, paragraph 4, of the Charter of the United Nations and within the provisions of General Assembly resolution 366 (IV) of 3 December 1949, a conference of plenipotentiaries for the adoption of a convention against illicit traffic in narcotic drugs and psychotropic substances". By its decision 1988/120, also adopted on 25 May 1988, the Council decided that the Conference should be held at Vienna from 25 November to 20 December 1988 and that the Secretary-General should send invitations to participate in the Conference to those who had been invited to participate in the International Conference on Drug Abuse and Illicit Trafficking, held at Vienna from 17 to 26 June 1987.

4. By its resolution 1988/8, the Economic and Social Council also decided to convene a review group for the Conference to review the draft texts of certain articles and the draft Convention as a whole to achieve overall consistency in the text to be submitted to the Conference. The Review Group on the draft Convention met at the United Nations Office at Vienna from 27 June to 8 July 1988 and adopted a report to the Conference (E/CONF.82/3).

5. The United Nations Conference for the Adoption of a Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances met at the Neue Hofburg at Vienna from 25 November to 20 December 1988.

6. Pursuant to Economic and Social Council resolution 1988/8 of 25 May 1988 and its decision 1988/120 of the same date, the Secretary-General invited to the Conference:

(a) All States;

(b) Namibia, represented by the United Nations Council for Namibia;

(c) Representatives of organizations that have received a standing invitation from the General Assembly to participate in the sessions and the work of all international conferences convened under its auspices in the capacity of observers to participate in the Conference in that capacity, in accordance with Assembly resolutions 3237 (XXIX) of 22 November 1974 and 31/152 of 20 December 1976;

(d) Representatives of the national liberation movements recognized in its region by the Organization of African Unity to participate in the Conference in the capacity of observers, in accordance with General Assembly resolution 3280 (XXIX) of 10 December 1974;

(e) The specialized agencies and the International Atomic Energy Agency, as well as interested organs of the United Nations, to be represented at the Conference;

(f) Other interested intergovernmental organizations to be represented by observers at the Conference;

(g) Interested non-governmental organizations in consultative status with the Economic and Social Council and other interested non-governmental organizations that may have a specific contribution to make to the work of the Conference to be represented by observers at the Conference.

7. The delegations of the following 106 States participated in the Conference: Afghanistan, Albania, Algeria, Argentina, Australia, Austria, Bahamas, Bahrain, Bangladesh, Barbados, Belgium, Bolivia, Botswana, Brazil, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Cameroon, Canada, Cape Verde, Chile, China, Colombia, Costa Rica, Côte d'Ivoire, Cuba, Cyprus, Czechoslovakia, Denmark, Dominican Republic, Ecuador, Egypt, Ethiopia, Finland, France, German Democratic Republic, Germany, Federal Republic of, Ghana, Greece, Guatemala, Guinea, Holy See, Honduras, Hungary, India, Indonesia, Iran (Islamic Republic of), Iraq, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kenya, Kuwait, Libyan Arab Jamahiriya, Luxembourg, Madagascar, Malaysia, Malta, Mauritania, Mauritius, Mexico, Monaco, Morocco, Nepal, Netherlands, New Zealand, Nicaragua, Nigeria, Norway, Oman, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Saudi Arabia, Senegal, Spain, Sri Lanka, Sudan, Suriname, Sweden, Switzerland, Thailand, Tunisia, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Uruguay, Venezuela, Viet Nam, Yemen, Yugoslavia and Zaire.

8. The representatives of the following national liberation movements, invited to the Conference by the Secretary-General, attended and participated as provided for in the rules of procedure of the Conference (E/CONF.8217): Pan Africanist Congress of Azania and South West Africa People's Organization.

9. The representatives of the following specialized agencies, invited to the Conference by the Secretary-General, attended and participated as provided for in the rules of procedure of the Conference: International Civil Aviation Organization, International Labour Organisation, United Nations Educational, Scientific and Cultural Organization, United Nations Industrial Development Organization and World Health Organization.

10. The representatives of the following other intergovernmental organizations, invited to the Conference by the Secretary-General, attended and participated as provided for in the rules of procedure of the Conference: Arab Security Studies and Training Center, Colombo Plan Bureau, Council of Europe, Customs Co-operation Council, European Economic Community, International Criminal Police Organization, League of Arab States and South American Agreement on Narcotic Drugs and Psychotropic Substances.

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11. The representatives of the following interested United Nations organs and related bodies, invited to the Conference by the Secretary-General, attended and participated as provided for in the rules of procedure of the Conference: Centre for Social Development and Humanitarian Affairs, International Narcotics Control Board, United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders and United Nations Fund for Drug Abuse Control.

12. Observers from the following non-governmental organizations, invited to the Conference by the Secretary-General, attended and participated as provided for in the rules of procedure of the Conference: Baha'i International Community, Caritas Internationalis, Centro Italiano de Solidarità, Colombia Therapeutic Communities, Co-ordinating Board of Jewish Organizations, Cruz Blanca Panama, Drug Abuse Prevention Programme, European Union of Women, Integrative Drogenhilfe a.d. Fachhochschule Ffm. e.v., International Abolitionist Federation, International Advertising Association, International Air Transport Association, International Association of Democratic Jurists, International Association of Lions Clubs, International Catholic Child Bureau, International Chamber of Commerce, International Confederation of Free Trade Unions, International Council on Women, International Council of Alcohol and Addictions, International Federation of Business and Professional Women, International Federation of Social Workers, International Pharmaceutical Federation, International Schools Association, Islamic African Relief Agency, Opium De-addiction Treatment, Training and Research Trust, Pace United Kingdom International Affairs, Pax Romana, Soroptimist International, World Association of Girl Guides and Girl Scouts, World Union of Catholic Women's Organizations and Zonta International Committee.

13. The Conference elected Mr. Guillermo Bedregal Gutiérrez (Bolivia) as President.

14. The Conference elected as Vice-Presidents the representatives of the following States: Algeria, Argentina, Bahamas, China, Côte d'Ivoire, France, Iran (Islamic Republic of), Japan, Kenya, Malaysia, Mexico, Morocco, Nigeria, Pakistan, Philippines, Senegal, Sudan, Sweden, Turkey, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela and Yugoslavia.

15. The Conference elected Mrs. Mervat Tallawy (Egypt) as Rapporteur-General.

16. The following Committees were set up by the Conference:

General Committee

Chairman: The President of the Conference

Members: The President and Vice-Presidents of the Conference, the Rapporteur-General of the Conference, the Chairmen of the Committees of the Whole and the Chairman of the Drafting Committee.

Committees of the Whole

Committee I

Chairman: Mr. Gioacchino Polimeni (Italy)

Vice-Chairman: Mr. M.A. Hena (Bangladesh)

Rapporteur: Mr. Oskar Hugler (German Democratic Republic)

Committee II

Chairman: Mr. István Bayer (Hungary)

Vice-Chairman: Mr. L.H.J.B. van Gorkom (Netherlands)

Rapporteur: Mrs. Yolanda Fernández Ochoa (Costa Rica)

Drafting Committee

Chairman: Mr. M.V.N. Rao (India)

Vice-Chairman: Mr. Hashem M. Kuraa (Egypt)

Members: The Chairman of the Drafting Committee and the representatives of the following States: Australia, Botswana, Canada, China, Colombia, Czechoslovakia, Egypt, France, Ghana, Iraq, Peru, Senegal, Spain and Union of Soviet Socialist Republics.

The Rapporteurs of the Committees of the Whole participated ex *officio* in the work of the Drafting Committee in accordance with rule 49 of the rules of procedure of the Conference.

Credentials Committee

Chairman: Mr. Edouard Molitor (Luxembourg)

Members: The representatives of the following States: Bolivia, Botswana, China, Côte d'Ivoire, Jamaica, Luxembourg, Thailand, Union of Soviet Socialist Republics and United States of America.

17. The Secretary-General of the United Nations was represented by Miss Margaret J. Anstee, Under-Secretary-General, Director-General of the United Nations Office at Vienna. Mr. Francisco Ramos-Galino, Director of the Division of Narcotic Drugs, was appointed by the Secretary-General as Executive Secretary.

18. The Conference had before it the report of the Review Group convened pursuant to Economic and Social Council resolution 1988/8 of 25 May 1988 (E/CONF.82/3). In addition to an account of the work of the Review Group, the report contained proposals submitted to the Review Group relating to the draft Convention for consideration by the Conference, and the text of the draft Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (annex II). This draft Convention constituted the basic proposal for consideration by the Conference.

19. The Conference in the course of its work divided the articles contained in the draft Convention between the two Committees of the Whole (Committee I and Committee 11). Articles 1 to 5 and the preamble were referred to Committee 1 and the remaining articles to Committee II. The Committees of the Whole, after agreeing upon the text of a particular article, referred it to the Drafting Committee. The Committees of the Whole reported to the Conference on the outcome of their work and the Drafting Committee submitted to the Conference a complete text of the draft Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (E/CONF.82/13).

20. On the basis of the deliberations set forth in the records of the Conference (E/CONF.82/SR.1 to 8) and of the Committees of the Whole (E/CONF.82/C.1/SR.1 to 33 and E/CONF.82/C.2/SR.1 to 34) and the reports of the Committees of the Whole (E/CONF.82/11 and E/CONF.82/12) and the Drafting Committee (E/CONF.82/13), the Conference drew up the following Convention:

United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

21. The foregoing Convention, which is subject to ratification, acceptance, approval or act of formal confirmation, and which shall remain open for accession, was adopted by the Conference on 19 December 1988 and opened for signature on 20 December 1988, in accordance with its provisions, until 28 February 1989 at the United Nations Office at Vienna and, subsequently, until 20 December 1989, at the Headquarters of the United Nations at New York, the Secretary-General of the United Nations being the depositary.

22. The Conference also adopted the following resolutions, which are annexed to this Final Act:

1. Exchange of information

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2. Provisional application of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances

3. Provision of necessary resources to the Division of Narcotic Drugs and the secretariat of the International Narcotics Control Board to enable them to discharge the tasks entrusted to them under the International Drug Control Treaties

IN WITNESS WHEREOF the representatives have signed this Final Act.
DONE AT VIENNA this twentieth day of December one thousand nine hundred and eighty-eight, in a single copy, which will be deposited with the Secretary-General of the United Nations, in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

RESOLUTIONS ADOPTED BY THE UNITED NATIONS CONFERENCE FOR THE ADOPTION OF A CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

Resolution 1

EXCHANGE OF INFORMATION

The United Nations Conference for the Adoption of a Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances,

Calling attention to resolution III adopted by the 1961 United Nations Conference for the Adoption of a Single Convention on Narcotic Drugs, in which attention was drawn to the importance of the technical records on international drug traffickers of the International Criminal Police Organization and their use by that organization for the circulation of descriptions of such traffickers,

Considering the machinery developed by the International Criminal Police Organization for the timely and efficient exchange of crime investigation information between police authorities on a world-wide basis,

Recommends that the widest possible use should be made by police authorities of the records and communications system of the International Criminal Police Organization in achieving the goals of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

Resolution 2

PROVISIONAL APPLICATION OF THE UNITED NATIONS CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

The United Nations Conference for the Adoption of a Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances,

1. *Urges* States, to the extent that they are able to do so, to accelerate steps to ratify the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances so that it enters into force as quickly as possible;

2. *Invites* States, to the extent that they are able to do so, to apply provisionally the measures provided in the Convention pending its entry into force for each of them;

3. *Requests* the Secretary-General to transmit the present resolution to the Economic and Social Council and the General Assembly.

Resolution 3

PROVISION OF NECESSARY RESOURCES TO THE DIVISION OF NARCOTIC DRUGS AND THE SECRETARIAT OF THE INTERNATIONAL NARCOTICS CONTROL BOARD TO

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**ENABLE THEM TO DISCHARGE THE TASKS ENTRUSTED TO THEM UNDER THE INTER-
NATIONAL DRUG CONTROL TREATIES**

The United Nations Conference for the Adoption of a Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances,

Recognizing that the Single Convention on Narcotic Drugs, 1961, that Convention as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961, and the Convention on Psychotropic Substances 1971, remain the basis for international efforts in the control of narcotic drugs and psychotropic substances, and that strict implementation both by Governments and by the international control organs of the United Nations of the obligations arising from the Conventions is essential to achieve their aims,

Considering that the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances will create further obligations and financial outlays for Governments, the Commission on Narcotic Drugs, the International Narcotics Control Board and their secretariats,

Deeply disturbed by the impact of recent staffing and budgetary reductions on the capacity of both the Division of Narcotic Drugs and the secretariat of the International Narcotics Control Board to carry out fully their mandated programme of work,

1. *Urges* all Member States to take appropriate steps in the General Assembly as well as in the financial organs of the Assembly to assign the appropriate priority and approve the necessary budgetary appropriations with a view to providing the Division of Narcotic Drugs and the secretariat of the International Narcotics Control Board with the necessary resources to discharge fully the tasks entrusted to them under the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, the Single Convention on Narcotic Drugs, 1961, that Convention as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961, and the Convention on Psychotropic Substances, 1971;

2. *Requests* the Secretary-General to take the necessary steps, within his competence, to give effect to the provisions of paragraph 1 above.

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UNITED NATIONS CONVENTION AGAINST ILICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

The Parties to this Convention,

Deeply concerned by the magnitude of and rising trend in the illicit production of, demand for and traffic in narcotic drugs and psychotropic substances, which pose a serious threat to the health and welfare of human beings and adversely affect the economic, cultural and political foundations of society,

Deeply concerned also by the steadily increasing inroads into various social groups made by illicit traffic in narcotic drugs and psychotropic substances, and particularly by the fact that children are used in many parts of the world as an illicit drug consumers market and for purposes of illicit production, distribution and trade in narcotic drugs and psychotropic substances, which entails a danger of incalculable gravity,

Recognizing the links between illicit traffic and other related organized criminal activities which undermine the legitimate economies and threaten the stability, security and sovereignty of States,

Recognizing also that illicit traffic is an international criminal activity, the suppression of which demands urgent attention and the highest priority,

Aware that illicit traffic generates large financial profits and wealth enabling transnational criminal organizations to penetrate, contaminate and corrupt the structures of government, legitimate commercial and financial business, and society at all its levels,

Determined to deprive persons engaged in illicit traffic of the proceeds of their criminal activities and thereby eliminate their main incentive for so doing,

Desiring to eliminate the root causes of the problem of abuse of narcotic drugs and psychotropic substances, including the illicit demand for such drugs and substances and the enormous profits derived from illicit traffic,

Considering that measures are necessary to monitor certain substances, including precursors, chemicals and solvents, which are used in the manufacture of narcotic drugs and psychotropic substances, the ready availability of which has led to an increase in the clandestine manufacture of such drugs and substances,

Determined to improve international co-operation in the suppression of illicit traffic by sea,

Recognizing that eradication of illicit traffic is a collective responsibility of all States and that, to that end, co-ordinated action within the framework of international co-operation is necessary,

Acknowledging the competence of the United Nations in the field of control of narcotic drugs and psychotropic substances and desirous that the international organs concerned with such control should be within the framework of that Organization,

Reaffirming the guiding principles of existing treaties in the field of narcotic drugs and psychotropic substances and the system of control which they embody,

Recognizing the need to reinforce and supplement the measures provided in the Single Convention on Narcotic Drugs, 1961, that Convention as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961, and the 1971 Convention on Psychotropic Substances, in order to counter the magnitude and extent of illicit traffic and its grave consequences,

Recognizing also the importance of strengthening and enhancing effective legal means for international co-operation in criminal matters for suppressing the international criminal activities of illicit traffic,

Desiring to conclude a comprehensive, effective and operative international convention that is directed specifically against illicit traffic and that considers the various aspects of the problem as a whole, in particular those aspects not envisaged in the existing treaties in the field of narcotic drugs and psychotropic substances,

Hereby agree as follows:

Article 1

DEFINITIONS

Except where otherwise expressly indicated or where the context otherwise requires, the following definitions shall apply throughout this Convention:

a) "Board" means the International Narcotics Control Board established by the Single Convention on Narcotic Drugs, 1961, and that Convention as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961;
b) "Cannabis plant" means any plant of the genus Cannabis;
c) "Coca bush" means the plant of any species of the genus Erythroxylon;
d) "Commercial carrier" means any person or any public, private or other entity engaged in transporting persons, goods or mails for remuneration, hire or any other benefit;
e) "Commission" means the Commission on Narcotic Drugs of the Economic and Social Council of the United Nations;
f) "Confiscation", which includes forfeiture where applicable, means the permanent deprivation of property by order of a court or other competent authority;
g) "Controlled delivery" means the technique of allowing illicit or suspect consignments of narcotic drugs, psychotropic substances, substances in Table I and Table II annexed to this Convention, or substances substituted for them, to pass out of, through or into the territory of one or more countries, with the knowledge and under the supervision of their competent authorities, with a view to identifying persons involved in the commission of offences established in accordance with article 3, paragraph 1 of the Convention;
h) "1961 Convention" means the Single Convention on Narcotic Drugs, 1961;
i) "1961 Convention as amended" means the Single Convention on Narcotic Drugs, 1961, as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961;
j) "1971 Convention" means the Convention on Psychotropic Substances, 1971;
k) "Council" means the Economic and Social Council of the United Nations;
l) "Freezing" or "seizure" means temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or a competent authority;
m) "Illicit traffic" means the offences set forth in article 3, paragraphs 1 and 2, of this Convention;
n) "Narcotic drug" means any of the substances, natural or synthetic, in Schedules I and II of the Single Convention on Narcotic Drugs, 1961, and that Convention as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961;
o) "Opium poppy" means the plant of the species *Papaver somniferum L*;
p) "Proceeds" means any property derived from or obtained, directly or indirectly, through the commission of an offence established in accordance with article 3, paragraph 1;
q) "Property" means assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets;
r) "Psychotropic substance" means any substance, natural or synthetic, or any natural material in Schedules I, II, III and IV of the Convention on Psychotropic Substances, 1971;
s) "Secretary-General" means the Secretary-General of the United Nations;
t) "Table I" and "Table II" mean the correspondingly numbered lists of substances annexed to this Convention, as amended from time to time in accordance with article 12,
u) "Transit State" means a State through the territory of which illicit narcotic drugs, psychotropic substances and substances in Table I and Table II are being moved, which is neither the place of origin nor the place of ultimate destination thereof.

Article 2

SCOPE OF THE CONVENTION

1. The purpose of this Convention is to promote co-operation among the Parties so that they may address more effectively the various aspects of illicit traffic in narcotic drugs and psychotropic substances having an international dimension. In carrying out their obligations under the Convention, the Parties shall take necessary measures, including legislative and administrative measures, in conformity with the fundamental provisions of their respective domestic legislative systems.

2. The Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

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3. A Party shall not undertake in the territory of another Party the exercise of jurisdiction and performance of functions which are exclusively reserved for the authorities of that other Party by its domestic law.

Article 3

OFFENCES AND SANCTIONS

1. Each Party shall adopt such measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally:

a) i) The production, manufacture, extraction; preparation, offering, offering for sale, distribution, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation or exportation of any narcotic drug or any psychotropic substance contrary to the provisions of the 1961 Convention, the 1961 Convention as amended or the 1971 Convention;

ii) The cultivation of opium poppy, coca bush or cannabis plant for the purpose of the production of narcotic drugs contrary to the provisions of the 1961 Convention and the 1961 Convention as amended;

iii) The possession or purchase of any narcotic drug or psychotropic substance for the purpose of any of the activities enumerated in i) above;

iv) The manufacture, transport or distribution of equipment, materials or of substances listed in Table I and Table II, knowing that they are to be used in or for the illicit cultivation, production or manufacture of narcotic drugs or psychotropic substances;

v) The organization, management or financing of any of the offences enumerated in i), ii), iii) or iv) above;

b) i) The conversion or transfer of property, knowing that such property is derived from any offence or offences established in accordance with subparagraph *a)* of this paragraph, or from an act of participation in such offence or offences, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an offence or offences to evade the legal consequences of his actions;

ii) The concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from an offence or offences established in accordance with subparagraph *a)* of this paragraph or from an act of participation in such an offence or offences;

c) Subject to its constitutional principles and the basic concepts of its legal system:

i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property was derived from an offence or offences established in accordance with subparagraph a) of this paragraph or from an act of participation in such offence or offences;

ii) The possession of equipment or materials or substances listed in Table I and Table II, knowing that they are being or are to be used in or for the illicit cultivation, production or

iii) Publicly inciting or inducing others, by any means, to commit any of the offences established in accordance with this article or to use narcotic drugs or psychotropic substances illicitly;

iv) Participation in, association or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.

2. Subject to its constitutional principles and the basic concepts of its legal system, each Party shall adopt such measures as may be necessary to establish as a criminal offence under its domestic law, when committed intentionally, the possession, purchase or cultivation of narcotic drugs or psychotropic substances for personal consumption contrary to the provisions of the 1961 Convention, the 1961 Convention as amended or the 1971 Convention.

3. Knowledge, intent or purpose required as an element of an offence set forth in paragraph 1 of this article may be inferred from objective factual circumstances.

4. a) Each Party shall make the commission of the offences established in accordance with paragraph 1 of this article liable to sanctions which take into account the grave nature of these offences, such as imprisonment or other forms of deprivation of liberty, pecuniary sanctions and confiscation.
b) The Parties may provide, in addition to conviction or punishment, for an offence established in accordance with paragraph 1 of this article, that the offender shall undergo measures such as treatment, education, aftercare, rehabilitation or social reintegration.
c) Notwithstanding the preceding subparagraphs, in appropriate cases of a minor nature, the Parties may provide, as alternatives to conviction or punishment, measures such as education, rehabilitation or social reintegration, as well as, when the offender is a drug abuser, treatment and aftercare.
d) The Parties may provide, either as an alternative to conviction or punishment, or in addition to conviction or punishment of an offence established in accordance with paragraph 2 of this article, measures for the treatment, education, aftercare, rehabilitation or social reintegration of the offender.

5. The Parties shall ensure that their courts and other competent authorities having jurisdiction can take into account factual circumstances which make the commission of the offences established in accordance with paragraph l of this article particularly serious, such as:

a) The involvement in the offence of an organized criminal group to which the offender belongs;
b) The involvement of the offender in other international organized criminal activities;
c) The involvement of the offender in other illegal activities facilitated by commission of the offence;
d) The use of violence or arms by the offender;
e) The fact that the offender holds a public office and that the offence is connected with the office in question;
f) The victimization or use of minors;
g) The fact that the offence is committed in a penal institution or in an educational institution or social service facility or in their immediate vicinity or in other places to which school children and students resort for educational, sports and social activities;
h) Prior conviction, particularly for similar offences, whether foreign or domestic, to the extent permitted under the domestic law of a Party.

6. The Parties shall endeavour to ensure that any discretionary legal powers under their domestic law relating to the prosecution of persons for offences established in accordance with this article are exercised to maximize the effectiveness of law enforcement measures in respect of those offences, and with due regard to the need to deter the commission of such offences.

7. The Parties shall, ensure that their courts or other competent authorities bear in mind the serious nature of the offences enumerated in paragraph l of this article and the circumstances enumerated in paragraph 5 of this article when considering the eventuality of early release or parole of persons convicted of such offences.

8. Each Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence established in accordance with paragraph 1 of this article, and a longer period where the alleged offender has evaded the administration of justice.

9. Each Party shall take appropriate measures, consistent with its legal system, to ensure that a person charged with or convicted of an offence established in accordance with paragraph 1 of this article, who is found within its territory, is present at the necessary criminal proceedings.

10. For the purpose of co-operation among the Parties under this Convention, including, in particular, co-operation under articles 5, 6, 7 and 9, offences established in accordance with this article shall not be considered as fiscal offences or as political offences or regarded as politically motivated, without prejudice to the constitutional limitations and the fundamental domestic law of the Parties.

11. Nothing contained in this article shall affect the principle that the description of the offences to which it refers and of legal defences thereto is reserved to the domestic law of a Party and that such offences shall be prosecuted and punished in conformity with that law.

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Article 4

JURISDICTION

1. Each Party:

a) Shall take such measures as may be necessary to establish its jurisdiction over the offences it has established in accordance with article 3, paragraph 1, when:

i) The offence is committed in its territory;
ii) The offence is committed on board a vessel flying its flag or an aircraft which is registered under its laws at the time the offence is committed;

b) May take such measures as maybe necessary to establish its jurisdiction over the offences it has established in accordance with article 3, paragraph 1, when:

i) The offence is committed by one of its nationals or by a person who has his habitual residence in its territory;
ii) The offence is committed on board a vessel concerning which that Party has been authorized to take appropriate action pursuant to article 17, provided that such jurisdiction shall be exercised only on the basis of agreements or arrangements referred to in paragraphs 4 and 9 of that article;
iii) The offence is one of those established in accordance with article 3, paragraph 1, subparagraph c) iv), and is committed outside its territory with a view to the commission, within its territory, of an offence established in accordance with article 3, paragraph 1.

2. Each Party:

a) Shall also take such measures as may be necessary to establish its jurisdiction over the offences it has established in accordance with article 3, paragraph 1, when the alleged offender is present in its territory and it does not extradite him to another Party on the ground:

i) That the offence has been committed in its territory or on board a vessel flying its flag or an aircraft which was registered under its law at the time the offence was committed; or
ii) That the offence has been committed by one of its nationals;

b) May also take such measures as may be necessary to establish its jurisdiction over the offences it has established in accordance with article 3, paragraph 1, when the alleged offender is present in its territory and it does not extradite him to another Party.

3. This Convention does not exclude the exercise of any criminal jurisdiction established by a Party in accordance with its domestic law.

Article 5

CONFISCATION

1. Each Party shall adopt such measures as may be necessary to enable confiscation of:

a) Proceeds derived from offences established in accordance with article 3, paragraph 1, or property the value of which corresponds to that of such proceeds;
b) Narcotic drugs and psychotropic substances, materials and equipment or other instrumentalities used in or intended for use in any manner in offences established in accordance with article 3, paragraph 1.

2. Each Party shall also adopt such measures as may be necessary to enable its competent authorities to identify, trace, and freeze or seize proceeds, property, instrumentalities or any other things referred to in paragraph 1 of this article, for the purpose of eventual confiscation.

3. In order to carry out the measures referred to in this article, each Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized. A Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.

4. a) Following a request made pursuant to this article by another Party having jurisdiction over an offence established in accordance with article 3, paragraph 1, the Party in whose territory proceeds, property, instrumentalities or any other things referred to in paragraph 1 of this article are situated shall:

   i) Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such order is granted, give effect to it; or
   ii) Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by the requesting Party in accordance with paragraph 1 of this article, in so far as it relates to proceeds, property, instrumentalities or any other things referred to in paragraph 1 situated in the territory of the requested Party.

   b) Following a request made pursuant to this article by another Party having jurisdiction over an offence established in accordance with article 3, paragraph 1, the requested Party shall take measures to identify, trace, and freeze or seize proceeds, property, instrumentalities or any other things referred to in paragraph l of this article for the purpose of eventual confiscation to be ordered either by the requesting Party or, pursuant to a request under subparagraph a) of this paragraph, by the requested Party.
   c) The decisions or actions provided for in subparagraphs a) and b) of this paragraph shall be taken by the requested Party, in accordance with and subject to the provisions of its domestic law and its procedural rules or any bilateral or multilateral treaty, agreement or arrangement to which it may be bound in relation to the requesting Party.
   d) The provisions of article 7, paragraphs 6 to 19 are applicable mutatis mutandis. In addition to the information specified in article 7, paragraph 10, requests made pursuant to this article shall contain the following:

   i) In the case of a request pertaining to subparagraph a) i) of this paragraph, a description of the property to be confiscated and a statement of the facts relied upon by the requesting Party sufficient to enable the requested Party to seek the order under its domestic law;
   ii) In the case of a request pertaining to subparagraph a) ii), a legally admissible copy of an order of confiscation issued by the requesting Party upon which the request is based, a statement of the facts and information as to the extent to which the execution of the order is requested;
   iii) In the case of a request pertaining to subparagraph b), a statement of the facts relied upon by the requesting Party and a description of the actions requested.

   e) Each Party shall furnish to the Secretary-General the text of any of its laws and regulations which give effect to this paragraph and the text of any subsequent changes to such laws and regulations.
   f) If a Party elects to make the taking of the measures referred to in subparagraphs a) and b) of this paragraph conditional on the existence of a relevant treaty, that Party shall consider this Convention as the necessary and sufficient treaty basis.
   g) The Parties shall seek to conclude bilateral and multilateral treaties, agreements or arrangements to enhance the effectiveness of international co-operation pursuant to this article.

5. a) Proceeds or property confiscated by a Party pursuant to paragraph 1 or paragraph 4 of this article shall be disposed of by that Party according to its domestic law and administrative procedures.
   b) When acting on the request of another Party in accordance with this article, a Party may give special consideration to concluding agreements on:

   i) Contributing the value of such proceeds and property, or funds derived from the sale of such proceeds or property, or a substantial part thereof, to intergovernmental bodies specializing in the fight against illicit traffic in and abuse of narcotic drugs and psychotropic substances;
   ii) Sharing with other Parties, on a regular or case-by-case basis, such proceeds or property, or funds derived from the sale of such proceeds or property, in accordance with its domestic law, administrative procedures or bilateral or multilateral agreements entered into for this purpose.

6. a) If proceeds have been transformed or converted into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.

b) If proceeds have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to seizure or freezing, be liable to confiscation up to the assessed value of the intermingled proceeds.

c) Income or other benefits derived from:

i) Proceeds;

ii) Property into which proceeds have been transformed or converted; or

iii) Property with which proceeds have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds.

7. Each Party may consider ensuring that the onus of proof be reversed regarding the lawful origin of alleged proceeds or other property liable to confiscation, to the extent that such action is consistent with the principles of its domestic law and with the nature of the judicial and other proceedings.

8. The provisions of this article shall not be construed as prejudicing the rights of bona fide third parties.

9. Nothing contained in this article shall affect the principle that the measures to which it refers shall be defined and implemented in accordance with and subject to the provisions of the domestic law of a Party.

Article 6

EXTRADITION

1. This article shall apply to the offences established by the Parties in accordance with article 3, paragraph 1.

2. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between Parties. The Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

3. If a Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another Party with which it has no extradition treaty, it may consider this Convention as the legal basis for extradition in respect of any offence to which this article applies. The Parties which require detailed legislation in order to use this Convention as a legal basis for extradition shall consider enacting such legislation as may be necessary.

4. The Parties which do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.

5. Extradition shall be subject to the conditions provided for by the law of the requested Party or by applicable extradition treaties, including the grounds upon which the requested Party may refuse extradition.

6. In considering requests received pursuant to this article, the requested State may refuse to comply with such requests where there are substantial grounds leading its judicial or other competent authorities to believe that compliance would facilitate the prosecution or punishment of any person on account of his race, religion, nationality or political opinions, or would cause prejudice for any of those reasons to any person affected by the request.

7. The Parties shall endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.

8. Subject to the provisions of its domestic law and its extradition treaties, the requested Party may, upon being satisfied that the circumstances so warrant and are urgent, and at the request of the requesting Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his presence at extradition proceedings.

9. Without prejudice to the exercise of any criminal jurisdiction established in accordance with its domestic law, a Party in whose territory an alleged offender is found shall:

a) If it does not extradite him in respect of an offence established in accordance with article 3, paragraph l, on the grounds set forth in article 4, paragraph 2, subparagraph a), submit the case to its competent authorities for the purpose of prosecution, unless otherwise agreed with the requesting Party;
b) If it does not extradite him in respect of such an offence and has established its jurisdiction in relation to that offence in accordance with article 4, paragraph 2, subparagraph b), submit the case to its competent authorities for the purpose of prosecution, unless otherwise requested by the requesting Party for the purposes of preserving its legitimate jurisdiction.

10. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested Party, the requested Party shall, if its law so permits and in conformity with the requirements of such law, upon application of the requesting Party, consider, the enforcement of the sentence which has been imposed under the law of the requesting Party, or the remainder thereof.

11. The Parties shall seek to conclude bilateral and multilateral agreements to carry out or to enhance the effectiveness of extradition.
12. The Parties may consider entering into bilateral or multilateral agreements, whether *ad hoc* or general, on the transfer to their country of persons sentenced to imprisonment and other forms of deprivation of liberty for offences to which this article applies, in order that they may complete their sentences there.

Article 7

MUTUAL LEGAL ASSISTANCE

1. The Parties shall afford one another, pursuant to this article, the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to criminal offences established in accordance with article 3, paragraph 1.

2. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

a) Taking evidence or statements from persons;
b) Effecting service of judicial documents;
c) Executing searches and seizures;
d) Examining objects and sites;
e) Providing information and evidentiary items;
f) Providing originals or certified copies of relevant documents and records, including bank, financial, corporate or business records;
g) Identifying or tracing proceeds, property, instrumentalities or other things for evidentiary purposes.

3. The Parties may afford one another any other forms of mutual legal assistance allowed by the domestic law of the requested Party.

4. Upon request, the Parties shall facilitate or encourage, to the extent consistent with their domestic law and practice, the presence or availability of persons, including persons in custody, who consent to assist in investigations or participate in proceedings.

5. A Party shall not decline to render mutual legal assistance under this article on the ground of bank secrecy.

6. The provisions of this article shall not affect the obligations under any other treaty, bilateral or multilateral, which governs or will govern, in whole or in part, mutual legal assistance in criminal matters.

7. Paragraphs 8 to 19 of this article shall apply to requests made pursuant to this article if the Parties in question are not bound by a treaty of mutual legal assistance. If these Parties are bound by such a treaty, the corresponding provisions of that treaty shall apply unless the Parties agree to apply paragraphs 8 to 19 of this article in lieu thereof.

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8. Parties shall designate an authority, or when necessary authorities, which shall have the responsibility and power to execute requests for mutual legal assistance or to transmit them to the competent authorities for execution. The authority or the authorities designated for this purpose shall be notified to the Secretary-General. Transmission of requests for mutual legal assistance and any communication related thereto shall be effected between the authorities designated by the Parties; this requirement shall be without prejudice to the right of a Party to require that such requests and communications be addressed to it through the diplomatic channel and, in urgent circumstances, where the Parties agree, through channels of the International Criminal Police Organization, if possible.

9. Requests shall be made in writing in a language acceptable to the requested Party. The language or languages acceptable to each Party shall be notified to the Secretary-General. In urgent circumstances, and where agreed by the Parties, requests may be made orally, but shall be confirmed in writing forthwith.

10. A request for mutual legal assistance shall contain:

a) The identity of the authority making the request;
b) The subject matter and nature of the investigation, prosecution or proceeding to which the request relates, and the name and the functions of the authority conducting such investigation, prosecution or proceeding;
c) A summary of the relevant facts, except in respect of requests for the purpose of service of judicial documents;
d) A description of the assistance sought and details of any particular procedure the requesting Party wishes to be followed;
e) Where possible, the identity, location and nationality of any person concerned;
f) The purpose for which the evidence, information or action is sought.

11. The requested Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

12. A request shall be executed in accordance with the domestic law of the requested Party and, to the extent not contrary to the domestic law of the requested Party and where possible, in accordance with the procedures specified in the request.

13. The requesting Party shall not transmit nor use information or evidence furnished by the requested Party for investigations, prosecutions or proceedings other than those stated in the request without the prior consent of the requested Party.

14. The requesting Party may require that the requested Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting Party.

15. Mutual legal assistance may be refused:

a) If the request is not made in conformity with the provisions of this article;
b) If the requested Party considers that execution of the request is likely to prejudice its sovereignty, security, ordre public or other essential interests;
c) If the authorities of the requested Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or proceedings under their own jurisdiction;
d) If it would be contrary to the legal system of the requested Party relating to mutual legal assistance for the request to be granted.

16. Reasons shall be given for any refusal of mutual legal assistance.

17. Mutual legal assistance may be postponed by the requested Party on the ground that it interferes with an ongoing investigation, prosecution or proceeding. In such a case, the requested Party shall consult with the requesting Party to determine if the assistance can still be given subject to such terms and conditions as the requested Party deems necessary.

18. A witness, expert or other person who consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting Party, shall not be prosecuted, detained, punished or subjected to any other restriction of his personal liberty in that territory in respect of acts, omissions or convictions prior to his departure from the territory of the requested Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days, or for any period agreed upon by the Parties, from the date on which

he has been officially informed that his presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory or, having left it, has returned of his own free will.

19. The ordinary costs of executing a request shall be borne by the requested Party, unless otherwise agreed by the Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the Parties shall consult to determine the terms and conditions under which the request will be executed as well as the manner in which the costs shall be borne.

20. The Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to, or enhance the provisions of this article.

Article 8

TRANSFER OF PROCEEDINGS

The Parties shall give consideration to the possibility of transferring to one another proceedings for criminal prosecution of offences established in accordance with article 3, paragraph 1, in cases where such transfer is considered to be in the interests of a proper administration of justice.

Article 9

OTHER FORMS OF CO-OPERATION AND TRAINING

1. The Parties shall co-operate closely with one another, consistent with their respective domestic legal and administrative systems, with a view to enhancing the effectiveness of law enforcement action to suppress the commission of offences established in accordance with article 3, paragraph 1. They shall, in particular, on the basis of bilateral or multilateral agreements or arrangements:

a) Establish and maintain channels of communication between their competent agencies and services to facilitate the secure and rapid exchange of information concerning all aspects of offences established in accordance with article 3, paragraph 1, including, if the Parties concerned deem it appropriate, links with other criminal activities;

b) Co-operate with one another in conducting enquiries, with respect to offences established in accordance with article 3, paragraph 1, having an international character, concerning:

i) The identity, whereabouts and activities of persons suspected of being involved in offences established in accordance with article 3, paragraph 1;

ii) The movement of proceeds or property derived from the commission of such offences;

iii) The movement of narcotic drugs, psychotropic substances, substances in Table I and Table II of this Convention and instrumentalities used or intended for use in the commission of such offences;

c) In appropriate cases and if not contrary to domestic law, establish joint teams, taking into account the need to protect the security of persons and of operations, to carry out the provisions of this paragraph. Officials of any Party taking part in such teams shall act as authorized by the appropriate authorities of the Party in whose territory the operation is to take place; in all such cases, the Parties involved shall ensure that the sovereignty of the Party on whose territory the operation is to take place is fully respected;

d) Provide, when appropriate, necessary quantities of substances for analytical or investigative purposes;

e) Facilitate effective co-ordination between their competent agencies and services and promote the exchange of personnel and other experts, including the posting of liaison officers.

2. Each Party shall, to the extent necessary, initiate, develop or improve specific training programmes for its law enforcement and other personnel, including customs, charged with the suppression of offences established in accordance with article 3, paragraph 1. Such programmes shall deal, in particular, with the following:

a) Methods used in the detection and suppression of offences established in accordance with article 3, paragraph 1;
b) Routes and techniques used by persons suspected of being involved in offences established in accordance with article 3, paragraph 1, particularly in transit States, and appropriate countermeasures;
c) Monitoring of the import and export of narcotic drugs, psychotropic substances and substances in Table I and Table II;
d) Detection and monitoring of the movement of proceeds and property derived from, and narcotic drugs, psychotropic substances and substances in Table I and Table II, and instrumentalities used or intended for use in, the commission of offences established in accordance with article 3, paragraph 1;
e) Methods used for the transfer, concealment or disguise of such proceeds, property and instrumentalities;
f) Collection of evidence;
g) Control techniques in free trade zones and free ports;
h) Modem law enforcement techniques.

3. The Parties shall assist one another to plan, and implement research and training programmes designed to share expertise in the areas referred to in paragraph 2 of this article and, to this end, shall also, when appropriate, use regional and international conferences and seminars to promote co-operation and stimulate discussion on problems of mutual concern, including the special problems and needs of transit States.

Article 10

INTERNATIONAL CO-OPERATION AND ASSISTANCE FOR TRANSIT STATES

1. The Parties shall co-operate, directly or through competent international or regional organizations, to assist and support transit States and, in particular, developing countries in need of such assistance and support, to the extent possible, through programmes of technical co-operation on interdiction and other related activities.

2. The Parties may undertake, directly or through competent international or regional organizations, to provide financial assistance to such transit States for the purpose of augmenting and strengthening the infrastructure needed for effective control and prevention of illicit traffic.

3. The Parties may conclude bilateral or multilateral agreements or arrangements to enhance the effectiveness of international co-operation pursuant to this article and may take into consideration financial arrangements in this regard.

Article 11

CONTROLLED DELIVERY

1. If permitted by the basic principles of their respective domestic legal systems, the Parties shall take the necessary measures, within their possibilities, to allow for the appropriate use of controlled delivery at the international level, on the basis of agreements or arrangements mutually consented to, with a view to identifying persons involved in offences established in accordance with article 3, paragraph 1, and to taking legal action against them.

2. Decisions to use controlled delivery shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the Parties concerned.

3. Illicit consignments whose controlled delivery is agreed to may, with the consent of the Parties concerned, be intercepted and allowed to continue with the narcotic drugs or psychotropic substances intact or removed or replaced in whole or in part.

Article 12

SUBSTANCES FREQUENTLY USED IN THE ILLICIT MANUFACTURE OF NARCOTIC DRUGS OR PSYCHOTROPIC SUBSTANCES

1. The Parties shall take the measures they deem appropriate to prevent diversion of substances in Table I and Table II used for the purpose of illicit manufacture of narcotic drugs or psychotropic substances, and shall co-operate with one another to this end.

2. If a Party or the Board has information which in its opinion may require the inclusion of a substance in Table I or Table II, it shall notify the Secretary-General and furnish him with the information in support of that notification. The procedure described in paragraphs 2 to 7 of this article shall also apply when a Party or the Board has information justifying the deletion of a substance from Table I or Table II, or the transfer of a substance from one Table to the other.

3. The Secretary-General shall transmit such notification, and any information which he considers relevant, to the Parties, to the Commission, and, where notification is made by a Party, to the Board. The Parties shall communicate their comments concerning the notification to the Secretary-General, together with all supplementary information which may assist the Board in establishing an assessment and the Commission in reaching a decision.

4. If the Board, taking into account the extent, importance and diversity of the licit use of the substance, and the possibility and ease of using alternate substances both for licit purposes and for the illicit manufacture of narcotic drugs or psychotropic substances, finds:

a) That the substance is frequently used in the illicit manufacture of a narcotic drug or psychotropic substance;
b) That the volume and extent of the illicit manufacture of a narcotic drug or psychotropic substance creates serious public health or social problems, so as to warrant international action,

it shall communicate to the Commission an assessment of the substance, including the likely effect of adding the substance to either Table I or Table II on both licit use and illicit manufacture, together with recommendations of monitoring measures, if any, that would be appropriate in the light of its assessment.

5. The Commission, taking into account the comments submitted by the Parties and the comments and recommendations of the Board, whose assessment shall be determinative as to scientific matters, and also taking into due consideration any other relevant factors, may decide by a two-thirds majority of its members to place a substance in Table I or Table II.

6. Any decision of the Commission taken pursuant to this article shall be communicated by the Secretary-General to all States and other entities which are, or which are entitled to become, Parties to this Convention, and to the Board. Such decision shall become fully effective with respect to each Party one hundred and eighty days after the date of such communication.

7. a) The decisions of the Commission taken under this article shall be subject to review by the Council upon the request of any Party filed within one hundred and eighty days after the date of notification of the decision. The request for review shall be sent to the Secretary-General, together with all relevant information upon which the request for review is based.
b) The Secretary-General shall transmit copies of the request for review and the relevant information to the Commission, to the Board and to all the Parties, inviting them to submit their comments within ninety days. All comments received shall be submitted to the Council for consideration.
c) The Council may confirm or reverse the decision of the Commission. Notification of the Council's decision shall be transmitted to all States and other entities which are, or which are entitled to become, Parties to this Convention, to the Commission and to the Board.

8. a) Without prejudice to the generality of the provisions contained in paragraph 1 of this article and the provisions of the 1961 Convention, the 1961 Convention as amended and the 1971 Convention, the Parties shall take the measures they deem appropriate to monitor the manufacture and distribution of substances in Table I and Table Il which are carried out within their territory.

b) To this end, the Parties may:

i) Control all persons and enterprises engaged in the manufacture and distribution of such substances;
ii) Control under licence the establishment and premises in which such manufacture or distribution may take place;
ii) Require that licensees obtain a permit for conducting the aforesaid operations;
iv) Prevent the accumulation of such substances in the possession of manufacturers and distributors, in excess of the quantities required for the normal conduct of business and the prevailing market conditions.

9. Each Party shall, with respect to substances in Table I and Table II, take the following measures:

a) Establish and maintain a system to monitor international trade in substances in Table I and Table II in order to facilitate the identification of suspicious transactions. Such monitoring systems shall be applied in close co-operation with manufacturers, importers, exporters, wholesalers and retailers, who shall inform the competent authorities of suspicious orders and transactions.
b) Provide for the seizure of any substance in Table I or Table II if there is sufficient evidence that it is for use in the illicit manufacture of a narcotic drug or psychotropic substance.
c) Notify, as soon as possible, the competent authorities and services of the Parties concerned if there is reason to believe that the import, export or transit of a substance in Table I or Table II is destined for the illicit manufacture of narcotic drugs or psychotropic substances, including in particular information about the means of payment and any other essential elements which led to that belief.
d) Require that imports and exports be properly labelled and documented. Commercial documents such as invoices, cargo manifests, customs, transport and other shipping documents shall include the names, as stated in Table I or Table II, of the substances being imported or exported, the quantity being imported or exported, and the name and address of the exporter, the importer and, when available, the consignee.
e) Ensure that documents referred to in subparagraph d) of this paragraph are maintained for a period of not less than two years and may be made available for inspection by the competent authorities.

10. a) In addition to the provisions of paragraph 9, and upon request to the Secretary-General by the interested Party, each Party from whose territory a substance in Table I is to be exported shall ensure that, prior to such export, the following information is supplied by its competent authorities to the competent authorities of the importing country:

i) Name and address of the exporter and importer and, when available, the consignee;
ii) Name of the substance in Table I;
iii) Quantity of the substance to be exported;
iv) Expected point of entry and expected date of dispatch;
v) Any other information which is mutually agreed upon by the Parties.

b) A Party may adopt more strict or severe measures of control than those provided by this paragraph if, in its opinion, such measures are desirable or necessary.

11. Where a Party furnishes information to another Party in accordance with paragraphs 9 and 10 of this article, the Party furnishing such information may require that the Party receiving it keep confidential any trade, business, commercial or professional secret or trade process.

12. Each Party shall furnish annually to the Board, in the form and manner provided for by it and on forms made available by it, information on:

a) The amounts seized of substances in Table I and Table II and, when known, their origin;
b) Any substance not included in Table I or Table II which is identified as having been used in illicit manufacture of narcotic drugs or psychotropic substances, and which is deemed by the Party to be sufficiently significant to be brought to the attention of the Board;
c) Methods of diversion and illicit manufacture.

13. The Board shall report annually to the Commission on the implementation of this article and the Commission shall periodically review the adequacy and propriety of Table I and Table II.

14. The provisions of this article shall not apply to pharmaceutical preparations, nor to other preparations containing substances in Table I or Table II that are compounded in such a way that such substances cannot be easily used or recovered by readily applicable means.

Article 13

MATERIALS AND EQUIPMENT

The Parties shall take such measures as they deem appropriate to prevent trade in and the diversion of materials and equipment for illicit production or manufacture of narcotic drugs and psychotropic substances and shall co-operate to this end.

Article 14

MEASURES TO ERADICATE ILLICIT CULTIVATION OF NARCOTIC PLANTS AND TO ELIMINATE ILLICIT DEMAND FOR NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES.

1. Any measures taken pursuant to this Convention by Parties shall not be less stringent than the provisions applicable to the eradication of illicit cultivation of plants containing narcotic and psychotropic substances and to the elimination of illicit demand for narcotic drugs and psychotropic substances under the provisions of the 1961 Convention, the 1961 Convention as amended and the 1971 Convention.

2. Each Party shall take appropriate measures to prevent illicit cultivation of and to eradicate plants containing narcotic or psychotropic substances, such as opium poppy, coca bush and cannabis plants, cultivated illicitly in its territory. The measures adopted shall respect fundamental human rights and shall take due account of traditional licit uses, where there is historic evidence of such use, as well as the protection of the environment.

3. a) The Parties may co-operate to increase the effectiveness of eradication efforts. Such co-operation may, *inter alia*, include support, when appropriate, for integrated rural development leading to economically viable alternatives to illicit cultivation. Factors such as access to markets, the availability of resources and prevailing socio-economic conditions should be taken into account before such rural development programmes are implemented. The Parties may agree on any other appropriate measures of co-operation.
b) The Parties shall also facilitate the exchange of scientific and technical information and the conduct of research concerning eradication.
c) Whenever they have common frontiers, the Parties shall seek to co-operate in eradication programmes in their respective areas along those frontiers.

4. The Parties shall adopt appropriate measures aimed at eliminating or reducing illicit demand for narcotic drugs and psychotropic substances, with a view to reducing human suffering and eliminating financial incentives for illicit traffic. These measures may be based, *inter alia*, on the recommendations of the United Nations, specialized agencies of the United Nations such as the World Health Organization, and other competent international organizations, and on the Comprehensive Multidisciplinary Outline adopted by the International Conference on Drug Abuse and Illicit Trafficking, held in 1987, as it pertains to governmental and non-governmental agencies and private efforts in the fields of prevention, treatment and rehabilitation. The Parties may enter into bilateral or multilateral agreements or arrangements aimed at eliminating or reducing illicit demand for narcotic drugs and psychotropic substances.

5. The Parties may also take necessary measures for early destruction or lawful disposal of the narcotic drugs, psychotropic substances and substances in Table I and Table II which have been seized or confiscated and for the admissibility as evidence of duly certified necessary quantities of such substances.

Article 15

COMMERCIAL CARRIERS

1. The Parties shall take appropriate measures to ensure that means of transport operated by commercial carriers are not used in the commission of offences established in accordance with article 3, paragraph 1; such measures may include special arrangements with commercial carriers.

2. Each Party shall require commercial carriers to take reasonable precautions to prevent the use of their means of transport for the commission of offences established in accordance with article 3, paragraph 1. Such precautions may include:

a) If the principal place of business of a commercial carrier is within the territory of the Party:

i) Training of personnel to identify suspicious consignments or persons;
ii) Promotion of integrity of personnel;

b) If a commercial carrier is operating within the territory of the Party:

i) Submission of cargo manifests in advance, whenever possible;
ii) Use of tamper-resistant, individually verifiable seals on containers;
iii) Reporting to the appropriate authorities at the earliest opportunity all suspicious circumstances that may be related to the commission of offences established in accordance with article 3, paragraph 1.

3. Each Party shall seek to ensure that commercial carriers and the appropriate authorities at points of entry and exit and other customs control areas co-operate, with a view to preventing unauthorized access to means of transport and cargo and to implementing appropriate security measures.

Article 16

COMMERCIAL DOCUMENTS AND LABELLING OF EXPORTS

1. Each Party shall require that lawful exports of narcotic drugs and psychotropic substances be properly documented. In addition to the requirements for documentation under article 31 of the 1961 Convention, article 31 of the 1961 Convention as amended and article 12 of the 1971 Convention, commercial documents such as invoices, cargo manifests, customs, transport and other shipping documents shall include the names of the narcotic drugs and psychotropic substances being exported as set out in the respective Schedules of the 1961 Convention, the 1961 Convention as amended and the 1971 Convention, the quantity being exported, and the name and address of the exporter, the importer and, when available, the consignee.

2. Each Party shall require that consignments of narcotic drugs and psychotropic substances being exported be not mislabelled.

Article 17

ILLICIT TRAFFIC BY SEA

1. The Parties shall co-operate to the fullest extent possible to suppress illicit traffic by sea, in conformity with the international law of the sea.

2. A Party which has reasonable grounds to suspect that a vessel flying its flag or not displaying a flag or marks of registry is engaged in illicit traffic may request the assistance of other Parties in suppressing its use for that purpose. The Parties so requested shall render such assistance within the means available to them.

3. A Party which has reasonable grounds to suspect that a vessel exercising freedom of navigation in accordance with international law, and flying the flag or displaying marks of registry of another Party is engaged in illicit traffic may so notify the flag State, request confirmation of registry and, if confirmed, request authorization from the flag State to take appropriate measures in regard to that vessel.

4. In accordance with paragraph 3 or in accordance with treaties in force between them or in accordance with any agreement or arrangement otherwise reached between those Parties, the flag State may authorize the requesting State to, *inter aria*:

a) Board the vessel;
b) Search the vessel;
c) If evidence of involvement in illicit traffic is found, take appropriate action with respect to the vessel, persons and cargo on board.

5. Where action is taken pursuant to this article, the Parties concerned shall take due account of the need not to endanger the safety of life at sea, the security of the vessel and the cargo or to prejudice the commercial and legal interests of the flag State or any other interested State.

6. The flag State may, consistent with its obligations in paragraph 1 of this article, subject its authorization to conditions to be mutually agreed between it and the requesting Party, including conditions relating to responsibility.

7. For the purposes of paragraphs 3 and 4 of this article, a Party shall respond expeditiously to a request from another Party to determine whether a vessel that is flying its flag is entitled to do so, and to requests for authorization made pursuant to paragraph 3. At the time of becoming a Party to this Convention, each Party shall designate an authority or, when necessary, authorities to receive and respond to such requests. Such designation shall be notified through the Secretary-General to all other Parties within one month of the designation.

8. A Party which has taken any action in accordance with this article shall promptly inform the flag State concerned of the results of that action.

9. The Parties shall consider entering into bilateral or regional agreements or arrangements to carry out, or to enhance the effectiveness of, the provisions of this article.

10. Action pursuant to paragraph 4 of this article shall be carried out only by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.

11. Any action taken in accordance with this article shall take due account of the need not to interfere with or affect the rights and obligations and the exercise of jurisdiction of coastal States in accordance with the international law of the sea.

Article 18

FREE TRADE ZONES AND FREE PORTS

1. The Parties shall apply measures to suppress illicit traffic in narcotic drugs, psychotropic substances and substances in Table I and Table II in free trade zones and in free ports that are no less stringent than those applied in other parts of their territories.

2. The Parties shall endeavour:

a) To monitor the movement of goods and persons in free trade zones and free ports, and, to that end, shall empower the competent authorities to search cargoes and incoming and outgoing vessels, including pleasure craft and fishing vessels, as well as aircraft and vehicles and, when appropriate, to search crew members, passengers and their baggage;
b) To establish and maintain a system to detect consignments suspected of containing narcotic drugs, psychotropic substances and substances in Table I and Table II passing into or out of free trade zones and free ports;
c) To establish and maintain surveillance systems in harbour and dock areas and at airports and border control points in free trade zones and free ports.

Article 19

THE USE OF THE MAILS

1. In conformity with their obligations under the Conventions of the Universal Postal Union, and in accordance with the basic principles of their domestic legal systems, the Parties shall adopt measures to suppress the use of the mails for illicit traffic and shall co-operate with one another to that end.

2. The measures referred to in paragraph 1 of this article shall include, in particular:

a) Co-ordinated action for the prevention and repression of the use of the mails for illicit traffic;
b) Introduction and maintenance by authorized law enforcement personnel of investigative and control techniques designed to detect illicit consignments of narcotic drugs, psychotropic substances and substances in Table I and Table II in the mails;

c) Legislative measures to enable the use of appropriate means to secure evidence required for judicial proceedings.

Article 20

INFORMATION TO BE FURNISHED BY THE PARTIES

1. The Parties shall furnish, through the Secretary-General, information to the Commission on the working of this Convention in their territories and, in particular:

a) The text of laws and regulations promulgated in order to give effect to the Convention;
b) Particulars of cases of illicit traffic within their jurisdiction which they consider important because of new trends disclosed, the quantities involved, the sources from which the substances are obtained, or the methods employed by persons so engaged.

2. The Parties shall furnish such information in such a manner and by such dates as the Commission may request.

Article 21

FUNCTIONS OF THE COMMISSION

The Commission is authorized to consider all matters pertaining to the aims of this Convention and, in particular.

a) The Commission shall, on the basis of the information submitted by the Parties in accordance with article 20, review the operation of this Convention;
b) The Commission may make suggestions and general recommendations based on the examination of the information received from the Parties;
c) The Commission may call the attention of the Board to any matters which may be relevant to the functions of the Board;
d) The Commission shall, on any matter referred to it by the Board under article 22, paragraph 1 b), take such action as it deems appropriate;
e) The Commission may, in conformity with the procedures laid down in article 12, amend Table I and Table II;
f) The Commission may draw the attention of non-Parties to decisions and recommendations which it adopts under this Convention, with a view to their considering taking action in accordance therewith.

Article 22

FUNCTIONS OF THE BOARD

1. Without prejudice to the functions of the Commission under article 21, and without prejudice to the functions of the Board and the Commission under the 1961 Convention, the 1961 Convention as amended and the 1971 Convention:

a) If, on the basis of its examination of information available to it, to the Secretary-General or to the Commission, or of information communicated by United Nations organs, the Board has reason to believe that the aims of this Convention in matters related to its competence are not being met, the Board may invite a Party or Parties to furnish any relevant information;
b) With respect to articles 12, 13 and 16:

i) After taking action under subparagraph a) of this article, the Board if satisfied that it is necessary to do so, may call upon the Party concerned to adopt such remedial measures as shall seem under the circumstances to be necessary for the execution of the provisions of articles 12, 13 and 16;
ii) Prior to taking action under iii) below, the Board shall treat as confidential its communications with the Party concerned under the preceding subparagraphs;
iii) If the Board finds that the Party concerned has not taken remedial measures which it has been called upon to take under this subparagraph, it may call the attention of the Parties, the Council and the Commission to the matter. Any

report published by the Board under this subparagraph shall also contain the views of the Party concerned if the latter so requests.

2. Any Party shall be invited to be represented at a meeting of the Board at which a question of direct interest to it is to be considered under this article.

3. If in any case a decision of the Board which is adopted under this article is not unanimous, the views of the minority shall be stated.

4. Decisions of the Board under this article shall be taken by a two-thirds majority of the whole number of the Board.

5. In carrying out its functions pursuant to subparagraph 1 *a)* of this article, the Board shall ensure the confidentiality of all information which may come into its possession.

6. The Board's responsibility under this article shall not apply to the implementation of treaties or agreements entered into between Parties in accordance with the provisions of this Convention.

7. The provisions of this article shall not be applicable to disputes between Parties falling under the provisions of article 32.

Article 23

REPORTS OF THE BOARD

1. The Board shall prepare an annual report on its work containing an analysis of the information at its disposal and, in appropriate cases, an account of the explanations, if any, given by or required of Parties, together with any observations and recommendations which the Board desires to make. The Board may make such additional reports as it considers necessary. The reports shall be submitted to the Council through the Commission which may make such comments as it sees fit.

2. The reports of the Board shall be communicated to the Parties and subsequently published by the Secretary-General. The Parties shall permit their unrestricted distribution.

Article 24

APPLICATION OF STRICTER MEASURES THAN THOSE REQUIRED BY THIS CONVENTION

A Party may adopt more strict or severe measures than those provided by this Convention if, in its opinion, such measures are desirable or necessary for the prevention or suppression of illicit traffic.

Article 25

NON-DEROGATION FROM EARLIER TREATY RIGHTS AND OBLIGATIONS

The provisions of this Convention shall not derogate from any rights enjoyed or obligations undertaken by Parties to this Convention under the 1961 Convention, the 1961 Convention as amended and the 1971 Convention.

ANNEX 3

Article 26

SIGNATURE

This Convention shall be open for signature at the United Nations Office at Vienna, from 20 December 1988 to 28 February 1989, and thereafter at the Headquarters of the United Nations at New York, until 20 December 1989, by:

a) All States;
b) Namibia, represented by the United Nations Council for Namibia;
c) Regional economic integration organizations which have competence in respect of the negotiation, conclusion and application of international agreements in matters covered by this Convention, references under the Convention to Parties, States or national services being applicable to these organizations within the limits of their competence.

Article 27

RATIFICATION, ACCEPTANCE, APPROVAL OR ACT OF FORMAL CONFIRMATION

1. This Convention is subject to ratification, acceptance or approval by States and by Namibia, represented by the United Nations Council for Namibia, and to acts of formal confirmation by regional economic integration organizations referred to in article 26, subparagraph *c)*. The instruments of ratification, acceptance or approval and those relating to acts of formal confirmation shall be deposited with the Secretary-General.

2. In their instruments of formal confirmation, regional economic integration organizations shall declare the extent of their competence with respect to the matters governed by this Convention. These organizations shall also inform the Secretary-General of any modification in the extent of their competence with respect to the matters governed by the Convention.

Article 28

ACCESSION

1. This Convention shall remain open for accession by any State, by Namibia, represented by the United Nations Council for Namibia, and by regional economic integration organizations referred to in article 26, subparagraph *c)*. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General.

2. In their instruments of accession, regional economic integration organizations shall declare the extent of their competence with respect to the matters governed by this Convention. These organizations shall also inform the Secretary-General of any modification in the extent of their competence with respect to the matters governed by the Convention.

Article 29

ENTRY INTO FORCE

1. This Convention shall enter into force on the ninetieth day after the date of the deposit with the Secretary-General of the twentieth instrument of ratification, acceptance, approval or accession by States or by Namibia, represented by the Council for Namibia.

2. For each State or for Namibia, represented by the Council for Namibia, ratifying, accepting, approving or acceding to this Convention after the deposit of the twentieth instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the ninetieth day after the date of the deposit of its instrument of ratification, acceptance, approval or accession.

3. For each regional economic integration organization referred to in article 26, subparagraph *c)* depositing an instrument relating to an act of formal confirmation or an instrument of accession, this Convention shall enter into force on the ninetieth day after such deposit, or at the date the Convention enters into force pursuant to paragraph l of this article, whichever is later.

Article 30

DENUNCIATION

1. A Party may denounce this Convention at any time by a written notification addressed to the Secretary-General.

2. Such denunciation shall take effect for the Party concerned one year after the date of receipt of the notification by the Secretary-General.

Article 31

AMENDMENTS

1. Any Party may propose an amendment to this Convention. The text of any such amendment and the reasons therefor shall be communicated by that Party to the Secretary-General, who shall communicate it to the other Parties and shall ask them whether they accept the proposed amendment. If a proposed amendment so circulated has not been rejected by any Party within twenty-four months after it has been circulated, it shall be deemed to have been accepted and shall enter into force in respect of a Party ninety days after that Party has deposited with the Secretary-General an instrument expressing its consent to be bound by that amendment.

2. If a proposed amendment has been rejected by any Party, the Secretary-General shall consult with the Parties and, if a majority so requests, he shall bring the matter, together with any comments made by the Parties, before the Council which may decide to call a conference in accordance with Article 62, paragraph 4, of the Charter of the United Nations. Any amendment resulting from such a Conference shall be embodied in a Protocol of Amendment. Consent to be bound by such a Protocol shall be required to be expressed specifically to the Secretary-General.

Article 32

SETTLEMENT OF DISPUTES

1. If there should arise between two or more Parties a dispute relating to the interpretation or application of this Convention, the Parties shall consult together with a view to the settlement of the dispute by negotiation, enquiry, mediation, conciliation, arbitration, recourse to regional bodies, judicial process or other peaceful means of their own choice.

2. Any such dispute which cannot be settled in the manner prescribed in paragraph 1 of this article shall be referred, at the request of any one of the States Parties to the dispute, to the International Court of Justice for decision.

3. If a regional economic integration organization referred to in article 26, subparagraph *c)* is a Party to a dispute which cannot be settled in the manner prescribed in paragraph 1 of this article, it may, through a State Member of the United Nations, request the Council to request an advisory opinion of the International Court of Justice in accordance with Article 65 of the Statute of the Court, which opinion shall be regarded as decisive.

4. Each State, at the time of signature or ratification, acceptance or approval of this Convention or accession thereto, or each regional economic integration organization, at the time of signature or deposit of an act of formal confirmation or accession, may declare that it does not consider itself bound by paragraphs 2 and 3 of this article. The other Parties shall not be bound by paragraphs 2 and 3 with respect to any Party having made such a declaration.

5. Any Party having made a declaration in accordance with paragraph 4 of this article may at any time withdraw the declaration by notification to the Secretary-General.

Article 33

AUTHENTIC TEXTS

The Arabic, Chinese, English, French, Russian and Spanish texts of this Convention are equally authentic.

ANNEX 3

Article 34

DEPOSITARY

The Secretary-General shall be the depositary of this Convention.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this Convention.

DONE AT VIENNA, in one original, this twentieth day of December one thousand nine hundred and eighty-eight.

ANNEX

Revised Tables including the amendments made by the Commission on Narcotic Drugs in force as of 23 November 1992

Table I	***Table II***
N-acetylanthranilic acid	Acetic anhydride
Ephedrine	Acetone
Ergometrine	Anthranilic acid
Ergotamine	Ethyl ether
Isosafrole	Hydrochloric acid
Lysergic acid	Methyl ethyl ketone
3,4-methylenedioxyphenyl-2-propanone	Phenylacetic acid
1-phenyl-2-propanone	Piperidine
Piperonal	Potassium permanganate
Pseudoephedrine	Sulphuric acid
Safrole	Toluene
The salts of the substances listed in this Table whenever the existence of such salts is possible.	The salts of the substances listed in this Table whenever the existence of such salts is possible (the salts of hydrochloric acid and sulphuric acid are specifically excluded)

ANNEX 4

United Nations Convention Against Illicit Traffic in Narcotic Drugs
and Psychotropic Substances, Status of Treaty Adherence (1998)

19. UNITED NATIONS CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

Vienna, 20 December 1988

ENTRY INTO FORCE: 11 November 1990, in accordance with article 29(1).
REGISTRATION: 11 November 1990, No. 27627.
STATUS: Signatories: 87. Parties: 184.
TEXT: Document of the United Nations Economic and Social Council E/CONF.82/15, Corr.1 and Corr.2 (English only); and depositary notification C.N.31.1990.TREATIES-1 of 9 April 1990 (procès-verbal of rectification of original French and Spanish texts); C.N.229.2007.TREATIES-1 of 12 March 2007 (Notification under article 12 (2) of the Convention).

Note: The Convention was adopted by the United Nations Conference for the Adoption of a Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, held at Vienna from 25 November to 20 December 1988. The Conference was convened pursuant to resolution 1988/8 of 25 May 1988 of the Economic and Social Council acting on the basis of the General Assembly resolutions 39/141 of 14 December 1984 and 42/111 of 7 December 1987. The Convention was open for signature at the United Nations Office at Vienna, from 20 December 1988 to 28 February 1989, and thereafter at the Headquarters of the United Nations at New York, until 20 December 1989. In addition to the Convention, the Conference adopted the Final Act and certain resolutions which are annexed to the Final Act. The text of the Final Act was published in document E/CONF.82/14.

Participant	*Signature*	*Ratification, Accession(a), Acceptance(A), Approval(AA), Formal confirmation(c), Succession(d)*
Afghanistan	20 Dec 1988	14 Feb 1992
Albania		27 Jun 2001 a
Algeria	20 Dec 1988	9 May 1995
Andorra		23 Jul 1999 a
Angola		26 Oct 2005 a
Antigua and Barbuda		5 Apr 1993 a
Argentina	20 Dec 1988	28 Jun 1993
Armenia		13 Sep 1993 a
Australia	14 Feb 1989	16 Nov 1992
Austria	25 Sep 1989	11 Jul 1997
Azerbaijan		22 Sep 1993 a
Bahamas	20 Dec 1988	30 Jan 1989
Bahrain	28 Sep 1989	7 Feb 1990
Bangladesh	14 Apr 1989	11 Oct 1990
Barbados		15 Oct 1992 a
Belarus	27 Feb 1989	15 Oct 1990
Belgium	22 May 1989	25 Oct 1995
Belize		24 Jul 1996 a
Benin		23 May 1997 a
Bhutan		27 Aug 1990 a
Bolivia	20 Dec 1988	20 Aug 1990
Bosnia and Herzegovina[1]		1 Sep 1993 d
Botswana		13 Aug 1996 a
Brazil	20 Dec 1988	17 Jul 1991
Brunei Darussalam	26 Oct 1989	12 Nov 1993
Bulgaria	19 May 1989	24 Sep 1992
Burkina Faso		2 Jun 1992 a
Burundi		18 Feb 1993 a
Cambodia		7 Jul 2005 a
Cameroon	27 Feb 1989	28 Oct 1991
Canada	20 Dec 1988	5 Jul 1990
Cape Verde		8 May 1995 a
Central African Republic		15 Oct 2001 a
Chad		9 Jun 1995 a
Chile	20 Dec 1988	13 Mar 1990
China[2,3]	20 Dec 1988	25 Oct 1989
Colombia	20 Dec 1988	10 Jun 1994
Comoros		1 Mar 2000 a
Congo		3 Mar 2004 a
Cook Islands		22 Feb 2005 a
Costa Rica	25 Apr 1989	8 Feb 1991
Côte d'Ivoire	20 Dec 1988	25 Nov 1991
Croatia[1]		26 Jul 1993 d
Cuba	7 Apr 1989	12 Jun 1996

ANNEX 4

Participant	*Signature*	*Ratification, Accession(a), Acceptance(A), Approval(AA), Formal confirmation(c), Succession(d)*
Cyprus	20 Dec 1988	25 May 1990
Czech Republic[4]		30 Dec 1993 d
Democratic People's Republic of Korea		19 Mar 2007 a
Democratic Republic of the Congo	20 Dec 1988	28 Oct 2005
Denmark	20 Dec 1988	19 Dec 1991
Djibouti		22 Feb 2001 a
Dominica		30 Jun 1993 a
Dominican Republic		21 Sep 1993 a
Ecuador	21 Jun 1989	23 Mar 1990
Egypt	20 Dec 1988	15 Mar 1991
El Salvador		21 May 1993 a
Eritrea		30 Jan 2002 a
Estonia		12 Jul 2000 a
Ethiopia		11 Oct 1994 a
European Community	8 Jun 1989	31 Dec 1990 c
Fiji		25 Mar 1993 a
Finland	8 Feb 1989	15 Feb 1994 A
France	13 Feb 1989	31 Dec 1990 AA
Gabon	20 Dec 1989	10 Jul 2006
Gambia		23 Apr 1996 a
Georgia		8 Jan 1998 a
Germany[5]	19 Jan 1989	30 Nov 1993
Ghana	20 Dec 1988	10 Apr 1990
Greece	23 Feb 1989	28 Jan 1992
Grenada		10 Dec 1990 a
Guatemala	20 Dec 1988	28 Feb 1991
Guinea		27 Dec 1990 a
Guinea-Bissau		27 Oct 1995 a
Guyana		19 Mar 1993 a
Haiti		18 Sep 1995 a
Holy See	20 Dec 1988	
Honduras	20 Dec 1988	11 Dec 1991
Hungary	22 Aug 1989	15 Nov 1996
Iceland		2 Sep 1997 a
India		27 Mar 1990 a
Indonesia	27 Mar 1989	23 Feb 1999
Iran (Islamic Republic of)	20 Dec 1988	7 Dec 1992
Iraq		22 Jul 1998 a
Ireland	14 Dec 1989	3 Sep 1996
Israel	20 Dec 1988	20 Mar 2002
Italy	20 Dec 1988	31 Dec 1990 AA
Jamaica	2 Oct 1989	29 Dec 1995
Japan	19 Dec 1989	12 Jun 1992
Jordan	20 Dec 1988	16 Apr 1990
Kazakhstan		29 Apr 1997 a
Kenya		19 Oct 1992 a
Kuwait	2 Oct 1989	3 Nov 2000
Kyrgyzstan		7 Oct 1994 a
Lao People's Democratic Republic		1 Oct 2004 a
Latvia		24 Feb 1994 a
Lebanon		11 Mar 1996 a
Lesotho		28 Mar 1995 a
Liberia		16 Sep 2005 a
Libyan Arab Jamahiriya		22 Jul 1996 a
Liechtenstein		9 Mar 2007 a
Lithuania		8 Jun 1998 a
Luxembourg	26 Sep 1989	29 Apr 1992
Madagascar		12 Mar 1991 a
Malawi		12 Oct 1995 a
Malaysia	20 Dec 1988	11 May 1993
Maldives	5 Dec 1989	7 Sep 2000
Mali		31 Oct 1995 a
Malta		28 Feb 1996 a
Mauritania	20 Dec 1988	1 Jul 1993
Mauritius	20 Dec 1988	6 Mar 2001
Mexico	16 Feb 1989	11 Apr 1990
Micronesia (Federated States of)		6 Jul 2004 a
Monaco	24 Feb 1989	23 Apr 1991
Mongolia		25 Jun 2003 a
Montenegro[6]		23 Oct 2006 d
Morocco	28 Dec 1988	28 Oct 1992
Mozambique		8 Jun 1998 a
Myanmar		11 Jun 1991 a
Namibia		6 Mar 2009 a
Nepal		24 Jul 1991 a
Netherlands[7]	18 Jan 1989	8 Sep 1993 A
New Zealand[8]	18 Dec 1989	16 Dec 1998

Participant	*Signature*	*Ratification, Accession(a), Acceptance(A), Approval(AA), Formal confirmation(c), Succession(d)*
Nicaragua	20 Dec 1988	4 May 1990
Niger		10 Nov 1992 a
Nigeria	1 Mar 1989	1 Nov 1989
Norway	20 Dec 1988	14 Nov 1994
Oman		15 Mar 1991 a
Pakistan	20 Dec 1989	25 Oct 1991
Panama	20 Dec 1988	13 Jan 1994
Paraguay	20 Dec 1988	23 Aug 1990
Peru	20 Dec 1988	16 Jan 1992
Philippines	20 Dec 1988	7 Jun 1996
Poland	6 Mar 1989	26 May 1994
Portugal[2]	13 Dec 1989	3 Dec 1991
Qatar		4 May 1990 a
Republic of Korea		28 Dec 1998 a
Republic of Moldova		15 Feb 1995 a
Romania		21 Jan 1993 a
Russian Federation	19 Jan 1989	17 Dec 1990
Rwanda		13 May 2002 a
Samoa		19 Aug 2005 a
San Marino		10 Oct 2000 a
Sao Tome and Principe		20 Jun 1996 a
Saudi Arabia		9 Jan 1992 a
Senegal	20 Dec 1988	27 Nov 1989
Serbia[1]		12 Mar 2001 d
Seychelles		27 Feb 1992 a
Sierra Leone	9 Jun 1989	6 Jun 1994
Singapore		23 Oct 1997 a
Slovakia[4]		28 May 1993 d
Slovenia[1]		6 Jul 1992 d
South Africa		14 Dec 1998 a
Spain	20 Dec 1988	13 Aug 1990
Sri Lanka		6 Jun 1991 a
St. Kitts and Nevis		19 Apr 1995 a
St. Lucia		21 Aug 1995 a
St. Vincent and the Grenadines		17 May 1994 a
Sudan	30 Jan 1989	19 Nov 1993
Suriname	20 Dec 1988	28 Oct 1992
Swaziland		3 Oct 1995 a
Sweden	20 Dec 1988	22 Jul 1991
Switzerland	16 Nov 1989	14 Sep 2005
Syrian Arab Republic		3 Sep 1991 a
Tajikistan		6 May 1996 a
Thailand		3 May 2002 a
The former Yugoslav Republic of Macedonia		13 Oct 1993 a
Togo	3 Aug 1989	1 Aug 1990
Tonga		29 Apr 1996 a
Trinidad and Tobago	7 Dec 1989	17 Feb 1995
Tunisia	19 Dec 1989	20 Sep 1990
Turkey	20 Dec 1988	2 Apr 1996
Turkmenistan		21 Feb 1996 a
Uganda		20 Aug 1990 a
Ukraine	16 Mar 1989	28 Aug 1991
United Arab Emirates		12 Apr 1990 a
United Kingdom of Great Britain and Northern Ireland[3,9]	20 Dec 1988	28 Jun 1991
United Republic of Tanzania	20 Dec 1988	17 Apr 1996
United States of America	20 Dec 1988	20 Feb 1990
Uruguay	19 Dec 1989	10 Mar 1995
Uzbekistan		24 Aug 1995 a
Vanuatu		26 Jan 2006 a
Venezuela (Bolivarian Republic of)	20 Dec 1988	16 Jul 1991
Viet Nam		4 Nov 1997 a
Yemen[10]	20 Dec 1988	25 Mar 1996
Zambia	9 Feb 1989	28 May 1993
Zimbabwe		30 Jul 1993 a

Declarations and Reservations

(Unless otherwise indicated, the declarations and reservations were made upon ratification, accession, acceptance, approval, formal confirmation or succession.)

ANNEX 4

ALGERIA

Reservation:

The People's Democratic Republic of Algeria does not consider itself bound by the provisions of article 32, paragraph 2, the compulsory referral of any dispute of the International Court of Justice.

The People's Democratic Republic of Algeria declares that for a dispute to be referred to the International Court of Justice the agreement of all the parties to the dispute is necessary in each case.

ANDORRA

Reservation:

With respect to the option provided in paragraph 4 of article 32, the Andorran State does consider itself bound by the provisions of paragraphs 2 and 3 of this article.

With respect to paragraph 2, the Andorran State considers that any dispute which cannot be settled in the manner prescribed in paragraph 1 of the aforementioned article will be referred to the International Court of Justice only with the agreement of all parties involved in the dispute.

Declaration:

Since the Andorran legal system already embodies almost all the measures referred to in the Vienna Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, accession to the aforementioned Convention will entail only minor changes in the Andorran State's legal system, which will be taken into account in the future legislative activity. From the point of view of the rights and obligations arising from accession to this Convention, without renouncing the specific characteristics of its domestic legislation, in particular with respect to the protection of individual freedoms and the rights of bona fide third parties, and to the preservation of national sovereignty and the common good, Andorra undertakes to assume the obligations among States arising from the Vienna Convention and to cooperate, through its judicial authorities and on the basis of reciprocity, with the other States which have accepted the provisions of the aforementioned Convention.

AUSTRIA

Declarations:

"re. Art. 2:

The Republic of Austria interprets the reference to the fundamental provisions of domestic legislative systems in art. 2 para 1 in the sense that the contents of these fundamental provisions may be subject to change. The same applies to all other references of the Convention to domestic law, its fundamental principles or the national constitutional order like they are contained in art. 3 para 1 lit.c; para 2, para 10 and para 11; art. 5 para 4 lit.c; para 7 and para 9 or art. 11 para 1.

re. Art. 3:

The Republic of Austria interprets art. 3 para 1 and 2 as follows: In cases of a minor nature, the obligations contained in this provision may also be implemented by the creation of administrative penal regulations providing adequate sanction for the offences enumerated therein.

re. Art. 7 para 10 to 12 :

The Republic of Austria declares that in pursuance of its domestic law, a request for the search of persons or rooms, for the seizure of objects or for the surveillance of telecommunication requires the enclosure of the certified copy or photocopy of the decision of the competent authority. If the decision has not been rendered by a court, a declaration of the authority requesting legal assistance has to be furnished, stating that all necessary preconditions are fulfilled, according to the law of the requesting state."

BAHRAIN[11]

Reservation:

The State of Bahrain, by the ratification of this Convention, does not consider itself bound by paragraph (2) of article 32 in connection with the obligation to refer the settlement of the dispute relating to the interpretation or application of this Convention to the International Court of Justice.

Declaration:

Moreover, the State of Bahrain hereby declares that its ratification of this Convention shall in no way constitute recognition of Israel or be a cause for the establishment of any relations of any kind therewith.

BELIZE

Reservation:

"Article 8 of the Convention requires the Parties to give consideration to the possibility of transferring to one another proceedings for criminal prosecution of certain offences where such transfer is considered to be in the interests of a proper administration of justice.

"The courts of Belize have no extra-territorial jurisdiction, with the result that they will have no jurisdiction to prosecute offences committed abroad unless such offences are committed partly within and partly without the jurisdiction, by a person who is within the jurisdiction. Moreover, under the Constitution of Belize, the control of public prosecutions is vested in the Director of Public Prosecutions, who is an independent functionary and not under Government control.

"Accordingly, Belize will be able to implement article 8 of the Convention only to a limited extent insofar as its Constitution and the law allows."

BOLIVIA

Reservation made upon signature and confirmed upon ratifica tion:

The Republic of Bolivia places on record its express reservation to article 3, paragraph 2, and declares the inapplicability to Bolivia of those provisions of that paragraph which could be interpreted as establishing as a criminal offence the use, consumption, possession, purchase or cultivation of the coca leaf for personal consumption.

For Bolivia such an interpretation of that paragraph is contrary to principles of its Constitution and basic concepts of its legal system which embody respect for the culture, legitimate practices, values and attributes of the nationalities making up Bolivia's population.

Bolivia's legal system recognizes the ancestral nature of the licit use of the coca leaf which, for much of Bolivia's population, dates back over centuries. In formulating this reservation, Bolivia considers that:

- The coca leaf is not, in and of itself, a narcotic drug or psychotropic substance;
- The use and consumption of the coca leaf do not cause psychological or physical changes greater than those resulting from the consumption of other plants and products which are in free and universal use;
- The coca leaf is widely used for medicinal purposes in the practice of traditional medicine, the validity of which is upheld by WHO and confirmed by scientific findings;
- The coca leaf can be used for industrial purposes;
- The coca leaf is widely used and consumed in Bolivia, with the result that, if such an interpretation of the above-mentioned paragraph was accepted, a large part of Bolivia's population could be

considered criminals and punished as such, such an interpretation is therefore inapplicable;

- It must be placed on record that the coca leaf is transformed into cocaine paste, sulphate and hydrochlorate when it is subjected to chemical processes which involve the use of precursors, equipment and materials which are neither manufactured in or originate in Bolivia.

At the same time, the Republic of Bolivia will continue to take all necessary legal measures to control the illicit cultivation of coca for the production of narcotic drugs, as well as the illicit consumption, use and purchase of narcotic drugs and psychotropic substances.

BRAZIL

Upon signature:

"a) The signature of the Convention is made subject to the process of ratification established by the Brazilian Constitution;

" b) It is the understanding of the Brazilian Government that paragraph 11 of article 17 does not prevent a coastal State from requiring prior authorization for any action under this article by other States in its Exclusive Economic Zone."

BRUNEI DARUSSALAM

19 June 2007

"The competent authority under article 7 (8) is the following:

Ministry of Foreign Affairs and Trade, Jalan Subok Bandar Seri Begawan BD, 2710, Brunei Darussalam

Telephone: (673) 226 1177; Fax: (673) 226 1709;

Email: mfa@gov.bn

Reservation:

"In accordance with article 32 of the Convention Brunei Darussalam hereby declares that it does not consider itself bound by paragraphs 2 and 3 of the said article 32."

CHINA

Declaration made upon signature and confirmed upon ratification:

Under the Article 32, paragraph 4, China does not consider itself bound by paragraphs 2 and 3 of that article.

COLOMBIA[12]

Upon signature:

Colombia formulates a reservation to article 9, paragraph 1, of the Convention, specifically subparagraphs (b), (c), (d) and (e) thereof, since its legislation does not permit outside co-operation with the judiciary in investigating offences nor the establishment of joint teams with other countries to that end. Likewise inasmuch as samples of the substances that have given rise to investigations belong to the proceedings, only the judge, as previously, can take decisions in that regard.

Upon ratification:

Reservations:

...

2. With respect to article 5, paragraph 7, of the Convention, Colombia does not consider itself bound to reverse the onus of proof.

3. Colombia has reservations in connection with article 9, paragraphs 1 (b), (c), (d) and (e), inasmuch as they conflict with the autonomy and independence of the judicial authorities in their jurisdiction over the investigation and judgement of offences.

Declarations:

1. No provision of the Convention may be interpreted as obliging Colombia to adopt legislative, judicial, administrative or other measures that might impair or restrict its constitutional or legal system or that go beyond the terms of the treaties to which the Colombian State is a contracting party.

2. It is the view of Colombia that treatment under the Convention of the cultivation of the coca leaf as a criminal offence must be harmonized with a policy of alternative development, taking into account the rights of the indigenous communities involved and the protection of the environment. In this connection it is the view of Colombia that the discriminatory, inequitable and restrictive treatment accorded its agricultural export products on international markets does nothing to contribute to the control of illicit crops, but, rather, is a cause of social and environmental degradation in the areas affected. Further, Colombia reserves the right to make an independent evaluation of the ecological impact of drug control policies, since those that have a negative impact on ecosystems contravene the Constitution.

3. It is the understanding of Colombia that article 3, paragraph 7, of the Convention will be applied in accordance with its penal system, taking into account the benefits of its policies regarding the indictment of and collaboration with alleged criminals.

4. A request for reciprocal legal assistance will not be met when the Colombian judicial and other authorities consider that to do so would run counter to the public interest or the constitutional or legal order. The principle of reciprocity must also be observed.

5. It is the understanding of Colombia that article 3, paragraph 8, of the Convention does not imply the non-applicability of the statutory limitation of penal action.

6. Article 24 of the Convention, on "more strict or severe measures", may not be interpreted as conferring on the Government powers that are broader than those conferred by the Political Constitution of Colombia, including in states of exception.

7. It is the understanding of Colombia that the assistance provided for under article 17 of the Convention will be effective only on the high seas and at the express request and with the authorization of the Colombian Government.

8. Colombia declares that it considers contrary to the principles and norms of international law, in particular those of sovereign equality, territorial integrity and non-intervention, any attempt to abduct or illegally deprive of freedom any person within the territory of one State for the purpose of bringing that person before the courts of another State.

9. It is the understanding of Colombia that the transfer of proceedings referred to in article 8 of the Convention will take place in such a way as not to impair the constitutional guarantees of the right of defence. Further, Colombia declares with respect to article 6, paragraph 10, of the Convention that, in the execution offoreign sentences, the provisions of article 35, paragraph 2, of its Political Constitution and other legal and constitutional norms must be observed

The international obligations deriving from article 3, paragraphs 1 (c) and 2, as well as from article 11 are conditional on respect for Colombian constitutional principles and the above three reservations and nine declarations making the Convention compatible with the Colombian constitutional order.

CUBA

Declaration:

The Government of the Republic of Cuba declares that it does not consider itself bound by the provisions of article 32, paragraphs 2 and 3, and that disputes which arise between the Parties should be settled by negotiation through the diplomatic channel.

CYPRUS

Upon signature:

"[Signature is effected] subject to ratification, at the time of which reservations in respect of specific provisions of the Convention may be made and deposited in the prescribed manner. [It is understood] that such reservations, if any, cannot be incompatible with the object and purpose of this Convention."

Upon ratification:

Declaration:

"As a result of the occupation of 37% of the territory of the Republic of Cyprus, which since 1974 is occupied by Turkish troops in violation of the United Nations Charter and of basic principles of international law, the Government of the Republic of Cyprus is prevented from exercising its legitimate control and jurisdiction throughout the territory of the Republic of Cyprus and consequently over those activities in the illegally occupied area which are related to illicit drug trafficking."

DENMARK

Declarations:

"The Convention shall not apply to the Faroe Islands and Greenland."

With regard to article 17:

"Authorization granted by Danish authority pursuant to article 17 denotes only that Denmark will abstain from pleading infringement of Danish sovereignty in connection with the requesting State's boarding of a vessel. Danish authorities cannot authorize another State to take legal action on behalf of the Kingdom of Denmark."

FRANCE

Reservations:

The Government of the French Republic does not consider itself bound by the provisions of article 32, paragraph 2, and declares that any dispute relating to the interpretation or application of the Convention which cannot be settled in the manner prescribed in paragraph 1 of the said article may not be referred to the International Court of Justice unless all the parties to the dispute agree thereto.

Similarly, the Government of the French Republic does not consider itself bound by the provisions of article 32, paragraph 3.

GERMANY[5]

Declaration:

It is the understanding of the Federal Republic of Germany that the basic concepts of the legal system referred to in article 3, paragraph 2 of the Convention may be subject to change.

INDONESIA

Reservation:

“The Republic of Indonesia [...] does not consider itself bound by the provision of article 32 paragraphs (2) and (3), and take the position that disputes relating to the interpretation and application [of] the Convention which have not been settled through the channel provided for in paragraph (1) of the said article, may be referred to the International Court of Justice only with the consent of the Parties to the dispute.”

IRAN (ISLAMIC REPUBLIC OF)

Upon signature:

"The Government of the Islamic Republic of Iran wishes to express reservation to article 6, paragraph 3, of the Convention, since this provision is incompatible with our domestic law.

"The Government furthermore wishes to make a reservation to article 32, paragraphs 2 and 3, since it does not consider itself bound to compulsory jurisdiction of the International Court of Justice and feels that any disputes arising between the Parties concerning the interpretation or application of the Convention should be resolved through direct negotiations by diplomatic means."

IRELAND

1 February 2006

"... the authority now designated by Ireland under Article 17 (7) of the Convention is as follows:

Head of Unit
Liaison & Joint Operations
Customs Drugs Law Enforcement
Revenue Investigations & Prosecutions Division
Ashtown Gate
Dublin 15
Ireland
Telephone No. (office hours):
+ 353 1 827 7512
24 hour Telephone No. (outside office hours):
+ 353 87 254 8201 Fax: + 353 1 827 7680
E-mail address: antidrugs@revenue.ie
Office Hours : 0800 - 1800 (Monday-Friday)
Languages of incoming requests accepted: English
Time zone: GMT:+/-:0"

ISRAEL

Declaration:

"In accordance with paragraph 4 of Article 32, the Government of the State of Israel declares that it does not consider itself bound by the provisions of paragraph 2 of and 3 of this Article."

JAMAICA[13]

KUWAIT

Reservation:

With reservation as to paragraphs (2) and (3) of article 32 of this Convention.

LAO PEOPLE'S DEMOCRATIC REPUBLIC

Reservation:

"In accordance with paragraph 4, Article 32 of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, the Lao People's Democratic Republic does not consider itself bound by paragraph 2, Article 32 of the present Convention. The Lao People's Democratic Republic declares that to refer a dispute relating to interpretation and application of the present Convention to arbitration or the International Court of Justice, the agreement of all parties concerned in the dispute is necessary."

LEBANON[14]

Reservations:

1. The Government of the Lebanese Republic does not consider itself bound by the provisions

of article 32, paragraph 2, and declares that disputes relating to the interpretation or application of the Convention which are not settled by the means prescribed in paragraph 1 of that article shall be referred to the International Court of Justice only with the agreement of all of the Parties to the dispute.

Similarly, the Government of the Lebanese Republic does not consider itself bound by the provisions of article 32, paragraph 3.

2. The Government of the Lebanese Republic has reservations regarding article 5, paragraph 3, regarding article 7, paragraph 2 (f), and regarding article 7, paragraph 5, of the Convention.

LITHUANIA

Declaration:

"In accordance with article 6 of the said Convention the Republic of Lithuania declares that this Convention shall not be the legal basis for extradition of the Lithuanian citizens as it is provided in the Constitution of the Republic of Lithuania."

Reservation:

In accordance with paragraph 4 of article 32 of the said Convention the Republic of Lithuania will not apply provisions of paragraph 2 and 3 of article 32, referring to the disputes relating to the interpretation or application of this Convention to the International Court of Justice."

MALAYSIA

Declaration:

"The Government of Malaysia does not consider itself bound by paragraphs 2 and 3 of article 32 of the said Convention, wherein if there should arise between two or more Parties a dispute and such dispute cannot be settled in the manner prescribed in paragraph 1 of article 32 of the Convention, Malaysia is not bound to refer the dispute to the International Court of Justice for decision."

MYANMAR

Reservations:

"The Government of the Union of Myanmar wishes to express reservation on article 6 relating to extradition and does not consider itself bound by the same in so far as its own Myanmar nationals are concerned.

"The Government further wishes to make a reservation on article 32, paragraphs 2 and 3 and does not consider itself bound by obligations to refer the disputes relating to the interpretation or application of this Convention to the International Court of Justice."

NETHERLANDS

Upon signature:

Understanding:

"1 . Article 1 - Definition of Illicit Traffic

During the initial stages of this Conference, [the Government of the Netherlands] proposed to amend articles 15, 17, 18 and 19 (final numbering) in order to replace the generic phrase 'illicit traffic' by more specific language (e.g., 'illicit transport').

"To some extent the underlying concerns have been met by the introduction in Article 15 of a specific reference to the 'offences established in accordance with Article 3, paragraph 2'. On the other hand, articles 17, 18 and 19 still contain references to 'illicit traffic in narcotic drugs, psychotropic substances and substances in table I and table II'.

"It is the understanding [of the Government of the Netherlands] that, given the scope of these articles, the term 'illicit traffic' has to be understood in a limited sense, in each case taking into account the specific context. In applying these articles, [it] would therefore have to rely on the chapeau of article 1, allowing for a contextual application of the relevant definition.

"2. Article 3

"(a). [The Government of the Netherlands] notes with respect to article 3, paragraph 2 (subparagraph (b) (i) and (ii), and subparagraph (c) (i)) that the Drafting Committee has replaced the terms `knowing that such property is derived from an offence or offences set forth in paragraph 2' by: 'knowing that such property is derived from an offence or offences *established in accordance with paragraph 1'* . [The Government of the Netherlands] accepts this change with the understanding that this does not affect the applicability of the paragraphs referred to in cases where the offender knows that property is derived from an offence or offences that may have been established and committed under the jurisdiction of a foreign State.

"(b). With respect of article 3, paragraph 6, [the Government of the Nethesions cover offences established both under paragraph 1 and paragraph 2. In view of the provisions of paragraph 4 (d) and paragraph 11 of the same article, [the Government of the Netherlands] understands that the measure of discretionary legal powers relating to the prosecution for offences established in accordance with paragraph 2 may in practice be wider than for offences established in accordance with paragraph 1.

"(c). With respect to article 3, paragraphs 7 and 8, it is the understanding of [the Government of the Netherlands] that these provisions do not require the establishment of specific rules and regulations on the early release of convicted persons and the statute of limitations in respect of offences, covered by paragraph 1 of the article, which are different from such rules and regulations in respect of other, equally serious, offences. Consequently, it is [the Government's] understanding that the relevant legislation presently in force within the Kingdom sufficiently and appropriately meets the concerns expressed by the terms of these provisions.

"Article 17

[The Government of the Netherlands] understands the reference (in para.3) to 'a vessel exercising freedom of navigation' to mean a vessel navigating beyond the external limits of the territorial sea.

"The safeguard-clause contained in para. 11 of the article aims in [its] view at safeguarding the rights and obligations of Coastal States within the contiguous zone.

"To the extent that vessels navigating in the contiguous zone act in infringement of the Coastal State's customs and other regulations, the Coastal State is entitled to exercise, in conformity with the relevant rules of the international law of the sea, jurisdiction to prevent and/or punish such infringement."

Upon acceptance:

Reservation:

"The Government of the Kingdom of the Netherlands accepts the provisions of article 3, paragraphs 6, 7, and 8, only in so far as the obligations undeese provisions are in accordance with Dutch criminal legislation and Dutch policy on criminal matters."

PANAMA

Reservation:

The Republic of Panama does not consider itself obligated to apply the measures of confiscation or seizure provided for in article 5, paragraphs 1 and 2, of the Convention to property the value of which corresponds to that of the proceeds derived from offences established in accordance with the said Convention, in so far as such measures would contravene the provisions of article 30 of the Constitution of Panama, under which there is no penalty of confiscation of property.

ANNEX 4

PERU

Upon signature:

Peru formulates an express reservation to paragraph 1 (a) (ii) of article 3, concerning offences and sanctions; that paragraph includes cultivation among the activities established as criminal offences, without drawing the necessary clear distinction between licit and illicit cultivation. Accordingly, Peru also formulates an express reservation to the scope of the definition of illicit traffic contained in article 1 in so far as it refers to article 3, paragraph 1 (a) (ii).

In accordance with the provisions of article 32, paragraph 4, Peru declares, on signing the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, that it does not consider itself bound by article 32, paragraphs 2 and 3, since, in respect of this Convention, it agrees to the referral of disputes to the International Court of Justice only if all the parties, and not just one, agree to such a procedure.

PHILIPPINES[15]

SAN MARINO

Declaration:

"[The Republic of San Marino declares] that any confiscation activity under article 5 is subject to the fact that the crime is considered as such also by San Marino legal system.

Moreover, it declares that the establishment of "joint teams" and "liaison officers", under article 9, item 1, letter c) and d), as well as "controlled delivery" under article 11 of the [...] Convention, are not provided for by San Marino legal system."

SAUDI ARABIA[11]

Declarations:

1. The Kingdom of Saudi Arabia does not regard itself bound by article 32, paragraphs 2 and 3, of the Convention;

2. This ratification does not constitute recognition of Israel and shall not give rise to entry with it into any dealings or to the establishment with it of any relations under the Convention.

SINGAPORE

Declaration:

"With respect to article 6 paragraph 3, the Republic of Singapore declares that it shall not consider the Convention as the legal basis for extradition in respect of any offence to which article 6 applies."

Reservation:

"The Republic of Singapore declares, in pursuance of article 32, paragraph 4 of the Convention that it will not be bound by the provisions of article 32, paragraphs 2 and 3."

SOUTH AFRICA

Declaration

In keeping with paragraph 4 of article 32, the Republic of South Africa does not consider itself bound by the provisions of paragraphs 2 and 3 of Article 32 of the Convention.

SWEDEN

Declaration:

"Regarding article 3, paragraph 10, Swedish constitutional legislation on extradition implies that in judging whether a specific offence is to be regarded as a political offence, regard shall be paid to the circumstances in each individual case."

SWITZERLAND

Reservation concerning article 3, paragraph 2 :

Switzerland does not consider itself bound by article 3, paragraph 2, concerning the maintenance or adoption of criminal offences under legislation on narcotic drugs.

Reservation concerning article 3 , paragraphes 6, 7 and 8:

Switzerland considers the provisions of article 3, paragraphs 6, 7 and 8 as binding only to the extent that they are compatible with Swiss criminal legislation and Swiss policy on criminal matters.

SYRIAN ARAB REPUBLIC[11]

Declaration:

The accession to this Convention shall not constitute a recognition of Israel or lead to any kind of intercourse with it.

THAILAND

Reservation:

"The Government of the Kingdom of Thailand does not consider itself bound by the provisions of paragraph 2 of Article 32 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances."

TURKEY

Reservation:

Pursuant to paragraph 4 of article 32 of [said Convention], the Republic of Turkey is not bound by paragraphs 2 and 3 of article 32 of the Convention.

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

Reservation:

"The United Kingdom of Great Britain and Northern Ireland will only consider the granting of immunity under article 7, paragraph 18, where this is specifically requested by the person to whom the immunity would apply or by the authority designated, under article 7, paragraph 8, of the Party from whom assistance is requested. A request for immunity will not be granted where the judicial authorities of the United Kingdom consider that to do so would be contrary to the public interest."

UNITED REPUBLIC OF TANZANIA

Upon signature:

"Subject to a further determination on ratification, the United Republic of Tanzania declares that the provisions of article 17 paragraph 11 shall not be construed as either restraining in any manner the rights and privileges of a coastal State as envisaged by the relevant provisions relating to the Economic Exclusive Zone of the Law of the Sea Convention, or, as according third parties rights other than those so recognized under the Convention."

UNITED STATES OF AMERICA

Understandings:

"(1) Nothing in this Treaty requires or authorizes legislation or other action by the United States

of America prohibited by the Constitution of the United States.

"(2) The United States shall not consider this Convention as the legal basis for extradition of citizens to any country with which the United States has no bilateral extradition treaty in force.

"(3) Pursuant to the rights of the United States under article 7 of this treaty to deny requests which prejudice its essential interests, the United States shall deny a request for assistance when the designated authority, after consultation with all appropriate intelligence, anti-narcotic, and foreign policy agencies, has specific information that a senior government official who will have access to information to be provided under this treaty is engaged in or facilitates the production or distribution of illegal drugs."

Declaration:

"Pursuant to article 32 (4), the United States of America shall not be bound by article 32 (2)."

VENEZUELA (BOLIVARIAN REPUBLIC OF)

Interpretative declarations:

1. With respect to article 6: (Extradition)

It is the understanding of the Government of Venezuela that this Convention shall not be considered a legal basis for the extradition of Venezuelan citizens, as provided for in the national legislation in force.

2. With respect to article 11: (Controlled Delivery)

It is the understanding of the Government of Venezuela that publicly actionable offences in the national territory shall be prosecuted by the competent national police authorities and that the controlled delivery procedure shall be applied only in so far as it does not contravene national legislation in this matter.

VIET NAM[16]

Reservations:

"Reservations to article 6 on Extradition, article 32 paragraph 2 and paragraph 3 on Dispute settlement."

YEMEN[10]

Upon signature:

[Yemen reserves its] right to enter reservations in respect of such articles as it may see fit at a time subsequent to this signature.

Objections

(Unless otherwise indicated, the objections were received upon ratification, accession, acceptance, approval, formal confirmation or succession.)

AUSTRIA

16 December 1998

With regard to the reservation to article 6 made by Viet Nam upon accession:

"Austria is of the view that the reservation raises doubts as to its ratification of the mentioned treaty. Austria is of the view that the reservation raises doubts as to its compatibility with the object and purpose of the Convention concerned, in particular the fundamental principle that perpetrators of drug-related crime should be brought to justice, regardless of their whereabouts. Non-acceptance of this principle would undermine the effectiveness of the [said] Convention.

"Austria therefore objects to the reservation. This objection does not preclude the entry into force of the [said] Convention between Austria and Vietnam."

BELGIUM

27 December 1989

Belgium, member State of the European Community, attached to the principle of freedom of navigation, notably in the exclusive economic zone, considers that the declaration of Brazil concerning paragraph 11 of article 17, of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, adopted at Vienna on 20 December 1988, goes further than the rights accorded to coastal States by international law.

DENMARK

27 December 1989

[*Same objection* , mutatis mutandis, *as the one made by Belgium* .]

FINLAND

25 April 1997

With regard to the reservations made by Lebanon:

[Same objection, mutatis mutandis *, as the one made by France.]*

FRANCE

27 December 1989

[*Same objection* , mutatis mutandis, *as the one made by Belgium* .]

7 March 1997

With regard to the reservations made by Lebanon upon accession:

The Government of France has taken note of the reservations [made] by the Government of Lebanon in respect of articles 5 and 7 of this Convention and considers these reservations to be contrary to the object and purpose of the Convention.

The Convention indicates that bank secrecy shall not be a ground for a failure to act or for a failure to render mutual assistance. The Government of France considers that these reservations therefore undermine the object and purpose of the Convention, as stated in article 2, paragraph 1, to promote cooperation in order to address more effectively the international dimension of illicit drugs trafficking.

16 December 1998

With regard to the reservation with regard to article 6 made by Viet Nam upon accession:

[The Government of France] considers [the reservation made by Viet Nam upon accession] to be contrary to the object and purpose of the Convention of 1988. France therefore objects to it.

The objection does not preclude the entry into force of the 1988 Convention between France and Viet Nam.

GERMANY[4]

27 December 1989

[Same objection, mutatis mutandis *, as the one made by Belgium.]*

ANNEX 4

21 March 1997

With regard to the reservations made by Lebanon:

[*Same objection* , mutatis mutandis, *as the one made by France* .]

16 December 1998

With regard to the reservation to article 6 made by Viet Nam upon accession:

"The Government of the Federal Republic of Germany considers this reservation to be problematic in the light of the object and purpose of the Convention. The reservation made in respect of article 6 is contrary to the principle 'aut dedere au iudicare' which provides that offences are brought before the court or that extradition is granted to the requesting States.

"The Government of the Federal Republic of Germany is therefore of the opinion that the reservation jeopardizes the intention of the Convention, as stated in article 2 paragraph 1, to promote cooperation among the parties so that they may address more effectively the international dimension of illicit drug trafficking.

"The reservation may also raise doubts as to the commitment of the Government of the Socialist Republic of Viet Nam to comply with fundamental provisions of the Convention. It is in the common interest of states that international treaties which they have concluded are respected, as to their object and purpose, and that all parties are prepared to undertake any legislative and administrative changes necessary to comply with their obligations.

"The Government of the Federal Republic of Germany therefore objects to the reservation.

"This objection does not preclude the entry into force of the Convention between the Federal Republic of Germany and the Socialist Republic of Viet Nam."

GREECE

27 December 1989

[*Same objection* , mutatis mutandis, *as the one made by Belgium.*]

IRELAND

27 December 1989

[*Same objection* , mutatis mutandis, *as the one made by Belgium* .]

ITALY

27 December 1989

[*Same objection* , mutatis mutandis, *as the one made by Belgium.*]

24 April 1997

With regard to the reservations made by Lebanon upon accession:

[*Same objection* , mutatis mutandis, *as the one made by France.*]

LUXEMBOURG

27 December 1989

[Same objection, mutatis mutandis, *as the one made by Belgium.]*

MEXICO

10 July 1990

With regard to the interpretative declarations made by the United States of America:

The Government of the United Mexican States considers that the third declaration submitted by the Government of the United States of America (...) constitutes a unilateral claim to justification, not envisaged in the Convention, for denying legal assistance to a State that requests it, which runs counter to the purposes of the Convention. Consequently, the Government of the United Mexican States considers that such a declaration constitutes a reservation to which it objects.

This objection should not be interpreted as impeding the entry into force of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 as between the Government of the United Mexican States and the Government of the United States of America.

NETHERLANDS

27 December 1989

[*Same objection,* mutatis mutandis, *as the one made by Belgium.*]

11 March 1997

With regard to the reservations made by Lebanon upon accession:

[*Same objection* , mutatis mutandis, *as the one made by France.*]

PORTUGAL

27 December 1989

[*Same objection,* mutatis mutandis, *as the one made by Belgium.*]

SPAIN

27 December 1989

[*Same objection,* mutatis mutandis, *as the one made by Belgium.*]

SWEDEN

7 March 1997

With regard to the reservations made by Lebanon upon accession:

[*Same objection* , mutatis mutandis, *as the one made by France.*]

14 December 1998

With regard to the reservation made by Viet Nam upon accession:

"... The Government of Sweden is of the view that the reservation made by the Government of Viet Nam regarding article 6, may raise doubts as to the commitment of Viet Nam to the object and purpose of the Convention.

"It is in the common interest of States that treaties to which they have chosen to become parties are respected as to their object and purpose by all parties, and that States are prepared to undertake any legislative changes necessary to comply with their obligations under the treaties.

"Furthermore, according to the Vienna Convention on the Law of Treaties of 23 May 1969, and well-established customary international law, a reservation contrary to the object and purpose of the treaty shall not be permitted.

"The Government of Sweden therefore objects to the aforesaid [reservation] by the Government of Viet Nam.

"[This objection does] not preclude the entry into force of the [Convention] between Viet Nam and Sweden. The [Convention] will thus become operative between the two States without Viet Nam benefiting from the [reservation]."

25 July 2001

With regard to the declaration made by San Marino upon accession:

"The Government of Sweden has examined the declaration made by San Marino at the time of its accession to the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, regarding articles 5, 9 and 11 of the Convention.

In this context, the Government of Sweden would like to recall that under well-established treaty law, the name assigned to a statement whereby the legal effect of certain provisions of a treaty is excluded or modified, does not determine itsreservation to the treaty. Thus, the Government of Sweden considers that the declaration made by San Marino, in the absence of further clarification, in substance constitutes a reservation to the Convention.

The Government of Sweden notes that the said articles of the Convention are being made subject to a general reservation referring to the contents of existing legislation in San Marino.

The Government of Sweden is of the view that, in the absence of further clarification, this reservation raises doubts as to the commitment of San Marino to the object and purpose of the Convention and would like to recall that, according to customary international law as codified in the Vienna Convention on the Law of Treaties, a reservation incompatible with the object and purpose of a treaty shall not be permitted.

It is in the common interest of States that treaties to which they have chosen to become parties are respected as to their object and purpose, by all parties, and that States are prepared to undertake any legislative changes necessary to comply with their obligations under the treaties.

The Government of Sweden therefore objects to the aforesaid reservation made by the Government of San Marino to the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

This objection shall not preclude the entry into force of the Convention between San Marino and Sweden. The Convention enters into force in its entirety between the two States, without San Marino benefiting from its reservation."

TURKEY

With regard to the declaration made by Cyprus upon ratification:

"The Republic of Cyprus, founded in 1960 as a partnership state in accordance with the international Cyprus Treaties by the Turkish Cypriot and Greek Cypriot communities, was destroyed in 1963 when the Greek Cypriot side threw the Turkish Cypriots out of the government and administration and thereby rendered the Government of Cyprus unconstitutional.

"Consequently, since December 1963, there has been no single political authority in Cyprus representing both communities and legitimate empowered to act on behalf of the whole island. The Greek Cypriot side does not possess the right or authority to become party to international instruments on behalf of Cyprus as a whole.

"The ratification of this Convention by Turkey shall in no way imply the recognition of the 'Republic of Cyprus' by Turkey and her accession to this Convention should not signify any obligation on the part of Turkey to enter into any dealings with the 'Republic of Cyprus' as are regulated by this Convention."

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

27 December 1989

[*Same objection,* mutatis mutandis, *as the one made by Belgium.*]

10 March 1997

With regard to the reservations made by Lebanon upon accession:

[*Same objection,* mutatis mutandis, *as the one made by France.*]

17 December 1998

With regard to the reservation to article 6 made by Viet Nam upon accession:

"The United Kingdom is not in a position to accept [the] reservation.

"The above objection is not however, to constitute an obstacle to the entry into force of the said [Convention] as between Vietnam and the United Kingdom."

UNITED STATES OF AMERICA

23 October 1995

With regard to the reservations and declarations made by Colombia upon ratification:

"The Government of the United States of America understands the first reservation to exempt Colombia from the obligations imposed by article 3, paragraphs 6 and 9, and article 6 of the Convention only insofar as compliance with such obligations would prevent Colombia from abiding by article 35 of its Political Constitution (regarding the extradition of Colombian nationals by birth), to the extent that the reservation is intended to apply other than to the extradition of Colombian nationals by birth, the Government of the United States objects to the reservation.

"The Government of the United States of America objects to the first declaration, as it purports to subordinate Colombia's obligations under the Convention to its Constitution and international treaties, as well as to that nation's domestic legislation generally.

"The Government of the United States of America objects to the seventh declaration to the extent it purports to restrict the right of other States to freedom of navigation and other internationally lawful uses of the sea related to that freedom seaward of the outer limits of any State's territorial sea, determined in accordance with the International Law of the Sea as reflected in the 1982 United Nations Convention on the Law of the Sea."

Notifications under article 6, 7 and 17
(Unless otherwise indicated, the notifications were received upon ratification, accession, acceptance, approval, formal confirmation or succession.)

BARBADOS

23 June 1993

"... the Attorney-General has been designated as the authority for the purposes of articles 7 (8) and 17 (7) of the above-mentioned Convention and that English is the acceptable language for the purposes of paragraph 9 of said article 7. "

ANNEX 4

BRUNEI DARUSSALAM

19 June 2007

"The competent authority under article 7 (8) is the following:

Ministry of Foreign Affairs and Trade, Jalan Subok Bandar Seri Begawan BD, 2710, Brunei Darussalam

Telephone: (673) 226 1177; Fax: (673) 226 1709;

Email: mfa@gov.bn

COOK ISLANDS

24 March 2005

"(a) Article 6: Extradition

The Cook Islands Extradition Act 2003 provides for the extradition of persons to and from the Cook Islands.

The objects of the Act are to -

(a) codify the law relating to the extradition of persons from the Cook Islands; and

(b) facilitate the making of requests for extradition by the Cook Islands to other countries, and

(c) enable the Cook Islands to carry out its obligations under extradition treaties.

An offense under the Act is an extradition offence if -

1. (a) it is an offence against a law of the requesting country punishable

by death or imprisonment for not less than 12 months or the imposition of a fine of more than $5,000; and

(b) the conduct that constitutes an offence (however described) in the Cook Islands punishable by death or imprisonment for not less than 12 months or the imposition of a fine of more than $5,000.

2. In determining whether conduct constitutes an offence, regard may be had to only some of the acts and omissions that make up the conduct.

3. In determining the maximum penalty for an offence for which no statutory penalty is imposed, regard must be had to the level of penalty that can be imposed by any court in the requesting country for the offence.

4. An offence may be an extradition offence although:

(a) it is an offence against a law of the requesting country relating to taxation, customs duties or other revenue matters, or relating to foreign exchange controls; and

(b) the Cook Islands does not impose a duty, tax, impost or control of that kind.

(b) Article 7: Mutual Legal Assistance:

The authority in the Cook Islands with the responsibility and power to execute requests for mutual legal assistance is as follows:

Solicitor General, Crown Law Office, PO Box 494, Avarua, Rarotonga, Cook Islands. Tel: (682) 29 337; Fax: (682 20 839.

(c) Article 17: Illicit Traffic at Sea The authority in the Cook Islands with the responsibility for responding to requests for information on vessels flying the Cook Islands flag is as follows:

Secretary, Ministry of Transport, PO Box 61, Avarua, Rarotonga, Cook Islands. Tel: (682) 28 810; Fax: (682) 28 816."

DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA

31 May 2007

The Government of the Democratic People's Republic of Korea has designated the following authorities under the provisions of article 7 (8) and 17 (7), respectively.

Ministry of People's Security

Wasan-dong,

Sosong District

Pyongyang, DPR Korea.

Fax: +850-2-381-5833 Tel.: +850-2-381-5833 Maritime Administration Tonghun-dong Central District Pyongang, DPR Korea. Fax: +850-2-381-4410 Tel.: +850-2-18111 ext 8059 E-mail: Mab@silibank.com On the same date, the Government of the Democratic People's Republic of Korea notified the Secretary-General that English has been chosen as its language for the purpose of article 7 (9) of the Convention.

IRELAND

1 February 2006

"... the authority now designated by Ireland under Article 17 (7) of the Convention is as follows:

Head of Unit

Liaison & Joint Operations

Customs Drugs Law Enforcement

Revenue Investigations & Prosecutions Division

Ashtown Gate

Dublin 15

Ireland

Telephone No. (office hours):

+ 353 1 827 7512

24 hour Telephone No. (outside office hours):

+ 353 87 254 8201 Fax: + 353 1 827 7680

E-mail address: antidrugs@revenue.ie

Office Hours : 0800 - 1800 (Monday-Friday)

Languages of incoming requests accepted: English

Time zone: GMT:+/-:0"

NICARAGUA

31 July 2006

... the Government of the Republic of Nicaragua has designated the Attorney General of the Republic as the Central Authority in charge of fulfilling that which is stipulated in the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, done at Vienna on 20 December 1988.

PARAGUAY

<Right>3 September 2008</Right>

Pursuant to the provisions of articles 7 (8) and 17 (7) of the aforementioned Convention, the Republic of Paraguay has designated the following institution as its Central authority:

Government Procurator's Department – Office of the Attorney-General – Department of International Affairs and External Legal Assistance

Address: Nuestra Señora de la Asunción 737 c/Haedo, Piso 8, Asunción, Paraguay

Telephone numbers: 595-21-498537/ 595-21-415-5000/ 595-21-415-5100

Website: www.ministeriopublico.gov.py

Director: Juan Emilio Oviedo Cabañas (lawyer)

E-mail: jeoviedo@ministeriopublico.gov.py

Alternative contact: Magdalena Quiñonez, Assistant Prosecutor

E-mail: mquinonez@ministeriopublico.gov.py

Notes:

[1] The former Yugoslavia had signed and ratified the Convention on 20 December 1988 and 3 January 1991, respectively. See also note 1 under "Bosnia and Herzegovina", "Croatia", "former Yugoslavia", "Slovenia" and "Yugoslavia"

in the “Historical Information” section in the front matter of this volume.

[2] On 7 July 1999, the Government of Portugal informed the Secretary-General that the Convention would apply to Macao.

Subsequently, the Secretary-General received communications regarding the status of Macao from China and Portugal (see also note 3 under “China” and note 1 under “Portgual” in the “Historical Information” section in the front matter of this volume). Upon resuming the exercise of sovereignty over Macao, China notified the Secretary-General that the Convention will also apply to the Macao Special Administrative Region.

[3] The Secretary-General, received on 6 and 10 June 1997 communications regarding the status of Hong Kong from China and the United Kingdom of Great Brtiain and Northern Ireland (see also note 2 under “China” and note 2 under “United Kingdom of Great Britain and Northern Ireland” in the “Historical Information” section in the front matter of this volume). Upon resuming the exercise of sovereignty over Hong Kong, China notified the Secretary-General that the Convention with declaration made by China will also apply to the Hong Kong Special Administrative Region.

[4] Czechoslovakia had signed and ratified the Convention on 7 December 1989 and 4 June 1991, respectively. See also note 1 under “Czech Republic” and note 1 under “Slovakia” in the “Historical Information” section in the front matter of this volume.

[5] The German Democratic Republic had signed and ratified the Convention on 21 June 1989 and 21 February 1990, respectively. The instrument of ratification contained the following declarations:

Requests for mutual legal assistance under article 7 shall be directed to the German Democratic Republic through diplomatic channel in one of the official United Nations languages or in the German language unless existing agreements on mutual legal assistance include other provisions or direct communication between legal authorities has been determined or developed on a mutual basis.

The Ministry of Foreign Affairs shall be the competent authority to receive and respond to requests of another state to board or search a vessel suspected of being involved in illicit traffic (article 17).

See also note 2 under “Germany” in the “Historical Information” section in the front matter of this volume.

[6] See note 1 under "Montenegro" in the "Historical Information" section in the front matter of this volume.

[7] The signature was affixed for the Kingdom in Europe, the Netherlands Antilles and Aruba. The instrument of acceptance specifies that it is for the Kingdom in Europe. As from 10 mars 1999: for the Netherlands Antilles and Aruba with the following reservation: “The Government of the Kingdom of the Netherlands accepts the provisions of article 3, paragraph 6, 7 and 8, only in so far as the obligations under these provisions are in accordance with Netherlands Antillean and Aruban criminal legislation and Netherlands Antillean and Aruban policy on criminal matters.”

[8] See note 1 under “New Zealand” regarding Tokelau in the “Historical Information” section in the front matter of this volume.

[9] On 2 December 1993, the Government of the United Kingdom of Great Britain and Northern Ireland notified the Secretary-General that the Convention would apply to the Isle of Man with the following reservation:

"The United Kingdom of Great Britain and Northern Ireland will only consider the granting of immunity under article 7, paragraph 18, in relation to the Isle of Man, where this is specifically requested by the person to whom the immunity would apply or by the authority designated under article 7, paragraph 8 of the party from whom assistance is requested. A request for immunity will not be granted where the judicial authorities of the Isle of Man consider that to do so would be contrary to the public interest.”

Subsequently, in a notification received on 8 February 1995, the Government of the United Kingdom notified the Secretary-General that the Convention should apply, as from that same date, to the following territories: Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Monserrat and Turks and Caicos Islands.

In this regard, on 6 August 1996, the Secretary-General received from the Government of the United Kingdom of Great Britain and Northern Ireland, the following communication:

"... In relation to the aformentioned Territories the granting of immunity under article 7, paragraph 18, of the said Convention will only be considered where this is specifically requested by the person to whom the immunity would apply or by the authority designated, under article 7, paragraph 8, of the Party from whom assistance is requested. A request for immunity will not be granted where the judicial authorities of the Territory in question consider to do so would be contrary to the public interest."

Further, on 15 May and 7 July 1997, respectively, the Government of the United Kingdom of Great Britain and Northern Ireland notified the Secretary-General that the Convention shall extend to Hong Kong *(see also note 2)* and the Bailiwick of Jersey. The applicatn of the Convention to the Bailiwick of Jersey is subject to the following reservation:

(1) article 7, paragraph 18 (Reservation)

"The United Kingdom of Great Britain and Northern Ireland will only consider the granting of immunity under article 7, paragraph 18, in relation to Jersey, where this is specifically requested by the person to whom the immunity would apply or by the authority designated under article 7, paragraph 8 of the party from whom assistance is requested. A request for immunity will not be granted where the judicial authorities of Jersey consider that to do so would be contrary to the public interest."

Further, on 3 April 2002, the Government of the United Kingdom informed the Secretary-General that the Convention would extend to Guernsey, with the following reservation:

ANNEX 4

"(1) Article 7, Paragraph 18 (Reservation)

The United Kingdom of Great Britain and Northern Ireland will only consider the granting of immunity under Article 7, Paragraph 18, in relation to Guernsey, where this is specifically requested by the person to whom the immunity would apply or by the authority designated under Article 7, Paragraph 8 of the party from whom assistance is requested. A request for immunity will not be granted where the judicial authorities of Guernsey consider that to do so would be contrary to the public interest.

[10] The formality was effected by the Yemen Arab Republic. See also note 1 under "Yemen" in the "Historical Information" section in the front matter of this volume.

[11] The Secretary-General received from the Government of Israel objections identical in essence, *mutatis mutandis* , as the one referenced in note 17 in chapter VI.16, on 14 May 1990 in regard to the declaration made by Bahrain upon ratification, on 15 November 1991 in regard to the declaration made by the Syrian Arab Republic upon accession and on 10 April 1992 in regard to the declaration made by Saudi Arabia upon accession.

[12] On 30 December 1997, the Government of Colombia notified the Secretary-General that it had decided to withdraw its reservation with regard to article 3 (6) and (9) and article 6 made upon ratification. The reservation reads as follows.

1. Colombia is not bound by article 3, paragraphs 6 and 9, or article 6 of the Convention since they contravene article 35 of the Political Constitution of Colombia regarding the prohibition on extraditing Colombians by birth.

[13] On 10 December 1996, the Government of Jamaica informed the Secretary-General that it had decided to withdraw its declaration made upon accession. The declaration read as follows:

Declaration:

"The Government of Jamaica understands paragraph 11 of article 17 of the said Convention to mean that the consent of the coastal State is required as a precondition for action under paragraphs 2, 3 and 4 of article 17 of the said Convention in relation to the Exclusive Economic Zone and all other maritime areas under the sovereignty or jurisdiction of the coastal State."

[14] In regard to the reservation made by Lebanon, the Secretary-General received communications identical in essence, *mutatis mutandis* , as the one made by France under ***Objections"*** , from the following Governments on the dates indicated hereinafter:

Participants:	***Date of the communication:***		
Austria	11	Jul	1997
Greece	18	Jul	1997

[15] On 24 July 1997, the Government of the Philippines informed the Secretary-General that it had decided to withdraw its reservations made upon accession, which read as follows:

"[The Government of the Philippines declares] that it does not consider itself bound by the following provisions:

1. " Paragraph 1 (b) (i) and paragraph 2 (a) (ii) of article 4 on jurisdiction;

2. "Paragraph 1 (a) and paragraph 6 (a) and (b) of article 5 on confiscation; and

3. "Paragraph 9 (a) and (b) and 10 of article on extradition."

On that same date, the Government of the Philippines declared the following:

"The Philippines, does not consider itself bound by the mandatory jurisdiction of the International Court of Justice as provided for in article 32, paragraph 2 of the same Convention."

In keeping with the depositary practice followed in similar cases, the Secretary-General proposed to receive the declaration in question for deposit (in the absence of any objection on the part of any of the Contracting States, either to the deposit itself or to the procedure envisaged) within a period of 90 days from the date of the present notification (3 September 1997). No objection having been recieved within the said period, the above declaration was deemed accepted for deposit upon the expiration of the 90-day period, that is to say on 2 December 1997.

[16] In a communication received on 15 January 1999, the Government of Finland notified the Secretary-General of the following:

"The Government of Finland is of the view that [this reservation] raise[s] doubts as to [its] compatibility with the object and purpose of the [Convention] concerned, in particular the [reservation] to article 6, paragraphs 2 and 9. According to the Vienna Convention on the Law of Treaties, and well-established customary international law, a reservation contrary to the object and purpose of the treaty shall not be permitted.

It is in the common interest of States that treaties to which they have chosen to become Parties are respected as to their object and purpose by all Parties, and that States are prepared to undertake any legislative changes necessary to comply with their obligations under the treaties.

The Government of Finland therefore objects to [this reservation] made by the Government of Viet Nam to the [Convention].

This objection does not preclude the entry into force of the [Convention] between Viet Nam and Finland. The [Convention] will thus become operative between the two States without Viet Nam benefitting from [this reservation].

ANNEX 5

International Conference of American States, Perfecting and Coordination of International Peace Instruments
(21 Dec. 1938)

EIGHTH INTER-AMERICAN CONFERENCE

LIMA

9-27 December 1938

[…]
[PAGE 31]
[…]

XV

IMPROVEMENT AND COODINATION OF INTER-AMERICAN PEACE INSTRUMENTS[3]

WHEREAS:

The legal norms to prevent war in the Americas are dispersed throughout numerous Treaties, Conventions, Pacts and Declarations, that there is a need to systematize these into an organized and harmonic union,

The Mexican Peace Code project represents a notable effort to meet the need for such systemization, by virtue of which the Montevideo Conference recommended it for consideration by the Governments of the Americas, [4] it was accepted by the American Scientific Congress of Mexico,[5] and it was referred to in the Peace Consolidation Conference[6] of the Expert

[3] See also resolution XI of the Second Consultation Meeting, *infra*, pg. 147.
[4] For the text of this project, and the recommendation of the Montevideo Conference, see resolution XXXV of the same, in *International American Conferences, 1889-1936*, op. cit., p. 506.
[5] For information on this Congress, see *infra*, Appendix A, no. 22.
[6] In its resolution XXVIII; see *International American Conferences, 1889-1936,* op. cit., p. 647.

Committee,[7] which lent its knowledge to the idea of Codification and introduced into the project, before informing this Conference, transcendental modifications,

The American Governments, despite the recommendation of the Montevideo Conference, have not expressed their views and initiatives regarding the material integrated into said Code; opinions and initiatives which are indispensable for a successful and effective organization of norms to prevent war in the Americas,

In the desire to improve the American peace structure, interesting projects have been presented to this Conference which contain excellent suggestions and points of view, the expressions of which have dealt with, in turn, technical rules and the dictates of experience, and that among these projects the "Consolidation of the American Peace Agreements," presented by the delegation of the United States,[8] is worth mentioning, which is a framework for a peaceful solution process for international American differences through the compilation, in one instrument, of the provisions contained in eight current Treaties; and,

Once the opinion of the Governments is known regarding the revised draft of the Peace Code and regarding the other projects mentioned, it shall be passed to a body of a technical nature, with the aim that this body will begin the work of systematization, taking inspiration from the points of view of each State, the principles of a pan-American law, and the coordinating all of these with the legal systems of a universal nature,

The Eighth International American Conference,
RESOLVES:
1st.- That the Mexican Peace Code project, along with the preliminary project of the Expert Committee, the North American project on the "Consolidation of American Peace Agreements" and the other projects and reports presented at this Conference regarding norms to prevent war, shall pass to the Pan-American Union so that this Institution may organize and remit them to each of the American Governments with a request for opinions and indications to serve as a basis for the codification of said norms.

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[7] *Infra*, Appendix B, no. 30.
[8] For the text of this project, see *El Diario*, op. cit. no. 9A, p. 623.

2nd.- That the American Governments shall send, within a prudent term, their responses to the Pan-American Union and that this body shall remit them without delay, along with all the material referred to in the previous paragraph, to the International Commission of American Legal Advisors,[9] which shall begin the definitive work of the Peace Code.

3rd.- That the International Commission of American Legal Advisors shall apprise the next International American Conference about the state of its work in a substantiated report which shall be presented in a timely manner.

(Approved 21 December 1938.)

[9] *Infra*, Appendix A, no. 112, and Appendix B, no. 30.

OCTAVA CONFERENCIA INTERNACIONAL AMERICANA

LIMA

DEL 9 AL 27 DE DICIEMBRE DE 1938

de quedar pendientes de estudio para futuras Conferencias Internacionales Americanas,

Que en opinión de algunas Delegaciones también el proyecto en su parte esencial merecería un estudio todavía más amplio que el que hasta ahora se ha realizado,

Que en tales condiciones sería imposible entrar a la discusión del proyecto de Asociación de Naciones Americanas, puesto que la Conferencia resuelve aplazar para ulterior estudio algunas materias contenidas en el mismo, y existe la opinión de que también conviene realizar un más amplio estudio en cuanto a sù parte esencial u orgánica,

La Octava Conferencia Internacional Americana,

RESUELVE:

Que el proyecto de Asociación de Naciones Americanas presentado por la República de Colombia y la República Dominicana, en acatamiento del encargo que a ambas confirió la Conferencia Internacional [*Interamericana*] de Consolidación de la Paz, reunida en Buenos Aires en 1936,[1] pase a estudio de la Comisión Internacional de Jurisconsultos Americanos.[2]

El informe de dicha Comisión deberá ser depositado en la Unión Panamericana con la antelación suficiente a la celebración de la Novena Conferencia Internacional Americana a fin de que pueda ser sometido a la consideración de dicha Conferencia.

(Aprobada el 21 de diciembre de 1938.)

XV

PERFECCIONAMIENTO Y COORDINACION DE LOS INSTRUMENTOS INTERAMERICANOS DE PAZ[3]

CONSIDERANDO:

Que las normas jurídicas para prevenir la guerra en América se hallan dispersas en numerosos Tratados, Convenciones, Pactos y Declaraciones que es preciso sistematizar en un conjunto organizado y armónico,

Que el proyecto mexicano de Código de la Paz representa un apreciable esfuerzo para corresponder a la necesidad de esa sistematización, en cuya virtud la Conferencia de Montevideo lo recomendó a la consideración de los Gobiernos americanos,[4] fué acogido por el Congreso Científico Americano de México[5] y referido por la Conferencia de Consolidación de la Paz[6] al Comité

[1] Véase la resolución X de dicha Conferencia, reproducida en *Conferencias Internacionales Americanas, 1889–1936*, ob. cit., pág. 633.

[2] *Infra*, Apéndice A, núm. 112, y Apéndice B, núm. 50.

[3] Véase también la resolución XI de la Segunda Reunión de Consulta, *infra*, pág. 147.

[4] Para el texto del referido proyecto, y la recomendación de la Conferencia de Montevideo, véase la resolución XXXV de la misma, en *Conferencias Internacionales Americanas, 1889–1936*, ob. cit., pág. 506.

[5] Para información sobre este Congreso, véase *infra*, Apéndice A, núm. 22.

[6] En su resolución XXVIII; véase *Conferencias Internacionales Americanas, 1889–1936*, ob. cit., pág. 647.

de Expertos,[1] el cual prestó su docto asentimiento a la idea de la Codificación e introdujo en el proyecto, antes de informar sobre él a esta Conferencia, trascendentales modificaciones,

Que los Gobiernos Americanos, a pesar de la recomendación de la Conferencia de Montevideo, no han expresado su parecer y sus iniciativas sobre las materias que integran dicho Código; parecer e iniciativas que son indispensables para una acertada y eficaz organización de las normas preventivas de la guerra en América,

Que en el deseo de mejorar la estructura de la paz americana se han presentado a esta Conferencia interesantes proyectos que contienen excelentes sugerencias y puntos de vista para cuya enunciación se han considerado, a la vez, las reglas de la técnica y los dictámenes de la experiencia, y entre esos proyectos es digno de mención el de "Consolidación de los Convenios Americanos de Paz", presentado por la Delegación de los Estados Unidos,[2] por cuanto estructura el proceso de solución pacífica de las diferencias internacionales americanas mediante la compilación en un solo instrumento de disposiciones contenidas en ocho Tratados vigentes; y,

Que una vez conocida la opinión de los Gobiernos sobre el proyecto revisado de Código de la Paz y sobre los otros proyectos referidos, ha de pasar a un organismo de carácter técnico, a fin de que éste emprenda la tarea de la sistematización inspirándose en los puntos de vista de cada Estado, en los principios del derecho americano y en la coordinación de cada uno de ellos con los sistemas jurídicos de índole o tendencia universal,

La Octava Conferencia Internacional Americana,

RESUELVE:

1°.—Que el proyecto mexicano de Código de la Paz, junto con el anteproyecto del Comité de Expertos, el proyecto norteamericano sobre "Consolidación de los Convenios Americanos de Paz" y los demás proyectos e informes presentados a esta Conferencia en relación con las normas preventivas de la guerra, pasen a la Unión Panamericana para que esta Institución los clasifique y remita a cada uno de los Gobiernos americanos en solicitud de opinión e iniciativas que sirvan de base a la codificación de dichas normas.

2°.—Que los Gobiernos Americanos envíen, dentro de un término prudencial, sus respuestas a la Unión Panamericana, y que ésta las remita sin demora, junto con todo el material a que se refiere el número anterior, a la Comisión Internacional de Jurisconsultos Americanos,[3] la cual emprenderá la obra definitiva del Código de la Paz.

3°.—Que la Comisión Internacional de Jurisconsultos Americanos dé cuenta a la próxima Conferencia Internacional Americana acerca del estado de sus labores al respecto, en informe circunstanciado que presentará oportunamente.

(Aprobada el 21 de diciembre de 1938.)

[1] *Infra*, Apéndice B, núm. 50.
[2] Para el texto del referido proyecto, véase el *Diario*, ob. cit., núm. 9A, pág. 623.
[3] *Infra*, Apéndice A, núm. 112, y Apéndice B, núm. 50.

ANNEX 6

Inter-American Conference on Problems of War and Peace
(21 Feb. – 8 Mar. 1945)

Inter-American Conference on Problems of War and Peace
Mexico, D.F.
21 FEBRUARY – 8 MARCH 1945

[PAGE 51]

[…]

XXXIX

INTER-AMERICAN PEACE SYSTEM

The Inter-American Conference on Problems of War and Peace, WHEREAS:

The American Republics have repeatedly expressed their adherence to the ideals of peace and solidarity, proscribing the use of force in their relations and establishing that all differences that might arise between them must be settled by peaceful procedures;

The report by the Committee of Experts for the Codification of International Law at the Eighth International American Conference on the Mexican Project Code of Peace, as well as Resolution XV approved by said Conference, highlighted the need “to systematize

into an organized and harmonious set" the Inter-American instruments for the prevention and peaceful settlement of controversies;

The same Conference of Lima, in Declaration XXV, categorically declared itself in favor of the inclusion of an Inter-American Court of International Justice among the instruments referred to above, leaving only for a subsequent decision the date to be deemed appropriate for the constitution of the court;

Experience has proven, as highlighted by the Executive Committee on Postwar Problems of the Governing Board of the Pan-American Union in a recent report, that "simplifying the codification mechanism is not only advisable but necessary", because in cases such as this, which require quick decisions on a sufficiently studied subject, it is appropriate to use the simplest of the two codification procedures available to the Union of the American Republics,

HEREBY RESOLVES TO:

1. Reaffirm the principle of Law that all disputes of international character shall be settled by peaceful means;

2. Recommend that the Inter-American Legal Committee immediately prepare a draft of the "Inter-American Peace System", coordinate the continental instruments for prevention and peaceful

resolution of controversies, so that the gradual and progressive implementation of these shall lead to the desired end;

3. Suggest that for the formulation of the preliminary draft in question, the Committee use as a guide the one presented at the Conference of Lima

[PAGE 52]

by the Committee of Experts for the Codification of International Law, along with the second edition of the Mexican Project Code of Peace, the "Consolidation Project of the American Peace Agreements," submitted by the Delegation of the United States at the Eighth Conference, the Draft of the "Alternative Treaty on Peaceful Procedures," prepared by the Inter-American Legal Committee, and relevant instruments approved by this Conference. The Committee shall also consider the drafts for bilateral pact and multilateral pact, presented to the Inter-American Conference of Lima, by the Delegation of Venezuela.

4. Entrust the Committee to also present in a timely manner the preliminary draft to be submitted to the American Governments, who shall formulate observations deemed appropriate within a maximum period of six months, in order for the Committee to be able to prepare

in the near future the final draft of the Inter-American instrument in question;

5. Entrust the Governing Board of the Pan-American Union, once the Committee has prepared said draft, to convene the International Conference of American Legal Advisors, in order to adopt the "Inter-American Peace System" as a Convention by the States of the Continent.

(Approved in the plenary session of 7March 1945)

CONFERENCIA INTERAMERICANA SOBRE PROBLEMAS DE LA GUERRA Y DE LA PAZ

MEXICO, D.F.

FEBRERO 21–MARZO 8, 1945

ANNEX 6

Democracia de América Frente a la Eventual Instalación de Regímenes Antidemocráticos en el Continente", y formule el dictamen del caso, que será sometido a los Gobiernos de las Repúblicas Americanas por conducto de la Unión Panamericana, para su presentación en la Novena Conferencia Internacional Americana.

(*Aprobada en la sesión plenaria del día 7 de marzo de 1945*)

XXXIX

Sistema Interamericano de Paz

La Conferencia Interamericana sobre Problemas de la Guerra y de la Paz,

Considerando:

Que las Repúblicas americanas han expresado repetidas veces su adhesión a los ideales de paz y de solidaridad, proscribiendo el uso de la fuerza en sus relaciones y estableciendo que todas las divergencias que entre ellas pudieran surgir deberán arreglarse mediante procedimientos pacíficos;

Que tanto el informe rendido por la Comisión de Expertos para la Codificación del Derecho Internacional a la Octava Conferencia Internacional Americana sobre el Proyecto Mexicano de Código de la Paz, como la Resolución XV aprobada por dicha Conferencia, subrayaron la necesidad de "sistematizar en un conjunto organizado y armónico" los instrumentos interamericanos para la prevención y solución pacífica de controversias;

Que la misma Conferencia de Lima se pronunció categóricamente, en la Declaración XXV, en favor de la inclusión de una Corte Interamericana de Justicia Internacional entre los instrumentos antes aludidos, dejando, sólo para ulterior decisión la fecha en que fuese oportuna la constitución de la Corte;

Que la experiencia ha demostrado que, como lo ha puesto de relieve el Comité Ejecutivo sobre Problemas de la Postguerra del Consejo Directivo de la Unión Panamericana, en reciente informe, "la simplificación del mecanismo de codificación no sólo es conveniente,sino necesaria", por lo que en casos como el presente, en que se requieren resultados rápidos sobre una materia suficientemente estudiada, es oportuno recurrir al más sencillo de los dos procedimientos de codificación de que dispone la Unión de las Repúblicas Americanas,

Resuelve:

1º. Reafirmar el principio de Derecho que todas las diferencias de carácter internacional deben ser resueltas por medios pacíficos;

2º. Recomendar al Comité Jurídico Interamericano la elaboración inmediata de un anteproyecto de "Sistema Interamericano de Paz", que coordine los instrumentos continentales para la prevención y solución pacífica de controversias, en forma tal que la aplicación gradual y progresiva de éstos lleve obligatoriamente a la obtención del fin apetecido;

3º. Sugerir al Comité que, para la formulación del anteproyecto en cuestión, tome como base el presentado a la Conferencia de Lima por la Comisión de

Expertos para la Codificación del Derecho Internacional, junto con la segunda edición del Proyecto Mexicano de Código de la Paz, el Proyecto de "Consolidación de los Convenios Americanos de Paz", sometido por la Delegación de los Estados Unidos a la Octava Conferencia, el Proyecto de "Tratado Alternativo sobre Procedimientos Pacíficos", elaborado por el propio Comité Jurídico Interamericano, y los instrumentos pertinentes aprobados en esta Conferencia. Igualmente, el Comité deberá tener en cuenta los proyectos de pacto bilateral y de pacto multilateral presentados a la Conferencia Interamericana de Lima por la Delegación Venezolana.

4º. Encomendar igualmente al Comité que someta oportunamente el anteproyecto de que se trata a todos los Gobiernos americanos, debiendo éstos formular las observaciones que estimen pertinentes en el plazo máximo de seis meses, con objeto de que el Comité esté en posibilidad de redactar en fecha próxima un proyecto definitivo del instrumento interamericano en cuestión;

5º. Encomedar al Consejo Directivo de la Unión Panamericana que, una vez que el Comité haya elaborado dicho proyecto, convoque a la Conferencia Internacional de Jurisconsultos Americanos, a fin de que el proyecto de "Sistema Interamericano de Paz" sea adoptado en forma de Convención por los Estados del Continente.

(*Aprobada en la sesión plenaria del día 7 de marzo de 1945*)

XL

Proteccion Internacional de los Derechos Esenciales del Hombre

La Conferencia Interamericana sobre Problemas de la Guerra y de la Paz,

Considerando:

Que la Declaración de las Naciones Unidas ha consagrado la necesidad de establecer la protección internacional de los Derechos Esenciales del Hombre;

Que para que esa protección sea llevada a la práctica se requiere precisar tales derechos—así como los deberes correlativos—en una Declaración adoptada en forma de Convención por los Estados;

Que la protección internacional de los derechos esenciales del hombre eliminaría el uso indebido de la protección diplomática de los ciudadanos en el exterior, cuyo ejercicio ha determinado más de una vez la violación del principio de no intervención, y también el de igualdad, entre nacionales y extranjeros, en cuanto a los derechos esenciales del hombre,

Resuelve:

1º. Proclamar la adhesión de las Repúblicas Americanas a los principios consagrados en el Derecho Internacional para la salvaguardia de los derechos esenciales del hombre y pronunciarse en favor de un sistema de protección internacional de los mismos.

2º. Encomendar al Comité Jurídico Interamericano la redacción de un anteproyecto de Declaración de los Derechos y Deberes Internacionales del

ANNEX 7

South Africa*, Fertilizer, Farm Feeds, Agricultural Remedies and Stock Remedies Act 36 of 1947*

FERTILIZERS, FARM FEEDS, AGRICULTURAL REMEDIES AND STOCK REMEDIES ACT 36 OF 1947

[ASSENTED TO 3 JUNE 1947] [DATE OF COMMENCEMENT: 1 JUNE 1948]

(Afrikaans text signed by the Governor-General)

as amended by

Fertilizers, Farm Feeds, Seeds and Remedies Amendment Act 48 of 1950
Seeds Act 28 of 1961
Fertilizers, Farm Feeds and Remedies Amendment Act 60 of 1970
Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Amendment Act 17 of 1972
Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Amendment Act 24 of 1977
Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Amendment Act 4 of 1980
General Law Amendment Act 49 of 1996

Regulations under this Act

EXCLUSION OF CERTAIN FARM FEEDS FROM THE OPERATION OF CERTAIN PROVISIONS OF THE ACT

FARM FEEDS, REGULATIONS RELATING TO

GRANTING OF CERTAIN POWERS TO THE SECRETARY FOR AGRICULTURE REGARDING THE ACQUISITION, DISPOSAL OR USE OF FARM FEEDS

PROHIBITION OF THE SALE, ACQUISITION, DISPOSAL OR USE OF AGRICULTURAL REMEDIES AND STOCK REMEDIES [CHLORDANE]

PROHIBITION OF THE SALE, ACQUISITION, DISPOSAL OR USE OF AGRICULTURAL REMEDIES AND STOCK REMEDIES

PROHIBITION ON THE ACQUISITION, DISPOSAL OR USE OF CERTAIN FARM FEEDS

REGISTRATION OF FERTILIZERS, FARM FEEDS, AGRICULTURAL REMEDIES, STOCK REMEDIES, STERILISING PLANTS AND PEST CONTROL OPERATORS, APPEALS AND IMPORTS

REGULATION RELATING TO THE PROHIBITION OF THE SALE, ACQUISITION, DISPOSAL OR USE OF THE AGRICULTURAL REMEDY - MONOCROTOPHOS

RETURNS BY MANUFACTURERS AND IMPORTERS OF FARM FEEDS AND PROHIBITION IN CONNECTION WITH FARM FEEDS OF ANIMAL ORIGIN

ACT

To provide for the appointment of a Registrar of Fertilizers, Farm Feeds and Agricultural Remedies; for the registration of fertilizers, farm feeds, agricultural remedies, stock remedies, sterilizing plants and pest control operators; to regulate or prohibit the importation, sale, acquisition, disposal or use of fertilizers, farm feeds, agricultural remedies and stock remedies; to provide for the designation of technical advisers and analysts; and to provide for matters incidental thereto.

Cases

[Long title amended by s. 3 of Act 48 of 1950 and by s. 44 of Act 28 of 1961 and substituted by s. 16 of Act 60 of 1970, by s. 22 of Act 24 of 1977 and by s. 10 of Act 4 of 1980.]

1 Definitions

Cases

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use of such equipment when administering the said remedy.

[S. 6A inserted by s. 5 of Act 4 of 1980.]

7 Sale of fertilizers, farm feeds, agricultural remedies and stock remedies

Cases

(1) No person shall sell any fertilizer, farm feed, agricultural remedy or stock remedy unless-

(a) it is registered under this Act under the name or mark under which it is so sold: Provided that a fertilizer, farm feed, agricultural remedy or stock remedy in respect of which the period of validity of the registration has expired, the certificate of registration has been cancelled in terms of section 4 or has lapsed in terms of section 4A (2) and which, before or on the date of such cancellation or lapse, was no longer under the control of, or owned by the person to whom that certificate of registration was issued, may, subject to the provisions of section 7*bis*, be sold;

(b) it is, subject to the provisions of paragraph *(c)*, packed in such manner and mass or volume as may be prescribed;

(c) the container in which it is sold, complies with the prescribed requirements and is sealed and labelled or marked in such manner as may be prescribed or, if it is not sold in a container, it is accompanied by the invoice referred to in section 9; and

(d) it is of the composition and efficacy specified in the application for registration thereof, possesses all chemical, physical and other properties so specified, and complies with the prescribed requirements.

(2) *(a)* No person shall for reward or in the course of any industry, trade or business-

(i) use, or recommend the use of, any agricultural remedy or stock remedy for a purpose or in a manner other than that specified on the label on a container thereof or described on such container;

(ii) use any agricultural remedy unless he is a pest control operator registered in terms of this Act or otherwise than in the presence and under the supervision of a pest control operator so registered.

[Para. *(a)* substituted by s. 6 of Act 4 of 1980.]

(b) The provisions of paragraph *(a)* shall, in the case of a stock remedy, not apply to a veterinarian registered under the Veterinary Act, 1933 (Act 16 of 1933).

[S. 7 substituted by s. 60 of 1970 and by s. 8 of Act 24 of 1977.]

7*bis* Prohibition on acquisition, disposal, sale or use of certain fertilizers, farm feeds, agricultural remedies and stock remedies

Cases

(1) The Minister may by notice in the *Gazette*-

(a) prohibit the acquisition, disposal, sale or use of fertilizers, farm feeds, agricultural remedies or stock remedies; or

(b) prohibit such acquisition, disposal, sale or use, except in accordance with such conditions as may be specified in the notice or except under the authority of and in accordance with such conditions as may be specified in a permit issued by the registrar,

and may in like manner repeal or amend any such notice.

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ANNEX 8

United States,
Federal Insecticide, Fungicide and Rodenticide Act,
7 U.S.C. Sec. 136j(a)(2)(G) (1947)

Effective:[See Text Amendments]

United States Code Annotated Currentness
Title 7. Agriculture
Chapter 6. Insecticides and Environmental Pesticide Control (Refs & Annos)
Subchapter II. Environmental Pesticide Control (Refs & Annos)
§ 136j. Unlawful acts

(a) In general

(1) Except as provided by subsection (b) of this section, it shall be unlawful for any person in any State to distribute or sell to any person--

(A) any pesticide that is not registered under section 136a of this title or whose registration has been canceled or suspended, except to the extent that distribution or sale otherwise has been authorized by the Administrator under this subchapter;

(B) any registered pesticide if any claims made for it as a part of its distribution or sale substantially differ from any claims made for it as a part of the statement required in connection with its registration under section 136a of this title;

(C) any registered pesticide the composition of which differs at the time of its distribution or sale from its composition as described in the statement required in connection with its registration under section 136a of this title;

(D) any pesticide which has not been colored or discolored pursuant to the provisions of section 136w(c)(5) of this title;

(E) any pesticide which is adulterated or misbranded; or

(F) any device which is misbranded.

(2) It shall be unlawful for any person--

(A) to detach, alter, deface, or destroy, in whole or in part, any labeling required under this subchapter;

(B) to refuse to--

(i) prepare, maintain, or submit any records required by or under section 136c, 136e, 136f, 136i, or 136q of this title;

(ii) submit any reports required by or under section 136c, 136d, 136e, 136f, 136i, or 136q of this title; or

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(iii) allow any entry, inspection, copying of records, or sampling authorized by this subchapter;

(C) to give a guaranty or undertaking provided for in subsection (b) of this section which is false in any particular, except that a person who receives and relies upon a guaranty authorized under subsection (b) of this section may give a guaranty to the same effect, which guaranty shall contain, in addition to the person's own name and address, the name and address of the person residing in the United States from whom the person received the guaranty or undertaking;

(D) to use for the person's own advantage or to reveal, other than to the Administrator, or officials or employees of the Environmental Protection Agency or other Federal executive agencies, or to the courts, or to physicians, pharmacists, and other qualified persons, needing such information for the performance of their duties, in accordance with such directions as the Administrator may prescribe, any information acquired by authority of this subchapter which is confidential under this subchapter;

(E) who is a registrant, wholesaler, dealer, retailer, or other distributor to advertise a product registered under this subchapter for restricted use without giving the classification of the product assigned to it under section 136a of this title;

(F) to distribute or sell, or to make available for use, or to use, any registered pesticide classified for restricted use for some or all purposes other than in accordance with section 136a(d) of this title and any regulations thereunder, except that it shall not be unlawful to sell, under regulations issued by the Administrator, a restricted use pesticide to a person who is not a certified applicator for application by a certified applicator;

(G) to use any registered pesticide in a manner inconsistent with its labeling;

(H) to use any pesticide which is under an experimental use permit contrary to the provisions of such permit;

(I) to violate any order issued under section 136k of this title;

(J) to violate any suspension order issued under section 136a(c)(2)(B), 136a-1, or 136d of this title;

(K) to violate any cancellation order issued under this subchapter or to fail to submit a notice in accordance with section 136d(g) of this title;

(L) who is a producer to violate any of the provisions of section 136e of this title;

(M) to knowingly falsify all or part of any application for registration, application for experimental use permit, any information submitted to the Administrator pursuant to section 136e of this title, any records required to be maintained pursuant to this subchapter, any report filed under this subchapter, or any information marked as confidential and submitted to the Administrator under any provision of this subchapter;

(N) who is a registrant, wholesaler, dealer, retailer, or other distributor to fail to file reports required by this subchapter;

(O) to add any substance to, or take any substance from, any pesticide in a manner that may defeat the purpose of this subchapter;

(P) to use any pesticide in tests on human beings unless such human beings (i) are fully informed of the nature

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and purposes of the test and of any physical and mental health consequences which are reasonably foreseeable therefrom, and (ii) freely volunteer to participate in the test;

(Q) to falsify all or part of any information relating to the testing of any pesticide (or any ingredient, metabolite, or degradation product thereof), including the nature of any protocol, procedure, substance, organism, or equipment used, observation made, or conclusion or opinion formed, submitted to the Administrator, or that the person knows will be furnished to the Administrator or will become a part of any records required to be maintained by this subchapter;

(R) to submit to the Administrator data known to be false in support of a registration; or

(S) to violate any regulation issued under section 136a(a) or 136q of this title.

(b) Exemptions

The penalties provided for a violation of paragraph (1) of subsection (a) of this section shall not apply to--

(1) any person who establishes a guaranty signed by, and containing the name and address of, the registrant or person residing in the United States from whom the person purchased or received in good faith the pesticide in the same unbroken package, to the effect that the pesticide was lawfully registered at the time of sale and delivery to the person, and that it complies with the other requirements of this subchapter, and in such case the guarantor shall be subject to the penalties which would otherwise attach to the person holding the guaranty under the provisions of this subchapter;

(2) any carrier while lawfully shipping, transporting, or delivering for shipment any pesticide or device, if such carrier upon request of any officer or employee duly designated by the Administrator shall permit such officer or employee to copy all of its records concerning such pesticide or device;

(3) any public official while engaged in the performance of the official duties of the public official;

(4) any person using or possessing any pesticide as provided by an experimental use permit in effect with respect to such pesticide and such use or possession; or

(5) any person who ships a substance or mixture of substances being put through tests in which the purpose is only to determine its value for pesticide purposes or to determine its toxicity or other properties and from which the user does not expect to receive any benefit in pest control from its use.

CREDIT(S)

(June 25, 1947, c. 125, § 12, as added Oct. 21, 1972, Pub.L. 92-516, § 2, 86 Stat. 989, and amended Sept. 30, 1978, Pub.L. 95-396, § 16, 92 Stat. 832; Oct. 25, 1988, Pub.L. 100-532, Title VI, §§ 601(b)(2), 603, Title VIII, § 801(g), (q)(2)(B), 102 Stat. 2677, 2678, 2682, 2683; Dec. 13, 1991, Pub.L. 102-237, Title X, § 1006(a)(7), (b)(3)(L) to (O), 105 Stat. 1895, 1896.)

Current through P.L. 111-7 (excluding P.L. 111-5) approved 3-9-09

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Effective:[See Text Amendments]

United States Code Annotated Currentness
Title 7. Agriculture
Chapter 6. Insecticides and Environmental Pesticide Control (Refs & Annos)
Subchapter II. Environmental Pesticide Control (Refs & Annos)
§ 136*l*. Penalties

(a) Civil penalties

(1) In general

Any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of this subchapter may be assessed a civil penalty by the Administrator of not more than $5,000 for each offense.

(2) Private applicator

Any private applicator or other person not included in paragraph (1) who violates any provision of this subchapter subsequent to receiving a written warning from the Administrator or following a citation for a prior violation, may be assessed a civil penalty by the Administrator of not more than $1,000 for each offense, except that any applicator not included under paragraph (1) of this subsection who holds or applies registered pesticides, or uses dilutions of registered pesticides, only to provide a service of controlling pests without delivering any unapplied pesticide to any person so served, and who violates any provision of this subchapter may be assessed a civil penalty by the Administrator of not more than $500 for the first offense nor more than $1,000 for each subsequent offense.

(3) Hearing

No civil penalty shall be assessed unless the person charged shall have been given notice and opportunity for a hearing on such charge in the county, parish, or incorporated city of the residence of the person charged.

(4) Determination of penalty

In determining the amount of the penalty, the Administrator shall consider the appropriateness of such penalty to the size of the business of the person charged, the effect on the person's ability to continue in business, and the gravity of the violation. Whenever the Administrator finds that the violation occurred despite the exercise of due care or did not cause significant harm to health or the environment, the Administrator may issue a warning in lieu of assessing a penalty.

(5) References to Attorney General

In case of inability to collect such civil penalty or failure of any person to pay all, or such portion of such civil

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penalty as the Administrator may determine, the Administrator shall refer the matter to the Attorney General, who shall recover such amount by action in the appropriate United States district court.

(b) Criminal penalties

(1) In general

(A) Any registrant, applicant for a registration, or producer who knowingly violates any provision of this subchapter shall be fined not more than $50,000 or imprisoned for not more than 1 year, or both.

(B) Any commercial applicator of a restricted use pesticide, or any other person not described in subparagraph (A) who distributes or sells pesticides or devices, who knowingly violates any provision of this subchapter shall be fined not more than $25,000 or imprisoned for not more than 1 year, or both.

(2) Private applicator

Any private applicator or other person not included in paragraph (1) who knowingly violates any provision of this subchapter shall be guilty of a misdemeanor and shall on conviction be fined not more than $1,000, or imprisoned for not more than 30 days, or both.

(3) Disclosure of information

Any person, who, with intent to defraud, uses or reveals information relative to formulas of products acquired under the authority of section 136a of this title, shall be fined not more than $10,000, or imprisoned for not more than three years, or both.

(4) Acts of officers, agents, etc.

When construing and enforcing the provisions of this subchapter, the act, omission, or failure of any officer, agent, or other person acting for or employed by any person shall in every case be also deemed to be the act, omission, or failure of such person as well as that of the person employed.

CREDIT(S)

(June 25, 1947, c. 125, § 14, as added Oct. 21, 1972, Pub.L. 92-516, § 2, 86 Stat. 992, and amended Sept. 30, 1978, Pub.L. 95-396, § 17, 92 Stat. 832; Oct. 25, 1988, Pub.L. 100-532, Title VI, § 604, 102 Stat. 2678; Dec. 13, 1991, Pub.L. 102-237, Title X, § 1006(a)(8), 105 Stat. 1895.)

Current through P.L. 111-7 (excluding P.L. 111-5) approved 3-9-09

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ANNEX 9

Charter of the Organization of American States,
UNTS I-1609 (1948), entered into force 13 Dec. 1951

No. 1609

ARGENTINA, BOLIVIA, BRAZIL, CHILE, COLOMBIA, etc.

Charter of the Organization of American States. Signed at Bogotá, on 30 April 1948

Official texts: Spanish, Portuguese, English and French.

Registered on 16 January 1952 by the Pan American Union acting on behalf of the Contracting Parties in accordance with article 110 of the Charter of the Organization of American States.

ARGENTINE, BOLIVIE, BRÉSIL, CHILI, COLOMBIE, etc.

Charte de l'Organisation des États américains. Signée à Bogota, le 30 avril 1948

Textes officiels espagnol, portugais, anglais et français.

Enregistrée le 16 janvier 1952 par l'Union panaméricaine agissant au nom des Parties contractantes, conformément à l'article 110 de la Charte de l'Organisation des États américains.

ARTICLE 18

The American States bind themselves in their international relations not to have recourse to the use of force, except in the case of self-defense in accordance with existing treaties or in fulfillment thereof.

ARTICLE 19

Measures adopted for the maintenance of peace and security in accordance with existing treaties do not constitute a violation of the principles set forth in Articles 15 and 17.

CHAPTER IV

Pacific settlement of disputes

ARTICLE 20

All international disputes that may arise between American States shall be submitted to the peaceful procedures set forth in this Charter, before being referred to the Security Council of the United Nations.

ARTICLE 21

The following are peaceful procedures : direct negotiation, good offices, mediation, investigation and conciliation, judicial settlement, arbitration, and those which the parties to the dispute may especially agree upon at any time.

ARTICLE 22

In the event that a dispute arises between two or more American States which, in the opinion of one of them, cannot be settled through the usual diplomatic channels, the Parties shall agree on some other peaceful procedure that will enable them to reach a solution.

ARTICLE 23

A special treaty will establish adequate procedures for the pacific settlement of disputes and will determine the appropriate means for their application, so that no dispute between American States shall fail of definitive settlement within a reasonable period.

CHAPTER V

Collective security

ARTICLE 24

Every act of aggression by a State against the territorial integrity or the inviolability of the territory or against the sovereignty or political independence

ANNEX 10

Republic of Colombia,
Decree No. 2811, *National Code of Renewable Natural Resources and Environmental Protection* (18 Dec. 1974)

DECREE 2811 of 18 DECEMBER 1974
(18 December)
Official Bulletin No. 34,243, of 27 January 1975

PRESIDENCY OF THE REPUBLIC

By which the National Code for Renewable Natural Resources and Environmental Protection is issued

[…]

PART II.
ON ENVIRONMENTAL ISSUES OF INTERNATIONAL SCOPE OR INFLUENCE

ARTICLE 10. To prevent or solve environmental problems and to regulate the use of renewable natural resources shared with bordering countries, and without prejudice to the treaties currently in force, the government shall seek to complement the existing stipulations or to negotiate others which deal with:

a. The reciprocation and permanent exchange of necessary information for the planning of development and the optimal use of said resources and elements;
b. The reciprocation and prior communication of alterations or environmental imbalances which can arise from works or projected works of the governments or inhabitants of the respective countries, far enough in advance that said governments can take the pertinent actions when they believe their environmental rights and interests could suffer impairment;
c. The joint administration of governments regarding natural renewable resources, the exploitation or use of which cannot be physically divided among the interested countries, or which from a technical or economic point of view are not convenient to divide;
d. The adoption of measures in order to not cause considerable damage to other countries from the purely internal use of non-renewable natural resources or other environmental elements, in Colombia or in neighboring nations.

ARTICLE 11. Natural resources subject to the provisions referred to in the preceding article are, among others, the following:

a. The hydrographic basins of rivers which serve as borders or which cross the borders of Colombia, including surface and subterranean water and other natural connecting flows;
b. The forests on both sides of a border;
c. The fauna species in which Colombia and neighboring countries have an interest;
d. National ocean waters and the elements they contain;
e. The atmosphere, in as much as already verified acts or projected acts in a country can produce harmful effects to the neighbor, or harmful climate changes;
f. The geothermic deposits which extend to both sides of a border. These are international rivers which cross the territories of two or more States or which serve as a border between these States.

ARTICLE 12. The government shall seek to avoid or prohibit the use of environmental elements and renewable natural resources which can cause environmental deterioration in non-neighboring countries, on the high seas or their shores, or in the atmosphere or air space beyond the territorial jurisdiction. The government shall also seek to make efforts to ensure that, in similar circumstances, other countries adopt a similar attitude.

Artículo

Siguiente

DECRETO 2811 DE 1974

(diciembre 18)

Diario Oficial No 34.243, del 27 de enero de 1975

PRESIDENCIA DE LA REPUBLICA

Por el cual se dicta el Código Nacional de Recursos Naturales Renovables y de Protección al Medio Ambiente

<Resumen de Notas de Vigencia>

EL PRESIDENTE DE LA REPUBLICA DE COLOMBIA,

en ejercicio de las facultades extraordinarias conferidas por la Ley 23 de 1973 y previa consulta con las comisiones designadas por las Cámaras Legislativas y el consejo de Estado, respectivamente,

DECRETA:

EL SIGUIENTE SERÁ EL TEXTO DEL CÓDIGO NACIONAL DE RECURSOS NATURALES RENOVABLES Y DE PROTECCIÓN AL MEDIO AMBIENTE

TITULO PRELIMINAR

CAPITULO UNICO

ARTICULO 1o. El ambiente es patrimonio común. El Estado y los particulares deben participar en su preservación y manejo, que son de utilidad pública e interés social.

La preservación y manejo de los recursos naturales renovables también son de utilidad pública e interés social.

ARTICULO 2o. Fundado en el principio de que el ambiente es patrimonio común de la humanidad y necesario para la supervivencia y el desarrollo económico y social de los pueblos, este Código tiene por objeto:

1o. Lograr la preservación y restauración del ambiente y la conservación, mejoramiento y utilización racional de los recursos naturales renovables, según criterios de equidad que aseguren el desarrollo armónico del hombre y de dichos recursos, la disponibilidad permanente de éstos y la máxima participación social, para beneficio de la salud y el bienestar de los presentes y futuros habitantes del territorio nacional.

2o. Prevenir y controlar los efectos nocivos de la explotación de los recursos naturales no renovables sobre los demás recursos.

3o. Regular la conducta humana, individual o colectiva y la actividad de la Administración Pública, respecto del ambiente y de los recursos naturales renovables y las relaciones que surgen del aprovechamiento y conservación de tales recursos y de ambiente.

<Notas del Editor>

ARTICULO 3o. De acuerdo con los objetivos enunciados, el presente Código regula:

a). El manejo de los recursos naturales renovables a saber:

10. La atmósfera y el espacio aéreo nacional.

20. Las aguas en cualquiera de sus estados.

30. La tierra, el suelo y el subsuelo.

40. La flora

50. La fauna

60. Las fuentes primarias de energía no agotables.

70. Las pendientes topográficas con potencial energético.

80. Los recursos geotérmicos.

90. Los recursos biológicos de las aguas y del suelo y el subsuelo del mar territorial y de la zona económica de dominio continental e insular de la República.

10. Los recursos del paisaje.

b). La defensa del ambiente y de los recursos naturales renovables contra la acción nociva de fenómenos naturales;

c). Los demás elementos y factores que conforman el ambiente o influyan en el denominador de este Código elementos ambientales, como:

10. Los residuos, basuras, desechos y desperdicios.

20. El ruido.

30. Las condiciones de vida resultantes de asentamiento humano urbano o rural.

40. Los bienes producidos por el hombre o cuya producción sea inducida o cultivada por él, en cuanto incidan o puedan incidir sensiblemente en el deterioro ambiental.

ARTICULO 40. Se reconocen los derechos adquiridos por particulares con arreglo a la ley sobre los elementos ambientales y los recursos naturales renovables. En cuanto a su ejercicio, tales derechos estarán sujetos a las disposiciones de este Código.
<Jurisprudencia - Vigencia>

ARTICULO 50. El presente Código rige en todo el territorio nacional, el mar territorial con su suelo, subsuelo y espacio aéreo, la plataforma continental y la zona económica o demás espacios marítimos en los cuales el país ejerza jurisdicción de acuerdo con el derecho internacional.

ARTICULO 60. La ejecución de la política ambiental de este Código será función del gobierno Nacional, que podrá delegarla en los gobiernos seccionales o en otras entidades públicas especializadas.

LIBRO PRIMERO
DEL AMBIENTE

PARTE I.
DEFINICION Y NORMAS GENERALES DE POLITICA AMBIENTAL

ARTICULO 70. Toda persona tiene derecho a disfrutar de ambiente sano.
<Notas del editor>

ARTICULO 80. Se consideran factores que deterioran el ambiente, entre otros:

a). La contaminación del aire, de las aguas, del suelo y de los demás recursos naturales renovables.

Se entiende por contaminación la alteración del ambiente con sustancias o formas de energía puestas en él, por actividad humana o de la naturaleza, en cantidades, concentraciones o niveles capaces de interferir el bienestar y la salud de las personas, atentar contra la flora y la fauna, degradar la calidad del ambiente de los recursos de la nación o de los particulares.

Se entiende por contaminante cualquier elemento, combinación de elementos, o forma de energía que actual o potencialmente pueda producir alteración ambiental de las precedentemente descritas. La contaminación puede ser física, química o biológica;

b). La degradación, la erosión y el revenimiento de suelos y tierras.

c). Las alteraciones nocivas de la topografía.

d). Las alteraciones nocivas del flujo natural de las aguas;

e). La sedimentación en los cursos y depósitos de agua;

f). Los cambios nocivos el lecho de las aguas.

g). La extinción o disminución cuantitativa o cualitativa de especies animales o vegetales o de recursos genéticos;

h). La introducción y propagación de enfermedades y de plagas;

i). La introducción, utilización y transporte de especies animales o vegetales dañinas o de productos de sustancias peligrosas;

j). La alteración perjudicial o antiestética de paisajes naturales;

k). La disminución o extinción de fuentes naturales de energía primaria;

l). La acumulación o disposición inadecuada de residuos, basuras, desechos y desperdicios;

m). El ruido nocivo;

n). El uso inadecuado de sustancias peligrosas;

o). La eutrificación, es decir, el crecimiento excesivo y anormal de la flora en lagos y lagunas.

p). La concentración de población humana urbana o rural en condiciones habitacionales que atenten contra el bienestar y la salud.

ARTICULO 90. El uso de elementos ambientales y de recursos naturales renovables, debe hacerse de acuerdo con los siguientes principios:

a). Los recursos naturales y demás elementos ambientales deben ser utilizados en forma eficiente, para lograr su máximo aprovechamiento con arreglo al interés general de la comunidad y de acuerdo con los

principios y objetos que orientan este Código;

b). Los recursos naturales y demás elementos ambientales, son interdependientes. Su utilización se hará de manera que, en cuanto sea posible, no interfieran entre sí.

c). La utilización de los elementos ambientales o de los recursos naturales renovables debe hacerse sin que lesione el interés general de la comunidad o el derecho de terceros;

d). Los diversos usos que pueda tener un recurso natural estarán sujetos a las prioridades que se determinen y deben ser realizados coordinadamente para que se puedan cumplir los principios enunciados en los ordinales precedentes.

e). Los recursos naturales renovables no se podrán utilizar por encima de los límites permisibles que, al alterar las calidades físicas, químicas o biológicas naturales produzcan el agotamiento o el deterioro grave de esos recursos o se perturbe el derecho a ulterior utilización en cuanto ésta convenga al interés público.

f). La planeación del manejo de los recursos naturales renovables y de los elementos ambientales debe hacerse en forma integral, de tal modo que contribuya al desarrollo equilibrado urbano y rural. Para bienestar de la comunidad, se establecerán y conservarán en los centros urbanos y sus alrededores espacios cubiertos de vegetación.

PARTE II.
DE LOS ASUNTOS AMBIENTALES DE AMBITO O INFLUENCIA INTERNACIONALES

ARTICULO 10. Para prevenir o solucionar los problemas ambientales y regular la utilización de recursos naturales renovables compartidos con países limítrofes y sin perjuicio de los tratados vigentes, el Gobierno procurará complementar las estipulaciones existentes o negociar otros que prevean.

a). El recíproco y permanente intercambio de informaciones necesarias para el planeamiento del desarrollo y el uso óptimo de dichos recursos y elementos;

b). La recíproca ya previa comunicación de las alteraciones o desequilibrios ambientales que puedan originar obras a trabajos proyectados por los gobiernos o los habitantes de os respectivos países, con antelación suficiente para que dichos gobiernos puedan emprender las acciones pertinentes cuando consideren que sus derechos e intereses ambientales pueden sufrir menoscabo.

c). La administración conjunta de los gobiernos en los recursos naturales renovables cuya explotación o aprovechamiento no pueda ser físicamente divisible entre los países interesados o que del punto de vista técnico o económico no resulte conveniente dividir;

d). la adopción de medidas para que no cause perjuicios sensibles a otros países del uso puramente interno de los recursos naturales no renovables u otros elementos ambientales hechos en Colombia o en naciones vecinas.

ARTICULO 11. Los recursos naturales materia de las previsiones a que se refiere el artículo precedente son, entre otros, los siguientes:

a). Las cuencas hidrográficas de ríos que sirven de límite o que atraviesan las fronteras de Colombia, incluidas las aguas superficiales y subterráneas y los demás cursos naturales conexos;

b). Los bosques de ambos lados de una frontera;

c). Las especies de la fauna en que tengan interés común Colombia y los países vecinos;

d). Las aguas marítimas nacionales y los elementos que ellas contienen;

e). La atmósfera, en cuanto los actos ya verificados o los proyectados en un país puedan producir efectos nocivos en el vecino o alteraciones climáticas perjudiciales;

f). Los yacimientos geotérmicos que se extienden a ambos lados de una frontera.

ARTICULO 12. El Gobierno procurará evitar o prohibirá la utilización de elementos ambientales y recursos naturales renovables que puedan producir deterioro ambiental en países no vecinos, en alta mar o en su lecho, o en la atmósfera o espacio aéreo más allá de la jurisdicción territorial.

El Gobierno también procurará realizar gestiones para obtener que, en circunstancias similares, otros países adopten actitud semejante.

PARTE III.
MEDIOS DE DESARROLLO DE LA POLITICA AMBIENTAL

TITULO I.
INCENTIVOS Y ESTIMULOS ECONOMICOS

ARTICULO 13. Con el objeto de fomentar la conservación, mejoramiento y restauración del ambiente y de los recursos naturales renovables, el Gobierno establecerá incentivos económicos.

TITULO II.
ACCION EDUCATIVA, USO DE MEDIOS DE COMUNICACION SOCIAL Y SERVICIO NACIONAL AMBIENTAL

ARTICULO 14. Dentro de las facultades que constitucionalmente le competen, el Gobierno al reglamentar la educación primaria, secundaria y universitaria procurará:

a). Incluir cursos sobre ecología, preservación ambiental y recursos naturales renovables;
<Notas del editor>

b). Fomentar el desarrollo de estudios interdisciplinarios;

c). Promover la realización de jornadas ambientales con participación de la comunidad y de campañas de educación popular, en los medios urbanos y rurales para lograr la comprensión de los problemas del ambiente, dentro del ámbito en el cual se presentan.
<Notas del Editor>

ARTICULO 15. Por medios de comunicación adecuada, se motivará a la población para que formule sugerencias y tome iniciativas a la protección ambiental y para el mejor manejo de los recursos naturales renovables y se adelantarán programas de divulgación y adiestramiento en la identificación y manejo de sustancias nocivas al ambiente.

ARTICULO 16. Para ayudar a formar y mantener en la comunidad conocimiento y convicción suficientes sobre la necesidad de proteger el medio ambiente y de mantener bien los recursos naturales renovables, el gobierno, en los contratos sobre espacios de televisión o frecuencias de radiodifusión, estipulará cláusulas concernientes a su colaboración con las otras partes contratantes, en programas educativos y de divulgación apropiados para el cumplimiento de esos fines.

ARTICULO 17. Créase el Servicio Nacional Ambiental Obligatorio que no excederá de un año y que será prestado gratuitamente.

El Gobierno determinará la manera como se organizará la prestación de este servicio.
<Notas del Editor>

TITULO III.
TASAS RETRIBUTIVAS DE SERVICIOS AMBIENTALES

ARTICULO 18. <Artículo derogado por el artículo 118 de la Ley 99 de 1993> <Ver Notas del Editor>.
<Notas de vigencia>
<Notas del Editor>
<Legislación anterior>

ARTICULO 19. El Gobierno Nacional calculará por sectores de usuarios y por regiones que individualizará, los costos de prevención, corrección o eliminación de los efectos nocivos al ambiente.
<Notas del Editor>

TITULO IV.
SISTEMA DE INFORMACION AMBIENTAL

ARTICULO 20. Se organizará y mantendrá al día un sistema de informaciones ambientales, con los datos físicos, económicos, sociales, legales y en general, concernientes a los recursos naturales renovables y al medio ambiente.

ARTICULO 21. Mediante el sistema de informaciones ambientales se procesarán y analizarán, por lo menos las siguientes especies de información:

a). Cartográfica;

b). Hidrometeorológica, hidrológica, hidrogeológica y climática.

c). Edafológica;

d). Sobre usos no agrícolas de la tierra;

f). El inventario forestal;

g). El inventario fáunico;

h). La información legal a que se refiere el Título VI; Capítulo I, Parte I del Libro II;

i). Los niveles de contaminación por regiones;

j). El inventario de fuentes de emisión y de contaminación.

ARTICULO 22. Las entidades oficiales suministrarán la información de que dispongan o que se les solicite, en relación con los datos a que se refiere el artículo anterior.

ARTICULO 23. Los propietarios, usuarios, concesionarios, arrendatarios y titulares de permiso de uso sobre recursos naturales renovables y elementos ambientales, están obligados a recopilar y a suministrar sin costo alguno, con destino al sistema de informaciones ambientales, la información sobre materia ambiental, y especialmente, sobre la cantidad consumida de recursos naturales y elementos ambientales.

ARTICULO 24. Los datos del sistema serán de libre consulta y deberán difundirse periódicamente por medios eficaces cuando fueren de interés general.

TITULO V.

DE LAS INVERSIONES FINANCIERAS ESTATALES EN OBRAS Y TRABAJOS PUBLICOS AMBIENTALES

ARTICULO 25. En el Presupuesto Nacional se incluirá anualmente una partida especial y exclusivamente destinada a financiar los programas o proyectos de preservación ambiental.

ARTICULO 26. En el proyecto general de cualquier obra pública que utilice o deteriore un recurso natural renovable o el ambiente se contemplará un programa que cubra totalmente, los estudios, planos, y presupuesto con destino a la conservación y mejoramiento del área afectada.

TITULO VI.
DE LA DECLARACION DE EFECTO AMBIENTAL

ARTICULO 27. <Artículo derogado por el artículo 118 de la Ley 99 de 1993.>
<Notas de vigencia>
<Legislación anterior>

ARTICULO 28. <Artículo derogado por el artículo 118 de la Ley 99 de 1993.>
<Notas de vigencia>
<Legislación anterior>

ARTICULO 29. <Artículo derogado por el artículo 118 de la Ley 99 de 1993.>
<Notas de vigencia>
<Legislación anterior>

TITULO VII.
DE LA ZONIFICACION

ARTICULO 30. Para la adecuada protección del ambiente y de los recursos naturales, el Gobierno Nacional establecerá políticas y normas sobre zonificación.

Los Departamentos y Municipios tendrán sus propias normas de zonificación, sujetas a las de orden nacional a que se refiere el inciso anterior.
<Notas del Editor>

TITULO VIII.
DE LAS EMERGENCIAS AMBIENTALES

ARTICULO 31. En accidentes acaecidos o que previsiblemente puedan sobrevenir, que causen deterioro ambiental, o de otros hechos ambientales que constituyan peligro colectivo, se tomarán las medidas de emergencia para contrarrestar el peligro.

PARTE IV.
DE LAS NORMAS DE PRESERVACION AMBIENTAL RELATIVAS A ELEMENTOS AJENOS A LOS RECURSOS NATURALES

TITULO I.
PRODUCTOS QUIMICOS, SUSTANCIAS TOXICAS Y RADIOACTIVAS

ARTICULO 32. Para prevenir deterioro ambiental o daño en la salud del hombre y de los demás seres vivientes, se establecerán requisitos y condiciones para la importación, la fabricación, el transporte, el almacenamiento, la comercialización, el manejo, el empleo o la disposición de sustancias y productos tóxicos o peligrosos.

En particular, en la ejecución de cualquier actividad en que se utilicen agentes físicos tales como

sustancias radioactivas o cuando se opere con equipos productores de radiaciones, se deberán cumplir los requisitos y condiciones establecidos para garantizar la adecuada protección del ambiente, de la salud del hombre y demás seres vivos.
<Notas del editor>

TITULO II.
DEL RUIDO

ARTICULO 33. Se establecerán las condiciones y requisitos necesarios para preservar y mantener la salud y la tranquilidad de los habitantes, mediante control de ruidos originados en actividades industriales, comerciales, domésticas, deportivas, de esparcimiento de vehículos de transporte, o de otras actividades análogas.
<Notas del Editor>

TITULO III.
DE LOS RESIDUOS, BASURAS, DESECHOS Y DESPERDICIOS

ARTICULO 34. En el manejo de residuos, basuras, desechos y desperdicios, se observarán las siguientes reglas:

a). Se utilizarán los mejores métodos, de acuerdo con los avances de la ciencia y la tecnología, para la recolección, tratamiento, procesamiento o disposición final de residuos, basuras, desperdicios y, en general, de desechos de cualquier clase;

b). La investigación científica y técnica se fomentará para:

1). Desarrollar los métodos más adecuados para la defensa del ambiente, del hombre y de los demás seres vivientes.

2o. Reintegrar al proceso natural y económico los desperdicios sólidos, líquidos y gaseosos, provenientes de industrias, actividades domésticas o de núcleos humanos en general.

3o. Sustituir la producción o importación de productos de difícil eliminación o reincorporación al proceso productivo.

4o. Perfeccionar y desarrollar nuevos métodos para el tratamiento, recolección, depósito y disposición final de los residuos sólidos, líquidos o gaseosos no susceptibles de nueva utilización.

c). Se señalarán medios adecuados para eliminar y controlar los focos productores del mal olor.
<Notas del Editor>

ARTICULO 35. Se prohibe descargar, sin autorización, los residuos, basuras y desperdicios, y, en general, de desechos que deterioren los suelos o, causen daño o molestia a individuos o núcleos humanos.

ARTICULO 36. Para la disposición o procesamiento final de las basuras se utilizarán, preferiblemente, los medios que permitan:

a). Evitar el deterioro del ambiente y de la salud humana;

b). Reutilizar sus componentes;

c). Producir nuevos bienes;

d). Restaurar o mejorar los suelos;

ARTICULO 37. Los municipios deberán organizar servicios adecuados de recolección, transporte y disposición final de basuras.

La prestación de este servicio por personas naturales o jurídicas de derecho privado requerirá autorización ajustada a los requisitos y condiciones que establezca el gobierno.
<Notas del Editor>

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Compilado por:
Avance Jurídico

Disposiciones analizadas por Avance Jurídico Casa Editorial Ltda. ISSN 1657-6241, "Leyes desde 1992 - Vigencia Expresa y Sentencias de Constitucionalidad", 10 de febrero de 2009.

Incluye análisis de vigencia **e presa** y análisis de fallos de constitucionalidad publicados hasta 10 de febrero de 2009.

La información contenida en este medio fue traba ada sobre transcripciones realizadas a partir del Diario Oficial los fallos de constitucionalidad fueron suministrados por la Corte Constitucional. Cuando fue posible se tomaron los te tos del Diario Oficial publicados por la Imprenta Nacional en Internet.

ANNEX 11

Republic of Colombia, Ministry of Health,
Decree No. 1843 (22 July 1991), *as amended by Decree No. 695* (26 Apr. 1995)
and Decree No. 4368 (4 Dec. 2006)

Ministry of Health
DECREE NUMBER 1843 OF 1991
(22 July)

"By which Titles III, V, VI, VII, and XI of Law 09 of 1979 on the Use and Management of Pesticides are partially regulated."

The President of the Republic of Colombia,
Using the powers conferred upon him by number 11 of article 189 of the Political Constitution,
DECREES:
CHAPTER 1
General Provisions and Definitions
ART. 1.- On epidemiological monitoring and control. Epidemiological monitoring and control in the use and management of pesticides must be carried out with the aim of avoiding effects to the health of communities, animals or plants, or causing deterioration of the environment.

[…]

ART 86.- On the prevention of environmental risks. When applying pesticides to populated areas, farms of fish, bees, birds or other animals, to water flows or sources, and to areas specially managed for the protection of natural resources, techniques must be used according to the inherent risks of the respective activity.

[…]

ART 92.- On signage for the application of pesticides. The owners or users of treated rural areas must post signs at access sites with the international danger symbol and a sign which reads "danger, area treated with pesticides, if you need to enter, wear protective equipment." These signs should be made of weather-resistant material, easily readable, and be placed at a distance of no less than 20 metres from access sites, and kept in a good state of repair. They cannot be taken down within 10 days of the application of the pesticide.
PAR.- Marking the site with people is strictly prohibited.

[…]

On aerial application

ART 95.- On compliance with norms. All natural or legal persons who apply pesticides using aircraft must obtain an operational permit issued by the Civil Aeronautic Aviation Agency for each one of their landing strips, for which a health license granted by the regional health management agency must previously be obtained. Also, all persons must comply with the pertinent norms currently in force, as established by the ministries of Health and Agriculture and other bodies of the State.

(Note: modified by Decree 695 of 1995, article 1, of the Ministry of Health).

ART 96.- On runways and air bases.

a) Principal base: The place where the business has established its operational center for its activities, and which has an approved runway for permanent use;
b) Auxiliary base: One which, for reasons related to the aeroagricultural activities of the business, requires the storage of one or more aircraft outside of the principal base for a prolonged period of time, and
c) Auxiliary runway: One which, for operational needs, is sporadically used. Only fuel and aeroagricultural product supply operations may be carried out at these runways. In no case may aircraft and application equipment be washed here.

PAR.- Planes and helicopters designated for fumigation work must only be operated from runways and helipads authorized by the Civil Aeronautic Agency's administrative department by way of operating permits granted to the agricultural aviation companies.

ART 97.- On licensing requirements. To obtain a health license, the interested party must comply with the pertinent requirements indicated in this chapter, in articles 131 and 132 of Chapter X, and also with the following:

a) Map indicating the locations of runways with respect to population centers, schools, aqueducts, bodies and flows of water, markets, hospitals and recreational centers, up to a distance of 100 meters from the sides of the runway and 1,000 meters from the heads of the runways;
b) Data regarding class, type and registration of aircraft designated for the application of pesticides, in accord with the regulations of the Administrative Department of the Civil Aeronautic Agency, and
c) A favorable report from the respective planning office regarding the location of the runway.

PAR.-In those localities in which municipal planning offices do not exist, the report should be issued by the regional planning department.

ART 98.- On the placement of runways and tank areas. The runways for aerial pesticide application operations shall be placed at a minimum distance of one-hundred (100) meters laterally from the central axis and one-thousand (1,000) meters from the head of the same, with regard to population centers, water bodies or flows, buildings or areas which require special protection, based on determinations adopted by the competent authorities.

Tank areas shall be placed at a minimum distance from population centers, water bodies or flows, buildings, or areas requiring special protection as determined by the competent authorities upon recommendations from the regional pesticide councils.

ART 99.- On the time period for the adaptation or relocation of runways. Runways which do not comply with all requirements stipulated in this decree shall have a period of one (1) year for adaptation and two (2) years for relocation. These terms are not extendable and shall be counted from the day this decree takes effect.

Non-compliance with the foregoing shall result in the suspension of operation permits issued by the Civil Aeronautic Agency for these runways, until corrective measures are adopted, in the case of adaptation, and the cancellation of said permits in the case of relocation.

ART 100.- On principal bases. Without prejudice to the requirements to be established in the following, principal bases must meet with the following requirements:

a) Operational platform (for the preparation of pesticides to be applied) must be located outside of the boundaries of the runway, constructed from compacted and paved with concrete, and be of a total area that depends upon the capacity of the operation, and must have slopes for effective drainage that run into a waste treatment system. Said platform must be signed to prevent access by unauthorized personnel, and
b) Provide of at least two covered, impermeable tanks built above ground level in a secure and technical manner in order to permit separate preparation of herbicides and other agrochemicals, and prevent direct contact or inhalation of substances by personnel.

ART 101.- On the prohibitions on runways at public airports. No public runways or airports can be designated for operations related to the application of pesticides. In exceptional cases, the Administrative Department of the Civil Aeronautic Agency can authorize such operations, upon the joint resolution of the Ministries of Health and Agriculture.

ANNEX 11

ART 102.- On the obligations of pilots. It is the obligation of pilots to comply with the pertinent norms established by this decree and, also, with the following:

a) Carry out the application taking into account the conditions of wind speed, temperature and relative humidity, and velocity and altitude of the flight, in accord with what has been established by the respective authorities of the agricultural sector and the civil aviation agency;
b) Carry out the application within a fixed area;
c) Do not fly over populations, aqueducts, schools and other places which represent a risk to human, animal, and plant health;
d) Do not apply pesticides to homes within the fields to be treated, protected water bodies, natural parks, reserves or other protected areas;
e) Do not intervene in the manipulation of pesticides. Only trained and authorized personnel may do so; and,
f) Maintain the aircraft application equipment in perfect conditions of calibration and use.

[…]

ART 180.- On compliance with norms. All persons involved in the management and use of pesticides must comply with the norms related to the respective activity, as laid out in this decree.

ART 181.- On requirements and obligations. The personnel referred to in the prior article must receive training and be provided with sanitary facilities, and medical attention and control services, in accord with the provisions of the corresponding chapters of this decree and, furthermore, must comply with the following obligations:

a) Obtain a certificate that demonstrates competence in the material, according to the activity for which it has been designated;
b) Obtain the applicator card, when this is their job;
c) Observe the maximum precautions for each and every activity carried out during the work day, with the aim of avoiding risk to human or animal health, or the deterioration of the environment;
d) Use work clothing and comply with protection measures according to the instructions given by the company or competent authority, and keep respiratory, eye and ear protection equipment, or protection equipment for any other organ or physiological function, in good condition;
e) Keep overalls closed, cuffs outside of gloves and pant legs outside of boots at all times while at the work site;

f) Use, when it is necessary to eat or drink during working hours, the facilities provided for that reason, after changing clothes and washing hands;
g) Wash the body completely with soap and water at the end of each work day;
h) Use products according to the instructions on the labels or with the technical assistance of the company;
i) Prevent substances or their fumes from entering into direct contact with people, or to contaminate the environment in levels exceeding the maximum permissible limits in any pesticide production, experimentation, storage, transport, sale or application activities;
j) Prevent entry into the work area without protective equipment which prevents contact with or inhalation of the pesticides, while these risks persist;
k) Bring pesticide waste to treatment areas before it is disposed of;
l) Advise a doctor immediately of the least suspicion of poisoning, regardless of the gravity of the work accident, and ensure that the fact is recorded in the respective records;
m) Change protective clothing immediately when it becomes impregnated with pesticide;
n) Change work clothes daily, wearing clean clothes every day, and
o) Avoid contaminating changing areas and street clothes. Contaminated work clothes should be placed in a special site for cleaning at the end of the day, in the same working area.

[…]

ART 254.- On authority to sanction. The authority to apply sanctions provided for in this decree at the different levels of the health system are as follows:
Local level. Administrative paperwork and the juridical-legal procedures shall be carried out by the health promoter or whoever carries out that task, and the authority to apply shall be rest with the local health director, by way of a resolution on relevant legal grounds.
Regional Level. The administrative paperwork and juridical-legal procedures shall be carried out by the official with responsibility for the monitoring and control of the use of pesticides, or by the director of environmental risk. The sanctions to be put in place shall be imposed through resolution on relevant legal grounds, by the head of the regional health agency.
National Level. Administrative paperwork shall be the responsibility of the Ministry of Health or the delegated office; juridical-legal procedures

shall be carried out by the legal office of the Ministry of Health, and the sanctions to be put into place shall be imposed through resolution on relevant legal grounds, issued from the Ministry of Health.

ART 255.- On the support of processes. In those levels of the health system in which there exists a legal office, that office shall be put in charge of carrying forward juridical-legal procedures to impose sanctions, once the precedents are known and the administrative paperwork is submitted by the health authorities indicated in the previous article.

ART 256.- On the competency of other authorities. Health authorities which are not part of the health system, that relates to the use and management of pesticides, may impose sanctions within their legal competency, or may give advice regarding infractions within their area of expertise to the authorities of the aforementioned system, with the aim of applying prevention and control procedures.

ART 257.- On publicity. Regional health agencies and the Ministry of Health shall publicize the results of non-compliance with health provisions, stemming from the grave health risks to people, with the aim of warning the population.

ART 258.- On the compatibility of sanctions with other types of responsibilities. The sanctions imposed in compliance with the norms of this decree do not provide exemption from civil or penal responsibility, or from any other order which can be incurred by violation of Law 09 of 1979, and of this regulation.

ART 259.- On the transfer of diligence by incompetence. When, as a result of an investigation carried out by a health authority, the sanction to be imposed is the competency of another health authority, diligence shall be remitted to this authority for the application of procedures to be put into place.

ART 260.- On commissions for the improvement of processes. When a sanctioning procedure must be initiated or advanced, or an investigation must be carried out, in which the Ministry of Health is the competent authority, this agency may commission regional health agencies to carry out the investigation or procedure, but the sanction or exoneration shall still be decided by the Ministry of Health.

Also, when tests must be made outside of the jurisdiction of a regional health agency, the head of the same must solicit the commission from the Ministry of Health so that the regional health agency may carry it out, in which case the ministry shall indicate the appropriate terms.

ART 261.- On support of tests by other entities. When an official entity distinct from those of the health system has a test related to the conduct, doings, or omissions which a health authority is investigating, said test

must be put into motion by the health authority, or required by the health authority, so that it may become part of the investigation.
ART 262.- On commissions to carry out tests. Health authorities carrying out an investigation or procedure may commission other official entities to carry out or obtain tests.
ART. 263.- On the accumulation of time for the effects of sanctions. When a sanction is imposed for a period of time, this shall be counted from the date of the execution of the resolution which imposed it, and the time which has passed under a security or preventative measure shall be calculated in the same way, for the same effect.
ART 264.- On the policing nature of health authorities. For the purpose of monitoring and ensuring compliance with norms and the imposition of measures and sanctions as dealt with in this regulation, the competent health officials shall in each case be considered as police, in conformance with article 35 of Decree-Law 1355 of 1970, and other norms which modify or add to it. Failure to respect this authority shall be sanctioned according to the same norm.
PAR.- National, regional, or municipal police authorities shall lend their complete collaboration to health authorities, for the completion of their functions.

[…]

DECREE 695 OF 1995
(26 April)
Official Registry No. 41,828 of 28 April 1995

MINISTRY OF PUBLIC HEALTH

By which Decree **1843** of 1991 is modified

THE PRESIDENT OF THE REPUBLIC OF COLOMBIA,

in exercise of the powers conferred upon him by number 11 of article 189 of the Political Constitution,

DECREES:

ARTICLE 1. Modifies article **95** of Decree 1843 of 1991, which shall be as follows:

"Article **95**. Any natural or legal person who applies pesticides by aircraft must obtain for each of their runways an operations permit issued by the Special Administrative Unit of the Civil Aviation body, for which a Health License must previously be obtained, issued by the respective Sectional Health Agency, and said persons must comply with and require compliance, when applicable, with the current standards established by the Ministries of Health and Agriculture, and by other agencies of the State.

PARAGRAPH 1. The authorities that, in compliance with the legal norms or provisions issued by other authorities duly empowered for this reason, that apply the substances referred to in this Decree, must obtain a health license issued by the Ministry of Health, for which the interested authority must submit a request containing the following requirements:

1. Name and address of the authority making the request, as well as the name and identity of its legal representative.

2. Methods of application to be used: spraying, fumigation; special or residual, lures or others.

3. Rules to protect personnel participating in the fumigation activity.

4. Plan for handling pesticide waste and

5. Indication as to whether its own or other runways will be used.

The issuance of the license shall carry with it health authorization for use at said runways, without the need to meet additional, different requirements to obtain operating permits which, according to current legal provisions, must be obtained from the Special Administrative Unit of the Civil Aeronautic body.

PARAGRAPH 2. The issuance of the health license referred to in the preceding paragraph shall be issued for a term of five (5) years and shall be renewable at the request of the interested authority through submission of the corresponding request, in which the changes since the last issuance or extension must be detailed, regarding the requirements which must be met in order to obtain the license.

ARTICLE 2. TRANSITIONAL STANDARD. The authorities mentioned in the first paragraph of the first article of this Decree that, on

the date of the entry into force of this Decree, are found applying the aforementioned substances will have a period of three (3) months to obtain the corresponding health license, and in the meantime may carry out the respective activity without meeting the requirement.

ARTICLE 3. ENTRY INTO FORCE. This Decree shall be effective from the date of its publication.

COMMUNICATED, PUBLISHED, AND CARRIED OUT.
Given in Santafe de Bogota, DC, on the 26 April 1995.

ERNESTO SAMPER PIZANO

Health Minister,
ALONSO GOMEZ DUQUE.

[…]

REPUBLIC OF COLOMBIA
[seal]

MINISTRY OF SOCIAL PROTECTION
DECREE NUMBER 4368 OF 2006
04 DEC 2006

"By which Decree 1843 of 1991 is partially modified"

THE PRESIDENT OF THE REPUBLIC OF COLOMBIA,

In exercise of his legal and constitutional powers, especially those conferred by number 11 of article 189 of the Constitution, article 564 of Law 9 of 1979, and article 5 of Law 99 of 1993,

DECREES:

FIRST ARTICLE.- Modifies article 98 of Decree 1843 of 1991, which shall be as follows:

"**ARTICLE 98.- ON THE LOCATION OF RUNWAYS AND TANK AREAS.** Runways for the operation of aerial pesticide application shall be located at a minimum distance of one hundred (100) metres laterally at the central axis, and the head of the runways shall be located one-

thousand (1,000) metres, from population centers, bodies or flows of water, construction sites, or areas which require special protection, according to determinations adopted by the competent authorities.

The tank areas shall be placed at a minimum distance from population centers, bodies or flows of water, construction sites, or areas which require special protection, as is determined by the competent authorities according to recommendations from Sectional Pesticide Councils.

FIRST PARAGRAPH.- The Special Administrative Unit of the Civil Aeronautic body shall authorize the functioning of runways for operations related to the aerial application of pesticides at distances less than those indicated in this article, only when a technical study is conducted by the party interested in the operation of the runways, in which measures are established for the prevention, mitigation and correction of possible impacts to human health and the environment. This must also include the prior approval of sectional health agencies or those that replace them, and the approval of the regional autonomous corporation with jurisdiction in the respective area.

The Ministry of Social Protection and the Ministry of the Environment, Livelihood, and Territorial Development, shall issue the directives, guidelines, and mechanisms governing the functioning and operation of the runways indicated in the previous paragraph, and the minimum requirements for the respective technical study.

SECOND PARAGRAPH.- Runways for operations related to the aerial application of pesticides which at the date of publication of this Decree have approved and established environmental licenses and/or environmental management plans must adjust their functioning and operations to the provisions of this decree and to the regulation issued by the Ministry of Social Protection and the Ministry of the Environment, Livelihood and Territorial Development for this purpose."

SECOND ARTICLE.- This decree shall take effect from the date of publication, and shall repeal all contrary provisions.

PUBLISHED AND CARRIED OUT
Given in Bogota, D.C. on 4 Dec 2006

ALVARO URIBE VELEZ
PRESIDENT OF THE REPUBLIC

ANDRES FELIPE ARIAS LEIVA
Minister of Agriculture and Rural Development

DIEGO PALACIO BETANCOURT
Minister of Social Protection

JUAN LOZANO RAMIREZ
Minister of the Environment, Livelihood and Territorial Development

ANDRES URIEL GALLEGO HENAO
Minister of Transportation

Ministerio de Salud
DECRETO NÚMERO 1843 DE 1991
(julio 22)

"Por el cual se reglamentan parcialmente los títulos III, V, VI, VII y XI de la Ley 09 de 1979, sobre uso y manejo de plaguicidas".

El Presidente de la República de Colombia,
en uso de las atribuciones que le confiere el numeral 11, del artículo 189 de la Constitución Política,
DECRETA:
CAPÍTULO I
Disposiciones generales y definiciones
ART. 1°—Del objeto del control y vigilancia epidemiológica. El control y la vigilancia epidemiológica en el uso y manejo de plaguicidas, deberá efectuarse con el objeto de evitar que afecten la salud de la comunidad, la sanidad animal y vegetal o causen deterioro del ambiente.
ART. 2°—Régimen aplicable al uso y manejo de plaguicidas. El uso y manejo de plaguicidas estarán sujetos a las disposiciones contenidas en la Ley 9ª de 1979, el Decreto 2811 de 1974, reglamento sanitario internacional, el código internacional de conducta para la distribución y utilización de plaguicidas de la FAO, las demás normas complementarias previstas en el presente decreto y las que dicten los ministerios de Salud y de Agricultura o sus institutos adscritos.
ART. 3°—De las definiciones. Para efectos del control y vigilancia epidemiológica en el país, se aplicarán las definiciones del reglamento sanitario internacional y además las siguientes:
Ambiente: El entorno, incluyendo el agua, aire y el suelo, y su interrelación, así como las relaciones entre estos elementos y cualesquiera organismos vivos.
Aplicación: Toda acción efectuada por personal idóneo vinculado o no a una empresa, tendiente a controlar o eliminar plagas con sustancias químicas o biológicas oficialmente registradas y de uso autorizado, empleando técnicas, equipos y utensilios aprobados por las autoridades de salud y el Instituto Colombiano Agropecuario.
Aplicador: Toda persona natural o jurídica dedicada a la aplicación de plaguicidas.
Área de aplicación: Todo lugar donde se aplican los plaguicidas con fines sanitarios.
Área pública: Lugares de utilidad común o pública tales como: parques, acueductos, basureros, vías u otros.
Autoridad sanitaria: Funcionario perteneciente a entidad oficial con responsabilidades en la protección de la salud humana, la sanidad vegetal y animal o del ambiente.
Concentración letal media (CL 50): Estimación estadística de la concentración mínima de tóxico en el aire, necesaria para matar el 50% de una población de especies experimentales bajo condiciones controladas que incluye la indicación de especie, sexo y edad de los animales usados en la experimentación. Se expresa en microgramos de tóxico por decímetro cúbico o en partes por millón.
Concentración letal media por inhalación (CL 50 por inhalación): Estimación estadística de concentración mínima de tóxico en el aire respirado durante una hora, capaz de matar dentro del lapso de 14 días, la mitad de una población compuesta por lo menos de 10 animales de laboratorio. Se determina mediante una serie de pruebas controladas bajo criterios específicos y ampliamente aceptados. Se expresa en microgramos por decímetro cúbico cuando se trata de vapores o gases, con indicación de la especie, sexo y edad de los animales usados en la experimentación.

verterse a un sistema para tratamiento de desechos conforme a lo establecido en el presente decreto.

ART. 86.—De la prevención de riesgos ambientales. Al aplicar plaguicidas cerca de zonas pobladas, criaderos de peces, abejas, aves u otros animales; cursos o fuentes de agua y áreas de manejo especial para protección de recursos naturales, deben utilizarse técnicas acordes con los riesgos inherentes a la actividad respectiva.

ART. 87.—De la franja de seguridad. La aplicación de plaguicidas en zonas rurales no podrá efectuarse a menos de 10 metros en forma terrestre y de 100 metros para la aérea como franja de seguridad, en relación a cuerpos o cursos de agua, carreteras troncales, núcleos de población humana y animal, o cualquiera otra área que requiera protección especial.

Por recomendación de los consejos asesores seccional, regional o específico y previa adopción de las autoridades de salud, podrán incrementarse las dimensiones de la franja de seguridad teniendo en cuenta criterios técnicos tales como los siguientes:

a) Características del plaguicida: presentación, dosis, categoría toxicológica, modalidad de aplicación, formulación, y

b) Clase de cultivo o explotación, lugar de aplicación y condiciones ambientales de la zona.

ART. 88.—De la aplicación en edificaciones, vehículos o área pública. Para la aplicación en edificaciones, vehículos, productos o área pública, deberán observarse el máximo de precauciones, especialmente en la protección de personas, animales, agua, alimentos, medicamentos y ropas.

ART. 89.—De los requisitos para la aplicación. Los plaguicidas deberán aplicarse dentro del área determinada, respetando las zonas o franjas de seguridad para evitar daño a la salud de la población y deterioro del ambiente.

ART. 90.—De los remanentes de plaguicidas. Cuando los plaguicidas se utilicen parcialmente, los recipientes que contengan los remanentes de éstos, deberán almacenarse en su envase original y en sitios seguros con el fin de evitar contaminación.

ART. 91.—De la prescripción. El profesional de que trata el artículo 63 del presente decreto que formule o prescriba el plaguicida deberá suministrar mensualmente a las autoridades locales de salud a través del Instituto Colombiano Agropecuario la siguiente información: tipo, extensión y ubicación de la explotación agrícola o comercial, cantidad de los productos y nombre del responsable de la aplicación.

PAR.—Los plaguicidas de categoría I, excepto los rodenticidas, fumigantes para granos e inmunizantes para madera sólo podrán usarse en explotaciones agrícolas y pecuarias. Cuando por razones sanitarias se requiera aplicar estos plaguicidas en edificaciones, vehículos, productos o área pública, el Ministerio de Salud o la autoridad delegada concederán el respectivo permiso especial.

ART. 92.—De las señales para aplicación de plaguicidas. Los propietarios o usufructuarios de las zonas rurales tratadas, deberán señalizar los sitios de acceso a éstas con el símbolo internacional de peligro y letras que digan "peligro, área tratada con plaguicidas, si necesita entrar use equipo de protección". Estos letreros deberán ser de material resistente a la intemperie, en tamaños fácilmente legibles a distancia no menor de 20 metros y ubicados en sitios de acceso y conservarse en buen estado. No podrán retirarse antes de 10 días después de la aplicación.

PAR.—Queda terminantemente prohibido el bandereo con personas.

ART. 93.—De las obligaciones de los responsables en prescripción y aplicación. Las personas naturales o jurídicas responsables de la prescripción y/o aplicación de plaguicidas deberán cumplir en lo pertinente con todos los requisitos establecidos en los capítulos precedentes de esta disposición y además con los siguientes:

—Inscribirse en la dirección seccional de salud o en la regional del Instituto Colombiano Agropecuario correspondiente, según el tipo de actividad.
—Revisar y mantener información actualizada sobre el uso y restricción de los plaguicidas registrados y de uso permitido en el país.
—Colaborar en la información y motivación para el correcto, seguro y eficaz uso y manejo de plaguicidas por parte de agricultores, ganaderos y propietarios o usufructuarios de áreas, edificaciones, vehículos o productos a tratar.
—Comprobar el cumplimiento por parte de los responsables de todas las medidas preventivas y de seguridad tanto en el área, edificación, vehículo o producto a tratar como en las zonas circunvecinas.
—Colaborar con la autoridad de salud e Instituto Colombiano Agropecuario para la detección y cuantificación de residuos de plaguicidas en alimentos.
ART. 94.—De las obligaciones de propietarios de los sujetos objeto de aplicación de plaguicidas. Es obligación de los propietarios de las explotaciones agrícolas, pecuaria, de edificaciones, vehículos o de productos, cumplir además los siguientes requisitos:
a) Colocar las señales de que trata el artículo 92;
b) Informar a los vecinos sobre la aplicación a fin de que éstos tomen las medidas necesarias para la protección de personas, alimentos, medicamentos, explotaciones agrícolas o pecuarias, especialmente cuando se trate de especies susceptibles a la acción nociva de los plaguicidas;
c) Colaborar para la destrucción, previa descontaminación de los empaques o envases de acuerdo a lo establecido en el capítulo de desechos de la presente disposición;
d) Hacer las aplicaciones de plaguicidas de acuerdo con los intervalos establecidos entre la última aplicación y la cosecha o utilizar los productos tratados con plaguicidas solamente después de transcurrido el tiempo de posible riesgo de intoxicación. Estos intervalos o tiempos serán los que aparezcan impresos en la etiqueta del plaguicida o en su defecto los fijados por el Ministerio de Salud y el Instituto Colombiano Agropecuario, según el caso. Las autoridades sanitarias locales y el Instituto Colombiano Agropecuario, serán responsables de la vigilancia y el control respectivo, y
e) Cumplir con todas las normas establecidas por el ICA al respecto.
De la aplicación aérea
ART. 95.—Del cumplimiento de normas. Toda persona natural o jurídica que aplique plaguicidas utilizando aeronaves, debe obtener para cada una de sus pistas permiso de operación expedido por el Departamento Administrativo de Aeronáutica Civil para lo cual debe obtener previamente licencia sanitaria expedida por la dirección seccional de salud respectiva, cumplir y hacer cumplir en lo pertinente las normas vigentes establecidas por los ministerios de Salud y Agricultura y de los demás organismos del Estado.
(Nota: Modificado por el Decreto 695 de 1995 artículo 1° del Ministerio de Salud).
ART. 96.—De las bases y pistas. Para la aplicación aérea se consideran las siguientes bases y pistas:
a) Base principal: Lugar donde la empresa tiene establecido el centro operacional de sus actividades y dispone de pista aprobada para uso permanente;
b) Base auxiliar: Es aquella que por razones de las actividades aeroagrícolas de las empresas exige la permanencia de una o más aeronaves fuera de la base principal por un período prolongado de tiempo, y
c) Pista auxiliar: Es aquella que por necesidad de operación se utiliza esporádicamente. En ésta sólo se pueden efectuar operaciones de aprovisionamiento de combustibles y productos de aplicación aeroagrícola. En ningún caso se puede efectuar el lavado de aeronaves y equipos de aplicación.

PAR.—Los aviones y helicópteros dedicados a labores de fumigación deben operar únicamente desde las pistas y helipuertos autorizados por el Departamento Administrativo de la Aeronáutica Civil en los permisos de operación otorgados a las empresas de aviación agrícola.

ART. 97.—De los requisitos para la licencia. Para la obtención de la licencia sanitaria el interesado deberá cumplir con los requisitos pertinentes indicados en el presente capítulo, en los artículos 131 y 132 del capítulo X y además los siguientes:

a) Mapa donde se indique la ubicación de las pistas con relación a centros poblados, escuelas, acueductos, cuerpos y cursos de agua, mercados, hospitales y centros de recreación, hasta una distancia de 100 metros en los costados de las pistas; y 1000 metros en las cabeceras de la misma;

b) Datos sobre clase, tipo y matrícula de las aeronaves destinadas para la aplicación de plaguicidas, de acuerdo con los reglamentos del Departamento Administrativo de Aeronáutica Civil, y

c) Concepto favorable de la oficina de planeación respectiva sobre la ubicación de la pista.

PAR.—En aquellas localidades en donde no exista oficina de planeación municipal el concepto debe expedirlo planeación departamental.

ART. 98.—De la ubicación de las pistas y zonas de tanqueo. Las pistas para operación de aplicación aérea de plaguicidas estarán ubicadas a una distancia mínima de cien (100) metros lateralmente al eje central y mil (1000) metros de las cabeceras de éstas, respecto de centros poblados, cuerpos o cursos de agua, edificaciones o áreas que requieran protección especial, según determinaciones que al respecto adopten las autoridades competentes.

Las zonas de tanqueo estarán ubicadas a una distancia mínima de centros poblados, cuerpos o cursos de agua, edificaciones o áreas que requieran protección especial, determinadas por las autoridades competentes según recomendaciones de los consejos seccionales de plaguicidas.

ART. 99.—Del plazo para adaptación o reubicación de las pistas. Las pistas que no cumplan con todos los requisitos previstos en este decreto tendrán un plazo de un (1) año para adaptación y dos (2) para reubicación. Términos que son improrrogables y empezarán a contarse a partir de la vigencia del presente decreto.

El incumplimiento de lo anterior dará lugar a la suspensión de los permisos de operación que expide la Aeronáutica Civil para estas pistas, hasta tanto se adopten los correctivos del caso cuando se trate de adaptación y a la cancelación de dichos permisos cuando se trate de reubicación.

ART. 100.—De las bases principales. Sin perjuicio de los requisitos que más adelante se establecen, las bases principales deberán reunir los requisitos siguientes:

a) Plataforma de operación (preparación de plaguicidas a aplicar) ubicada fuera de la franja de la pista, construida con materiales compactos y pavimentada en concreto, en un área total acorde a la capacidad de operación y con desniveles para drenaje efectivo hacia el sistema de tratamiento de desechos. Dicha plataforma deberá señalizarse para impedir el acceso de personal no autorizado, y

b) Disponer como mínimo de dos tanques de mezcla impermeabilizados aforados y construidos sobre el nivel del suelo en forma segura y técnica, que permitan preparar por separado los herbicidas de otros agroquímicos y que impidan el contacto directo o inhalación de sustancias por parte del personal.

ART. 101.—De la prohibición en pistas de aeropuertos públicos. No se podrán destinar pistas o aeropuertos públicos para operaciones relacionadas con la aplicación de plaguicidas. En casos excepcionales el Departamento Administrativo de la Aeronáutica

Civil podrá autorizar tales operaciones previa resolución conjunta de los ministerios de Salud y Agricultura.
ART. 102.—De las obligaciones de los pilotos. Es obligación de los pilotos, cumplir en lo pertinente con las normas establecidas en el presente decreto y además con las siguientes:
a) Realizar la aplicación teniendo en cuenta condiciones de velocidad del viento, temperatura y humedad relativa; velocidad y altura de vuelo, de acuerdo con lo establecido por las respectivas autoridades del sector agropecuario y de aviación civil;
b) Efectuar aplicación con bandereo fijo;
c) No sobrevolar poblaciones, acueductos, escuelas y demás lugares que representen riesgos para la salud humana y sanidad animal y vegetal;
d) No aplicar plaguicidas sobre viviendas localizadas dentro del campo a tratar, áreas de protección de cuerpos de agua, parques naturales, zonas de reserva o vedadas para tal fin;
e) No intervenir en la manipulación de plaguicidas. Únicamente podrá hacerlo personal capacitado y autorizado, y
f) Mantener el equipo de aplicación de la aeronave en perfectas condiciones de calibración y funcionamiento.
De la aplicación terrestre
ART. 103.—Del cumplimiento de las normas. Toda empresa, persona natural o jurídica que se dedique a aplicación terrestre de plaguicidas en forma manual o mecánica en áreas pecuaria, o agrícola, en vehículos, edificaciones, productos almacenados o no, o área pública, deberá cumplir las normas sobre medidas preventivas y de seguridad al tenor de lo dispuesto en el Decreto 614 de 1984, las disposiciones contenidas en el presente decreto y aquellas relacionadas con el respectivo tipo de actividad, originarias de los ministerios de Salud y Agricultura, según el caso.
ART. 104.—De la licencia sanitaria. Para realizar las actividades a que se refiere el artículo anterior en edificaciones, productos almacenados o no, vehículos y área pública, los interesados deberán obtener licencia sanitaria de funcionamiento expedida por la dirección seccional de salud respectiva, cumpliendo los requisitos contemplados en el capítulo correspondiente.
De las empresas aplicadoras
ART. 105.—De las condiciones del local. La empresa aplicadora de plaguicidas deberá destinar para sus operaciones un local que reúna mínimo los siguientes requisitos en cuanto a instalaciones, edificaciones y servicios:
a) Espacio adecuado para administración y atención al público, debidamente aislado de las áreas de manejo, preparación y almacenamiento de plaguicidas;
b) Área de almacenamiento de materia prima con estantería y divisiones que garanticen adecuada separación de productos y suficiente aireación, ventilación e iluminación;
c) Área para almacenamiento y conservación de equipos, repuestos de aplicación y protección;
d) Área de preparación de productos, con suficiente ventilación hacia área libre y de fácil lavado;
e) Cuarto con guardarropas de doble compartimiento, para uso de los operarios;
f) Ducha y servicios sanitarios;
g) Área para el lavado de maquinaria, equipos y ropas contaminadas, tratamiento de desechos y residuos con instalaciones separadas;
h) Área para botiquín y utilería, e
i) Demás requisitos que la autoridad competente determine mediante disposición legal pertinente.

hacia los trabajadores, la comunidad y el ambiente preferiblemente en la fuente, pudiéndose aplicar entre otras, uno o varios de los siguientes métodos: sustitución de sustancias, cambio, encerramiento y/o aislamiento de los procesos, ventilación general, ventilación local, mantenimiento u otros que nuevas técnicas aconsejen. Métodos complementarios, tales como limitación del tiempo de exposición y protección personal, se aplicarán sólo cuando los anteriores sean insuficientes y deberán tener autorización de la dirección seccional de salud correspondiente.

ART. 177.—De las medidas ambientales específicas. El Ministerio de Salud o su entidad delegada determinarán la existencia de riesgos y dispondrán las medidas específicas que se deben adoptar y los dispositivos que se deben instalar en los lugares de trabajo, para eliminar o controlar efectivamente los riesgos de enfermedades y accidentes, cuyo cumplimiento es obligatorio por parte de los patronos o contratistas.

ART. 178.—De prohibiciones. Se prohíbe cualquier acto u omisión que tenga como consecuencia reducir la eficacia de los medios de control de riesgos o que signifique producir nuevos riesgos para la salud.

ART. 179.—De la dotación. La dotación básica para los operarios según la actividad desarrollada con plaguicidas, será la siguiente:

a) Ropa de trabajo para cada operario en cantidad suficiente que garantice el recambio diario, o antes cuando las circunstancias así lo requieran;

b) Guantes de caucho o de cuero (de acuerdo al riesgo de manejo): un par por cada trabajador;

c) Botas de seguridad: un par por cada trabajador;

d) Gorra, casco o sombrero: uno por cada trabajador;

e) Implementos de aseo: toalla y jabón para cada trabajador;

f) Disponer de casilleros dobles independientes e individuales, ubicados a la entrada del sitio de trabajo, para colocar la ropa de trabajo y de calle, y

g) Equipos de protección respiratoria, ocular, auditiva o dérmica cuando el riesgo lo requiera.

PAR.—Según la actividad desarrollada y tipo de riesgo, el Ministerio de Salud o el Instituto Colombiano Agropecuario podrán adicionar o exigir otros elementos de protección.

ART. 180.—Del cumplimiento de normas. Toda persona que tenga injerencia en el manejo y uso de plaguicidas, deberá cumplir y hacer cumplir las normas relacionadas con la actividad respectiva, contenidas en la presente disposición.

ART. 181.—De los requisitos y obligaciones. El personal al cual se refiere el artículo anterior, deberá recibir capacitación y entrenamiento y disponer de instalaciones sanitarias, servicios de atención y control médicos, de acuerdo con lo previsto en los capítulos correspondientes de la presente disposición y además cumplir con las obligaciones siguientes:

a) Obtener el certificado o constancia de idoneidad en la materia, de acuerdo con la actividad a que se dedique;

b) Obtener el "carne de aplicador", cuando sea ésta su ocupación;

c) Observar el máximo de precauciones de todas y de cada una de las actividades que realice durante la jornada de trabajo, a fin de evitar riesgos para la salud humana o animal o el deterioro del ambiente;

d) Utilizar la ropa de trabajo y cumplir las medidas de protección de acuerdo a las instrucciones dadas por la empresa o la autoridad competente y conservar en buenas condiciones de uso los equipos para protección respiratoria, ocular o auditiva o de cualquier otro órgano o función fisiológica;

e) Mantener cerrado el overol, los puños por fuera de los guantes y las mangas de los pantalones por fuera de las botas durante y mientras se permanezca en el sitio de trabajo;
f) Utilizar, cuando sea necesario comer o beber durante las horas de trabajo las instalaciones destinadas para tal fin, previos cambios de ropa y lavado de manos;
g) Darse un baño corporal completo con agua y jabón, al terminar cada jornada;
h) Manejar los productos de acuerdo con las instrucciones señaladas en la etiqueta o por el asistente técnico de la empresa;
i) Evitar que las sustancias o sus emanaciones entren en contacto directo con las personas o causen contaminación al ambiente, que sobrepasen los límites máximos permisibles, en cualquiera de las actividades de producción, experimentación, almacenamiento, transporte, venta o aplicación de plaguicidas;
j) Evitar el ingreso al área de trabajo sin equipo de protección que impida el contacto o la inhalación de los plaguicidas mientras persistan estos riesgos;
k) Llevar los desechos de plaguicidas a los lugares de tratamiento antes de ser evacuados;
l) Avisar al médico inmediatamente a la menor sospecha de intoxicación y cualquiera que sea la gravedad del accidente de trabajo que se presente durante o después de éste y exigir que el hecho quede registrado en la historia respectiva;
ll) Cambiarse de ropa de protección inmediatamente cuando se encuentre impregnada de plaguicida;
m) Cambiarse de ropa de trabajo diariamente, empleando cada día ropa limpia y
n) Evitar contaminar las áreas de cambio de ropa y la ropa de calle. La ropa de trabajo contaminada al fin de la jornada deberá ser colocada en sitio especial para efectuar el lavado de ésta, en el mismo lugar de trabajo.

CAPÍTULO XV

De la publicidad o propaganda

ART. 182.—Del cumplimiento de las normas. Quienes se dediquen a la publicidad o propaganda sobre plaguicidas en cualquier medio de comunicación, deberán cumplir desde el punto de vista sanitario, los requisitos y normas contenidas en el presente decreto y lo pertinente del Capítulo V del Decreto 2092 de 1986.

ART. 183.—De la solicitud. Los interesados deberán presentar solicitud escrita ante la división de sustancias potencialmente tóxicas del Ministerio de Salud, para estudio y concepto del comité que para tales efectos se conforme y de acuerdo con el medio de comunicación o publicidad a autorizar, acompañar lo siguiente:
a) Fotocopia del respectivo registro del plaguicida y de la licencia sanitaria de funcionamiento del establecimiento donde se produzca, formule o expenda, cuando el producto sea nacional; o de registro de importación, cuando sea de procedencia foránea;
b) Aviso o propaganda comercial dibujada, en original y dos copias;
c) Cinta fonóptica o "videotape", o
d) Texto escrito por duplicado y grabación magnetofónica de la misma, en la forma que se pretende difundir.

ART. 184.—De la publicidad escrita o impresa. La publicidad en prensa, radio, hojas volantes, folletos plegables u otro medio publicitario deberá ceñirse a los contenidos e indicaciones de las respectivas etiquetas o rótulos de los productos. La violación a este artículo acarreará las sanciones establecidas por el Ministerio de Salud o el Instituto Colombiano Agropecuario.

ART. 185.—De la publicidad de plaguicidas categorías I y II. La publicidad relativa a plaguicidas clasificados en categorías I y II y aquellas que requiera equipos y condiciones especiales para su aplicación, estará dirigida única y exclusivamente al

ART. 253.—De la puesta en ejecución de las sanciones. La autoridad sanitaria podrá tomar las medidas pertinentes a la ejecución de la sanción, tales como aposición de sellos, bandas u otros sistemas apropiados.

ART. 254.—De las competencias para sancionar. La competencia para la aplicación de las sanciones previstas en este decreto, en los diferentes niveles del sistema de salud, será la siguiente:

Nivel local. Los trámites administrativos y los procedimientos jurídico-legales serán realizados por el promotor de saneamiento o quien haga sus veces y la aplicación de las sanciones a que haya lugar será de competencia del director local de salud, mediante resolución motivada.

Nivel seccional. Los trámites administrativos y los procedimientos jurídico-legales serán efectuados por el funcionario con responsabilidades sobre vigilancia y control en el uso y manejo de plaguicidas, o por el director de factores de riesgo del ambiente. Las sanciones a que haya lugar serán impuestas, mediante resolución motivada, por el jefe de la dirección seccional de salud.

Nivel nacional. Los trámites administrativos estarán a cargo del Ministerio de Salud o la dependencia que él delegue; los procedimientos jurídico-legales serán efectuados por la oficina jurídica del Ministerio de Salud y las sanciones a que haya lugar, serán impuestas, mediante resolución motivada por el Ministerio de Salud.

ART. 255.—De la sustanciación de los procesos. En aquellos niveles del sistema de salud en donde exista oficina jurídica, esta será la encargada de adelantar los procedimientos jurídico-legales para imponer sanciones, una vez conocidos los antecedentes y trámites administrativos presentados por las autoridades sanitarias señaladas para los efectos en el artículo anterior.

ART. 256.—De la competencia de otras autoridades. Las autoridades sanitarias que no formen parte del sistema de salud, en todo cuanto se relacione con el uso y manejo de plaguicidas, podrán imponer las sanciones que sean de su competencia legal o dar aviso de las infracciones que sean de su conocimiento a las autoridades del sistema mencionado, a fin de que estas apliquen los procedimientos de prevención y control.

ART. 257.—De la publicidad. Las direcciones seccionales de salud y el Ministerio de Salud, darán a la publicidad los hechos que como resultado del incumplimiento de las disposiciones sanitarias, deriven graves riesgos para la salud de las personas, con el objeto de prevenir a la comunidad.

ART. 258.—De compatibilidad de las sanciones con otro tipo de responsabilidades. Las sanciones impuestas de conformidad con las normas del presente decreto, no eximen de la responsabilidad civil, penal o de otro orden en que pudiere incurrirse por la violación de la Ley 09 de 1979 y de este reglamento.

ART. 259.—Del traslado de diligencias por incompetencia. Cuando como resultado de una investigación adelantada por una autoridad sanitaria, se encuentre que la sanción a imponer es de competencia de otra autoridad sanitaria, deberán remitirse a ésta las diligencias adelantadas, para la aplicación de los procedimientos a que haya lugar.

ART. 260.—De las comisiones para instruir procesos. Cuando sea del caso iniciar o adelantar un procedimiento sancionatorio, o una investigación para la cual sea competente el Ministerio de Salud, éste podrá comisionar a las direcciones seccionales de salud para que adelanten la investigación o el procedimiento, pero la sanción o exoneración será decidida por el Ministerio de Salud.

Igualmente cuando se deban practicar pruebas fuera de la jurisdicción de una dirección seccional de salud, el jefe de la misma, deberá solicitar al Ministerio de Salud la comisión para la dirección seccional de salud que deba practicarlo, caso en el cual el ministerio señalará los términos apropiados.

ART. 261.—Del aporte de pruebas por otras entidades. Cuando una entidad oficial distinta a las que integran el sistema de salud tenga pruebas en relación con conductas, hechos u omisiones que estén investigando una autoridad sanitaria, tales pruebas deberán ser puestas de oficio a disposición de la autoridad sanitaria, o requeridas por ésta, para que formen parte de la investigación.

ART. 262.—De las comisiones para practicar pruebas. Las autoridades sanitarias que adelantan una investigación o procedimiento, podrán comisionar a otras entidades oficiales para que practiquen u obtengan las pruebas ordenadas que sean procedentes.

ART. 263.—De la acumulación de tiempo para los efectos de sanciones. Cuando una sanción se imponga por un período de tiempo, éste empezará a contarse a partir de la fecha de ejecutoria de la resolución que la imponga y se computará, para efectos de la misma, el tiempo transcurrido bajo una medida de seguridad o preventiva.

ART. 264.—Del carácter policivo de las autoridades sanitarias. Para efectos de la vigilancia y el cumplimiento de las normas y la imposición de medidas y sanciones de que trata este reglamento los funcionarios sanitarios competentes en cada caso serán considerados como de policía, de conformidad con el artículo 35 del Decreto-Ley 1355 de 1970 y demás normas que lo modifiquen o adicionen. Su desacato o irrespeto será sancionado de acuerdo con la misma norma.

PAR.—Las autoridades de policía del orden nacional, departamental o municipal prestarán toda su colaboración a las autoridades sanitarias, para efecto del cumplimiento de sus funciones.

ART. 265.—De las disposiciones de carácter epidemiológico. Además de las disposiciones del presente decreto, deberán cumplirse las especiales sobre control y vigilancia de carácter epidemiológico señaladas en la Ley 09 de 1979 y sus disposiciones reglamentarias.

ART. 266.—De las sanciones disciplinarias a funcionarios. Los funcionarios que pertenezcan a entidades públicas que incumplan o no colaboren en el desarrollo de las funciones fijadas en la presente disposición se harán acreedores a sanciones disciplinarias contempladas en los respectivos estatutos o normas de personal, mediante informe escrito al secretario del consejo asesor seccional respectivo o al jefe inmediato del funcionario, sin perjuicio de las demás sanciones legales a que haya lugar.

ART. 267.—De la concesión de plazos especiales. El Ministerio de Salud y las direcciones seccionales de salud, según el caso, podrán conceder plazos para el cumplimiento de los requisitos a que se refieren los capítulos X y XIII de este decreto hasta por doce (12) meses contados a partir de la fecha de vigencia del mismo.

ART. 268.—De la vigencia. El presente decreto rige a partir de la fecha de su publicación y deroga las disposiciones que le sean contrarias, especialmente el Decreto 775 de 1990.

Comuníquese, publíquese y cúmplase.

Dado en Santafé de Bogotá, D.C., a 22 de julio de 1991.

ANNEX 11

DECRETO 695 DE 1995

(abril 26)
Diario Oficial No. 41.828, de 28 de abril de 1995

MINISTERIO DE SALUD PUBLICA

Por el cual se modifica el Decreto **1843** de 1991.

EL PRESIDENTE DE LA REPÚBLICA DE COLOMBIA,

en ejercicio de las atribuciones que le confiere el numeral 11 del artículo 189 de la Constitución Política,

DECRETA:

ARTÍCULO 1o. Modifícase el artículo **95** del Decreto 1843 de 1991, el cual quedará así:

"Artículo **95.** Toda persona natural o jurídica que aplique plaguicidas utilizando aeronaves, debe obtener para cada una de sus pistas permiso de operación expedido por la Unidad Administrativa Especial de la Aeronáutica Civil, para lo cual deberá obtener previamente Licencia Sanitaria expedida por la Dirección Seccional de Salud respectiva y cumplir y hacer cumplir en lo pertinente las normas vigentes establecidas por los Ministerios de Salud y de Agricultura y por los demás organismos del Estado.

PARÁGRAFO 1o. Las autoridades que, en obedecimiento de normas legales o de disposiciones emanadas de otras autoridades debidamente facultadas para ello, deban aplicar sustancias a las que se refiere el presente Decreto, estarán sujetas a la obtención de licencia sanitaria expedida por el Ministerio de Salud, para lo cual se presentará por la autoridad interesada una solicitud que contenga los siguientes requisitos:

1. Nombre y domicilio de la autoridad que eleva la solicitud, así como el nombre e identidad de su representante legal.

2. Métodos de aplicación a utilizar: aspersión, fumigación; especial o residual, cebos u otros.

3. Reglamento para la protección del personal que participará en la actividad de fumigación.

4. Tratamiento que recibirán los desechos de los plaguicidas y

5. Indicación de si se emplearán pistas propias u otras pistas.

La expedición de la licencia conllevará la habilitación sanitaria para el uso de tales

pistas, sin que se deban cumplir requisitos adicionales diferentes a la obtención de los permisos de operación que, conforme a las disposiciones legales vigentes, hayan de obtenerse de la Unidad Administrativa Especial de la Aeronáutica Civil.

PARÁGRAFO 2o. La expedición de la licencia sanitaria de que trata el parágrafo precedente se expedirá por el término de cinco (5) años y será renovable a solicitud de la autoridad interesada mediante la presentación de la correspondiente petición, en la que se precisarán los cambios que, respecto de los requisitos exigidos para la obtención de la licencia, se hayan presentado desde la expedición o última prórroga de la misma".

ARTÍCULO 2o. NORMA TRANSITORIA. Las autoridades a las que se refiere el parágrafo primero del artículo primero del presente Decreto que, a la fecha de su entrada en vigencia, se encuentren aplicando sustancias a las que el mismo se refiere, cuentan con un plazo de tres (3) meses para obtener la correspondiente licencia sanitaria de funcionamiento y en el entretanto podrán adelantar la respectiva actividad sin el lleno de tal requisito.

ARTÍCULO 3o. VIGENCIA. El presente Decreto rige a partir de la fecha de su publicación.

COMUNÍQUESE, PUBLÍQUESE Y CÚMPLASE.
Dado en Santafé de Bogotá, D.C., a 26 de abril de 1995.

ERNESTO SAMPER PIZANO

El Ministro de Salud,
ALONSO GÓMEZ DUQUE.

ANNEX 11

REPUBLICA DE COLOMBIA

MINISTERIO DE LA PROTECCION SOCIAL

DECRETO NÚMERO 4368 DE 2006

04 DIC 2006

"Por el cual se modifica parcialmente el Decreto 1843 de 1991"

EL PRESIDENTE DE LA REPÚBLICA DE COLOMBIA,

En ejercicio de sus facultades constitucionales y legales, en especial las conferidas por el numeral 11 del artículo 189 de la Constitución Política, el artículo 564 de la Ley 9 de 1979, y el artículo 5 de la Ley 99 de 1993

DECRETA:

ARTÍCULO PRIMERO.- Modificar el artículo 98 del Decreto 1843 de 1991, el cual quedará de la siguiente manera: '

"Artículo 98.- **DE LA UBICACION DE LAS PISTAS y ZONAS DE TANQUEO.** Las Pistas para operación de aplicación aérea de plaguicidas estarán ubicadas a una distancia mínima de cien (100) metros lateralmente al eje central y mil (1.000) metros de las cabeceras de éstas, respecto de centros poblados, cuerpos o cursos de agua, edificaciones o áreas que requieran protección especial, según determinaciones que al respecto adopten las autoridades competentes.

Las zonas de tanqueo estarán ubicadas a una distancia mínima de centros poblados, cuerpos o cursos de agua, edificaciones o áreas que requieran protección especial, determinadas por las autoridades competentes según recomendaciones de los Consejos Seccionales de Plaguicidas.

PARÁGRAFO PRIMERO.- La Unidad Administrativa Especial de Aeronáutica Civil autorizará el funcionamiento de pistas para operación de aplicación aérea de plaguicidas a distancias menores a las señaladas en este artículo, siempre y cuando se cuente con el estudio técnico por parte del interesado en la operación de pistas, donde se establezcan las medidas de prevención, mitigación y corrección de los posibles impactos que se puedan generar sobre la salud humana y el medio ambiente, el cual debe contar con el concepto previo favorable de las direcciones seccionales de salud o la que haga sus veces, y de la corporación autónoma regional con jurisdicción en el área respectiva.

Los Ministerios de la Protección Social y de Ambiente, Vivienda y Desarrollo Territorial expedirán las directrices, lineamientos y mecanismos a que se sujetarán el funcionamiento y operación de las pistas de que trata el presente parágrafo, y los requisitos mínimos del respectivo estudio técnico.

PARÁGRAFO SEGUNDO.- Las pistas para operación de aplicación aérea de plaguicidas que a la fecha de publicación del presente decreto, cuenten con licencias ambientales y/o planes de manejo ambiental aprobado y establecido, deberán ajustar su funcionamiento y operación a lo dispuesto en el presente

decreto y a la regulación que para el efecto expidan los Ministerios de la Protección Social y de Ambiente, Vivienda y Desarrollo Territorial."

ARTÍCULO SEGUNDO.- El presente decreto rige a partir de la fecha de publicación y deroga las disposiciones que le sean contrarias.

PUBLIQUESE Y CUMPLASE
Dado en Bogota, D.C, a los 04 DIC 2006

ALVARO URIBE VELEZ
PRESIDENTE DE LA REPUBLICA

ANDRES FELIPE ARIAS LEIVA
Ministro de Agricultura y Desarrollo Rural

DIEGO PALACIO BETANCOURT
Ministro de la Protección Social

JUAN LOZANO RAMIREZ
Ministro de Ambiente, Vivienda y Desarrollo Territorial

ANDRES URIEL GALLEGO HENAO
Ministro de Transporte

ANNEX 12

Republic of Colombia, Ministry of Environment, *Law No. 99* (22 Dec. 1993)

Law 99 of 1993
(December 22)
Official Diary No. 41.146, of 22 December 1993

By which the Ministry of the Environment restructures the Public Sector charged with the management and conservation of the environment and natural renewable resources, organizes the National Environmental System – SINA, and issues other provisions

THE CONGRESS OF COLOMBIA

DECREES:

TITLE I
FOUNDATION FOR COLOMBIAN ENVIRONMENTAL POLICY

ARTICLE 1.- General Environmental Principles.- Colombian environmental policy shall follow these general principles:

1. The processes of economic and social development of the country shall be oriented according to universal principles and the principles of sustainable development contained in the Rio de Janeiro Declaration of June 1992, regarding the Environment and Development.

2. The biodiversity of the country, because it is our national heritage and of interest to humanity, must be protected as a priority, and used in a sustainable way.

3. Population policies shall take into account the right of human beings to a healthy and productive life in harmony with nature.

4. Highland areas, sub-highland areas, water sources, and areas where aquifers are recharged shall be objects of special protection.

5. In the use of water resources, human consumption shall take precedence over any other use.

6. The formulation of environmental policies shall take into account the results of the process of scientific investigation. Nevertheless, environmental authorities and individuals shall apply the precautionary principle, according to which, when there exists the

risk of grave and irreversible damage, the lack of absolute scientific certainty shall not be used as a reason to delay the adoption of efficacious measures to prevent the degradation of the environment.

7. The State shall promote the integration of environmental costs and the use of economical instruments for the prevention, correction and restoration of environmental deterioration and for the conservation of renewable natural resources.

8. The landscape, as it is our common heritage, must be protected.

9. The prevention of disasters shall be a matter of collective interest and the measures taken to avoid or mitigate the effects of their occurrence shall be obligatory.

10. Actions for environmental protection and recuperation of the country are a joint and coordinated undertaking between the State, the community, non-governmental organizations, and the private sector. The State will support and incentivize the formation of non-governmental organizations for environmental protection, and may delegate to these organizations some of its own functions.

11. Environmental impact studies shall be the basic instrument for decision-making with respect to construction projects and activities which significantly affect the natural or artificial environment.

12. The environmental management of the country, in accordance with the National Constitution, shall be decentralized, democratic and participatory.

13. For the environmental management of the country, a National Environmental System –SINA– is established, the components and interrelationships of which define the performance mechanisms of the State and civil society.

14. The environmental institutions of the State shall be structured based on criteria for the comprehensive management of the environment and their interrelation with the economic, social and physical planning processes.

[…]

ARTICLE 56.- On the Environmental Assessment of Alternatives. In projects which require an Environmental License, the interested party must request, during the feasibility stage, from the competent environmental authority, that this body make a determination as to whether or not an Environmental Assessment of Alternatives must be presented. Based on the information supplied, the environmental authority shall make a decision on the necessity, or lack thereof, and shall define its terms of reference within a period of no more than thirty working days.

The environmental assessment of alternatives shall include information regarding the location and characteristics of the geographic, environmental and social surroundings for the project alternatives, in addition to a comparative analysis on the effects and risks inherent in the project or activity, and the possible solutions and control and mitigation measures for each of the alternatives.

Based on the Environmental Assessment of Alternatives presented, the authority shall choose, in a period of no more than sixty days, the alternative or alternatives that require the elaboration of a corresponding Environmental Impact Study before issuing the respective license.

ARTICLE 57.- On the Environmental Impact Study.- "Environmental Impact Study" shall be understood as the collection of information that a petitioner for an Environmental License must present before the competent environmental authority..

The Environmental Impact Study shall contain information regarding the location of the project and the abiotic, biotic and socioeconomic elements of the environment that could suffer damage due to the project or activity, for whose execution the license is requested, as well as the evaluation of impacts that could result. In addition, it shall include the design of plans for prevention, mitigation, correction, and compensation of impacts and the environmental management plan for the project or activity.

The competent environmental authority, in order to grant an environmental license, shall set the terms of reference for environmental impact studies within a period of no more than sixty 60 working days, starting from the date of the request by the interested party.

LEY 99 DE 1993

(Diciembre 22)

Diario Oficial No. 41.146, de 22 de diciembre de 1993

Por la cual se crea el Ministerio del Medio Ambiente, se reordena el Sector Público encargado de la gestión y conservación del medio ambiente y los recursos naturales renovables, se organiza el Sistema Nacional Ambiental, SINA y se dictan otras disposiciones.

<Resumen de Notas de Vigencia>

EL CONGRESO DE COLOMBIA

DECRETA:

TÍTULO I.
FUNDAMENTO DE LA POLÍTICA AMBIENTAL COLOMBIANA

ARTÍCULO 10. PRINCIPIOS GENERALES AMBIENTALES. La Política ambiental colombiana seguirá los siguientes principios generales:

1. El proceso de desarrollo económico y social del país se orientará según los principios universales y del desarrollo sostenible contenidos en la Declaración de Río de Janeiro de junio de 1992 sobre Medio Ambiente y Desarrollo.
<Jurisprudencia - Vigencia>
<Nota del editor>

2. La biodiversidad del país, por ser patrimonio nacional y de interés de la humanidad, deberá ser protegida prioritariamente y aprovechada en forma sostenible.
<Notas del editor>

3. Las políticas de población tendrán en cuenta el derecho de los seres humanos a una vida saludable y productiva en armonía con la naturaleza.
<Notas del editor>

4. Las zonas de páramos, subpáramos, los nacimientos de agua y las zonas de recarga de acuíferos serán objeto de protección especial.

5. En la utilización de los recursos hídricos, el consumo humano tendrá prioridad sobre cualquier otro uso.

6. La formulación de las políticas ambientales tendrá en cuenta el resultado del proceso de investigación científica. No obstante, las autoridades ambientales y los particulares darán aplicación al principio de precaución conforme al cual, cuando exista peligro de daño grave e irreversible, la falta de certeza científica absoluta no deberá utilizarse como razón para postergar la adopción de medidas eficaces para impedir la degradación del medio ambiente.
<Jurisprudencia Vigencia>

7. El Estado fomentará la incorporación de los costos ambientales y el uso de instrumentos económicos para la prevención, corrección y restauración del deterioro ambiental y para la conservación de los recursos naturales renovables.
<Notas del editor>

8. El paisaje por ser patrimonio común deberá ser protegido.

<Notas del editor>

9. La prevención de desastres será materia de interés colectivo y las medidas tomadas para evitar o mitigar los efectos de su ocurrencia serán de obligatorio cumplimiento.
<Notas del editor>

10. La acción para la protección y recuperación ambientales del país es una tarea conjunta y coordinada entre el Estado, la comunidad, las organizaciones no gubernamentales y el sector privado. El Estado apoyará e incentivará la conformación de organismos no gubernamentales para la protección ambiental y podrá delegar en ellos algunas de sus funciones.
<Notas del editor>

11. Los estudios de impacto ambiental serán el instrumento básico para la toma de decisiones respecto a la construcción de obras y actividades que afecten significativamente el medio ambiente natural o artificial.
<Nota del editor>

12. El manejo ambiental del país, conforme a la Constitución Nacional, será descentralizado, democrático, y participativo.

13. Para el manejo ambiental del país, se establece un Sistema Nacional Ambiental, SINA, cuyos componentes y su interrelación definen los mecanismos de actuación del Estado y la sociedad civil.

14. Las instituciones ambientales del Estado se estructurarán teniendo como base criterios de manejo integral del medio ambiente y su interrelación con los procesos de planificación económica, social y física.
<Notas del editor>

TÍTULO II.
DEL MINISTERIO DEL MEDIO AMBIENTE Y DEL SISTEMA NACIONAL AMBIENTAL

ARTÍCULO 20. CREACIÓN Y OBJETIVOS DEL MINISTERIO DEL MEDIO AMBIENTE. Créase el Ministerio del Medio Ambiente como organismo rector de la gestión del medio ambiente y de los recursos naturales renovables, encargado de impulsar una relación de respeto y armonía del hombre con la naturaleza y de definir, en los términos de la presente ley, las políticas y regulaciones a las que se sujetarán la recuperación, conservación, protección, ordenamiento, manejo, uso y aprovechamiento de los recursos naturales renovables y el medio ambiente de la Nación, a fin de asegurar el desarrollo sostenible.

El Ministerio del Medio Ambiente formulará, junto con el Presidente de la República y garantizando la participación de la comunidad, la política nacional ambiental y de recursos naturales renovables, de manera que se garantice el derecho de todas las personas a gozar de un medio ambiente sano y se proteja el patrimonio natural y la soberanía de la Nación.

Corresponde al Ministerio del Medio Ambiente coordinar el Sistema Nacional Ambiental, SINA, que en esta Ley se organiza, para asegurar la adopción y ejecución de las políticas y de los planes, programas y proyectos respectivos, en orden a garantizar el cumplimiento de los deberes y derechos del Estado y de los particulares en relación con el medio ambiente y con el patrimonio natural de la Nación.
<Notas del editor>

ARTÍCULO 30. DEL CONCEPTO DE DESARROLLO SOSTENIBLE. Se entiende por desarrollo sostenible el que conduzca al crecimiento económico, a la elevación de la calidad de la vida y al bienestar social, sin agotar la base de recursos naturales renovables en que se sustenta, ni deteriorar el medio ambiente o el derecho de las generaciones futuras a utilizarlo para la satisfacción de sus propias necesidades.
<Nota del editor>

<Legislación anterior>

ARTÍCULO 52-BIS. MECANISMOS DE PREVENCION, CONTROL Y SEGUIMIENTO AMBIENTAL. <Artículo adicionado por el artículo 91 del Decreto 1122 de 1999. El Decreto 1122 de 1999 fue declarado INEXEQUIBLE>.
<Notas de vigencia>
<Jurisprudencia - Vigencia>
<Legislación anterior>

ARTÍCULO 53. DE LA FACULTAD DE LAS CORPORACIONES AUTONOMAS REGIONALES PARA OTORGAR LICENCIAS AMBIENTALES. El Gobierno Nacional por medio de reglamento establecerá los casos en que las Corporaciones Autónomas Regionales otorgarán Licencias Ambientales y aquellos en que se requiera Estudio de Impacto Ambiental y Diagnóstico Ambiental de Alternativas.

ARTÍCULO 54. DELEGACIÓN. Las Corporaciones Autónomas Regionales podrán delegar en las entidades territoriales el otorgamiento de licencias, concesiones, permisos y autorizaciones que les corresponda expedir, salvo para la realización de obras o el desarrollo de actividades por parte de la misma entidad territorial.

ARTÍCULO 55. DE LAS COMPETENCIAS DE LAS GRANDES CIUDADES. Los municipios, distritos y áreas metropolitanas cuya población urbana sea superior a 1.000.000 de habitantes serán competentes, dentro de su perímetro urbano, para el otorgamiento de licencias ambientales, permisos, concesiones y autorizaciones cuya expedición no esté atribuida al Ministerio del Medio Ambiente.

ARTÍCULO 56. DEL DIAGNÓSTICO AMBIENTAL DE ALTERNATIVAS. En los proyectos que requieran Licencia Ambiental, el interesado deberá solicitar en la etapa de factibilidad a la autoridad ambiental competente, que ésta se pronuncie sobre la necesidad de presentar o no un Diagnóstico Ambiental de Alternativas. Con base en la información suministrada, la autoridad ambiental decidirá sobre la necesidad o no del mismo y definirá sus términos de referencia en un plazo no mayor de 30 días hábiles.

El Diagnóstico Ambiental de Alternativas incluirá información sobre la localización y características del entorno geográfico, ambiental y social de las alternativas del proyecto, además de un análisis comparativo de los efectos y riesgos inherentes a la obra o actividad, y de las posibles soluciones y medidas de control y mitigación para cada una de las alternativas.

Con base en el Diagnóstico Ambiental de Alternativas presentado, la autoridad elegirá, en un plazo no mayor de 60 días, la alternativa o las alternativas sobre las cuales deberá elaborarse el correspondiente Estudio de Impacto Ambiental antes de otorgarse la respectiva licencia.

PARÁGRAFO. <Parágrafo adicionado por el Decreto 2150 de 1995, declarado INEXEQUIBLE>
<Notas de vigencia>
<Jurisprudencia - Vigencia>
<Legislación anterior>

ARTÍCULO 57. DEL ESTUDIO DE IMPACTO AMBIENTAL. Se entiende por Estudio de Impacto Ambiental el conjunto de la información que deberá presentar ante la autoridad ambiental competente el peticionario de una Licencia Ambiental.

El Estudio de Impacto Ambiental contendrá información sobre la localización del proyecto, y los elementos abióticos, bióticos y socioeconómicos del medio que puedan sufrir deterioro por la respectiva obra o actividad, para cuya ejecución se pide la licencia, y la evaluación de los impactos que puedan producirse. Además, incluirá el diseño de los planes de prevención, mitigación, corrección y compensación de impactos y el plan de manejo ambiental de la obra o actividad.

La autoridad ambiental competente para otorgar la Licencia Ambiental fijará los términos de referencia de los estudios de impacto ambiental en un término que no podrá exceder de 60 días hábiles contados a

partir de la solicitud por parte del interesado.
<Notas de vigencia>
<Nota del editor>
<Jurisprudencia - Vigencia>
<Legislación anterior>

ARTÍCULO 58. DEL PROCEDIMIENTO PARA EL OTORGAMIENTO DE LICENCIAS AMBIENTALES. El interesado en el otorgamiento de una Licencia Ambiental presentará ante la autoridad ambiental competente la solicitud acompañada del Estudio de lmpacto Ambiental correspondiente para su evaluación. La autoridad competente dispondrá de 30 días hábiles para solicitar al interesado información adicional en caso de requerirse. Allegada la información requerida, la autoridad ambiental dispondrá de 15 días adicionales hábiles para solicitar a otras entidades o autoridades los conceptos técnicos o informaciones pertinentes, que deberán serle remitidos en un plazo no mayor de 60 días hábiles. Recibida la información o vencido el término de requerimiento de informaciones adicionales, la autoridad ambiental decidirá mediante resolución motivada sobre la viabilidad ambiental del proyecto o actividad y otorgará o negará la respectiva licencia ambiental en un término que no podrá exceder de 60 días hábiles.

PARÁGRAFO. El Ministerio del Medio Ambiente dispondrá hasta de 120 días hábiles para otorgar la Licencia Ambiental Global y las demás de su competencia, contados a partir del acto administrativo de trámite que reconozca que ha sido reunida toda la información requerida, según el procedimiento previsto en este artículo.
<Nota del editor>
<Notas de vigencia>
<Jurisprudencia - Vigencia>
<Legislación anterior>

ARTÍCULO 59. DE LA LICENCIA AMBIENTAL ÚNICA. A solicitud del peticionario, la autoridad ambiental competente incluirá en la Licencia Ambiental, los permisos, concesiones y autorizaciones necesarias para adelantar la obra o actividad.

En los casos en que el Ministerio del Medio Ambiente sea competente para otorgar la Licencia Ambiental, los permisos, concesiones y autorizaciones relacionados con la obra o actividad para cuya ejecución se pide la licencia, serán otorgados por el Ministerio del Medio Ambiente, teniendo en cuenta la información técnica suministrada por las Corporaciones Autónomas Regionales, las entidades territoriales correspondientes y demás entidades del Sistema Nacional del Ambiente.

ARTÍCULO 60. En la explotación minera a cielo abierto, se exigirá, la restauración o la sustitución morfológica y ambiental de todo el suelo intervenido con la explotación, por cuenta del concesionario o beneficiario del título minero, quien la garantizará con una póliza de cumplimiento o con garantía bancaria. El Gobierno reglamentará el procedimiento para extender la póliza de cumplimiento o la garantía bancaria.

ARTÍCULO 61. Declárase la Sabana de Bogotá, sus páramos, aguas, valles aledaños, cerros circundantes y sistemas montañosos como de interés ecológico nacional, cuya destinación prioritaria será la agropecuaria y forestal.

El Ministerio del Medio Ambiente determinará las zonas en las cuales exista compatibilidad con las explotaciones mineras, con base en esta determinación, la Corporación Autónoma Regional de Cundinamarca (CAR), otorgará o negará las correspondientes licencias ambientales.

<Inciso CONDICIONALMENTE EXEQUIBLE> Los municipios y el Distrito Capital, expedirán la reglamentación de los usos del suelo, teniendo en cuenta las disposiciones de que trata este artículo y las que a nivel nacional expida el Ministerio del Medio Ambiente.
<Jurisprudencia - Vigencia>

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Gaceta del Congreso | Diario Oficial | Opinión - Consulta

Senado de la Rep blica de Colombia Información legislativa .secretariasenado.gov.co

Compilado por:
Avance Jurídico

Disposiciones analizadas por Avance Jurídico Casa Editorial Ltda. ISSN 1657-6241, "Leyes desde 1992 - Vigencia Expresa y Sentencias de Constitucionalidad", 10 de febrero de 2009.

Incluye análisis de vigencia **e presa** y análisis de fallos de constitucionalidad publicados hasta 10 de febrero de 2009.

La información contenida en este medio fue traba ada sobre transcripciones realizadas a partir del Diario Oficial los fallos de constitucionalidad fueron suministrados por la Corte Constitucional. Cuando fue posible se tomaron los te tos del Diario Oficial publicados por la Imprenta Nacional en Internet.

ANNEX 13

United Kingdom,
Control of Pesticides Regulations, S.I. 1510 (1986),
Regulation 4(5), *as amended by Control of Pesticides (Amendment) Regulations*,
S.I. 188 (1997)

1986 No. 1510
PESTICIDES

The Control of Pesticides Regulations 1986

Laid before Parliament in draft

Made	*29th August 1986*
Coming into Operation	
Regulation 3(3)	*1st July 1987*
Regulation 4(1)	*1st January 1987*
Regulation 4 5(b)(i)	*1st January 1988*
Remainder	*6th October 1986*

The Minister of Agriculture, Fisheries and Food and the Secretary of State, acting jointly, in exercise of the powers conferred on them by sections 16(2) and 24(3) of the Food and Environment Protection Act 1985[1] and of all other powers enabling them in that behalf, having had regard to the interests of persons supplying information for the purposes of section 16 of that Act, and after consultation with the Advisory Committee on Pesticides established under section 16(7) of that Act[2] and with the Health and Safety Commission, hereby make the following regulations a draft whereof has been laid before and approved by resolution of each House of Parliament:—

Title and commencement

1. These regulations may be cited as the Control of Pesticides Regulations 1986 and shall come into operation as follows—

(a) regulation 3(3) shall come into operation on 1st July 1987;

(b) regulation 4(1) shall come into operation on 1st January 1987;

(c) regulation 4(5)*(b)*(i) shall come into operation on 1st January 1988;

(d) this regulation and the remaining provisions of these regulations shall come into operation on 6th October 1986.

Interpretation

2.—

(1) In these regulations, unless the context otherwise requires—

"active ingredient" means a component of a pesticide which fits it for use as a pesticide;

"adjuvant" means a substance other than water, without significant pesticidal properties, which enhances or is intended to enhance the effectiveness of a pesticide, when it is added to that pesticide;

"aerial application" means the application of a pesticide from an aircraft in flight;

"approval" means an approval given jointly by the Ministers under regulation 5 in relation to a pesticide;

"curtilage" means the land attached to a building and forming one enclosure with it;

[1] 1985 c. 48.

[2] Established by S.I. 1985/1516.

"evaluation" means a written evaluation of study reports or other data examined in the course of an appraisal by the Ministers of a pesticide in relation to which approval is sought;

"experimental permit" has the meaning given by regulation 5(2)*(a)*;

"full approval" has the meaning given by regulation 5(2)*(c)*;

"local beekeepers' spray warning scheme" means any scheme for the advance notification of the application of pesticides, organised by local beekeepers and notified to the Minister of Agriculture, Fisheries and Food, the Secretary of State for Scotland or the Secretary of State for Wales (being the Secretaries of State respectively concerned with agriculture in Scotland and Wales);

"metal working fluid" means any fluid used to facilitate the cutting, drilling, forming or machining of metal;

"micropropagation" means the growth of plantlets from tissue culture or small parts of a plant in culture solution and under conditions which are sterile apart from the presence of that plant;

"mycoplasma" means a genus of organisms which have a unit membrane without a rigid cell wall and are highly pleomorphic, having no independent form or spore stage in the life cycle;

"novel food" means any food or food ingredient produced from raw material which hitherto has not been used for human consumption or has been so used only in small amounts, or produced by new or extensively modified processes not previously used in the production of food;

"paint" includes surface coatings;

"provisional approval" has the meaning given by regulation 5(2)*(b)*;

"sell" includes offer or expose for sale or have in possession for sale, and "sale" shall be construed accordingly;

"supply" includes offer to supply;

"soil sterilant" means a substance used to control harmful organisms in soil or compost.

(2) Any reference in these regulations to a numbered regulation or schedule shall be construed as a reference to the regulation or schedule so numbered in these regulations.

Scope

3.—

(1) Subject to the following provisions of this regulation, these regulations apply to pesticides and to any substance, preparation or organism prepared or used for any of the following purposes—

(a) protecting plants or wood or other plant products from harmful organisms;

(b) regulating the growth of plants;

(c) giving protection against harmful creatures;

(d) rendering such creatures harmless;

(e) controlling organisms with harmful or unwanted effects on water systems, buildings or other structures, or on manufactured products;

(f) protecting animals against ectoparasites,

as if it were a pesticide.

(2) These regulations do not apply to—

(a) organisms other than bacteria, protozoa, fungi, viruses, and mycoplasmas, used for destroying or controlling pests;

(b) substances whose use or sale within the United Kingdom is controlled under any of the following enactments—

Medicines Act 1968*(**a**)*;

Agriculture Act 1970 Part IV*(**b**)*;

Food Act 1984*(**c**)*;

Food and Drugs (Scotland) Act 1956*(**d**)*;

The Cosmetics Products (Safety) Regulations 1984 *(**e**)*;

when those substances are used or sold for the purpose over which control under that enactment is exercised;

(c) substances prepared or used for the purpose of disinfecting, bleaching or sterilising any substance (including water), other than soils, compost or other growing medium;

(d) substances used in laboratories for the purpose of the micropropagation of plants or substances used in the production of novel food;

(e) substances designed and used for—

(i) the stimulation of the growth of plants, excluding materials which act as plant growth hormones, or which mimic the action of such materials;

(ii) the modification of micro-biological processes in soil, excluding soil sterilants;

(iii) assistance in the anaerobic fermentation of silage;

(f) pesticides—

(i) used in adhesive pastes, decorative paper or textiles;

(ii) intended solely for exportation from the United Kingdom;

(iii) used as part of a manufacturing process, other than for the purpose of preserving timber or timber products or in the production of food;

(iv) used in preparations intended for topical application to human beings for the purpose of repelling insects;

(v) used in metal working fluids;

(vi) used in paint;

(vii) used in water supply systems or in swimming pools.

(3) Notwithstanding subparagraph (2)*(f)*(iii) and (vi) above, "pesticides" in paragraph (1) above shall include paints used to prevent the fouling of the hulls of vessels or structures below the waterline, or applied to nets, floats or other apparatus used in the cultivation of fish.

Prohibitions

4.—

(1) No person shall advertise a pesticide unless—

(a) the Ministers jointly have given a provisional or full approval under regulation 5 in relation to that pesticide and a consent under regulation 6*(a)*;

(b) any conditions of the approval related to advertisement and the conditions of the consent have been complied with.

(2) No person shall sell a pesticide unless—

(a) the Ministers jointly have given a provisional or full approval under regulation 5 in relation to that pesticide and a consent under regulation 6*(b)*;

(b) any conditions of the approval related to sale and the conditions of the consent have been complied with.

(3) No person shall supply a pesticide unless—

(a) the Ministers jointly have given an approval under regulation 5 in relation to that pesticide and a consent under regulation 6*(b)*;

(b) any conditions of the approval related to supply and the conditions of the consent have been complied with.

(4) No person shall store a pesticide unless—

(a) the Ministers jointly have given an approval under regulation 5 in relation to that pesticide and a consent under regulation 6*(b)*;

(b) any conditions of the approval related to storage and the conditions of the consent have been complied with.

(5) No person shall use a pesticide unless—

(a) the Ministers jointly have given an approval under regulation 5 in relation to that pesticide and a consent under regulation 6*(c)*;

(b)

(i) the conditions of the approval related to use,

(ii) the conditions of the consent imposed under regulation 6*(c)*(i), and,

(iii) in the case of pesticides applied from an aircraft in flight, the additional conditions of the consent imposed under regulation 6*(c)*(ii)

have been complied with.

Approvals

5.—

(1) Subject to the following provisions of this regulation, the Ministers may jointly give their approval in relation to a pesticide of any description.

(2) The Ministers' approval may be given in relation to a pesticide, in the form of—

(a) an experimental permit, to enable testing and development to be carried out with a view to providing the Ministers with safety and other data;

(b) a provisional approval, for a stipulated period with a view to satisfying the Ministers' outstanding data requirements; or

(c) a full approval, for an unstipulated period.

(3) Each approval may authorise the use, supply and storage of the pesticide to which it relates and a provisional approval or a full approval may in addition authorise the sale and advertisement of that pesticide.

(4) An approval may be given subject to conditions imposed when or after it is given.

(5) The Ministers may jointly, at any time—

(a) review, revoke or suspend an approval,

(b) amend the conditions of an approval.

Consents

6. The Ministers may by notice in the London and Edinburgh Gazettes jointly give their consent to—

(a) the advertisement of pesticides subject to such of the basic conditions set out in Schedule 1 and any further conditions as may be specified by such a notice;

(b) the sale, supply and storage of pesticides subject to such of the basic conditions set out in Schedule 2 and any further conditions as may be specified by such a notice;

(c) the use of pesticides subject to—

(i) such of the basic conditions set out in Schedule 3 and any further conditions that may be specified by such a notice, and,

(ii) in the case of pesticides applied from an aircraft in flight, such of the additional basic conditions set out in Schedule 4 and any further conditions as may be specified by such a notice.

Seizure or disposal of pesticides

7.—

(1) If there has been a breach, in relation to any pesticide, of any of the specified prohibitions imposed by regulation 4, or of a condition of an approval or consent, either of the Ministers shall have power—

(a) to seize or dispose of the pesticide or to require that some other person shall dispose of it;

ANNEX 14

Republic of Colombia, Ministry of Environment,
Resolution No. 341, Adopting Some Decisions in Relation to the Program for the Eradication of Illicit Crops by Aerial Spraying with Glyphosate (2001)

Resolution No. 341 of 2001

"Adopting some decisions in relation to the Program for the Eradication of Illicit Crops by Aerial Spraying with Glyphosate."

The Minister of the Environment

Using the powers conferred by articles 2 and 5, Number 2, and article 38 of Decree 1753 of 1994.

WHEREAS:

It falls to the Ministry of the Environment as the entity governing the environmental management and renewable natural resources of the country, to ensure, among other things the recovery, conservation and protection of renewable natural resources and the environment, and to regulate the general conditions for the clean-up of the environment, with the aim of preventing, eliminating or mitigating the impact of activities that pollute, deteriorate, or destroy the environment or our natural heritage;

The actions related to the eradication of illicit crops by the spraying of glyphosate are considered, according to the provisions of article 38 of Decree 1753 of 1994, an activity of a transitional regime, for which reason this Ministry directed the National Narcotics Directorate – DNE – to present an Environmental Management Plan for said activity;

Based on Technical Report No. 0150 of 12 July 1996, by the Sub-Agency of Planning and Evaluation within the Regional Environmental General Management Office of this Ministry, the Legal Office of the same entity, by way of Decree No. 558A of August 13, 1996, proceeded to set the Terms of Reference for the National Narcotics Directorate – DNE – to lay out an Environmental Management Plan for the application of Glyphosate-based Herbicides as part of the Program for the Eradication of Illicit Crops. The Management Plan was submitted to this Ministry on 31 July 1998, without chapter VII, on the "Identification and Evaluation of Environmental Impacts."

In consideration of the foregoing, by way of official note on 13 November 1998, this Ministry requested that the National Narcotics Directorate add Chapter VII to the Environmental Management Plan already submitted,

with the aim of proceeding with the respective evaluation. This chapter was submitted to the Ministry in the month of December 1998;

Once the Environmental Management Plan submitted by the National Narcotics Directorate was subjected to study and evaluation by the Sub-Agency of Environmental Licenses, technical report No. 419-99 of 21 December 1999 was issued, through which additional information was requested in relation to the analysis and determination of the conditions of exposure, whether the exposure was direct or indirect, and the possible cumulative impacts, the latter with the aim of re-establishing an environmental risk assessment for spraying activities and reshaping the Environmental Management Plan for the Program of Eradication with Glyphosate;

The request for additional information envisaged in the aforementioned technical report was made to the National Narcotics Directorate via Decree No. 599 of 23 December 1999, which was appealed in its entirety by the Directorate on 1 February 2000;

By way of Decree No. 143 of 29 March 2000, this Ministry resolved the Request for Review raised against Decree 599 of 1999, in that it modified number 2 of article 1, clarified number 3 of article 1 of the same, and granted a term of three months for the additional information;

The National Narcotics Directorate requested a review of article five of the decree in question, requesting an extension of the term established for the submission of additional information to twelve months. This request was rejected by the Ministry of the Environment in Decree No. 275 of 6 June 2000, confirming the term of three months for the submission of the information;

In compliance with the foregoing, on 13 September 2000, the National Narcotics Directorate –DNE- submitted to this Ministry the document "Addition to the Environmental Management Plan for the Application of the Herbicide Glyphosate in the Eradication of Illicit Crops," which was added on 17 October 2000;

Once the additional information was received complimentary to the Environmental Management Plan under study, the Sub-Agency of Environmental Licenses, through technical report 589 of 20 December 2000, determined that the additional information submitted by the

National Narcotics Directorate was not in compliance with the requirements stipulated in Decree No. 588A of 1996;

Considering the foregoing, on 20 December 2000, the Ministry of the Environment called the National Narcotics Directorate –DNE to a meeting with the aim of communicating the fact that the information submitted did not satisfy the requirements of this Ministry. In the meeting, the National Narcotics Directorate –DNE promised to submit a document with greater detail in its characterization and to direct the evaluation of impacts toward the assessment of risks, as was requested in the terms of reference for the Environmental Management Plan laid out in Decree No. 588A/96 of this Ministry, for the Putumayo area;

In compliance with the foregoing, on 30 January 2001, the National Narcotics Directorate –DNE submitted to this Ministry, for its study and evaluation, the document "Environmental Management Plan for the Eradication of Illicit Crops beginning with the evaluation of potential risks in the operation of the straying program in the Province of Putumayo";

In this document, which was based on an environmental characterization at the provincial level (1:500,000, 1:400,000), a combination of two methodologies for risk assessment was used (environmental impacts due to the use of pesticides and an assessment of potential technological risks). The document presented a description of the stages of the program for the spraying of illicit crops, and proposed both an evaluation of the eradication program and a framework for the Management Plan incorporating 10 program elements, on issues related to:

*Objectives of the eradication program;
*Entry into inter-institutional agreements to improve information in the areas of operation of the eradication program;
*Training of pilots in environmental issues;
*Analysis of satellite images, systemization and geo-referencing of information for spraying operations;
*Systemization of environmental audit reports;
*Recording of environmental data in the verification process;
*Mitigation measures and compensation for contingencies in the operation of the program; and,
*Proposed mechanism for attending to complaints and claims.

Once the aforementioned information was evaluated by the Sub-Agency of Environmental Licenses, it was determined that:

*The document presents a characterization at a general level (scale: 1:400,000 and 1:500,000) which does not permit definition, in a real way, of the locations of the ecosystems and natural resources of the area that are exposed to aerial spraying, nor does it permit differentiation or determination of environmentally critical and sensitive ecosystems, or of the areas which should be excluded, treated or managed in a special manner in the development of the program, according to a set of criteria fixed by the same.

* The analysis to determine which areas are environmentally affected by the eradication program is not supported from a technical or scientific point of view. It contains neither qualitative nor quantitative supporting information, nor any supporting research on programs related to the purpose of the evaluation that could allow a determination and evaluation of the impacts caused to natural resources by the application of Glyphosate. Therefore, the risk assessment is in a very general form, which does not allow for a detailing or specification of actions to determine risks and to plan for their management in advance.

* Also, and as a consequence of the foregoing, the final result of the analysis undertaken for the Province of Putumayo is a characterization on an excessively broad and general scale, which does not specifically address the ecosystems and natural resources found with the core areas of illicit crops which are the object of the program, for which reason the results of this exercise, which it was hoped could be replicated for other areas of the country, did not meet their objective.

* That on the other hand, and with respect to the set of programmatic actions laid out in that document, as well as in previous documents reviewed above, it can be concluded that the documents that have so far been submitted by the National Narcotics Directorate to define an adequate Environmental Management Plan for the activities pertaining to the eradication of illicit crops through the aerial spraying of Glyphosate have not met the scope and objectives defined in the terms of reference, nor the informational requirements that this Ministry has repeatedly requested from the National Narcotics Directorate – DNE-, taking the following into account:

*There has been no presentation of an evaluation of the supply and vulnerability of the individual ecosystems and natural resources contained within the core areas of illicit crops which are the object of the program,

based on which, from a technical point of view, environmentally critical, sensitive and important ecosystems could be determined and differentiated, along with the areas that should be excluded, treated or specially managed in the development and execution of the program.

Nevertheless, the program has resources and technological tools available, such as updated satellite images (SPOT and LANDSAT), software for the recording and analysis of image interpretation from remote sensors, field recording software, IGAC- and DMA-based cartography, air and field verification points, with which a suitable characterization can be made of the physical-biological and social environment of the areas with illicit crops at a semi-detailed level (appx: 1:25,000), and in this way comply with the requirements of both the environmental plan and the stipulations of the National Narcotics Council in article 2 of resolution 0005 of 2000.

* There has been no formulation of evaluation parameters for the environmental impacts and effects caused by the Glyphosate eradication program, which could be used to establish in a clear and acceptable manner a level of certainty to support decision-making on environmental management measures, which must be considered in the planning and implementation processes of the spraying project.

*In the documents which reference the national Environmental Management Plan and the Environmental Management Plan for the Province of Putumayo, no set of programs, actions and concrete management measures for prevention, control, mitigation, compensation and correction have been put forward for the possible impacts and effects caused by the program.

* No special measures have been proposed for implementation in the area surrounding the National Nature Park System to prevent, mitigate, control and compensate for the possible impacts and effects caused by the program, which especially have to do with the conservation of biological and cultural diversity, as was established in resolution 0005 of 2000.

* No concrete, systematic actions are proposed for the tracking and monitoring of the environmental management measures and their results, supported by a technical design of a set of environmental quality indicators that the program must comply with.

* Currently, the operational timelines for the aerial Glyphosate spraying and the definition and implementation of environmental management

measures of a preventative type have not put into practice articles 2 and 8 of resolution 0005/2000, regarding the prior characterization of and recommendations to the program from the inter-institutional technical committee.

Due to the foregoing, the documentation submitted to this Ministry in July of 1998, September of 2000 and January of 2001 by the National Narcotics Directorate –DNE does not satisfy the scope and objectives established by this Ministry in Decree No. 588A of 1996.

As a consequence, and taking into account that on three occasions this Ministry has requested of the National Narcotics Directorate –DNE additional information that would move towards the formulation of an Environmental Management Plan based on characteristics of the eradication program, and without the documents submitted having not met the stated objective, according to the conclusions expressed above, the Environmental Management Plan is not accepted. Therefore it is necessary to immediately apply preventative measures as established in the resolution portion of this decree, with the aim that these measures, in their development and results, will serve as a means for this Ministry to _____ or implement an Environmental Management Plan for the activities of the transitional regime, according to article 38 of Decree 1753 of 1994.

By virtue of the foregoing,

RESOLVED:

FIRST ARTICLE.- The Environmental Management Plan submitted by the National Narcotics Directorate –DNE for the eradication of illicit crops by the aerial spraying of Glyphosate is not accepted, and given the Plan's defects, the actions establish in beginning of the following article are preventative measures.

PARAGRAPH: Based on the results of the preventative measures established in this decree, this Ministry shall impose upon the National Narcotics Directorate –DNE the definitive Environmental Management Plan that will guarantee adequate environmental performance of this activity.

SECOND ARTICLE.- The National Narcotics Directorate must develop, within a period of six (6) months, regarding the areas subjected to spaying with glyphosate for the eradication of illicit crops, environmental impact

assessments in order to establish the nature and characteristics of possible environmental impacts generated by said activity in the four (4) months before the notification date of this administrative decree, to investigate potential environmental effects according to the findings and to propose the necessary measures to mitigate and/or compensate for them.

THIRD ARTICLE.- The National Narcotics Directorate must comply with the stipulations of the National Narcotics Council in the eleventh article of Resolution 0005/2000.

FOURTH ARTICLE.- In the case of populated areas, areas with social infrastructure and/or water supply areas, the National Antinarcotics Agency - DNE, shall define and implement, in an immediate fashion, alternative methods for the eradication of illicit crops, so as to guarantee the protection of the social and natural environment, effective immediately.

FIFTH ARTICLE.- To move forward with the planning of spraying activities in accordance with the provisions of Resolution 0005/2,000 and its developments, the National Narcotics Directorate –DNE must undertake and immediately put into practice, for within a term of six (6) months, the following measures:

a) Characterize, environmentally and socio-economically, the core areas of illicit crops which are the object of the eradication program, based on specialized cartography with resolution levels of 1:25,000

b) Identify, characterize, and locate to a scale of 1:25,000 the areas of exclusion that, according to their ecological, environmental, and social characteristics, must be subject to special measures on the part of the Program.

c) Implement the Educational Communication Program, directed at the communities, as proposed by the DNE, upon the approval of competent entities.

d) Propose and implement buffer zones according to the criteria for aerial spraying and the particular conditions of the site, with the aim of minimizing the potential risk of effects to sensitive ecosystems surrounding the areas which are the object of the aerial spraying. For said purpose, the National Narcotics Directorate

shall submit to the Environment Ministry the respective proposals for approval.

e) Coordinate and harmonize the planning of actions for the Program for the Eradication of illicit crops with Glyphosate with the social and environmental management programs and projects developed by other entities participating in the National Plan in the War on Drugs.

PARAGRAPH: The National Narcotics Directorate shall present to the Ministry of the Environment, on a quarterly basis, reports on the advancement of the obligations established in this article.

SIXTH ARTICLE.- The National Narcotics Directorate must adopt, in an immediate and efficient manner, the following measures for environmental mitigation, compensation, and control, without prejudice to the competency of the Ministry of the Environment to monitor compliance with the same:

a) A contingency plan for the attention to and control of potential undesirable events which could occur in the different activities that compose the execution of the program, especially in the spraying of the herbicide, to guarantee that the actions undertaken in the event of an emergency or events of an uncertain nature do not cause irreparable damage to human health and the environment, as well as to allow for the attention to and recuperation of the affected areas.

b) An inspection, verification, and control program, the fundamental objective of which will be oriented towards:

- On site verification of the effectiveness of environmental management measures applied during the operation of the Program for the Eradication of Illicit Crops.
- Evaluation of the design for that purpose, by way of efficiency and efficacy indicators, of the application of environmental management measures in the Program for the Eradication of Illicit Crops.
- Evaluation of the efficiency of the adoption of corrective action measures, in the event that the existence of damages derived from the eradication activities is established.

c) A compensation program directed towards responding to the possible environmental damages and impacts caused by the application of the Eradication Program for Illicit Crops by the aerial spraying of Glyphosate.

SEVENTH ARTICLE.- The National Narcotics Directorate must initiate, within the three (3) months following notification of this administrative decree, the following research programs:

* A regeneration and dynamic ecological study of the areas sprayed, by way of plots of land that are demonstrative and are representative of the core areas of greater concentration of illicit crops, obtained from the census of 2000.

* Determine the degree to which Glyphosate remains in soil as residue, and its effects on the physio-chemical and biological properties of the same, using the same sample plots of land as previously mentioned.

PARAGRAPH: The National Narcotics Directorate must submit quarterly reports to the Ministry of the Environment regarding the advancement of the research projects provided for in this article.

EIGHTH ARTICLE.- The National Narcotics Directorate must contract an external, independent technical Auditor, whose objective, scope, functional structure, functions, and activities, as well as the products to be submitted and the expected results of the same, must conform to the terms of reference approved in the Inter-Institutional Technical Committee in resolution No. 005 of 2000.

NINTH ARTICLE.- The National Narcotics Directorate must design and operate a system for public information regarding the development of the spraying program, the activities and reports of the oversight required by this decree, and compliance with the same.

TENTH ARTICLE.- The National Narcotics Directorate must request the support of the Colombian Agricultural Institute –ICA and of the Ministry of Health, or the agency that it designates for the development of an evaluation conducive to establishing the dose of the Glyphosate formulation which is most effective in terms of the minimization of risks to human health and the environment.

ELEVENTH ARTICLE.- This resolution shall be brought to the attention of the National Narcotics Director, the Ombudsman, and the legal representative of FUNDEPUBLICO

TWELFTH ARTICLE.- The National Narcotics Directorate must pay to this Ministry, for oversight, an amount to be determined.

THIRTEENTH ARTICLE.- There is no recourse to this resolution.

NOTIFIED AND COMPLETED

JUAN MAYR MALDONADO
Ministry of the Environment
"By which are adopted decisions related to the Program for the eradication of illicit crops through the aerial spraying of Glyphosate"

[…]



Normatividad > Resultados de su búsqueda

Resolución No. 341 de 2001

"Por medio de la cual se adoptan unas decisiones en relación con el Programa de erradicación de cultivos ilícitos mediante aspersión aérea con Glifosato"

El Ministro del Medio Ambiente

En ejercicio de las atribuciones conferidas por los artículos 2º, 5º. Numeral 2º. y articulo 38 del Decreto 1753 de 1994,

CONSIDERANDO:

Que corresponde al Ministerio del Medio Ambiente como ente rector de la gestión ambiental y de los recursos naturales renovables del país asegurar, entre otras, la recuperación, conservación y protección de los recursos naturales renovables y el medio ambiente, así como regular las condiciones generales para el saneamiento del medio ambiente, a fin de impedir, eliminar o mitigar el impacto de las actividades contaminantes, deteriorantes o destructivas del entorno o del patrimonio natural.

Que las acciones de erradicación de cultivos ilícitos con aspersión de Glifosato, se consideran, al tenor de lo dispuesto en el artículo 38 del Decreto 1753 de 1994, una actividad del régimen de transición, razón por la cual, este Ministerio exigió a la Dirección Nacional de Estupefacientes - DNE la presentación de un Plan de Manejo Ambiental para dicha actividad.

Que con fundamento en el Concepto Técnico No. 0150 del 12 de Julio de 1996, de la Subdirección de Ordenación y Evaluación de la Dirección General Ambiental Sectorial de este Ministerio, la Oficina Jurídica de la misma entidad, a través del Auto No. 558A de agosto 13 de 1996, procedió a fijar los Términos de Referencia para que la Dirección Nacional de Estupefacientes - DNE elaborara el Plan de Manejo Ambiental para la aplicación del Herbicida a base de Glifosato a través del Programa de Erradicación de Cultivos Ilícitos en el Territorio Nacional; Plan de Manejo que fue entregado a este Ministerio el día 31 de julio de 1998, sin el capitulo VII correspondiente a la "Identificación y Evaluación de Impactos Ambientales".

Que en consideración de lo anterior, mediante oficio del 13 de Noviembre de 1998, este Ministerio solicitó a la Dirección Nacional de Estupefacientes allegar el Capítulo VII del Plan de Manejo Ambiental presentado, con el fin de proseguir con la respectiva evaluación; capítulo que fue presentado al Ministerio en el mes de Diciembre de 1998;

Que una vez sometido a estudio y evaluación de la Subdirección de Licencias Ambientales el Plan de Manejo Ambiental presentado por la Dirección Nacional

de Estupefaciente, se emitió el concepto técnico No.419-99 del 21 de Diciembre de 1999, mediante el cual se solicito información complementaria en relación con el análisis y determinación de las condiciones de exposición, tipo de exposición directa o indirecta y los posibles impactos acumulativos; lo anterior con el fin de replantear la evaluación de riesgo ambiental de las actividades de fumigación y redimensionar el Plan de Manejo Ambiental del Programa de Erradicación con Glifosato;

Que la solicitud de información complementaria prevista en el concepto técnico anteriormente referenciado, fue hecha a la Dirección Nacional de Estupefacientes, en virtud de Auto No. 599 del 23 de Diciembre de 1999, el cual fue recurrido en su totalidad por dicha Dirección el 1° de febrero del año 2000.

Que mediante Auto No. 143 del 29 de Marzo del 2000 este Ministerio resolvió el Recurso de Reposición interpuesto contra el Auto 599 de 1999, en el sentido de modificar el numeral 2 del artículo 1º. , aclarar el numeral 3 del artículo 1º. del mismo y otorgar un término de tres meses para su complementación.

Que la Dirección Nacional de Estupefacientes, interpuso recurso de reposición contra el artículo quinto del auto en cuestión, solicitando la ampliación a doce meses del término establecido para la entrega de la información adicional; recurso que fue rechazado por el Ministerio del Medio Ambiente, mediante el Auto No.275 del 6 de junio de 2000, confirmándose el plazo de tres meses para la entrega de la dicha información.

Que en cumplimiento de lo anterior, el 13 de septiembre de 2000 la Dirección Nacional de Estupefacientes - DNE, entregó a este Ministerio, el documento "Complementación al Plan de Manejo Ambiental para la Aplicación del Herbicida Glifosato en la Erradicación de Cultivos Ilícitos", el cual fue adicionado con fecha 17 de octubre de 2000.

Que una vez recibida la información adicional y complementaria al Plan de Manejo Ambiental en estudio, la Subdirección de Licencias Ambientales, mediante concepto técnico 589 del 20 de diciembre de 2000, conceptúo que la información complementaria entregada por la Dirección Nacional de Estupefacientes, no cumplía con los requerimientos exigidos en el Auto No. 588A de 1996.

Que en consideración de lo anterior, el 20 de diciembre de 2000, el Ministro del Medio Ambiente convocó a la Dirección Nacional de Estupefaciente - DNE a una reunión, con el fin de comunicarle que la información entregada, no satisfacía los requerimientos de este Ministerio; en dicha reunión la Dirección Nacional de Estupefaciente - DNE, se comprometió a entregar un documento con mayor detalle en su caracterización y orientando la evaluación de los impactos al análisis de riesgos, de acuerdo a lo solicitado en los términos de referencia para el Plan de Manejo Ambiental previsto en el Auto No. 558A/96 de este Ministerio, para la zona de Putumayo.

Que en cumplimiento de lo anterior, el 30 de Enero de 2001, la Dirección Nacional de Estupefacientes - DNE, entregó a este Ministerio para su estudio y

evaluación, el documento "Plan de Manejo Ambiental para la Erradicación de Cultivos Ilícitos a partir de la evaluación de riesgo potencial de operación del programa de aspersión en el departamento del Putumayo".

Que en este documento, con base en una caracterización ambiental a nivel departamental (1:500.000, 1:400.000) se planteó la combinación de dos metodologías de evaluación de riesgos (impactos ambientales por uso de plaguicidas y evaluación de riesgos potenciales tecnológicos); y se presentó una descripción de las etapas del programa de aspersión de cultivos ilícitos; una propuesta de evaluación del programa de erradicación; y una estructura de Plan de Manejo integrada por 10 fichas de programa en aspectos relacionados con:

* Objetivos del programa de erradicación;
* Celebración de convenios interinstitucionales para mejorar la información de las áreas de operación del programa de erradicación;
* Capacitación de los pilotos en aspectos ambientales;
* Análisis de imágenes de satélite, sistematización y georreferenciación de información para las operaciones de aspersión;
* Sistematización de informes de auditoría ambiental;
* Registro de datos del medio natural en el proceso de verificación;
* Medidas de mitigación y compensación por contingencias en la operación del programa; y
* Propuesta de mecanismo de atención de quejas y reclamos.

Que una vez evaluada por la Subdirección de Licencias Ambientales, la información anteriormente referenciada, se determinó:

* El documento presenta una caracterización a nivel general (escala: 1:400.000 y 1:500.000), que no permite definir de manera real la localización de los ecosistemas y recursos naturales del área, expuestos a la aspersión aérea; tampoco permite diferenciar ni determinar los ecosistemas ambientalmente críticos y sensibles ni las áreas que deban ser excluidas, tratadas o manejadas de manera especial en el desarrollo del programa, de acuerdo al conjunto de criterios fijados por el mismo.

* Los análisis para determinar las áreas ambientalmente afectadas por el programa de erradicación, no se sustentan desde el punto de vista técnico ni científico, por cuanto no se dispone de los soportes cuantitativos ni cualitativos ni los soportes de investigaciones en programas relacionados con el objeto de la evaluación, que permitan determinar y valorar los impactos ocasionados sobre los recursos naturales por la aplicación del Glifosato, y por lo tanto, la estimación de riesgos planteada se presenta de forma muy general, lo cual no permite detallar ni precisar acciones para determinarlos y prospectar su manejo de manera previa.

* De otra parte, y como consecuencia de lo anterior, el resultado final del análisis realizado para el departamento del Putumayo, parte de una caracterización en escala excesivamente amplia y general, no efectuándose de manera especifica sobre los ecosistemas y recursos naturales que se encuentran al interior de las zonas nucleadas de cultivos ilícitos objeto del programa, razón por la cual, los resultados de este ejercicio, que se esperaba pudiera ser replicado para otras zonas del país, no cumplió con su objetivo.

Que de otro lado, y respecto al conjunto de acciones programáticas planteadas en dicho documento, así como en los documentos previos reseñados anteriormente, se puede concluir que los documentos hasta ahora entregados por la Dirección Nacional de Estupefacientes para definir un adecuado Plan de Manejo Ambiental para la actividad de erradicación de cultivos ilícitos mediante la aspersión aérea con Glifosato, no han respondido a los alcances y objetivos definidos en los términos de referencia ni a los requerimientos de información que este Ministerio ha solicitado en repetidas oportunidades a la Dirección Nacional de Estupefacientes - DNE, teniendo en cuenta lo siguiente:

* No se ha presentado una evaluación de la oferta y vulnerabilidad de los ecosistemas y recursos naturales particulares contenidos al interior de las zonas nucleadas de cultivos ilícitos objeto del programa, sobre la cual desde el punto de vista técnico se puedan determinar y diferenciar los ecosistemas ambientalmente críticos, sensibles y de importancia ambiental, así como las áreas que deben ser excluidas, tratadas o manejadas de manera especial en desarrollo y ejecución del programa.

No obstante, el programa dispone de los recursos y herramientas tecnológicas, tales como: imágenes de satélite (SPOT y LANDSAT) actualizadas, software de registro y análisis de interpretación de imágenes de sensores remotos, software de registro de campo, cartografía base del IGAC y DMA, comprobaciones aéreas y de campo, con las cuales se puede efectuar una caracterización adecuada del entorno físico-biótico y social de las áreas con cultivos ilícitos a nivel de semidetalle (aprox: 1:25.000), y de esta manera dar cumplimiento a las exigencias tanto del plan de manejo ambiental, como con lo establecido por el Consejo Nacional de Estupefacientes en el artículo 2º de la resolución 0005 de 2000.

* No se han generado los parámetros de valoración de los impactos y efectos ambientales generados por el Programa de erradicación con Glifosato, con los cuales se pueda establecer de manera clara y aceptable un nivel de certeza que soporte la toma de decisiones relacionadas con las medidas de manejo ambiental que se deben contemplar en el proceso de planificación e implementación de las labores de aspersión.

* Tanto en los documentos que hacen referencia al Plan de Manejo Ambiental para el territorio nacional, como para el Departamento del Putumayo, no se han diseñado el conjunto de programas, acciones y medidas concretas de manejo ambiental relacionadas con la prevención, control, mitigación, compensación y corrección, para los posibles impactos y efectos causados por el programa.

* No se han propuesto medidas especiales a implementar en las áreas aledañas al sistema de Parques Nacionales Naturales, con el fin de prevenir, mitigar, controlar y compensar los posibles impactos y efectos ocasionados por el programa y que respondan, en particular a conservar la diversidad biológica y cultural, tal como lo establece la resolución 0005 del 2000.

* No se proponen acciones sistemáticas concretas para el seguimiento y monitoreo de las medidas de manejo ambiental y sus resultados, soportado en el diseño técnico de un conjunto de indicadores de calidad ambiental con los cuales debe operar el programa.

* En la actualidad los cronogramas operacionales del programa de aspersión área con Glifosato y la definición e implementación de medidas de manejo ambiental de tipo preventivo, no han puesto en practica los artículos 2 y 8 de la resolución 0005/2000, relacionados con la caracterización previa y recomendaciones al programa por parte del comité técnico interinstitucional.

Que por lo anteriormente expuesto, la documentación entregada a este Ministerio en julio de 1998, septiembre de 2000 y enero de 2001 por la Dirección Nacional de Estupefacientes - DNE, no satisface los alcances y objetivos establecidos por este Ministerio en el Auto No. 588A de 1996.

Que en consecuencia, y teniendo en cuenta que en tres oportunidades este Ministerio ha requerido a la Dirección Nacional de Estupefacientes - DNE, información complementaria que conduzcan a lograr la formulación de un Plan Manejo Ambiental frente a las características del programa de erradicación, sin que los documentos entregados hayan cumplido con el objetivo previsto, de acuerdo a las conclusiones anteriormente planteadas, no se acepta el Plan de Manejo Ambiental y en consecuencia, se hace necesario aplicar de manera inmediata las medidas preventivas que se establecen en la parte resolutiva del presente acto, con el fin de que las mismas en su desarrollo y resultado, sirvan de insumo a este Ministerio para la imposición definitiva del Plan de Manejo Ambiental previsto para las actividades del régimen de transición, según el artículo 38 del decreto 1753 de 1994.

Que en mérito de lo expuesto, se

RESUELVE:

ARTICULO PRIMERO.- No aceptar el Plan de Manejo Ambiental presentado por la Dirección Nacional de Estupefacientes - DNE para la actividad de erradicación de cultivos ilícitos mediante la aspersión aérea con Glifosato, y en su defecto establecer como medidas preventivas las acciones que se determinar a partir del artículo siguiente

PARAGRAFO: Con base en los resultados de las medidas preventivas establecidas en la presente providencia, este Ministerio impondrá a la Dirección Nacional de Estupefacientes - DNE el Plan de Manejo Ambiental definitivo que garantice el adecuado desempeño ambiental de esta actividad .

ARTICULO SEGUNDO.- La Dirección Nacional de Estupefacientes, deberá desarrollar dentro de un término de hasta seis (6) meses, sobre las áreas objeto de aspersión de Glifosato para la erradicación de cultivos ilícitos, evaluaciones de impacto ambiental, conducentes a establecer la naturaleza y características de los posibles impactos ambientales generados por dicha actividad en los cuatro (4) meses anteriores a la fecha de notificación del presente acto administrativo, prospectar los potenciales efectos ambientales en función de los hallazgos y proponer las medidas necesarias para mitigarlos y/o compensarlos.

ARTICULO TERCERO.- La Dirección Nacional de Estupefacientes deberá cumplir con lo establecido por el Consejo Nacional de Estupefaciente en el artículo undécimo de la Resolución 0005/2000.

ARTICULO CUARTO. - Para el caso de áreas pobladas, áreas con infraestructura social y/o áreas de abastecimiento de acueductos, la Dirección Nacional de Estupefacientes - DNE, definirá e implementará de manera inmediata, medidas alternativas para erradicar los cultivos ilícitos, de tal forma que se garanticen la protección del entorno ambiental y social, las cuales tendrán inmediata aplicación.

ARTICULO QUINTO. - Para adelantar la planificación de las actividades de aspersión, en concordancia con lo establecido en la Resolución 0005/2.000 y sus desarrollos, la Dirección Nacional de Estupefacientes - DNE, debe realizar y poner en práctica de forma inmediata, y hasta por un término de seis (6) meses, las siguientes medidas:

a) Caracterizar ambiental y socioeconómicamente las áreas nucleadas de cultivos ilícitos objeto del programa de erradicación, basada en cartografía especializada con niveles de resolución de 1:25.000

b) Identificar, caracterizar y espacializar a escala 1:25.000, las áreas de exclusión, que de acuerdo a sus características ecológicas, ambientales y sociales deben ser objeto de medidas especiales por parte del Programa.

c) Implementar el Programa de Comunicación Educativa dirigido a las comunidades, propuesto por la DNE, previo concepto de las entidades competentes .

d) Proponer e implementar las franjas de seguridad de acuerdo con los criterios propios de aspersión aérea y condiciones particulares del sitio, con el fin de minimizar riesgos potenciales de afectación a ecosistemas sensibles circundantes a las áreas que resulten objeto de la aspersión aérea. Para tal efecto, la Dirección Nacional de Estupefacientes presentará al MMA las propuestas respectivas para su aprobación.

e) Coordinar y armonizar, la planificación de las acciones del Programa de Erradicación de cultivos ilícitos con Glifosato, con los programas y proyectos de gestión social y ambiental desarrollados por las otras entidades participantes en el Plan Nacional de Lucha Contra la Drogas.

PARAGRAFO: La Dirección Nacional de Estupefacientes deberá presentar al Ministerio del Medio Ambiente trimestralmente, informes de avance sobre las obligaciones establecidas en el presente artículo.

ARTICULO SEXTO.- La Dirección Nacional de Estupefacientes debe adoptar de manera inmediata y eficiente, las siguientes medidas de mitigación, compensación y control ambiental, sin perjuicio de la competencia del Ministerio del Medio Ambiente para hacer seguimiento al cumplimiento de las mismas:

a) Plan de contingencia para la atención y control de eventos potenciales indeseados, que puedan ocurrir en las diferentes actividades que comprenden la ejecución del Programa, en especial en la actividad de aspersión del herbicida, conducentes a garantizar que las acciones que se acometan con ocasión de emergencia o eventos de naturaleza incierta, no generen daños irreparables a la salud humana y el medio ambiente, y así mismo permitan la atención y

recuperación de las áreas afectadas.

b) Programa de inspección, verificación y control cuyo objetivo fundamental esté orientado a:

* Verificar en sitio, la efectividad de la aplicación de medidas de manejo ambiental durante la operación del Programa de Erradicación de Cultivos Ilícitos.
* Evaluar previo diseño para tal fin, mediante indicadores de eficiencia y efectividad, la aplicación de medidas de manejo ambiental del Programa de Erradicación de Cultivos Ilícitos
* Evaluar la eficiencia en la adopción de medidas de acción correctiva, en caso de que se establezcan la existencia de daños derivados de las actividades de erradicación.

c) Un programa de compensación dirigido a responder a posibles daños e impactos ambientales generados en ejercicio de la aplicación del Programa de Erradicación de cultivos ilícitos a través de la aspersión aérea con Glifosato.

ARTICULO SEPTIMO.- La Dirección Nacional de Estupefacientes deberá iniciar dentro los tres (3) meses siguientes a la notificación del presente acto administrativo, los siguientes programas de investigación:

* Estudio de la regeneración y dinámica ecológica de zonas asperjadas, mediante parcelas demostrativas y representativas de los núcleos de mayor concentración de cultivos ilícitos, obtenidos en el censo de 2000.

* Determinar la residualidad de Glifosato en el suelo y su afectación en las propiedades físico químico y biológicas de los mismos, utilizando las mismas parcelas demostrativas enunciadas anteriormente.

PARAGRAFO: La Dirección Nacional de Estupefacientes deberá reportar trimestralmente al Ministerio del Medio Ambiente sobre los avances de las investigaciones previstas en el presente artículo

ARTICULO OCTAVO.- La Dirección Nacional de Estupefacientes deberá contratar una Auditoría técnica externa e independiente, cuyo objeto, alcance, estructura funcional, funciones y actividades a desarrollar, así como los productos a entregar y los resultados esperados de la misma, deberán estar conforme a los términos de referencia aprobados en EL Comité Técnico Interinstitucional de que trta la resolución No. 005 de 2.000

ARTICULO NOVENO.- La Dirección Nacional de estupefacientes deberá diseñar y operar un sistema de información al público respecto del desarrollo del programa de aspersión, las actividades y los informes de la interventoría ordenada en la presente providencia y el cumplimiento de la misma.

ARTICULO DECIMO.- La Dirección Nacional de Estupefacientes deberá solicitar el apoyo del Instituto Colombiano Agropecuario - ICA y del Ministerio de Salud o a quien este último designe, para que desarrollen la evaluación conducente a establecer las dosis de la formulación de Glifosato más eficaz en función de la minimización del riesgo para salud humana y el medio ambiente.

ARTICULO DECIMO PRIMERO.- La presente resolución deberá ser notificada al Director Nacional de Estupefacientes , al Defensor del Pueblo y al representante legal de FUNDEPUBLICO

ARTICULO DECIMO SEGUNDO.- La Dirección Nacional de estupefacientes deberá cancelar a este Ministerio, por concepto de seguimiento, la suma que en su oportunidad se determine.

ARTICULO DECIMO TERCERO.- Contra la presente resolución no procede recurso alguno.

NOTIFÍQUESE Y CUMPLASE

JUAN MAYR MALDONADO
Ministro del Medio Ambiente.
"Por medio de la cual se adoptan unas decisiones en relación con el Programa de erradicación de cultivos ilícitos mediante aspersión aérea con Glifosato"

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Reglamentación

ANNEX 15

Republic of Colombia, Ministry of Environment,
Resolution No. 1065, Environmental Management Plan
(26 Nov. 2001)

Environmental Management Plan
Resolution No. 1065
26 November 2001

"Whereby a management plan is established and other decisions are made"

The Minister for the Environment
Pursuant to the powers conferred by Law 99 of 1993 and especially by Article 38 of Decree 1753 of 1994

and Whereas:

The Ministry of the Environment, by way of Decree 558 A of 13 August 1996, ordered the NATIONAL NARCOTICS DIRECTORATE – DNE – to present an Environmental Management Plan for the eradication of illicit crops with Glyphosate, in accordance with the Terms of Reference issued in the aforementioned administrative decree.

By way of official note No. 11430 of 30 July 1998, the NATIONAL NARCOTICS DIRECTORATE – DNE – submitted to this Ministry the Environmental Management Plan for the "Eradication of illicit crops through the aerial spraying with Glyphosate," without Chapter VII regarding the "Identification and Evaluation of Environmental Impacts."

Due to the foregoing, by way of official note No. 22111-2-315 of 2 October 1998, the Sub-Agency of Licenses of the Ministry of the Environment requested that the NATIONAL NARCOTICS DIRECTORATE – DNE – submit Chapter VII of the Environmental Management Plan.

On 18 November 1998, the NATIONAL NARCOTICS DIRECTORATE – DNE – through an official based in this Ministry and under the number 3110-1-25417, submitted copies of Chapter VII of the Environmental Management Plan entitled: "Identification and Evaluation of Environmental Impacts."

Once the study presented by the NATIONAL NARCOTICS DIRECTORATE – DNE – was evaluated, Technical Report No. 419-99 of 21 December 1999 was issued by way of Decree No. 599 of 23 December 1999, in which the NATIONAL NARCOTICS DIRECTORATE – DNE – was required to augment the Environmental Management Plan for the application of Glyphosate-based herbicides in the eradication of illicit crops, as is recorded in the file.

By way of an official note on 1 February 2000, the NATIONAL NARCOTICS DIRECTORATE – DNE – filed a Request for Review against Decree No. 599 of 23 December 1999, arguing, *inter alia*, that there were aspects that were not in accordance with the technical opinions expressed by the Colombian Agricultural Institute – I.C.A. – and the technical report issued by the Ministry of the Environment, as well as with the term established for the submittal of the complementary information to the Environmental Management Plan.

By way of decree No. 143 of 29 March 2000, the Ministry of the Environment put forward a Request for Review resolution in the sense of modifying numeral 2, clarifying numeral 3, confirming the others terms of the First Article of Decree 599 of 1999 and setting a term of 3 months for the effects of delivery of the information solicited in the first article of the decree challenged.

By way of an official note on 10 May 2000, the NATIONAL NARCOTICS DIRECTORATE – DNE – filed a Request for Review against the foregoing Decree, requesting consideration of the fact that, among other aspects, the amplification, reformation, and presentation of the Environmental Management Plan, requires the participation of different entities to define terms, times, proposals and agreements with national and regional entities.

By way of Decree 275 of 6 June 2000, the Ministry of the Environment resolved the request for review filed against Decree No. 143 of 29 March 2000, by not modifying the appealed decree and ratifying every one of the challenged ruling's parts.

The NATIONAL NARCOTICS DIRECTORATE – DNE, by way of a communiqué on 13 September 2000, presented to the Ministry of the Environment the document "Addition to the Environmental Management Plan for the application of the herbicide Glyphosate in the eradication of illicit crops," which was appended on 17 October 2000.

Having received and analyzed the additional information in the Environmental Management Plan under consideration, the Sub-Agency of Licenses, according to technical opinion No. 589 of 20 December 2000, announced that the additional information submitted by the NATIONAL NARCOTICS DIRECTORATE – DNE – did not comply with the requirements demanded in Decree No. 588 A of 1996.

In response to the foregoing, on 20 December 2000, the Ministry of the Environment called for a meeting with the NATIONAL NARCOTICS DIRECTORATE – DNE – to inform it that the information delivered did not

satisfy the requirements of this Ministry. In said meeting, the NATIONAL NARCOTICS DIRECTORATE – DNE – committed to deliver a document more detailed in its characterization and oriented to the evaluation of the impacts to the risk assessment, in accordance with the demands of the terms of reference for the Environmental Management Plan set in Decree 558 A of 1996, for the Putumayo region.

In fulfillment of the foregoing, by way of the official note numbered 3111-1-1627 of 30 January 2001, the NATIONAL NARCOTICS DIRECTORATE – DNE – submitted the document "Environmental Management Plan beginning with the evaluation of the potential operational risks of the eradication of illicit crops through spraying in the Putumayo Region."

By way of Resolution 341 of 4 May 2001, this entity decided not to accept the Environmental Management Plan presented by the NATIONAL NARCOTICS DIRECTORATE – DNE – for the "Eradication of illicit crops through the aerial spraying of Glyphosate," and given its defect, proceeded to establish measures for immediate observance and others of a preventative sort, whose observance is the subject of revision in this resolution.

The Ministry of the Environment, through Decree 516 of 16 July 2001, required that the NATIONAL NARCOTICS DIRECTORATE – DNE – report on the actions taken to advance compliance with Resolution 341 of 2001.

By way of the official note numbered 3110-1-1069 of 8 August 2001, the NATIONAL NARCOTICS DIRECTORATE – DNE – submitted to the Ministry of the Environment the first report on the advancement of its compliance with the obligations established in Resolution 341 of 2001.

In response to this report, the Ministry, by way of official note 2211-2-126 of 24 August 2001, requested clarification regarding the official notes of the Ministry of Health and the ICA [Agricultural Institute of Colombia]. Likewise, by way of official note 3111-2-11558 of 6 September 2001, it made comments regarding the proposals titled "Rapid ex-post environmental evaluation" and "Determination of the effects of the sprayings with glyphosate."

By way of official note numbered 3113-1-14331 of 7 November 2001, the NATIONAL NARCOTICS DIRECTORATE – DNE – submitted to the Ministry the document titled "Environmental Management Plan for the Program of Eradication of Illicit Cops through Aerial Spraying with Glyphosate," as well as the document related to the State of Advancement of Resolution 341 of 2001.

ANNEX 15

TECHNICAL CONSIDERATIONS

The Sub-Agency of Licenses, by way of Technical Opinion No. 992 of 23 November 2001, made an announcement regarding the information submitted by the DNE related to the fulfillment of Resolution 341 of 2001. It is important to note that within this opinion, aspects were included referring to the follow-up visit undertaken by this Ministry on the 6th and 7th days of November of this year to the air base of the National Antinarcotics Police of the City of San José del Guaviare and some sprayed areas in the Guaviare Region.

1. Follow-up to resolution 341 of 2001

From a technical point of view, this Ministry, with respect to the information submitted by the DNE on the fulfillment of the requirements stipulated in the resolving articles of Resolution 341 of 2001, considers the following:

Second Article

The DNE submits an investigation proposal that combines the requirements of Articles Two and Seven of Resolution 341, arguing that the PROGRAM OF ERADICATION OF ILLICIT CROPS WITH GLYPHOSATE – PECIG – has been carried out in areas that have been infiltrated by the cultivators of coca, initially through their slashing and burning of forests and later, through their long-term production of coca, in which they use agrochemicals and other chemical supplies. In this sense, the DNE demonstrates that is not possible to evaluate these areas subject to the Program without an investigation design that allows for the separation of the effects of the application of Glyphosate herbicides from those related to the chemical substances used in the process of planting illicit crops and the production of narcotics.

Once the foregoing aspects are analyzed, this Ministry considers from a technical point of view that some environmental impacts exist before the spraying, which generates interferences for the evaluation of the impacts in the framework of the required investigations. Nevertheless, this does not imply that the required evaluation on the effect of the spraying will not be conducted, in the terms and conditions established in Article Two of Resolution 341 of 2001. Therefore, the DNE must conduct environmental monitoring as indicated in part No. 8 of its proposed management plan, complemented with the adjustments that are later indicated. For this, it is necessary that the indicated monitoring be started immediately, and similarly, the submittal of quarterly reports regarding the

advancement of this monitoring should be carried out as of the date of the notification of this resolution.

Third Article

The assertions of the DNE that aerial spraying with Glyphosate will not be carried out in park areas or other natural areas protected on regional and local levels are accepted. In this sense, the Special Administrative Unit of the National Natural Parks System – UAESPNN – will verify compliance with this article through follow-up visits and/or through the reports of the Technical Auditor.

For illicit crops present in such areas, the DNE will manually eradicate, in accordance with the related guidelines that will be established by the Special Administrative Unit of the National Natural Parks System – UAESPNN.. It is clear that the programs for eradication, prevention and mitigation of the environmental impact of illicit crops in these zones are the responsibility of the DNE.

Fourth Article

In agreement with what is expressed by the DNE, the PECIG does not operate in environmentally sensitive areas, such as: populated areas, parks, natural reserves, aqueducts and bodies of water. This will be subject of verification by the Technical Auditor. The DNE will be responsible for adequate inter-institutional coordination, in accordance with what is indicated in Part No. 12 of the proposed Environmental Management Plan.

Fifth Article

Paragraphs a) and b):

In what refers to the framework of the inter-administrative agreement signed by the DNE and the IGAC, the DNE suggests that the technical and economic proposal presented in the first instance by the IGAC divides the execution of information production activities into two phases, which do not abide by their requirements - as established in Resolution 341 of 2001 - because only upon finishing the second phase will the required cartography be completely obtained.

Additionally, it states that that the cost of this first phase is very high, and it does not include an estimate for what would be the investment for the second phase, in order to allow for the negotiation of the corresponding allocations, which is why

the related request was made to the IGAC, but as of this date a response has not been received.

Consequently, it is suggested that the description be carried out and that the requested information be submitted, employing the "virtual scales" methodology, and also using as support the so-called "Geo-referenced Information System for the Areas with the Presence of Illicit Crops," which was started in the month of July and which, in the judgment of the DNE, allows for the characterization of the social, cultural, epidemiological, health, economic and environmental environment in the areas of spraying, as well as the determination of potential risks of the program's operation, through the integration of information provided by different entities.

On this topic, it should be noted that in Resolution 341 of May 2001, the Ministry requested the environmental and socioeconomic characterization of the areas of illicit crops, as well as information on the excluded areas on the scales indicated in the Resolution, keeping in mind that this level of detail is the most suitable for purposes of the analysis of the environmental impacts that could occur within the framework of the development of the process of environmental evaluation and monitoring.

Regarding the position expressed by the DNE in the document entitled **"Comments on the scale of the characterization studies in zones with the presence of illicit crops," the following appraisals are made:**

Resolution 0341 of 2001 does not propose in any part of its content the execution of characterizations of areas of influence that are outside the areas that could be **directly** affected by the operation of the program. Therefore, it is erroneous to assert that it is requesting the characterization of 50% of the country, and consequently, the figures that are provided in that analysis do not apply to the reality of the requirements made by the Ministry.

The DNE implies that the execution of the characterization studies at the scale requested by the Ministry is useless, because those studies **"...serve as a baseline for the evaluations more often applied regarding human activities or different processes of degradation (environmental impacts, evaluation of land, erosion processes, etc....),"** suggesting that for the purposes that the Ministry is pursuing, it would be necessary to revise the scope and levels of the detail requested. On this topic, it should always be kept in mind that the purpose of the characterization is precisely to obtain the closest approximation of the possible impacts on the physical, biotic, economic and social components that

could result from the operation of the program in order to determine the correct measures of prevention, mitigation and compensation to implement.

This approximation would not be possible [sic, impossible], in that the characterization of the noted components is to be conducted and presented in work scales of 1:250,000 or 1:500,000, as suggested by the DNE.

Nevertheless, taking into account that there are limitations on the part of the entities charged with the production of the cartographic information to provide basic and thematic cartography in the required scale for some of the areas subject to the Eradication Program, the Ministry accepts the technical arguments outlined by the IGAC, allowing the presentation of the required information at a scale of 1:100,000.

In conclusion, the DNE must immediately initiate the environmental and socioeconomic characterization of the specific areas of illicit crops subject to the eradication program, using the available analog and digital cartographic information and its associated alphanumeric databases, supporting the development of the same through the managing and processing of satellite images, radar images, and aerial photographs, as well as the use of geographic information systems, for the final presentation of cartographic products (maps, spatial maps, ortophoto maps) at a scale of 1:100,000.

Likewise, the DNE must immediately conduct the geo-referencing, identification and characterization of areas of exclusion which, according to their ecological, environmental and social characteristics, should be subject to special measures of the eradication program, using the available analog and digital cartographic information and its associated alphanumeric databases, supporting the development of the same through the managing and processing of satellite images, radar images, and aerial photographs, as well as the use of geographic information systems for the final presentation of cartographic products (maps, spatial maps, ortophoto maps) at a scale of 1:100,000.

Finally, the DNE must immediately conduct the geo-referencing of the monitoring parcels that are defined in the framework of the environmental monitoring program pertaining to Article 2 of Resolution 341 of 2001.

Paragraph c:

The elaboration and implementation of the Educational Communication program is contained in Part 10 of the PMA.

Article 5 Paragraph d:

This Ministry believes that the buffer zones proposed by the DNE in the study submitted should be adjusted according to the Ministry's determination, since those suggested by DNE do not guarantee safety with respect to the need to preserve and protect the areas described. These adjustments should be adopted immediately by the PECIG and verified in the field by the Technical Auditor, maintaining therefore the same buffer zones, according to the following table:

Buffer Zones for Environmental Elements

Environmental Element	**Buffer Zone**
Standing bodies of water: lakes, ponds, fish-farming ponds, and flowing bodies of water: streams, rivers.	Minimum 200-meter buffer. (Pursuant to the criteria set forth in Decree 1843/1991 of the Ministry of Health). This buffer may be expanded depending on the technical conditions of the aerial operations.
Sub-highland, headwaters and aquifer recharge areas.	Do not spray within them. Spray outside the area with a minimum buffer zone of **2000 meters**.
Areas of the zones belonging to SNPNN*.	Do not spray within them. Spray outside the area with a minimum buffer zone of **2000 meters**.
Human settlements: hamlets, checkpoints, shelters, urban areas.	Do not spray within them. Spray outside the area with a minimum buffer zone of **2000 meters**.
Areas of socio-economic interest: Productive projects, pact areas.	Do not spray. Establish a minimum buffer zone of **1600 meters.**

(*) The UAESPNN [Special Administrative Unit of the National Natural Parks System] will provide the data on the topographic boundaries that define and limit of the natural national parks, with their polygon and BMs properly identified, in order for DNE and the operators to limit their actions in accordance with the established buffer zones.

Paragraph e:

The DNE, within the information provided to the Ministry in the second monitoring report includes copies of the official notes sent to the different entities requesting information on environmental and social projects. Based on the foregoing, and facing the need to establish clear and quick mechanisms of inter-institutional coordination, the DNE must immediately adopt the mechanisms of coordination proposed in Part No. 12 of the PMA.

Sixth Article

a. Contingency Plan for the attention to and control of undesired events

The Contingencies Plan submitted by the DNE presents a structure developed according to what is described in the criteria established in the National Policy for Attention to and Prevention of Disasters, and in particular those regarding the decrees related to the National Contingency Plan that it complements, covering transportation and storage activities, spraying operations and complementary activities developed in Antinarcotics Bases. It presents specific training programs for the teams that operate in each base.

As a consequence of the foregoing, the plan presented by the DNE is accepted and the DNE must immediately start its implementation.

To effectuate the review of the effectiveness of the Contingency Plan, the DNE must make periodic revisions to the Plan and report the necessary adjustments to the MMA.

b. Inspection, verification and control program (PIVC)

-Verification of the effectiveness of the environmental management measures: Regarding the verification of the effectiveness of the environmental management measures proposed by the DNE, this Ministry considers the actions suggested by the DNE in the proposed PMA to be viable.

However, and as was indicated in Resolution 0341 of 2001, the development of these activities was required to be undertaken immediately, such that the parties should put themselves in compliance with the requirements established therein.

- Evaluation of environmental management measures through efficiency and effectiveness indicators: The DNE proposes environmental management measures indicators to evaluate the level of effect of the spraying operations on human settlements and other types of matters, including: the type of vegetative cover, evaluation of illicit crops, evaluation of the level of recuperation,

regeneration or restoration of the vegetative cover, identification of the number dwellings present and the identification of bodies of standing water.

In the progress report submitted to the Ministry in August of 2001, the DNE proposed using indicators to be applied by the PIVC in the required evaluation, which, nonetheless, change in their conception to presenting the PMA proposal in November.

Based on the foregoing, the Ministry accepts for immediate application the aforementioned indicators proposed by the DNE and those included in Part No. 8 of the PMA, with the adjustments indicated below.

As was indicated in Resolution 0341 of 2001, the development of these activities should have been undertaken immediately, for which reason the parties should proceedwith conforming themselves to what is indicated therein, that is, immediately.

- Efficiency in the adoption of corrective action measures: The DNE reports that in the measure through which the existence of damages resulting from the eradication activities will be established, the PECIG will move forward with the corresponding correction, mitigation or compensation measures in accordance with what is established in Resolution 017/01 of the CNE and what is proposed in the Social Management Program and the Contingency Plan of the proposed PMA.

Additionally, and for the purpose of guaranteeing the full development of the corrective action measures, the DNE must immediately develop the following measures:

- For the activation, control and recuperation of affected soil: The application of neutralizers; the application of fertilizer on affected soil; the development of works aimed at the control of erosion in the event that the spraying activities have caused it.

- For affected bodies of water, previous monitoring and its results: The application of diluted clays for bodies of standing water; the verification in the space-time of the evolution of the quality of the water of the body affected.

- For cases of an effect on public health: In the regions where complaints are received from the population that are related with the implementation of the program, communicate with the personnel from Health to carry out a program of epidemiological monitoring.

c. Compensation Program

The compensation program proposed by the DNE is oriented toward claims for environmental compensation, which complies with the requirements. This must be implemented immediately.

Seventh Article

The proposal presented by the DNE, specifies concepts, objectives, methodologies and an experimental design. It includes the ground, water, microorganism and vegetation components. In this context, the Ministry considers that the proposal presented fits the pertinent requirements. However, given the nature and amplitude of the issue, its development must be accompanied by an interdisciplinary and multidisciplinary team with expertise in areas that include ecology, soil, vegetation and the environment in general.

Due to the fact that this requirement was required to be initiated within three months after the issuance of Resolution 0341 of 2001, it should be implemented immediately.

Eighth Article

In accordance with the information provided by the DNE, the Ministry considers that the terms of reference for the hiring of the Technical Auditor correspond to those that were approved by the Inter-Institutional Technical Committee of the CNE, which fundamentally served for the hiring that is now taking place.

Ninth Article

This Ministry considers adequate the information systems proposed by the DNE, such as: Web page, monthly informational bulletin on PECIG, press releases, the conducting of an annual national seminar and informational campaigns through the different means of communication. These should be verified as proposed in Part No. 10 of the PMA, referring to the Education Communication Program.

Tenth Article

In compliance with this requirement, the ICA [Agricultural Institute of Colombia] conducted the respective field evaluations on the product's agronomic efficacy. Moreover, the Ministry of Health performed a toxicological classification of the mixture: Glyphosate + POEA + Cosmoflux (1%), classifying it as Category III

Moderately Toxic and recommending that the additive COSMO IN D not be added to the mixture.

In accordance with the data approved by the ICA as a result of the field studies conducted, the Ministry shall accept the dosage of 8 liters/ha of the Glyphosate-based mixture (Roundup 480 SL + Cosmoflux 411) which the ICA defined for coca crops, and from this date on, this shall be the same maximum dosage to be applied.

Likewise, in accordance with the studies conducted by the ICA, the DNE shall repeat the evaluation in two, three and six months following the spraying, in order to observe the recovery state of coca plants sprayed with glyphosate, and it shall report the results to the ICA for its endorsement.

In the event that the DNE wishes to use doses greater than those accepted here, it will have to conduct the appropriate evaluations in accordance with the procedures and protocols that the ICA endorses for this purpose and obtain prior authorization from this Institute.

In the event that the DNE wishes to use mixtures with the active ingredient Glyphosate that are different from those studied by the ICA and the Ministry of Health, the DNE will have to conduct the appropriate evaluations in accordance with the procedures and protocols that the ICA and the Ministry of Health approve for this purpose.

The DNE shall take measures corresponding to the toxicological classification and assessment as defined by the Ministry of Health for the mixture (active ingredient and coadjuvant) with respect to the toxicological risks associated with the herbicide in its approved formulation.

With regard to the implementation of the Program for the eradication of illegal poppy crops, this Ministry accepts the glyphosate-based maximum mixture dosage and application techniques approved by the ICA in previous studies.

2. PECIG Environmental Management Plan

The EMP by the DNE contains 11 environmental management elements, with their respective descriptions, objectives, activities, follow-ups and monitoring, people responsible, timelines and costs.

This plan has been structured into three types of activities:

Prevention Measures
Mitigation and Corrective Measures
Compensation Measures

This Ministry considers that the proposal is adequate because the EMP contains the prevention, mitigation, corrective and compensation measures stemming from the development of the PECIG. Nevertheless, observations have been made regarding some of the management elements and they must be complemented, however this shall not be an excuse for not implementing the EMP immediately, whenever the observations of the Ministry of the Environment can be developed within the framework of the application of the Plan.

Part No. 1. Program for management of the fumigation operations

This part includes the technical and environmental specifications of the different phases of the PECIG, which are: detection, fumigation and verification.

This Ministry considers that the detection measures set forth in this environmental management element can be accepted. With respect to the spraying, the buffer zones proposed by the DNE cannot be accepted, but those imposed by the Ministry in this Resolution are acceptable. The parameters of technical operations for the aerial spraying by T 65 and OV-10 airplanes, which are required by the ICA, are accepted.

Part No. 2. Program for handling glyphosate and its adjuvants at operational bases.

The proposed measures for handling the formula based on the active ingredient, glyphosate, in different stages, such as: storage, preparation, loading onto aircraft, and the calibration of equipment, are adequate.

Part No. 3. Program for the management of combustibles, vehicles, equipment, and transportation.

For this part, the proposed handling measures for the storage and general transportation of equipment and materials are considered to be pertinent and should be immediately adopted. Nevertheless, the DNE must present, within 15 working days of the publication of this resolution, the environmental quality procedures for the transport of the herbicide.

Part No. 4. Solid waste management program.

For the management of solid waste, the measures for handling domestic solid waste are accepted, and a program of separation at source and recycling is to be implemented.

For hazardous solid wastes, such as used oils, lubricants, and batteries, the proposal for their final handling, separation and disposal must be adopted immediately. Likewise, alternatives must be presented for the handling of solid waste linked to glyphosate and its adjuvants within 15 working days of the publication of this Resolution.

Part No. 5. Residual water management program.

This part looks at the management of rainwater, residual domestic water and water residues. The management measures proposed for implementing a system for the collection of rainwater is considered to be the most adequate option, as well as the construction of wastewater treatment plants, with their respective monitoring and evaluation measures.

For the management of the special liquids for airplane tanks, the site used for preparing the mixture should be taken into account. The treatment proposal is accepted, but as with the wastewater treatment plant proposal, monitoring and evaluation must be conducted every trimester on the pH, DQO and concentration of the glyphosate herbicide.

Part No. 6. Inspection, verification and control of operations of aerial fumigation program.

This part contains the requirements requested by the DNE in Resolution 341 of 2001, with respect to the verification of the effectiveness of the environmental management measures, which will be revised by the Technical Auditor.

On the evaluation of the environmental management measures through indicators of efficiency and effectiveness, that look at the level of effect that the spraying operations have on human settlements and other types of areas, the Ministry considers that the proposed indicators are acceptable, with the clarifications mentioned in the previous note.

On the efficiency of the adoption of corrective measures, the Ministry accepts the proposals in this part. Nevertheless, it considers that they must be complemented with what is described in letter b) of the Sixth Article of Resolution 341 of 2001.

Part No. 7. Program of investigation in representative and demonstrative parcels

This element corresponds to a requirement set forth in the seventh article of Resolution 341 of 2001, and covers the what is said about this subject in the respective part. Likewise, in relation to the demonstrative parcels, other representative ecosystems of Andean forests, in particular cloud forests and *subpáramo* forests, should be included.

Element No. 8. Environmental Monitoring Program

This part sets out the monitoring of the different glyphosate spraying activities, to measure the real impacts on the environment, water, soil, vegetation, soil use and health of the population in the sprayed areas. The Ministry considers that the soil and water components should be complemented as follows:

a- Indicators

Soil: pH, CIC, relation of exchangeable bases, Concentration of Glyphosate and its metabolite, AMPA, Determination of Contamination, Nitrification (Nitrates, Nitrites, ammonium), Count of Nitrogen Fixers, Phosphate Solublization, Texture, Percentage of organic material, Total and Available Phosphorus, Percentage of clay and Toxicity.

Water: pH, OD, DQO, Turbidity, Temperature Color, Electric Conductivity, Nitrates, Nitrites, Ammonium, Dissolved Phosphate, Magnesium and Calcium, Concentration of Glyphosate and AMPA.

In Sediment: Glyphosate and AMPA, Particle Size and Organic Material.

b- Sample Sites:
These will be set up in geo-referenced areas representative of the fumigation areas.

Amazonian Region: The following areas will be determined: Caquetá, Guaviere and Putumayo
Catatumbo Region: The mountainside and the valley north of Santander will be selected.
Magdalena and Cauca Medio Region: South of Bolívar, Northeastern Antioqueño and western Santander
Macizo Colombiano Region: Tolima and Cauca

The **NATIONAL NARCOTICS DIRECTORATE –DNE-** must take the soil samples fifteen days and sixty days after fumigation. Depending on their results and in the sample sites where the presence of glyphosate or its metabolite is identified, monitoring must be conducted four and six months following the spraying, with the goal of adopting the corresponding preventive and corrective measures.

For all cases of the environmental monitoring program, the sample sites must be geo-referenced.

Part No. 9. Social management program

In this part, the various actions that should be taken by the PECIG to approach the populations surrounding the fumigated areas are proposed. This includes: Inter-institutional Support, promotion of alternative development, compensation for damage caused, environmental remediation and improvement, and healthcare services. This Ministry considers that the program is structured according to the expectations.

Part No. 10. Education communication program

In this part, a series of basic activities is undertaken: training information, environmental education and signage. The Communication program proposed by the DNE is considered to fulfill the requirements of the education plan.

Part No. 11. Program for complete personal safety at operational bases

This part is based on preventing risks for the personnel that participate in the fumigation operations or environmental hazards that could be derived from the operation and mixing of herbicides used in the airplanes and the inadequate use of equipment. It includes industrial safety measures. The Ministry considers what is proposed in this part to be adequate and pertinent, and these measures must be implemented in all corresponding aerial bases.

Part No. 12. Environmental administration and institutional coordination

This part has as the objective of ensuring compliance with the environmental specifications of the different activities proposed in the EMP, through mechanisms of direct management by the entities responsible for the program and coordination with the different entities and sectors involved in the PECIG. The

Ministry considers that this program should be permanent while there aerial spraying of glyphosate takes place.

RESOLVES:

FIRST ARTICLE.- TO IMPOSE the Environmental Management Plan, presented by the **NATIONAL NARCOTICS DIRECTORATE –DNE-** for the "Program of Eradication of Illicit Crops through Aerial Fumigation with Glyphosate" in national territory, within the terms and conditions established in the considerations of this resolution.

SECOND ARTICLE.- The Environmental Management Plan that is imposed through this ruling only includes the work or activities described in the Environmental Management Plan and in this Resolution. Any modification to the conditions stipulated in the Environmental Management Plan, or any of the obligations imposed by this resolution must be reported to this Ministry of the Environment in writing for their evaluation and approval.

Likewise, a modification of the Environmental Management Plan must be requested and obtained in order to use, exploit, or affect a renewable natural resource in conditions other than those set forth in the Environmental Management Plan or in this ruling.

THIRD ARTICLE.- THE NATIONAL NARCOTICS DIRECTORATE – DNE- must previously inform the Ministry of the Environment in writing of any modification that implies changes with regard to the activity for their evaluation and approval.

FOURTH ARTICLE.- THE NATIONAL NARCOTICS DIRECTORATE – DNE- will inform, in writing, the contractors and all of the personnel in general that are involved in the activity mentioned in the first article, of the obligations, measures of control, and prohibitions set forth in this ruling, as well as those defined in the presented Environmental Management Plan, and shall require strict compliance with them.

FIFTH ARTICLE.- The Ministry of the Environment, the Colombian Institute of Agriculture –ICA- and the Ministry of Health in their competencies, will supervise the activity, and can verify, at any time, compliance with the guidelines and obligations stipulated in this ruling and in the Environmental Management Plan.

SIXTH ARTICLE.- This Environmental Management Plan will be in force for

the duration of the Program of Eradication of Illicit Crops Through Aerial Spraying with Glyphosate.

SEVENTH ARTICLE.- THE NATIONAL NARCOTICS DIRECTORATE – DNE- will be responsible for any environmental deterioration and/or damage that is imputable to it, caused through the "Program of Eradication of Illicit Crops Through Aerial Spraying with Glyphosate."

EIGHTH ARTICLE.- The Assistant Directorship of Licenses of this Ministry is responsible for notifying the legal representative of the National Narcotics Directorate, the Public Ombudsman, the Legal Representative of FUNDEPUEBLO or its duly constituted special proxies, and Ms. Claudia Sampedro and Mr. Hector Suarez who act as third-party interveners in this Case of the content of this resolution.

NINTH ARTICLE - THE NATIONAL NARCOTICS DIRECTORATE – DNE- must publish the title and the resolution of this administrative act in newspaper that is circulated on a national level, and a copy of this publication must be sent to this Ministry within 10 days of its notification to be archived in file No. 793.

TENTH ARTICLE.- The Assistant Directorship of Licenses of this Ministry is responsible for sending a copy of this ruling to the Attorney's Office Delegated for Environmental and Agronomical Issues, the Ministry of Health, the Colombian Institute of Agriculture –ICA-, the National Narcotics Directorate, the Autonomous Regional Corporations, and the Corporations of Sustainable Development that have jurisdiction in the Departments indicated in this ruling.

ELEVENTH ARTICLE.- The Request for Review will proceed against this Resolution, which can be filed before this Ministry within five days of its publication, as long as it fulfills all legal requirements, as stipulated in Articles 50, 51, and 52 of the Administrative Dispute Code.

BE IT NOTIFIED, PROCLAIMED, PUBLISHED AND COMPLIED WITH

JUAN MAYR MALDONADO
Minister of the Environment

Plan Mane o Ambiental, Resolución N. 1

2 de noviembre de 2 1 Por medio de la cual se impone un plan de mane o y se toman otras determinaciones

El ministro del medio ambiente

En uso de sus facultades legales conferidas en la Ley 99 de 1993 y en especial el Artículo 38 del Decreto 1753 de 1994

y Considerando

Que el Ministerio del Medio Ambiente mediante Auto 558 A del 13 de agosto de 1996 ordenó a la DIRECCI N NACIONAL DE ESTUPEFACIENTES -DNE-, la presentación de un Plan de Manejo Ambiental para la actividad de erradicación de cultivos ilícitos con Glifosato, de conformidad con los Términos de Referencia otorgados en el citado acto administrativo.

Que mediante oficio Nº 11430 del 30 de julio de 1998, la DIRECCI N NACIONAL DE ESTUPEFACIENTES -DNE- remitió a este Ministerio el Plan de Manejo Ambiental para la actividad de "Erradicación de cultivos ilícitos mediante la aspersión aérea con Glifosato", sin el Capítulo VII correspondiente a la "Identificación y Evaluación de Impactos Ambientales".

Que en razón de lo anterior, mediante oficio Nº 22111-2-315 del 2 de octubre de 1998, la Subdirección de Licencias del Ministerio del Medio Ambiente, solicitó a la DIRECCI N NACIONAL DE ESTUPEFACIENTES -DNE-, remitir el Capitulo VII del Plan de Manejo Ambiental.

Que la DIRECCI N NACIONAL DE ESTUPEFACIENTES -DNE- mediante Oficio radicado en este Ministerio el 18 de noviembre de 1998 bajo el Nº 3110-1-25417, remitió las copias del Capitulo VII del Plan de Manejo Ambiental denominado: " Identificación y Evaluación de Impactos Ambientales".

Que una vez evaluado el estudio presentado por la DIRECCI N NACIONAL DE ESTUPEFACIENTES -DNE-, se emitió el Concepto Técnico Nº 419-99 del 21 de diciembre de 1999, acogido mediante Auto Nº 599 del 23 de diciembre de 1999, en el cual se dispuso requerir a la DIRECCI N NACIONAL DE ESTUPEFACIENTES -DNE- para que complementara el Plan de Manejo Ambiental para la aplicación de herbicidas a base de Glifosato en la erradicación de cultivos ilícitos según consta en el expediente.

Que mediante oficio del 1º de febrero de 2000, la DIRECCI N NACIONAL DE ESTUPEFACIENTES -DNE- interpuso Recurso de Reposición contra el Auto Nº 599 del 23 de diciembre de 1999, argumentando entre otros aspectos no estar de acuerdo con los conceptos técnicos emitidos por el Instituto Colombiano Agropecuario -I.C.A.- y la parte técnica del Ministerio del Medio Ambiente, así como con el término establecido para la presentación de la complementación del Plan de Manejo Ambiental.

Que mediante Auto Nº 143 del 29 de marzo de 2000, el Ministerio del Medio Ambiente resolvió el Recurso de Reposición interpuesto en el sentido de modificar el numeral 2º, aclarar el numeral 3º, confirmar en los demás términos el Artículo Primero del Auto 599 de 1999 y fijar un término de 3 meses para efectos de la entrega de la información solicitada en el artículo primero del auto impugnado.

Que mediante oficio del 10 de mayo de 2000, la DIRECCI N NACIONAL DE ESTUPEFACIENTES -DNE- interpuso Recurso de Reposición contra el Auto indicado, por considerar entre otros aspectos, que para ampliar, reformar y presentar el Plan de Manejo Ambiental se requiere la participación de diferentes entidades, definir términos, tiempos, presupuestos y convenios con entidades del orden nacional y regional.

Que mediante Auto 275 del 06 de junio de 2000, el Ministerio del Medio Ambiente resolvió el recurso de reposición interpuesto contra el Auto Nº 143 del 29 de marzo de 2000, en el sentido de no modificar el auto recurrido y ratificar en todas y cada una de sus partes la providencia impugnada.

Que la DIRECCI N NACIONAL DE ESTUPEFACIENTES -DNE- mediante comunicación del 13 de septiembre de 2000, presentó ante el Ministerio del Medio Ambiente el documento "Complementación del Plan de Manejo Ambiental para la aplicación del herbicida Glifosato en la erradicación de cultivos ilícitos", el cual fue adicionado el 17 de octubre de 2000.

Que recibida y analizada la información adicional y complementaria al Plan de Manejo Ambiental en estudio, la Subdirección de Licencias según concepto técnico No 589 del 20 de diciembre de 2000, se pronunció en el sentido de que la información complementaria entregada por la DIRECCI N NACIONAL DE ESTUPEFACIENTES -DNE-, no cumplía con los requerimientos exigidos en el Auto Nº 588 A de 1996.

Que en atención a lo anterior, el 20 de diciembre de 2000, el Ministerio del Medio Ambiente convocó a la DIRECCI N NACIONAL DE ESTUPEFACIENTES -DNE- a una reunión para comunicarle que la información entregada, no satisfacía los requerimientos de este Ministerio; en dicha reunión la DIRECCI N NACIONAL DE ESTUPEFACIENTES -DNE-, se comprometió a entregar un documento con mayor detalle en su caracterización y orientando la evaluación de los impactos al análisis de riesgos, de acuerdo a lo solicitado en los términos de referencia para el Plan de Manejo Ambiental determinados en el auto 558 A de 1996, para la zona del Putumayo.

Que en cumplimiento de lo anterior, mediante oficio radicado con el Nº 3111-1-1627 del 30 de enero de 2001 la DIRECCI N NACIONAL DE ESTUPEFACIENTES -DNE- hizo entrega del documento "Plan de Manejo Ambiental a partir de la evaluación del riesgo potencial de operación derivado de la erradicación de cultivos ilícitos por aspersión en el Departamento del Putumayo"

Que mediante Resolución 341 de 4 de mayo de 2001, esta entidad decidió no aceptar el Plan de Manejo Ambiental presentado por la DIRECCI N NACIONAL DE ESTUPEFACIENTES -DNE- para la actividad de "Erradicación de cultivos ilícitos mediante la aspersión aérea con Glifosato", y en su defecto procedió a establecer medidas de cumplimiento inmediato y otras de tipo preventivo, cuyo cumplimiento es objeto de revisión en la presente resolución.

Que el Ministerio del Medio Ambiente mediante Auto 516 del 16 de julio de 2001, requirió a la DIRECCI N NACIONAL DE ESTUPEFACIENTES -DNE-, para que informara sobre las acciones adelantadas en cumplimiento de la Resolución 341 de 2001

Que mediante oficio radicado con el Nº 3110-1-1069 del 8 de agosto de 2001 la DIRECCI N NACIONAL DE ESTUPEFACIENTES -DNE- remitió al Ministerio del Medio Ambiente el primer informe de Avance a las obligaciones establecidas en la Resolución 341 de 2001.

En respuesta a este informe, el Ministerio mediante oficio 2211-2-126 del 24 de Agosto de 2001, solicitó aclaraciones en relación con los oficios del Ministerio de Salud y del ICA. Así mismo, mediante oficio 3111-2-11558 del 6 de Septiembre de 2001, hizo comentarios respecto de las propuestas denominadas "Evaluación ambiental rápida ex-post" y "Determinación del efecto de las aspersiones con glifosato".

Que mediante oficio radicado con el Nº 3113-1-14331 del 7 de noviembre de 2001 la DIRECCI N NACIONAL DE ESTUPEFACIENTES -DNE-, entregó al Ministerio el documento denominado "Plan de Manejo Ambiental del Programa de Erradicación de Cultivos Ilícitos mediante Aspersión Aérea con Glifosato", al igual que el documento relacionado con el Estado de Avance de la Resolución 341 de 2001.

CONSIDERACIONES TECNICAS

Que la Subdirección de Licencias mediante Concepto Técnico Nº 992 del 23 de Noviembre de 2001 se pronunció sobre la información allegada por la DNE en relación con el cumplimiento de la Resolución 341 de 2001. Es importante acotar que dentro de dicho concepto, se incluyeron los aspectos referentes a la visita de seguimiento realizada por este Ministerio durante los días 6 y 7 de Noviembre del presente año, a la base aérea de la Policía Nacional Antinarcóticos de la Ciudad de San José del Guaviare y a algunas zonas asperjadas en el Departamento del Guaviare.

1. Seguimiento a la resolución 341 de 2 1

Desde el punto de vista técnico, este Ministerio con respecto a la información entregada por la DNE acerca del cumplimiento a los requerimientos contenidos en los artículos de la parte resolutiva de la Resolución 341 de 2001 considera lo siguiente:

Artículo Segundo

La DNE allega una propuesta de investigación que recoge los requerimientos de los Artículos Segundo y Séptimo de la Resolución 341, argumentando que el PROGRAMA DE ERRADICACI N DE CULTIVOS IL CITOS CON GLIFOSATO - PECIG se ha llevado a cabo en áreas que han sido intervenidas por los cultivadores de coca, inicialmente mediante la tala y quema del bosque y posteriormente, a lo largo de la producción de coca, por el uso de agroquímicos y otros insumos químicos. En este sentido, la DNE manifiesta que no es posible evaluar estas áreas objeto del Programa sin un diseño de investigación que permita independizar los efectos de la aplicación del herbicida Glifosato de aquellas sustancias químicas utilizadas en el proceso de plantación de cultivos ilícitos y de producción de narcóticos.

Una vez analizados los anteriores aspectos, este Ministerio considera desde el punto de vista técnico, que existen unos impactos ambientales previos a la aspersión, lo cual genera interferencias para la evaluación de los impactos en el marco de las investigaciones requeridas; sin embargo, ello no implica que no se realice la evaluación requerida por efecto de la aspersión, en los términos y condiciones establecidos en el Artículo Segundo de la

Resolución 341 de 2001. Por lo tanto, la DNE deberá hacer el monitoreo ambiental tal como se indica en la ficha Nº 8 de su plan de manejo propuesto, complementada con los ajustes que mas adelante se indican. Para esto, se hace necesario que se inicien los monitoreos indicados de forma inmediata, y así mismo, que se efectúe a partir de la fecha de la notificación de la presente resolución, la entrega de informes trimestrales que den cuenta del avance del monitoreo indicado.

Artículo Tercero

Se acepta lo afirmado por la DNE en el sentido de que no operará mediante fumigación aérea con Glifosato en áreas de parques y otras áreas naturales protegidas de los niveles regional y local. En este sentido, la Unidad Administrativa Especial del Sistema de Parques Nacionales Naturales -UAESPNN- verificará a través de visitas de seguimiento y/o a través de los informes de la Auditoría Técnica, el cumplimiento de ese artículo.
En cultivos ilícitos presentes en dichas zonas, la DNE erradicará de forma manual, de acuerdo con las orientaciones que para este efecto establezca la Unidad Administrativa Especial del Sistema de Parques Nacionales Naturales -UAESPNN-. Es claro que los programas de erradicación, prevención y mitigación del impacto ambiental de los cultivos ilícitos en estas zonas, son responsabilidad de la DNE.

Artículo Cuarto

De acuerdo con lo expresado por la DNE, el PECIG no opera en áreas ambientales sensibles a saber: áreas pobladas, parques, reservas naturales, acueductos y cuerpos de agua. Esto será objeto de verificación por parte de la Auditoría Técnica. La DNE será responsable de la adecuada coordinación interinstitucional, de conformidad con lo indicado en la Ficha No 12 del Plan de Manejo Ambiental propuesto.

Artículo uinto

Literales a y b :

En lo que hace referencia al marco del convenio interadministrativo suscrito entre la DNE y el IGAC, la DNE plantea que la propuesta técnica y económica presentada en primera instancia por el IGAC, divide la realización de las actividades de producción de la información en dos fases, las cuales no se sujetan a sus necesidades, de conformidad con lo exigido por la resolución 341 de 2001, porque solo al finalizar la segunda fase se contaría con la cartografía requerida en su totalidad.

Adicionalmente manifiesta que el costo de esta primera fase es muy elevado y no se cuenta con un estimativo de lo que sería la inversión para la segunda fase, a fin de gestionar las asignaciones presupuestales correspondientes, por lo cual realizó el respectivo requerimiento al IGAC, pero a la fecha no ha obtenido respuesta.

En consecuencia de ello, propone adelantar la caracterización y hacer entrega de la información solicitada, empleando la metodología de "escalas virtuales", apoyándose complementariamente en el denominado "Sistema de Información Georeferenciada para Zonas con Presencia de Cultivos Ilícitos", el cual se inició el pasado mes de julio y que a juicio de la DNE les permitirá caracterizar el entorno social, cultural, epidemiológico, sanitario, económico y ambiental en las áreas a asperjar, así como determinar los riesgos

potenciales derivados de la operación del programa, a través de la integración de información procedente de diferentes entidades.

Sobre este particular debe señalarse que el Ministerio solicitó en la Resolución 341 de Mayo del 2001, la caracterización ambiental y socioeconómica de las áreas de los cultivos ilícitos, así como la información de las áreas de exclusión en las escalas allí señaladas, bajo la consideración de que este nivel de detalle es el más adecuado para los propósitos de análisis de los impactos ambientales que puedan llegarse a ocasionar en el marco del desarrollo del proceso de evaluación y seguimiento ambiental.

Con respecto a la posición expresada por la DNE en el aparte denominado **Comentario sobre las escalas de los estudios de caracterización en zonas con presencia de cultivos ilícitos , se hacen las siguientes apreciaciones:**

La Resolución 0341 de 2001 no plantea en ninguna parte de su contenido, la realización de caracterizaciones de áreas de influencia, que vayan más allá de aquellas zonas que puedan resultar **directamente** afectadas por la operación del programa; por lo tanto, es erróneo aseverar que se está solicitando la caracterización del 50% del país, y en consecuencia, las cifras que se desprenden de ese análisis no aplican a la realidad de los requerimientos hechos por el Ministerio.

Se da a entender que la realización de los estudios de caracterización a la escala solicitada por el Ministerio son inútiles, ya que éstos **...sirven como línea base para las evaluaciones m s aplicadas sobre actividades humanas o diferentes procesos de degradación impactos ambientales, evaluación de tierras, procesos erosivos, etc....** , sugiriendo que para los propósitos que persigue el Ministerio, sería necesario revisar los alcances y niveles de detalle solicitados. Sobre este particular, debe tenerse presente en todo momento que la finalidad que tiene la caracterización, es precisamente la de obtener la aproximación más acertada a los posibles impactos que puedan derivarse de la operación del programa sobre los componentes físicos, bióticos, económicos y sociales para, de esta manera, determinar las medidas correctas de prevención, mitigación o compensación a implementar.

Esta aproximación no sería posible, en la medida en que la caracterización de los componentes señalados anteriormente se realizara y presentara en escalas de trabajo 1:250.000 o 1:500.000, como lo sugiere de DNE.

No obstante, teniendo en cuenta que existen limitaciones por parte de las entidades encargadas de la producción de la información cartográfica, para proveer cartografía básica y temática en la escala requerida para algunas zonas objeto del Programa de Erradicación, el Ministerio acepta los argumentos técnicos esbozados por el IGAC, en el sentido de presentar la información requerida a escala de salida 1:100.000.

En conclusión, la DNE deberá iniciar de manera inmediata, la caracterización ambiental y socioeconómica de las áreas nucleadas de cultivos ilícitos objeto del programa de erradicación, utilizando la información cartográfica análoga y digital disponible y sus bases de datos alfanuméricas asociadas, apoyando el desarrollo de la misma a través del manejo y procesamiento de imágenes satelitales, imágenes de radar y fotografías aéreas, así como el uso de sistemas de información geográfica, para la presentación final de productos cartográficos (mapas, espaciomapas, ortofotomapas) a una escala de salida de 1:100.000.

Así mismo, la DNE deberá realizar de forma inmediata la georeferenciación, identificación y caracterización de las áreas de exclusión que de acuerdo con sus características ecológicas, ambientales y sociales, deben ser objeto de medidas especiales por parte del programa de erradicación, utilizando la información cartográfica análoga y digital disponible y sus bases de datos alfanuméricas asociadas, apoyando el desarrollo de la misma a través del manejo y procesamiento de imágenes satelitales, imágenes de radar y fotografías aéreas, así como el uso de sistemas de información geográfica, para la presentación final de productos cartográficos (mapas, espaciomapas, ortofotomapas) a una escala de salida de 1:100.000.

Finalmente, la DNE deberá realizar de manera inmediata, la respectiva georeferenciación de las parcelas de monitoreo que se definan en el marco del programa de seguimiento ambiental pertinente al artículo 2 de la Resolución 341 de 2001.

Literal c:

La elaboración y puesta en marcha del programa de Comunicación Educativa está contenida en la Ficha 10 del PMA.

Literal d:

Este Ministerio considera que las franjas de seguridad propuestas por DNE en el estudio presentado deberán ser ajustadas según lo impuesto por el Ministerio, ya que la sugeridas por la DNE no dan garantía de seguridad en cuanto a la necesidad de preservar y proteger las áreas descritas. Estas deberán ser adoptadas por el PECIG de manera inmediata y verificadas en sitio por la Auditoría Técnica, quedando por lo tanto fijadas las mismas, según la siguiente tabla:

Franjas de Seguridad sobre Elementos Ambientales

Elemento Ambiental	**Franja de Seguridad**
Cuerpos de AguaEstáticos: lagos, lagunas, estanques piscícolas y humedales Corrientes: quebradas, ríos.	Franja mínima de 200 metros. (De acuerdo con los criterios del Decreto 1843/1991 de Minsalud). Esta franja podrá ser ampliada dependiendo de las condiciones técnicas de la operación aérea.
Sub-páramos, nacimientos de agua y recarga de acuíferos	No asperjar al interior de los mismos Asperjar al exterior de los mismos con una franja de seguridad mínima de 2000 m.
Áreas de las zonas pertenecientes al SNPNN. *	No asperjar al interior de las mismas. Asperjar al exterior de las mismas con una franja de seguridad mínima de **2.000 metros.**
Zonas de asentamientos humanos: Caseríos, inspecciones, resguardos, cascos urbanos.	No asperjar al interior de las mismas. Asperjar al exterior de las mismas con una franja de seguridad mínima de **2.000 metros.**
Áreas de interés socio-económica: Proyectos productivos, zonas de pactos.	No asperjar. Establecer una franja de seguridad mínima de **1.600 metros.**

( ) La UAESPNN aportará los datos referidos a los linderos topográficos que definan y limiten los parques nacionales naturales, con las poligonales y sus BM debidamente indicadas, con el fin de que la DNE y los operadores a cargo delimiten su accionar de acuerdo con las franjas de seguridad señaladas.

Literal e:

La DNE dentro de la información aportada al Ministerio en el segundo informe de seguimiento, incluye copia de los oficios enviados a diferentes entidades solicitando información sobre proyectos ambientales y sociales. Con base en lo anterior y ante la necesidad de establecer mecanismos de coordinación interinstitucional claros y expeditos, la DNE deberá adoptar de manera inmediata los mecanismos de coordinación propuestos en la ficha Nº 12 del PMA.

Artículo Se to

a. Plan de Contingencia para la atención y control de eventos indeseados

El Plan de Contingencias entregado por la DNE, presenta una estructura desarrollada según lo descrito en los criterios dados en la Política Nacional de Atención y Prevención de Desastres, y en particular en lo atinente a los decretos relativos al Plan Nacional de Contingencia que la complementa, cubriendo actividades de transporte, almacenamiento, operaciones de aspersión y actividades complementarias desarrolladas en las Bases Antinarcóticos. Presenta programas específicos de capacitación y entrenamiento de los equipos que operan en cada base.

En consecuencia con lo anterior, se acepta el plan presentado por la DNE, quien deberá iniciar su implementación de manera inmediata.

Para efectos de la revisión de la efectividad del Plan de Contingencia, la DNE deberá realizar revisiones periódicas del mismo y reportar al MMA los ajustes necesarios.

b. Programa de inspección, verificación y control PIVC

Verificación de la efectividad de las medidas de mane o ambiental: Con respecto a la verificación de la efectividad de las medidas de manejo ambiental propuestas por la DNE, este Ministerio considera que las acciones sugeridas por la DNE en el PMA propuesto son viables.

Sin embargo y tal como se indicó en la Resolución 0341 de 2001, el desarrollo de estas actividades debió hacerse de forma inmediata, por lo cual debe procederse de conformidad con lo allí indicado.

Evaluación de medidas de mane o ambiental mediante indicadores de eficiencia y efectividad La DNE propone unos indicadores de medidas de manejo ambiental, para evaluar el nivel de afectación de las operaciones de aspersión sobre asentamientos humanos y otros tipos de coberturas, que incluye: el tipo de cobertura vegetal, evaluación de cultivos ilícitos, evaluación del grado de recuperación, regeneración o restauración de la cobertura vegetal, identificación del número de viviendas presentes e identificación de cuerpos de agua lénticos.

En el informe de avance entregado al Ministerio en Agosto de 2001, la DNE propone utilizar en la evaluación requerida indicadores a ser aplicados por el PIVC, que sin embargo cambian en su concepción al presentar en noviembre la propuesta de PMA.

Con base en lo anterior, el Ministerio acepta para aplicación inmediata los indicadores arriba propuestos por la DNE y los incluidos en la ficha No 8 del PMA, con los ajustes que para el efecto se indican mas adelante.

Tal como se indicó en la Resolución 0341 de 2001, el desarrollo de estas actividades debió hacerse de forma inmediata, por lo cual debe procederse de conformidad con lo allí indicado, esto es, de manera inmediata.

Eficiencia en la adopción de medidas de acción correctiva: La DNE informa que en la medida en que se establezca la existencia de daños derivados de las actividades de erradicación, el PECIG adelantará las correspondientes medidas de corrección, mitigación o compensación de acuerdo a lo dispuesto en la Resolución 017/01 del CNE y lo planteado en el Programa de Gestión Social y en el Plan de Contingencias del PMA propuesto.

Adicionalmente y para efectos de garantizar el cabal desarrollo de las medidas de acción correctiva, la DNE deberá desarrollar las siguientes medidas de forma inmediata:

Para activación, control y recuperación de suelos afectados: Aplicación de neutralizantes; aplicación de fertilizantes en suelos afectados; desarrollo de labores destinadas al control de erosión en el evento en que las actividades de aspersión lo hayan promovido.

Para cuerpos de agua afectados, previo monitoreo y en función de sus resultados: Aplicación de arcillas diluidas para cuerpos de aguas lénticos; verificación en el espacio- tiempo sobre la evolución de la calidad del agua del cuerpo afectado.

Para casos de afectación a la salud p blica: En las regiones donde se presenten quejas de la población que sean relacionados con la aplicación del programa, articular con el personal de Salud, para adelantar un programa de vigilancia epidemiológica.

c. Programa de Compensación

El programa de compensación planteado por la DNE orientado hacia las acciones de compensación ambiental, cumple con los requerimientos. Este deberá ser implementado de manera inmediata.

Artículo S ptimo.

La propuesta presentada por la DNE, precisa conceptos, objetivos, metodologías y un diseño experimental. Ella incluye los componentes de suelos, aguas, microorganismos y vegetación. En este contexto, el Ministerio considera que la propuesta presentada se ajusta a los requerimientos pertinentes. Sin embargo, dada la naturaleza y la amplitud del tema, su desarrollo deberá ser acompañado por un equipo interdisciplinario y multidisciplinario en áreas que incluyan la ecología, los suelos, la vegetación y el medio ambiente en general.

Debido a que este requerimiento debió ser iniciado a los tres meses de expedida la Resolución 0341 de 2001, deberá ser implementado de manera inmediata.

Artículo Octavo.

De acuerdo con la información aportada por la DNE, el Ministerio considera que los términos de referencia para la contratación de la Auditoría Técnica, corresponden a los que fueron aprobados por el Comité Técnico Interinstitucional del CNE, los cuales sirvieron de fundamento para la contratación respectiva que está en curso.

Artículo Noveno.

Este Ministerio considera que los sistemas de información propuestos por la DNE como: página Web, boletín mensual de información sobre el PECIG, comunicados de prensa, realización de un seminario nacional anual y campañas de información a través de diferentes medios de comunicación son adecuados. Estos deberán ser verificados tal como se propone en la ficha Nº 10 referida al Programa de Comunicación Educativa del PMA.

Artículo D cimo.

En cumplimiento de este requerimiento el ICA realizó las respectivas evaluaciones en campo sobre la eficacia agronómica del producto. Por otra parte, el Ministerio de Salud realizó la clasificación toxicológica de la mezcla: Glifosato POEA Cosmoflux (1%), como Categoría III Medianamente Tóxico y recomienda no adicionar a la mezcla el aditivo COSMO IN D.

De acuerdo con los datos aprobados por el ICA como resultado de los estudios de campo que realizó, el Ministerio acogerá la dosis de 8 Litros/Ha de la mezcla (Roundup 480 SL Cosmoflux 411) con base en el Ingrediente Activo Glifosato que definió el ICA para el cultivo de coca, siendo la misma a partir de la fecha, la máxima dosis a aplicar.

Así mismo, de acuerdo a los estudios realizados por el ICA, la DNE deberá repetir la evaluación a los dos, tres, y seis meses siguientes a la aspersión, con el fin de observar el estado de recuperación de las plantas de coca asperjadas con glifosato y reportarán los resultados al ICA para el respectivo aval.

En el evento de que la DNE pretenda utilizar dosis mayores a las aquí acogidas, deberá adelantar las evaluaciones pertinentes de acuerdo con el procedimiento y protocolos que para el efecto avale el ICA y obtener la aprobación previa por parte de este Instituto.

En el evento de que la DNE pretenda utilizar mezclas con el ingrediente activo Glifosato, diferentes a las estudiadas por el ICA y el Ministerio de Salud, la DNE deberá adelantar las evaluaciones pertinentes de acuerdo con el procedimiento y protocolos que para el efecto aprueben el ICA y el Ministerio de Salud .

La DNE deberá tomar las medidas correspondientes a la clasificación y evaluación toxicológica que definió el Ministerio de Salud para la mezcla (ingrediente activo y coadyuvante), en lo relacionado a los riesgos toxicológicos asociados con el herbicida en su formulación aprobada.

En lo atinente a la aplicación del Programa para la erradicación de cultivos ilícitos de amapola, este Ministerio acoge la dosis máxima de mezcla y técnicas de aplicación a base de glifosato aprobadas por el ICA en estudios anteriores.

2. Plan de mane o ambiental del PECIG

El PMA por la DNE consta de 11 fichas de manejo ambiental, con su respectiva descripción, objetivos, actividades, seguimiento y monitoreo, responsables, cronograma y costos.

Este plan se ha estructurado en tres tipos de actividades:

Medidas de Prevención
Medidas de Mitigación y corrección
Medidas de compensación

Este Ministerio considera que este planteamiento es adecuado ya que el PMA tiene en cuenta las medidas de prevención, mitigación, corrección y compensación, originadas por el desarrollo del PECIG. Sin embargo, se han hecho observaciones a algunas fichas de manejo, por lo que deberán ser complementadas, sin que lo anterior sea excusa para no implementar el PMA de manera inmediata, toda vez que las observaciones del MMA, admiten su desarrollo en el marco de la aplicación del Plan.

Ficha No. 1. Programa de mane o de las operaciones de aspersión

En esta ficha se contemplan las especificaciones técnicas y ambientales de las diferentes fases del PECIG, como son: detección, aspersión y verificación.

Este Ministerio considera que se puede aceptar de esta ficha de manejo ambiental, las medidas de detección; con respecto a la aspersión no se aceptan las franjas de seguridad propuestas por la DNE, sino las impuestas por este Ministerio en la presente Resolución. Se aceptan los parámetros de operación técnicos para aspersión aérea de aeronaves T 65 y OV-10, las cuales son los requeridos por el ICA.

Ficha No. 2. Programa de mane o del glifosato y sus coadyuvantes en las bases de operación.

Se considera que las medidas propuestas para el manejo de la formulación a base del ingrediente activo glifosato en las diferentes etapas como: almacenamiento, preparación, cargue de aviones, calibración de equipos, son las adecuadas.

Ficha No. 3. Programa de mane o de combustibles, vehículos, equipo y transporte.

Para esta ficha se considera que las medidas de manejo propuestas para el almacenamiento, transporte general de equipos y materiales son pertinentes y se deben adoptar de manera inmediata. Sin embargo, la DNE deberá presentar en el término de los 15 días hábiles siguientes a la notificación de la presente resolución, los procedimientos de calidad ambiental para el transporte del herbicida.

Ficha No. 4. Programa de mane o de residuos sólidos.

Para el manejo de los residuos sólidos, se aceptan las medidas de manejo de los residuos sólidos domésticos, implementando el programa de separación en la fuente y el reciclaje.

Para los residuos sólidos peligrosos tales como aceites usados, lubricantes, baterías, se deberán adoptar de manera inmediata la propuesta de manejo, separación y disposición final. Así mismo, deberán presentarse alternativas para el manejo de los residuos sólidos ligados al glifosato y su coadyuvante dentro de los 15 días hábiles siguientes a la notificación de la presente Resolución.

Ficha No. . Programa de mane o de aguas residuales.

En esta ficha se contempla el manejo de las aguas lluvias, aguas residuales domésticas y aguas de residuos. Se considera que las medidas de manejo propuestas de realizar un sistema de recolección de aguas lluvias es la más adecuada, al igual que la construcción de las plantas de aguas residuales domésticas, con su respectivo seguimiento y monitoreo.

Para el manejo de los líquidos especiales de tanques de aviones, se considera que se debe tener en cuenta el sitio de preparación de la mezcla; se acepta el tratamiento propuesto, pero al igual que para la planta de tratamiento de aguas residuales domésticas, deberá hacerse seguimiento y monitoreo trimestral de los parámetros; pH, DQO y concentración de plaguicida glifosato.

Ficha No. . Programa de inspección, verificación y control de las operaciones de aspersión a rea.

Esta ficha contempla los requerimientos solicitados a la DNE en la Resolución 341 de 2001, respecto a la verificación de la efectividad de las medidas de manejo ambiental, las cuales serán revisadas por la Auditoria Técnica.

Sobre la evaluación de medidas de manejo ambiental mediante indicadores de eficiencia y efectividad, para evaluar el nivel de afectación de las operaciones de aspersión sobre asentamientos humanos y otros tipos de coberturas, este Ministerio considera que son aceptables los indicadores propuestos, con las aclaraciones señaladas sobre el particular anteriormente.

Sobre la eficiencia en la adopción de medidas de acción correctiva, este Ministerio acepta las contempladas en esta ficha. No obstante, considera que deberán complementarse con las descritas en el literal b, del artículo Sexto de la Resolución 341 de 2001.

Ficha No. . Programa de investigación en parcelas representativas y demostrativas

Esta ficha corresponde a un requerimiento solicitado en el artículo séptimo de la Resolución 341 de 200 y se acoge lo dicho sobre el particular en el aparte respectivo. Así mismo y en relación con las parcelas demostrativas, se deberán incluir otras representativas de los ecosistemas de bosque andino, en particular bosques de niebla y de subpáramo.

Ficha No. . Programa de Monitoreo Ambiental

En esta ficha se plantea el seguimiento de las diferentes actividades de aspersión con glifosato, para medir los impactos reales sobre el medio ambiente agua, suelo, vegetación, usos del suelo y la salud de la población de las áreas asperjadas. Este Ministerio considera que debe ser complementada en los componentes suelo y agua así:

a Indicadores

Suelos: pH, CIC, Relación de bases intercambiables, Concentración de Glifosato y su metabolito, AMPA, Determinación de Contaminación, Nitrificación (Nitratos, Nitritos, amonio), Recuento de Fijadores de Nitrógeno, Solubizadores de Fosfato, Textura, Porcentaje de materia orgánica, Fósforo Total y Disponible, Porcentaje de arcillas y Toxicidad.

Agua: pH, OD, DQO, Turbidez, Color Temperatura, Conductividad Eléctrica, Nitratos, Nitritos, Amonio, Fosfato Disuelto, Magnesio y Calcio, Concentración de Glifosato y AMPA.

En Sedimentos: Glifosato y AMPA, Granulometría y Materia Orgánica.

b Sitios de Muestreo:

Estos se harán en áreas previamente georeferenciadas, representativas de las zonas de aspersión.

Región Amazónica: Se determinarán las siguientes zonas: Caquetá, Guaviare y Putumayo
Región del Catatumbo: Se escogerá la zona de vertiente y valle en norte de Santander.
Región Magdalena y Cauca Medio: Sur de Bolívar, Noreste Antioqueño y occidente Santander
Región Macizo Colombiano: Tolima y Cauca.

La **DIRECCIÓN NACIONAL DE ESTUPEFACIENTES DNE**- deberá realizar el muestreo en suelos después de la aspersión, a los quince y sesenta días. A partir de estos resultados y en los sitios muestreados en donde se identifique la persistencia del glifosato, o su metabolito, deberá extender el seguimiento a los cuatro y seis meses siguientes a la aspersión, con el fin de adoptar medidas preventivas o correctivas según corresponda.

Para todos los casos del programa de monitoreo ambiental, los puntos de muestreo deberán estar georeferenciados.

Ficha N Programa de gestión social

En esta ficha se plantean las diferentes acciones que debe realizar el PECIG para propiciar el acercamiento con la población asentada en los alrededores de las zonas de aspersión. Este incluye: Apoyo interinstitucional, promoción del desarrollo alternativo, compensación por daños causados, recuperación y mejoramiento ambiental y atención a la salud. Este Ministerio considera que el programa está estructurado según las expectativas.

Ficha N 1 Programa de comunicación educativa

En esta ficha se desarrollan una serie de actividades básicas: información capacitación, educación ambiental y señalización. Se considera que el programa de Comunicación propuesto por la DNE, cumple con los requerimientos de un plan de educación.

Ficha N 11 Programa de seguridad social integral en las bases de operación

Esta ficha está orientada a evitar riesgos para el personal que participa en la operación de aspersión o peligros ambientales que se puedan derivar de la operación y mezcla del herbicida, suministro del mismo a las aeronaves y uso inadecuado de equipos. Incluye las

medidas de seguridad industrial. El Ministerio considera adecuado y pertinente lo planteado en esta ficha, lo cual deberá ser asumido en todas las bases aéreas tal como corresponde.

Ficha N 12 Administración ambiental y coordinación institucional

Esta ficha tiene como objetivo asegurar el cumplimiento de las especificaciones ambientales de las diferentes actividades planteadas en el PMA, mediante mecanismos de gestión directa por parte de las entidades responsables del programa y de coordinación con las diferentes entidades y sectores involucrados en el PECIG. Este Ministerio considera que este programa debe ser una actividad permanente mientras haya aspersiones aéreas con glifosato.

3. Visita tecnica

De acuerdo a la visita realizada, cuyo reporte reposa en el concepto técnico ya referido, se hacen las siguientes consideraciones:

En cuanto al manejo del herbicida en la base aérea visitada, se pudo observar que se cuenta con un buen almacenamiento, se tienen los elementos necesarios para atender un derrame o escape del plaguicida, teniendo en cuenta las recomendaciones hechas en las fichas de manejo ambiental y en el Plan de Contingencia.

Se recomienda que las canecas vacías de glifosato se les haga un triple lavado antes de su disposición final, de acuerdo con la ficha Nº 4. Programa de manejo de residuos sólidos.

Para el manejo de combustibles e incendios, (ficha No. 3) se cuenta con el apoyo del programa de la Aeronáutica Civil y con el comando del ejército nacional, el cual queda a 10 minutos de la base. En caso de una descarga puntual en el momento de la aspersión, se tiene proyectado aplicar el Plan de Contingencias (ficha no 13).

Al interior de la base visitada, se debe mejorar el manejo de aguas aceitosas de talleres, aguas con posibles residuos de plaguicidas y el manejo integral de residuos sólidos. Este punto ya se tiene contemplado en el PMA entregado (Ficha No.5 Manejo de aguas residuales).

De acuerdo con la revisión ocular de los cultivos asperjados en esta zona de bosque se puede concluir que cumpliendo las condiciones técnicas de operación de la aeronave, el efecto de deriva es mínimo.

También se observó una gran intervención antrópica con gran deforestación del bosque allí presente, cuyas espacios en general se utilizan para ganadería, con desarrollos parciales de rastrojos alternos.

En las zonas en donde el herbicida ha caído directamente, se observa que ha empezado la regeneración natural, con las dinámicas sucesionales propias de la zona, observándose algunas plantas gramíneas, musgos y población de insectos.

De acuerdo a todo lo anterior, este Ministerio, considera viable desde el punto de vista técnico ambiental, imponer el Plan de Manejo Ambiental a la DNE con todas y cada una de las consideraciones antes expuestas.

Que de acuerdo con lo expuesto anteriormente este Despacho procederá en tal parte resolutiva de la presente providencia a imponer a la **DIRECCIÓN NACIONAL DE ESTUPEFACIENTES DNE**-, el Plan de Manejo Ambiental para la actividad denominada "Programa de erradicación de Cultivos Ilícitos mediante Aspersión Aérea con Glifosato"
Que en mérito de lo expuesto, se

RESUELVE:

ART CULO PRIMERO.- **IMPONER** el Plan de Manejo Ambiental, presentado por la **DIRECCIÓN NACIONAL DE ESTUPEFACIENTES DNE**-, para la actividad denominada "Programa de Erradicación de Cultivos Ilícitos mediante la Aspersión Aérea con Glifosato" en el territorio nacional, en los términos y condiciones establecidas en la parte considerativa de la presente resolución.

ARTICULO SEGUNDO.- El Plan de Manejo Ambiental que se impone mediante esta providencia, ampara únicamente las obras o actividades descritas en el Plan de Manejo Ambiental y en la presente Resolución. Cualquier modificación a las condiciones del Plan de Manejo Ambiental, o a cualquiera de las obligaciones impuestas en la presente providencia, deberá ser informada inmediatamente por escrito al Ministerio del Medio Ambiente para su evaluación y aprobación.

Igualmente deberá solicitar y obtener la modificación del Plan de Manejo Ambiental cuando se pretenda usar, aprovechar o afectar un recurso natural renovable en condiciones distintas a las contempladas en el Plan de Manejo Ambiental y en la presente providencia

ARTICULO TERCERO.- **La DIRECCIÓN NACIONAL DE ESTUPEFACIENTES DNE** deberá informar previamente y por escrito al Ministerio del Medio Ambiente cualquier modificación que implique cambios con respecto a la actividad para su evaluación y aprobación.

ARTICULO CUARTO.- **La DIRECCIÓN NACIONAL DE ESTUPEFACIENTES DNE**-, dará a conocer por escrito a los contratistas y en general a todo el personal involucrado en la actividad señalada en el artículo primero, las obligaciones, medidas de control y prohibiciones establecidas en esta providencia, así como aquellas definidas en el Plan de Manejo Ambiental presentado y deberá exigir el estricto cumplimiento de las mismas.

ARTICULO UINTO.- El Ministerio del Medio Ambiente, el Instituto Colombiano de Agricultura -ICA- y el Ministerio de Salud dentro de sus competencias, supervisarán la ejecución de la actividad y podrán verificar en cualquier momento el cumplimiento de los lineamientos y obligaciones contenidas en la presente providencia y en el Plan de Manejo Ambiental.

ARTICULO SEXTO.- El término del presente Plan de Manejo Ambiental será por la duración del Programa de Erradicación de Cultivos Ilícitos Mediante la Aspersión Aérea con Glifosato.

ARTICULO SEPTIMO.- **La DIRECCIÓN NACIONAL DE ESTUPEFACIENTES** -DNE- será responsable por cualquier deterioro y/o daño ambiental que le sea imputable, causado en desarrollo del "Programa de Erradicación de Cultivos Ilícitos mediante Aspersión Aérea con Glifosato".

ART CULO OCTAVO.- Por la Subdirección de Licencias de este Ministerio, notificar el contenido de la presente resolución al representante legal de la Dirección Nacional de Estupefacientes, a la Defensoría del Pueblo, al Representante Legal de FUNDEPUBLICO o a sus apoderados debidamente constituidos y a los señores Claudia Sampedro y Héctor Suárez quienes actúan como terceros intervinientes dentro del Expediente.

ARTICULO NOVENO.- **La DIRECCIÓN NACIONAL DE ESTUPEFACIENTES DNE**- deberá publicar el encabezado, y la parte resolutiva del presente acto administrativo, en un diario de amplia circulación nacional, copia de la cual deberá allegar a este Ministerio dentro de los 10 días siguientes a su notificación con destino al expediente No.793.

ARTICULO D CIMO.- Por la Subdirección de Licencias de este Ministerio envíese copia de la presente providencia a la Procuraduría Delegada para Asuntos Ambientales y Agrarios, al Ministerio de Salud, al Instituto Colombiano Agropecuario -ICA; al Consejo Nacional de Estupefacientes y a las Corporaciones Autónomas Regionales y de Desarrollo Sostenible, con jurisdicción en los Departamentos señalados en la presente providencia.

ART CULO D CIMO PRIMERO.- Contra la presente Resolución procede el recurso de reposición el cual se podrá interponer ante este Ministerio, dentro de los cinco días siguientes a su notificación y con el lleno de requisitos legales, conforme lo estipulan los artículos 50, 51 y 52 del Código Contencioso Administrativo.

NOTIF UESE, COMUN UESE, PUBL UESE Y C MPLASE

JUAN MAYR MALDONADO
Ministro del Medio Ambiente

ANNEX 16

Canada, *Pest Control Products Act*, R.S.C. Chap. 28, Sec. 6(5) (2002)

Department of Justice Canada | Ministère de la Justice Canada
Canada
Pest Control Products Act (2002, c. 28)
Disclaimer: These documents are not the official versions (more).
Act current to February 27th, 2009
Attention: See coming into force provision and notes, where applicable.
Table Of Contents

Pest Control Products Act

2002, c. 28

P-9.01

[Assented to December 12th, 2002]

An Act to protect human health and safety and the environment by regulating products used for the control of pests

Preamble

WHEREAS the availability and use of pest control products pose potential risks, both directly and indirectly, to the health, safety and well-being of people in Canada and to the environment;

WHEREAS pest management plays a significant role in diverse areas of the economy and other aspects of the quality of life throughout Canada;

WHEREAS pest control products of acceptable risk and value can contribute significantly to the attainment of the goals of sustainable pest management;

WHEREAS the goals of sustainable pest management are to meet society's needs for human health protection, food and fibre production and resource utilization and to conserve or enhance natural resources and the quality of the environment for future generations, in an economically viable manner;

WHEREAS Canada and the provinces and territories have traditionally administered complementary regulatory systems designed to protect people and the environment, including its biological diversity, from unacceptable risks posed by pest control products, and it is important that such an approach be continued in order to achieve mutually desired results efficiently, without regulatory conflict or duplication;

WHEREAS it is in the national interest that the primary objective of the federal regulatory system be to prevent unacceptable risks to people and the environment from the use of pest control products,

the attainment of the objectives of the federal regulatory system continue to be pursued through a scientifically-based national registration system that addresses risks to human health and the environment both before and after registration and applies to the regulation of pest control products throughout Canada,

pest control products of acceptable risk be registered for use only if it is shown that their use would be efficacious and if conditions of registration can be established to prevent adverse health impact or pollution of the environment,

in assessing risks to humans, consideration be given to aggregate exposure to pest control products, cumulative effects of pest control products and the different sensitivities to pest control products of major identifiable subgroups, including pregnant women, infants, children, women and seniors,

pest control products be regulated in a manner that supports sustainable development, being development that meets the needs of the present without compromising the ability of future generations to meet their own needs,

the federal regulatory system be designed to minimize health and environmental risks posed by pest control products and to encourage the development and implementation of innovative, sustainable pest management strategies, for example by facilitating access to pest control products that pose lower risks, and encouraging the

development and use of alternative, non-toxic, ecological pest control approaches, strategies and products,

applicable policies of the Government of Canada that are consistent with the objectives of this Act be duly reflected in decisions respecting the regulation of pest control products,

there be cooperation among federal departments in the development of policies to pursue the attainment of the objectives of this Act, and that those policies take into account advice from diverse sources throughout the country,

the provinces and territories and those whose interests and concerns are affected by the federal regulatory system be accorded a reasonable opportunity to participate in the regulatory system in ways that are consistent with the attainment of its objectives, and

the federal regulatory system be administered efficiently and effectively in accordance with the foregoing principles and objectives and in a manner that recognizes the various interests and concerns affected and, where consistent with the primary objective of the system, minimizes the negative impact on economic viability and competitiveness;

AND WHEREAS Canada must be able to fulfil its international obligations in relation to pest management;

NOW, THEREFORE, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

SHORT TITLE

Short title

1. This Act may be cited as the *Pest Control Products Act*.

INTERPRETATION

Definitions

2. (1) The definitions in this subsection apply in this Act. "active ingredient"
«*principe actif* »

"active ingredient" means a component of a pest control product to which the intended effects of the product are attributed and includes a synergist but does not include a solvent, diluent, emulsifier or other component that is not primarily responsible for those effects.

"advertise"
«*publicité* »

"advertise" includes making a representation by any means for the purpose of directly or indirectly promoting the distribution of a pest control product.

"analyst"
«*analyste* »

"analyst" means a person who is appointed or designated as an analyst under section 45.

"biological diversity"
«*diversité biologique* »

"biological diversity" means the variability among living organisms from all sources, including, without limiting the generality of the foregoing, terrestrial and marine and other aquatic ecosystems and the ecological complexes of which they form a part and includes the diversity within and between species and of ecosystems.

"biotechnology"
«*biotechnologie* »

"biotechnology" means the application of science and engineering in the direct or indirect use of living

(2) Consistent with, and in furtherance of, the primary objective, the Minister shall

(*a*) support sustainable development designed to enable the needs of the present to be met without compromising the ability of future generations to meet their own needs;

(*b*) seek to minimize health and environmental risks posed by pest control products and encourage the development and implementation of innovative, sustainable pest management strategies by facilitating access to pest control products that pose lower risks and by other appropriate measures;

(*c*) encourage public awareness in relation to pest control products by informing the public, facilitating public access to relevant information and public participation in the decision-making process; and

(*d*) ensure that only those pest control products that are determined to be of acceptable value are approved for use in Canada.

Protection of future generations

4.1 For greater certainty, protection and consideration afforded to children in this Act shall also extend to future generations.

ADVISORY COUNCIL

Establishment

5. (1) In carrying out duties under this Act, the Minister may establish an advisory council of persons whose interests and concerns are affected by this Act, and may specify the functions of the council and the means by which it is to perform those functions.

Report to Minister

(2) The advisory council shall give any report that it makes, including its recommendations and the reasons for them, to the Minister, who shall place it in the Register.

PROHIBITIONS

Unregistered pest control products

6. (1) No person shall manufacture, possess, handle, store, transport, import, distribute or use a pest control product that is not registered under this Act, except as otherwise authorized under subsection 21(5) or 41(1), any of sections 53 to 59 or the regulations.

Conditions of registration

(2) No person shall manufacture, import, export or distribute a registered pest control product unless it conforms to the conditions of registration respecting its composition and the person complies with the other conditions of registration.

Packaging of pest control products

(3) No person shall store, import, export or distribute a pest control product that is not packaged in accordance with the regulations and the conditions of registration.

Defence

(4) A person shall not be found to have contravened subsection (3) if it is established that the person reasonably believed that the pest control product was packaged in accordance with the regulations and the conditions of registration.

Misuse of pest control products

(5) No person shall handle, store, transport, use or dispose of a pest control product in a way that is inconsistent with

(*a*) the regulations; or

(*b*) if the product is registered, the directions on the label recorded in the Register, subject to the regulations.

Defence

(6) A person shall not be found to have contravened subsection (5) if it is established that the person

(*a*) reasonably believed that the directions on the label accompanying the pest control product complied with the regulations or, if the product is registered, with the directions on the label recorded in the Register; and

(*b*) handled, stored, transported, used or disposed of the product in accordance with the directions on the label accompanying it.

Packaging and advertisement of pest control products

(7) No person shall package or advertise a pest control product in a way that is false, misleading or likely to create an erroneous impression regarding its character, value, quantity, composition, safety or registration.

Activities that endanger health, etc.

(8) No person shall manufacture, possess, handle, store, transport, distribute, use or dispose of a pest control product in a way that endangers human health or safety or the environment.

Offence and punishment

(9) A person who contravenes any provision of this section is guilty of an offence and liable

(*a*) on summary conviction, to a fine of not more than $200,000 or to imprisonment for a term of not more than six months, or to both; or

(*b*) on conviction on indictment, to a fine of not more than $500,000 or to imprisonment for a term of not more than three years, or to both.

REGISTRATION OF PEST CONTROL PRODUCTS

APPLICATIONS FOR REGISTRATION OR AMENDMENT

Application to Minister

7. (1) An application to register a pest control product or to amend the product's registration must be made to the Minister in the form and manner directed by the Minister and must include any information or other thing that is required by the regulations to accompany the application.

Use of information provided by other registrants

(2) If the Minister is satisfied that any information referred to in subsection (1) has been provided by a registrant of a pest control product, the active ingredient of which the Minister has determined to be equivalent to the active ingredient in the applicant's product, the Minister shall, subject to and in accordance with the regulations made under paragraph 67(1)(*h*), permit the applicant to use or rely on that information.

Foreign review or evaluation

(2.1) For the purposes of subsection (1), the applicant may include information that is available from a review or evaluation of a pest control product conducted by the government of another member country of the Organisation for Economic Co-operation and Development if the proposed use of the pest control product in Canada would be under conditions similar to those under which the foreign review or evaluation was conducted.

Evaluation of pest control product

(3) If the Minister is satisfied that the application has been made in accordance with subsection (1), (2) or (2.1), the Minister shall

(*a*) in accordance with the regulations, if any, conduct any evaluations that the Minister considers necessary with respect to the health or environmental risks or the value of the pest control product;

(*b*) expedite evaluations with respect to a pest control product that may reasonably be expected to pose lower health or environmental risks; and

(*c*) carry out any consultation required by section 28.

Other information

(4) The Minister may, by delivering a notice in writing, request an applicant to provide the Minister with other information in support of the application within the time and in the form specified in the notice.

Denial of application

(5) The Minister shall deny an application if the applicant does not comply with a notice under subsection (4).

Burden of persuasion and consideration of information

(6) During an evaluation,

(*a*) the applicant has the burden of persuading the Minister that the health and environmental risks and the value of the pest control product are acceptable; and

(*b*) the Minister shall consider the information provided by the applicant in support of the application and may consider additional information, but the Minister shall give the applicant a reasonable opportunity to make representations in respect of the additional information before completing the evaluation.

Scientific approach

(7) In evaluating the health and environmental risks of a pest control product and in determining whether those risks are acceptable, the Minister shall

(*a*) apply a scientifically based approach; and

(*b*) in relation to health risks, if a decision referred to in paragraph 28(1)(*a*) or (*b*) is being made or has been made in relation to a pest control product,

(i) among other relevant factors, consider available information on aggregate exposure to the pest control product, namely dietary exposure and exposure from other non-occupational sources, including drinking water and use in and around homes and schools, and cumulative effects of the pest control product and other pest control products that have a common mechanism of toxicity,

(ii) apply appropriate margins of safety to take into account, among other relevant factors, the use of animal experimentation data and the different sensitivities to pest control products of major identifiable subgroups, including pregnant women, infants, children, women and seniors, and

(iii) in the case of a threshold effect, if the product is proposed for use in or around homes or schools, apply a margin of safety that is ten times greater than the margin of safety that would otherwise be applicable under subparagraph (ii) in respect of that threshold effect, to take into account potential pre- and post-natal toxicity and completeness of the data with respect to the exposure of, and toxicity to, infants and children unless, on the basis of reliable scientific data, the Minister has determined that a different margin of safety would be appropriate.

Government policy to be given effect in evaluation

(8) In evaluating the health and environmental risks and the value of a pest control product, the Minister shall give effect to government policy.

Comparative risk and value assessment

(9) In determining whether the health and environmental risks and the value of a pest control product are acceptable, the Minister may, in accordance with the regulations, if any, take into account information regarding the risks and value of other pest control products that are registered for the same use.

Representations

(10) For the purposes of subsection (9), the Minister shall, before making the determination, give the applicant a reasonable opportunity to make representations in respect of the information referred to in that subsection.

Registration or amendment

8. (1) If the Minister considers that the health and environmental risks and the value of the pest control product are acceptable after any required evaluations and consultations have been completed, the Minister shall register the product or amend its registration in accordance with the regulations, if any, by

ANNEX 17

Andean Community,
Resolution 630, Andean Technical Manual for the Registration and Control of Chemical Pesticides for Agricultural Use (25 June 2002)

ANDEAN COMMUNITY [seal]
Secretary General

RESOLUTIONS
25 JUNE 2002
4.5.1

[…]

RESOLUTION 630

Andean Technical Manual for
the Registration and Control of
Chemical Pesticides for
Agricultural Use

THE SECRETARY GENERAL OF THE ANDEAN COMMUNITY,

IN VIEW OF: Articles 30, paragraph a), 99 and 100 of the Cartagena Accord; Decision 436 of the Commission that approved the Andean Standard for the Registration and Control of Chemical Pesticides for Agricultural Use; articles 1, 8 and 11, paragraph b) of the Regulations of the Secretary General, found in Decision 409 of the Andean Council of Foreign Relations Ministers; and Resolutions 532, 537, 541 and 546 of the Secretary General; and,

CONSIDERING: That, in conformance with the provisions of article 70 of Decision 436, the Secretary General of the Andean Community must adopt, through Resolution, the Andean Technical Manual for the Registration and Control of Chemical Pesticides for Agricultural Use, with the aim of regulating the application of said Decision;

That, through Resolution 532 of this Secretary General of the 24 July 2001, the Andean Technical Manual for the Registration and Control of Chemical Pesticides for Agricultural Use was adopted for application in Member Countries, in compliance with the provisions of article 70 of Decision 436;

That, on 9 August 2001 the Government of Peru solicited from the Secretary General the reconsideration of Resolution 532. On 13 August 2001, by way of Resolution 537, the Secretary General of the Andean Community suspended the enforcement of the Registration and Control of Chemical Pesticides for Agricultural Use for application in Member Countries until the reconsideration was resolved. Through Resolution 541 of this Secretary General on 22 August 2001, the reconsideration interposed by Peru was rejected for the reasons therein indicated. However, in the same Resolution 541, the contents of the Andean Technical Manual for the Registration and Control of Chemical Pesticides for Agricultural Use were modified in some aspects;

That, on 6 September 2001, the Secretary General received fax no. MCEI/1012/2001 from the Ministry of Foreign Trade and Investment of Bolivia, from 4 September 2001, by means of which, in his capacity as President of the Commission of the Andean Community, and because he was in charge of said Commission, the Secretary General was requested to review the contents of the Andean Technical Manual for the Registration and Control of Chemical Pesticides for Agricultural Use, adopted through Resolution 532 and modified through Resolution 541. To that effect, it was requested that the Secretary General consult with the Heads of the Member Countries regarding the substantive aspects of the aforementioned Manual, regarding which they had noted discrepancies, and to call, as soon as possible, a Meeting of Governmental Experts from Member Countries to discuss those aspects, and to procure a consensus regarding the same. In the same communication, the President of the Commission of the Andean Community requested that, in application of article 41 of the Administrative Procedure Regulation of the Secretary General, and while the review of the manual was being concluded, the enforcement of Resolution 541 be suspended, as some representatives from Member Countries had stated before the Commission that specific aspects of the Manual could violate provisions of the legal ordinances of the Andean Community and cause grave damage to the community's industry;

That, through Resolution 546 of this Secretary General on 10 September 2001, the enforcement of the Andean Technical Manual for the Registration and Control of Chemical Pesticides for Agricultural Use was suspended for application in Member Countries, while the request was resolved by the Andean Community Commission.

That, after repeated conferences on the part of the Secretary General, a Meeting of Governmental Experts in Pesticides was held on 22 and 23 April 2002, during which the Representatives of the Member Countries reached a consensus regarding the substantive aspects of the Technical Manual for Chemical Pesticides for Agricultural Use in the parts where discrepancies had appeared. In this regard, the Representatives of the Member Countries requested that the Secretary General present a proposal to the Commission of the Andean Community for the modification of Decision 436, in such a way as to expressly recognize the interpretations adopted by consensus. That, during the meeting held during the Eighty-second Ordinary Session, on 7 June 2002, the Commission of the Andean Community, on the recommendations of its Alternate Representatives, considered it unnecessary to modify Decision 436, and requested that the Secretary General issue by Resolution a new text of the Technical Pesticide Manual which reflects the agreements reached by the Governmental Experts of the Member Countries;

That, for the reasons stated above, the Secretary General considers it advisable to substitute the text of the Andean Technical Manual for the Registration and Control of Chemical Pesticides for Agricultural Use for its application in Member Countries, adopted through Resolution 532 and modified through Resolution 541, with the aim of assembling the interpretations adopted by consensus by the Representatives of Member Countries during the Group Meeting of Governmental Pesticide Experts;

RESOLVED:

Sole Article.- To adopt the Andean Technical Manual for the Registration and Control of Chemical Pesticides for Agricultural Use for application in Member Countries. It is to be found in the Annex of this Resolution.

Issued in the city of Lima, Peru, on the twenty-fifth day of the month of June in the year two-thousand and two.

SEBASTIAN ALEGRETT
Secretary General

ANNEX 17

ANDEAN COMMUNITY [seal]
Secretary General

ANDEAN TECHNICAL MANUAL FOR THE REGISTRATION AND CONTROL OF CHEMICAL PESTICIDES FOR AGRICULTURAL USE

[PAGE 128]

1. STORAGE PICTOGRAM

1



Keep out of the
reach of children

2. HANDLING AND APPLICATION SAFETY PICTOGRAM

2



Handling of Liquids

3



Handling of Solids

4



Application of Solids for direct use

5



Special Application of Solids

6



Application of liquids
and dissolved solids

[PAGE 129]

3. PERSONAL SAFETY PICTOGRAMS

7



Use protective gloves

8



Wash your entire
body after
using the product

ANNEX 17

9



Wear protective boots

10



Wear a protective mask

11



Wear a mask or mouth cover

12



Wear a respirator or gas mask

13



Wear two-piece coveralls over work clothes

14



Wear a bib or apron over work clothes

[PAGE 130]

4. **WARNING PICTOGRAMS**

15



Do not allow animals in the treated area

16



Toxic to bees

17



Do not contaminate water sources

COMUNIDAD ANDINA
SECRETARIA GENERAL

RESOLUCIONES

25 DE JUNIO DEL 2002
4.5.1

RESOLUCIÓN 630

Manual Técnico Andino para el Registro y Control de Plaguicidas Químicos de Uso Agrícola

ANNEX 17

RESOLUCION 630

Manual Técnico Andino para el Registro y Control de Plaguicidas Químicos de Uso Agrícola

LA SECRETARIA GENERAL DE LA COMUNIDAD ANDINA,

VISTOS: Los Artículos 30, literal a), 99 y 100 del Acuerdo de Cartagena; la Decisión 436 de la Comisión que aprueba la Norma Andina para el Registro y Control de Plaguicidas Químicos de Uso Agrícola; los artículos 1, 8 y 11, literal b) del Reglamento de la Secretaría General contenido en la Decisión 409 del Consejo Andino de Ministros de Relaciones Exteriores; el Capítulo II del Título IV del Reglamento de Procedimientos Administrativos de la Secretaría General contenido en la Decisión 425 del Consejo Andino de Ministros de Relaciones Exteriores; y las Resoluciones 532, 537, 541 y 546 de la Secretaría General; y,

CONSIDERANDO: Que, conforme lo establece el artículo 70 de la Decisión 436, la Secretaría General de la Comunidad Andina debe adoptar mediante Resolución el Manual Técnico Andino para el Registro y Control de Plaguicidas Químicos de Uso Agrícola, a fin de reglamentar la aplicación de la referida Decisión;

Que, a través de la Resolución 532 de esta Secretaría General del 24 de julio de 2001, se adoptó el Manual Técnico Andino para el Registro y Control de Plaguicidas Químicos de Uso Agrícola, para su aplicación en los Países Miembros, dando cumplimiento a lo establecido en el artículo 70 de la Decisión 436;

Que, con fecha 9 de agosto de 2001, el Gobierno de Perú solicitó a la Secretaría General la reconsideración de la Resolución 532. El día 13 de agosto de 2001, mediante Resolución 537, la Secretaría General de la Comunidad Andina suspendió la vigencia del Manual Técnico Andino para el Registro y Control de Plaguicidas Químicos de Uso Agrícola para su aplicación en los Países Miembros, hasta tanto se resolviera el recurso de reconsideración. A través de la Resolución 541 de esta Secretaría General, del 22 de agosto de 2001, se desestimó el recurso de reconsideración interpuesto por el Gobierno de Perú por las razones allí indicadas. Sin embargo, en la misma Resolución 541 se modificó el contenido del Manual Técnico Andino para el Registro y Control de Plaguicidas Químicos de Uso Agrícola en algunos aspectos;

Que, con fecha 6 de septiembre de 2001, la Secretaría General recibió el fax No. MCEI/1012/2001 del Ministro de Comercio Exterior e Inversión de Bolivia, de fecha 4 de septiembre de 2001, por medio del cual solicitaba, en su condición de Presidente de la Comisión de la Comunidad Andina y por encargo de la propia Comisión, que la Secretaría General revisara el contenido del Manual Técnico de Plaguicidas Químicos de Uso Agrícola, adoptado mediante Resolución 532 y modificado mediante Resolución 541. A tal efecto, solicitaba que la Secretaría General consultara la opinión de los Gobiernos de los Países Miembros acerca de los aspectos sustantivos del referido Manual en los cuales se habían registrado discrepancias y convocara a la brevedad posible a una Reunión de Expertos Gubernamentales de los Países Miembros para discutir esos aspectos y procurar llegar a un consenso en torno a los mismos. En la misma comunicación, el Presidente de la Comisión de la Comunidad Andina solicitó que en aplicación del artículo 41 del Reglamento de Procedimientos Administrativos de la

Secretaría General, y mientras concluía la revisión del Manual, se suspendiera la vigencia de la Resolución 541, toda vez que algunos representantes de Países Miembros ante la Comisión habían expresado que determinados aspectos del Manual pudieran contravenir disposiciones del ordenamiento jurídico de la Comunidad Andina y generar perjuicios graves a la industria comunitaria;

Que, a través de la Resolución 546 de esta Secretaría General del 10 de septiembre de 2001, se suspendieron los efectos del Manual Técnico Andino para el Registro y Control de Plaguicidas Químicos de Uso Agrícola para su aplicación en los Países Miembros, mientras se resolvía la solicitud formulada por encargo de la Comisión de la Comunidad Andina;

Que, luego de repetidas convocatorias por parte de la Secretaría General, se llevó a cabo una Reunión del Grupo de Expertos Gubernamentales en Plaguicidas los días 22 y 23 de abril de 2002, durante la cual los Representantes de los Países Miembros llegaron a una posición de consenso sobre los aspectos sustantivos del Manual Técnico de Plaguicidas Químicos de Uso Agrícola en los cuales se habían presentado discrepancias. En tal sentido, los Representantes de los Países Miembros solicitaron a la Secretaría General que presentara una propuesta a la Comisión de la Comunidad Andina para la modificación de la Decisión 436, de manera que se recogieran expresamente las interpretaciones adoptadas por consenso. Que, durante la reunión correspondiente al Período Ochenta y Dos de Sesiones Ordinarias realizada el día 7 de junio de 2002, la Comisión de la Comunidad Andina, por recomendación de sus Representantes Alternos, consideró innecesario modificar la Decisión 436 y solicitó a la Secretaría General emitir por Resolución un nuevo texto del Manual Técnico de Plaguicidas, que reflejara los acuerdos alcanzados por los Expertos Gubernamentales de los Países Miembros;

Que, por todo lo indicado, la Secretaría General considera conveniente sustituir el texto del Manual Técnico Andino para el Registro y Control de Plaguicidas Químicos de Uso Agrícola para su aplicación en los Países Miembros adoptado mediante Resolución 532 y modificado mediante Resolución 541, con el fin de recoger las interpretaciones adoptadas por consenso por los Representantes de los Países Miembros durante la Reunión del Grupo de Expertos Gubernamentales en Plaguicidas;

RESUELVE:

Artículo Unico.- Adoptar el Manual Técnico Andino para el Registro y Control de Plaguicidas Químicos de Uso Agrícola para su aplicación en los Países Miembros, que consta en Anexo de la presente Resolución.

Dada en la ciudad de Lima, Perú, a los veinticinco días del mes de junio del año dos mil dos.

SEBASTIAN ALEGRETT
Secretario General

ANNEX 17

COMUNIDAD ANDINA
SECRETARIA GENERAL

MANUAL TÉCNICO ANDINO PARA EL REGISTRO Y CONTROL DE PLAGUICIDAS QUÍMICOS DE USO AGRÍCOLA

PICTOGRAMAS

1. PICTOGRAMA DE ALMACENAMIENTO

1



Manténgase fuera del alcance de los niños

2. PICTOGRAMA DE SEGURIDAD PARA LA MANIPULACIÓN Y APLICACIÓN

2



Manejo de líquidos

3



Manejo de sólidos

4



Aplicación de sólidos para uso directo

5



Aplicación especial de sólidos

6



Aplicación de líquidos y de sólidos en dilución

3. PICTOGRAMAS SOBRE SEGURIDAD PERSONAL

7



Utilice guantes de protección

8



Báñese el cuerpo después de utilizar el producto

9



Utilice botas de protección

10



Utilice careta protección

11



Utilice tapaboca o Mascarilla

12



Utilice respirador o Máscara

13



Utilice overol de dos piezas sobre la ropa de trabajo

14



Utilice peto o delantal sobre la ropa de trabajo

4. PICTOGRAMAS DE ADVERTENCIA

15



No permita animales en el área tratada

16



Tóxico para abejas

17



No contamine fuentes de agua

5. SÍMBOLOS DE SEGURIDAD (CLASIFICACIÓN TOXICOLÓGICA)

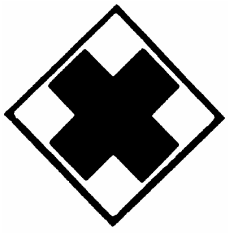
MUY TÓXICO
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TÓXICO
Ib



DAÑINO
II



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Republic of Ecuador, Ministry of Agriculture,
General Regulation of Pesticides and Related Products for Agricultural Use,
Special Official Registry, Book II, Title XXVIII, (20 Mar. 2003)

OFFICIAL REGISTRY
ORGAN OF THE GOVERNMENT OF ECUADOR

[…]

Year 1 -- Quito, Thursday 20 March 2003 -- Special Edition No. 1

[…]

No. 3609

Gustavo Noboa Bejarano
CONSTITUTIONAL PRESIDENT OF THE REPUBLIC,

[…]

Decrees:

[…]

TITLE XXVIII

OF THE REGULATION OF PESTIDICITES AND RELATED AGRICULTURAL-USE PRODUCTS

[…]

Art. 33.- Use of pesticides.- Pesticides may only be used according to the recommendations listed on the labels, or as developed by an authorized professional, observing the specific time to use each pesticide for each crop, as established by the Ministry of Agriculture and Livestock.

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REGISTRO OFICIAL
ORGANO DEL GOBIERNO DEL ECUADOR

Administración del Sr. Ing. Lucio E. Gutiérrez Borbúa
Presidente Constitucional de la República

TRIBUNAL CONSTITUCIONAL

Año I -- Quito, Jueves 20 de Marzo de 2003 -- Edición Especial Nº 1

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Quito: Avenida 12 de Octubre N 16-114 y Pasaje Nicolás Jiménez
Dirección: Telf. 2901 - 629 -- Oficinas centrales y ventas: Telf. 2234 - 540
Distribución (Almacén): 2430 - 110 -- Mañosca Nº 201 y Av. 10 de Agosto
Sucursal Guayaquil: Calle Chile Nº 303 y Luque -- Telf. 2527 - 107
Suscripción anual: US$ 200 -- Impreso en Editora Nacional
250 ejemplares -- 208 páginas -- Valor US$ 2.50

SUMARIO:

Págs.

FUNCION EJECUTIVA

DECRETO:

3609 Expídese el Texto Unificado de Legislación Secundaria del Ministerio de Agricultura y Ganadería.

Nº 3609

Gustavo Noboa Bejarano
PRESIDENTE CONSTITUCIONAL DE LA REPUBLICA

Considerando:

Que mediante Decreto Ejecutivo No. 2824, publicado en el Registro Oficial No. 623 de 22 de julio de 2002 se conformó la Comisión Jurídica de Depuración Normativa, orientada a impulsar el logro de la seguridad jurídica del país;

Que mediante Decreto Ejecutivo No. 3057 de 30 de agosto de 2002, se estableció como política de Estado el Proceso de fortalecimiento de la seguridad jurídica del país, para lo cual se aprobó el plan de trabajo propuesto por la Comisión Jurídica de Depuración Normativa;

Que una de las finalidades para lo cual fue creada la Comisión es la expedición, según las materias correspondientes a cada Ministerio de Estado, de los textos refundidos de legislación secundaria;

Que este texto unificado facilita el acceso de los ciudadanos a todas las normas vigentes y aplicables en el ámbito del Ministerio de Agricultura y Ganadería;

Que la Comisión Jurídica de Depuración Normativa, cumpliendo con los fines que le fueron impuestos, ha recomendado la expedición del presente Decreto Ejecutivo; y,

En ejercicio de las atribuciones que le confieren el numeral 9 del artículo 171 de la Constitución Política de la República y el literal f) del artículo 11 del Estatuto del Régimen Jurídico Administrativo de la Función Ejecutiva,

Decreta:

Expedir el siguiente

TEXTO UNIFICADO DE LEGISLACION SECUNDARIA DEL MINISTERIO DE AGRICULTURA Y GANADERIA

Art. 1.- Expídese el siguiente Texto Unificado de Legislación Secundaria del Ministerio de Agricultura y Ganadería.

Art. 2.- Disponer la publicación del Texto Unificado en el Registro Oficial, fecha a partir de la cual quedan derogadas expresamente las siguientes disposiciones normativas:

1. El Decreto Ejecutivo No. 2099 publicado en el Registro Oficial Suplemento No. 524 de 12 de

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contiene el Reglamento General de los Consejos Consultivos del MAG.

138. El Decreto Ejecutivo No. 11338-A, publicado en el Registro Oficial No. 726 de julio 15 de 1991, que contiene el Reglamento sobre Normas de la Calidad del Aire y sus Métodos de Medición.

139. El Acuerdo Ministerial No. 2144, publicado en el Registro Oficial No. 204 de junio 5 de 1989, que contiene el Reglamento para la Prevención y Control de la Contaminación Ambiental, en lo relativo al recurso agua.

140. El Acuerdo Ministerial No. 7789, publicado en el Registro Oficial No. 560 de noviembre 12 de 1990, que contiene el Reglamento para la Prevención y Control de la Contaminación Ambiental originada por la Emisión de Ruidos.

141. El Acuerdo Ministerial No. 14629, publicado en el Registro Oficial No. 989 de julio 30 de 1992, que contiene el Reglamento para la Prevención y Control de la Contaminación Ambiental en lo referente al Recurso Suelo.

142. El Acuerdo Ministerial No. 883, publicado en el Suplemento del Registro Oficial No. 303 de octubre 25 de 1993, que contiene el Reglamento que establece las Normas Generales de Emisión para Fuentes Fijas de Combustión y los Métodos Generales de Medición.

Art. 3.- Todas las actuaciones o decisiones de los funcionarios públicos, mencionadas en este Texto Unificado, deberán observar cuidadosamente el Reglamento para el Control de la Discrecionalidad en los Actos de la Administración Pública.

Art. 4.- En el caso de reformas a este Texto Unificado, se deberá señalar expresamente las disposiciones que se reformen, deroguen o añadan.

Art. 5.- El presente decreto ejecutivo entrará en vigencia a partir de su publicación en el Registro Oficial.

Dado en el Palacio Nacional, en Quito, a 14 de enero de 2003.

f.) Gustavo Noboa Bejarano, Presidente Constitucional de la República.

Es fiel copia del original.- Lo certifico.

f.) Marcelo Santos Vera, Secretario General de la Administración Pública.

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nuevo propietario procederá a la inscripción de la nueva marca o ratificar la anterior. La Federación Nacional de Ganaderos del Ecuador llevará este registro y constituirá el título de propiedad del animal.

Art. 13.- Se prohibe la coexistencia o similitud de dos o más marcas en una misma provincia y, en caso de discrepancias prevalecerá la marca de inscripción más antigua.

Art. 14.- En el ganado equino, mular y asnal las marcas estarán de acuerdo a las características y tamaño usadas en la especie bovina.

Art. 15.- En vista de que las marcas o señales que identifican al o los animales, son parte constitutiva de la guía de movilización, el incumplimiento de las disposiciones de la presente norma se sancionará de acuerdo a lo dispuesto en los artículos 19, 20 y 21 de la Ley de Erradicación de la Fiebre Aftosa.

Art. 16.- Para efecto de lo dispuesto en la ley, el SESA aplicará las disposiciones constantes en el Capítulo V de la Ley de Sanidad Animal y en las disposiciones de su Reglamento General.

Art. 17.- En cuanto a las infracciones sancionadas con penas pecuniarias y prisión, éstas serán denunciadas por el Director General o los jefes provinciales del SESA ante los respectivos jueces de lo penal, competentes para su juzgamiento.

Art. 18.- La terminología que deberá emplearse para la aplicación de la presente norma, será la siguiente:

Cifras.- Números.- Enlace de dos o más letras que como abreviatura se emplea en sellos, marcas, etc.

Marcas.- Señal hecha en una persona, animal o cosa para distinguirla de otra o denotar calidad o pertenencia.

En la práctica ganadera, la marca consiste en un dibujo, letras, números, signos, etc., que deberán estamparse con hierro candente (marca al fuego), por uso de sustancias químicas (marca al frío), o por cualquier otro procedimiento autorizado en el futuro y que produzca un efecto indeleble.

Señal.- Signo convencional que se utiliza como aviso o para transmitir una información. Lo que muestra o indica la existencia de algo, cicatriz.

Fierro.- Marca para el ganado.

Contrafierro.- Segundo fierro, colocado cerca del primero.

Remarca.- Segunda marca, colocada cerca de la primera.

Grabar.- Señalar con incisión o abrir y labrar un hueco o relieve sobre una superficie dura, alguna cosa.

TITULO XXVI

DE LA PROHIBICION DE COMERCIALIZACION DE HARINAS NACIONALES O IMPORTADAS DE CARNE, SANGRE O HUESOS DE RUMIANTES PARA LA ALIMENTACION DE RUMIANTES

Art. 1.- Prohibir en todo el territorio nacional la utilización de harinas nacionales o importadas de carne, sangre y huesos de rumiantes para la alimentación de rumiantes o de alimentos para rumiantes que contengan estos productos.

Art. 2.- Se prohíbe la importación y comercialización de harinas de carne, huesos y sangre de rumiantes para alimentación de rumiantes o alimentos que contengan estos productos desde países afectados por la presencia de la Encefalopatía Espongiforme Bovina (EEB) y el Prurigo Lumbar Ovino (scaprie).

Art. 3.- Los embalajes y envases de productos de elaboración nacional e importados que contengan fuentes de proteínas originarias de rumiantes, destinadas a consumo animal, deben contener una inscripción o advertencia claramente visible que manifieste que este producto está prohibido para la alimentación de rumiantes.

Art. 4.- Se prohíbe el uso e importación de fármacos y medicamentos de uso veterinario, que contengan como excipientes gelatinas, harinas, sueros, sanguíneos y otras substancias originarias de rumiantes y que provengan de países afectados por la EEB y el Prurigo Lumbar (scrapie).

TITULO XXVII

DEL REGISTRO DE OPERACIONES DE ARROZ EN LA BOLSA NACIONAL DE PRODUCTOS AGROPECUARIOS

Art. 1.- Se designa a la Corporación Bolsa Nacional de Productos Agropecuarios como el ente imparcial para registrar las operaciones de importación y exportación de arroz y sus subproductos, y las compras por parte de las industrias locales tanto de los productos y subproductos, materia de ayudas internacionales, así como las operaciones que entrañan absorción de compras locales, que se canalizarán a través del Ministerio de Agricultura y Ganadería.

Art. 2.- La Corporación Bolsa Nacional de Productos Agropecuarios tendrá la responsabilidad de verificar las condiciones y calidad del producto bajo las normas que se pacten en las respectivas negociaciones.

Art. 3.- La Corporación Bolsa Nacional de Productos Agropecuarios deberá llevar un registro detallado de las operaciones y reportará mensualmente al Ministerio de Agricultura y Ganadería y al Banco Central del Ecuador.

Art. 4.- Los compradores en el caso de importaciones y los vendedores, en el caso de exportaciones reconocerán por el servicio la comisión del 0.15% del valor de las transacciones. Cuando el producto sea de propiedad del Estado, la comisión será del 0.10% del valor de las transacciones.

TITULO XXVIII

DEL REGLAMENTO DE PLAGUICIDAS Y PRODUCTOS AFINES DE USO AGRICOLA

Art. 1.- AMBITO.- El régimen jurídico de los plaguicidas en el país estará sometido a las disposiciones de la ley y de este reglamento. El Ministerio de Agricultura y Ganadería, a través de la Unidad Administrativa de

Art. 27.- Prohibición.- Se prohíbe el expendio de todos los plaguicidas y productos afines que no cumplan las disposiciones señaladas en la ley y en este reglamento y de aquellos cuyos registros no se encuentren vigentes o hubieren sido cancelados.

Art. 28.- Plaguicidas altamente tóxicos.- Los plaguicidas extremada y altamente tóxicos solo podrán expenderse en establecimientos que dispongan de las medidas de seguridad y en locales aprobados por el Ministerio de Salud Pública. Un ingeniero agrónomo, debidamente colegiado y registrado, intervendrá en los términos previstos en el Art. 21 de la Ley No. 73 publicada en el Registro Oficial No. 442 de 22 de mayo de 1990.

Unicamente se expenderán éstos, para los fines indicados en su registro con las restricciones señaladas, debiendo además dar cumplimiento a todas las disposiciones que se señalan en el Art. 21 de la Ley No. 73 antes citada, y a la Norma INEN sobre requisitos para locales de distribución de plaguicidas y productos afines.

Art. 29.- Decomiso.- Si las autoridades encontraren plaguicidas que no estén registrados serán decomisados de acuerdo a la ley.

Art. 30.- Expendio al por menor.- Los plaguicidas no podrán ser comercializados al por menor por personas naturales o jurídicas que no tengan autorización escrita de los formuladores, fabricantes, importadores o distribuidores inscritos.

Los comerciantes al por menor de esta clase de productos no requerirán los servicios permanentes de un ingeniero agrónomo, no obstante serán responsables de cualquier violación a lo dispuesto en este reglamento.

La autorización a que se refiere el inciso primero de este artículo, obliga a quien la otorgue a ejercer un control permanente sobre las adulteraciones y demás infracciones en que incurrieren los minoristas autorizados y serán solidariamente responsables con ellos si se comprueba que propiciaron de cualquier manera tales adulteraciones, facilitando envases o etiquetas para el reenvase a nivel de almacenes.

Art. 31.- Medios alternativos.- El Ministerio de Agricultura y Ganadería no permitirá el uso de plaguicidas y productos afines cuando existan enemigos naturales de las plagas para controlarlas. Se propenderá al establecimiento de centros para la producción y desarrollo de especies destinadas al control biológico, para cuyo efecto el Ministerio expedirá normas que regulen las actividades de estos centros.

Art. 32.- Aplicaciones aéreas.- Las empresas de sanidad vegetal y los agricultores en general no podrán hacer aplicaciones aéreas en las que se utilicen plaguicidas extremada y altamente tóxicos o peligrosos para el hombre, animales y cultivos agrícolas, aún cuando se usan en baja concentración.

Estas aplicaciones deberán contar con autorización escrita del ingeniero agrónomo asesor técnico de la empresa. Quienes incumplieran esta prohibición serán sancionados de conformidad con este reglamento y la ley.

Art. 33.- Empleo de los plaguicidas.- Los plaguicidas solamente se podrán emplear de acuerdo con las recomendaciones constantes en la etiqueta o a las que formulare el profesional autorizado, observando el tiempo específico de cada plaguicida por cultivo, establecido por el Ministerio de Agricultura y Ganadería.

Art. 34.- Establecimientos públicos.- Sin previa autorización de la Dirección de Saneamiento Ambiental del Ministerio de Salud Pública, no podrán efectuarse aplicaciones de plaguicidas en locales o establecimientos en los cuales se produzcan, almacenen, expendan o consuman alimentos o medicinas, y tampoco en establecimientos escolares y hospitalarios.

Art. 35.- Responsabilidad de empleadores.- Los empleadores serán responsables de cuidar por la salud del personal que participe en cualquier forma en el manejo de plaguicidas y productos afines, debiendo cumplir las siguientes obligaciones:

1. Contratar a operadores que hayan aprobado un curso de instrucción sobre el manejo correcto de plaguicidas, medidas de protección y primeros auxilios y las necesarias para evitar la contaminación del ambiente.

2. Proveerlos de los equipos individuales de protección de acuerdo a la toxicidad del producto que manejen, especialmente en establecimientos comerciales, invernaderos o recintos cerrados, según normas que establezca el Ministerio de Salud Pública; de acuerdo con la ley, siendo el equipo mínimo guantes de polipropileno, mascarillas provistas de filtros para plaguicidas, casco o gorro protector y botas de caucho.

3. Estos establecimientos deberán contar con un baño completo y ducha, extinguidores de incendio, un botiquín de primeros auxilios que incluya además, antídotos como Atropina, PAM o Toxogonin y otros similares. El establecimiento deberá contar, además, con absorbentes para el caso de derrame de algún producto, como el aserrín, carbón activado, tierra de fuller, y un manual de primeros auxilios.

4. Proporcionarles asistencia médica tanto preventiva como curativa; y, someterlos a controles médicos periódicos de niveles de colinesterasa y otros de laboratorios por lo menos una vez al año y de acuerdo al tipo de plaguicida que utilicen con mayor frecuencia; a cuyos informes deberán tener acceso los funcionarios de Sanidad Vegetal y Salud Pública.

Art. 36.- Supervisión.- El Ministerio de Agricultura y Ganadería cuando estime necesario realizará la supervisión y control de las labores de fabricación, formulación, reenvase y aplicación de plaguicidas y ordenará la suspensión de tales actividades si se comprobare el incumplimiento de las disposiciones anteriores, con sujeción a lo que dispone la ley en materia de tipificación de infracciones y aplicación de las penas.

Art. 37.- Desechos.- Bajo la responsabilidad de la persona natural o jurídica que maneje plaguicidas, los derechos de estos productos deben recibir un tratamiento previo a la evacuación final de tal manera que los afluentes no sobrepasen los límites permitidos oficialmente.

ANNEX 19

Republic of Colombia, Ministry of Environment
Resolution No. 670, *Whereby a Sanction is Imposed and Other Decisions Are Made* (19 June 2003)

[seal]

MINISTRY OF THE ENVIRONMENT, HOUSING AND TERRITORIAL DEVELOPMENT

19 JUNE 2003

RESOLUTION NO. 0670

"Whereby a sanction is imposed and other decisions are made"

THE VICEMINISTER OF THE ENVIRONMENT

Pursuant to the powers conferred by Law 99 of 1993 in Article 197 et seq. of Decree 1594 of 1984 in number 15 of Article 6 of Decree 216 of 2003; and in number 1 of Article 1 of Resolution 307 of 2003

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[…]

2.5 Impossibility of conducting the environmental impact assessments during the implementation of a program, project or policy

Regarding the DNE's [National Narcotics Directorate] argument on the impossibility of conducting the environmental impact assessment during the implementation of a program or project, this Ministry does not share this opinion since it is a very common practice to conduct ex post facto evaluations to determine the effects of an activity on the environment and, based on the analysis of this evaluations, ascertain if the foreseen impacts and environmental management measures give optimum results and/or suggest measures to mitigate and/or offset said impacts.

By virtue of the foregoing, the Ministry considers that the arguments presented by the DNE do not demonstrate compliance with the obligation set forth in the Second Article of Resolution 341 of 2001.

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[…]

3.1 Information about the environmental audits conducted on PECIG [Illicit Crop Eradication Program Using Aerial Spraying with Glyphosate] with glyphosate: contracts 032 of 1992, 070 of 1994, 086 of 1994, 065 of 1995, 082 of 1996, 01 of 1998, 019 of 2000, 001 of 2001, and 035 of 2001.

As for the evidence presented by DNE regarding the reports on the audits, it should be noted that none of the reports referred to by DNE were submitted or are found in file No. 793 handled by this Ministry for PECIG, except for the sections of the reports presented as evidence and numbered 1, 2 and 3, relating to the first charge.

The information provided by the DNE in the document responding to the charges relating to the object of the contract of the different Environmental Audits indicate that the assessments carried out were designed to evaluate the effectiveness (agronomic efficiency) of the glyphosate as an herbicide and not to evaluate the effectiveness and efficiency of the environmental management measures of PECIG, as is required under letter b) of Article 6 of Resolution 341 of 2001.

With regard to the measures adopted and the implementation of efficiency and effectiveness indicators, DNE made reference to the studies conducted by the entity prior to the issuance of Resolution 341 of 2001, whereby, said studies do not meet the requirements under Article 6, letter b). In addition, according to progress reports submitted to the Ministry in response to the requirements of Resolution 341, in-situ verification in-situ of the effectiveness of environmental management measures and evaluation of the efficiency and effectiveness of these indicators were not carried out.

3.2 Identification of impacts prior to the eradication of illegal crops.

Regarding the existence of impacts prior to the eradication of illegal crops, this Ministry has reiterated that the impacts from aerial spraying with glyphosate are being assessed. Moreover, the argument presented does not meet the requirements under letter b), Article 6 of Resolution 341 of 2001, for verification and assessment of environmental management measures during PECIG operations, because it identifies the impacts generated by the establishment of illegal crops and not the impacts of aerial spraying.

[…]

[PAGE 13]

[signature]
JUAN PABLO BONILLA ARBOLEDA
Viceminister of the Environment

MINISTERIO DE AMBIENTE, VIVIENDA Y DESARROLLO TERRITORIAL

19 JUN 2003

RESOLUCIÓN NÚMERO 0670

" Por la cual se impone una sanción y se toman otras determinaciones "

EL VICEMINISTRO DE AMBIENTE

En uso de sus facultades legales conferidas en la Ley 99 de 1993, en los artículos 197 y siguientes del Decreto 1594 de 1984, en el numeral 15 del artículo 6° del Decreto 216 de 2003, y en el numeral 1° del artículo 1° de la Resolución 307 de 2003

CONSIDERANDO

ANTECEDENTES

Que éste Ministerio expidió la resolución 341 de 2001, determinado en sus artículos segundo, sexto literal b) y séptimo:

*"**Artículo Segundo:** La Dirección Nacional de Estupefacientes, deberá desarrollar dentro de un término de hasta seis (6) meses, sobre las áreas objeto de aspersión de Glifosato para la erradicación de cultivos ilícitos, evaluaciones de impacto ambiental, conducentes a establecer la naturaleza y características de los posibles impactos ambientales generados por dicha actividad en los cuatro (4) meses anteriores a la fecha de notificación del presente acto administrativo, prospectar los potenciales efectos ambientales en función de los hallazgos y proponer medidas necesarias para mitigarlos y/o compensarlos."*

*"**Artículo Sexto:** La Dirección Nacional de Estupefacientes debe adoptar de manera inmediata y eficiente las siguientes medidas de mitigación, compensación y control, ambiental, sin perjuicio de la competencia del Ministerio del Medio Ambiente para hacer seguimiento al cumplimiento de las mismas:*

a (...)
***b.** Programa de inspección, verificación y control cuyo objetivo fundamental esté orientado a:*

- *Verificar en sitio, la efectividad de la aplicación de medidas de manejo ambiental durante la operación del Programa de Erradicación de Cultivos Ilícitos.*
- *Evaluar previo diseño para tal fin, mediante indicadores de eficiencia y efectividad, la aplicación de medidas de manejo ambiental del Programa de Erradicación de Cultivos Ilícitos*
- *Evaluar la eficiencia en la adopción de medidas de acción correctiva, en caso de que se establezcan la existencia de daños derivados de las actividades de erradicación"*

*"**Artículo Séptimo:** La Dirección Nacional de Estupefacientes deberá iniciar dentro de los tres (3) meses siguientes a la notificación del presente acto administrativo, los siguientes programas de investigación:*

ANNEX 19

Nacional de Estupefacientes, en su escrito de descargos en la página 16, mediante decreto 2599 del 3 de diciembre de 2001, el Gobierno Nacional aprobó la adición presupuestal a esa Dirección, con la cual hubiera podido dar cumplimiento a las obligaciones impuestas en los artículos segundo y séptimo de la resolución 341 de 2001.

2.5 Imposibilidad de realizar evaluaciones de impacto ambiental durante la ejecución de un programa, proyecto o política

Sobre la argumentación de la DNE donde manifiesta la imposibilidad de realizar evaluaciones de impacto ambiental durante la ejecución de un programa o proyecto, este Ministerio no comparte dicha opinión, porque es una practica muy común realizar evaluaciones expost para determinar el efecto que pueda tener el desarrollo de una actividad sobre el ambiente y con base en el análisis de ésta evaluación, conocer de una manera real si los impactos que se habían previsto y las medidas de manejo ambiental, dan óptimos resultados y/o proponer medidas para mitigar y/o compensar dichos impactos.

Por las anteriores consideraciones, el Ministerio considera que los argumentos expuestos por la DNE, no demuestran el cumplimiento a la obligación del Artículo Segundo de la Resolución 341 de 2001.

3. Segundo Cargo.

Conforme al concepto técnico 1199 de 2002 la Subdirección de Licencias consideró:

3.1 Información acerca de las auditorías ambientales realizadas sobre el PECIG con glifosato: contratos 032 de 1992, 070 de 1994, 086 de 1994, 065 de 1995, 082 de 1996, 01 de 1998, 019 de 2000, 001 de 2001 y 035 de 2001.

En cuanto a las pruebas presentadas por la DNE con respecto a los informes de auditorías se debe tener en cuenta que todos los informes a que hace alusión la DNE no fueron presentados, ni se encuentran en el expediente No. 793, que se adelanta en éste Ministerio para el PECIG, excepto los apartes de los informes incluidos como pruebas y numerados como 1, 2 y 3, relacionados con el primer cargo.

La información aportada por la DNE, en el documento de respuesta de cargos, con respecto al objeto del contrato de las diferentes Auditorías Ambientales, indica que las evaluaciones realizadas están orientadas a evaluar la efectividad (eficacia agronómica) del glifosato como acción herbicida y no a evaluar la efectividad y eficiencia de las medidas de manejo ambiental del PECIG que es lo que se exigió en el requerimiento del literal b) del artículo Sexto de la Resolución 341 de 2001.

Con respecto a las medidas adoptadas y a la aplicación de los indicadores de eficiencia y efectividad, la DNE hace referencia a estudios realizados por la entidad antes de la expedición de la Resolución 341 de 2001, por lo cual, dichos estudios no estarían dando respuesta al requerimiento del artículo sexto literal b), adicionalmente, en los informes de avance allegados al Ministerio como respuesta a los requerimientos de la Resolución 341, no se hizo la verificación en sitio de la efectividad de las medidas de manejo ambiental y la evaluación de la eficiencia y efectividad de estos indicadores.

3.2 Identificación de impactos previos a la erradicación de cultivos ilícitos.

En cuanto a la existencia de impactos previos a la erradicación de cultivos ilícitos, este Ministerio ha reiterado que se están evaluando los impactos por la aspersión aérea con glifosato. Adicionalmente la argumentación presentada no satisface los requerimientos del literal b) artículo sexto de la resolución 341 de 2001, en el sentido de verificar y evaluar las medidas de manejo ambiental durante la operación del PECIG, porque identifica los impactos generados por el establecimiento de los cultivos ilícitos y no los impactos por la aspersión aérea.

Que en mérito de lo expuesto,

RESUELVE

ARTÍCULO PRIMERO.- Decretar como pruebas los documentos relacionados en el numeral 5, de la parte motiva de la presente providencia, en los términos expuestos, las cuales fueron solicitadas por la DIRECCIÓN NACIONAL DE ESTUPEFACIENTES –DNE en el escrito de descargos y el informe de visita técnica a la base aérea de Cúcuta y las zonas de aspersión del Catatumbo, realizada del 20 al 25 de junio de 2002, por funcionarios de este Ministerio.

ARTÍCULO SEGUNDO.- Declarar a la DIRECCIÓN NACIONAL DE ESTUPEFACIENTES –DNE-, responsable de infringir el artículo segundo, el literal b) del artículo sexto y el artículo séptimo de la resolución 341 de 2001, por las razones expuestas en la parte motiva de la presente providencia.

ARTÍCULO TERCERO.- Imponer a la DIRECCIÓN NACIONAL DE ESTUPEFACIENTES –DNE- sanción pecuniaria, consistente en una multa de TREINTA Y TRES MILLONES DOSCIENTOS MIL PESOS ($33.200.000) MCTE, conforme a lo expuesto en la parte motiva de la presente providencia.

ARTÍCULO CUARTO: La sanción pecuniaria impuesta en el presente acto administrativo a la DIRECCIÓN NACIONAL DE ESTUPEFACIENTES –DNE- deberá cancelarse en la tesorería de este Ministerio, dentro de los cinco (5) días siguientes a la ejecutoria del mismo y su incumplimiento en los términos y cuantía indicados, dará lugar a su respectiva exigibilidad por jurisdicción coactiva.

ARTÍCULO QUINTO. Por la Secretaría Jurídica de este Ministerio, notificar el contenido de la presente resolución al representante legal de la DIRECCIÓN NACIONAL DE ESTUPEFACIENTES –DNE-, o a su Apoderado debidamente constituido.

ARTÍCULO SEXTO.- Por la Secretaría Jurídica de este Ministerio. envíese copia de la presente providencia a la Procuraduría Delegada para Asuntos Ambientales y Agrarios, al Ministerio de Salud, al Instituto Colombiano Agropecuario -ICA.

ARTÍCULO SEPTIMO.- La DIRECCIÓN NACIONAL DE ESTUPEFACIENTES –DNE-, deberá publicar el encabezado, y la parte resolutiva del presente acto administrativo, en un diario de amplia circulación nacional, copia de la cual deberá allegar a este Ministerio dentro de los 10 días siguientes a su notificación con destino al expediente N° 2625.

ARTÍCULO OCTAVO.- Contra la presente resolución procede el recurso de reposición el cual podrá interponerse y sustentarse por escrito ante el Viceministro de Ambiente, dentro de los cinco (5) días siguientes a la notificación de la presente providencia, conforme a lo dispuesto en el Código Contencioso Administrativo.

NOTIFÍQUESE, COMUNÍQUESE, PUBLÍQUESE Y CÚMPLASE

JUAN PABLO BONILLA ARBOLEDA
Viceministro de Ambiente

ANNEX 20

Republic of Colombia, Institute of Agriculture,
Resolution No. 3759, Enacting Provisions for the Registration and Control of Chemical Pesticides for Agricultural Use (16 Dec. 2003)

[seal] Ministry of Agriculture and
Rural Development
AGRICULTURAL INSTITUTE OF COLOMBIA

RESOLUTION No. 03759
(16 December 2003)

By which the provisions of the Registration and Control of Chemical Pesticides for Agricultural Use are issued

GENERAL MANAGER OF THE AGRICULTURAL INSTITUTE of COLOMBIA "ICA"

[…]

RESOLVES:

SCOPE OF APPLICATION

ARTICLE 1. To define the procedures and establish the requirements for the registration and control of chemical pesticides for agricultural use.

[PAGE 2]

ARTICLE 2. To establish as a requirement for the use of agricultural pesticides in Colombia the obtaining of a national registration, in conformance with the provisions of this resolution.

[…]
[PAGE 22]

SANCTIONS

ARTICLE 33. The violation of any of the norms established in this resolution shall be sanctioned through a substantiated resolution issued by the ANC-ICA, according to Decree 1843 of 1991, and article 17 of Decree 1840 of 1994, or the provision which replaces it, without prejudice to the corresponding penal or civil action.

The sanctions shall be the following:

ANNEX 20

1. Written warning in which the term for compliance with the violated provisions is detailed for the infracting party, with a copy for their files.
2. Fines, which may be successive and whose value shall not exceed a sum equivalent to ten thousand (10,000) legal minimum salaries. These fines shall be paid into the Treasury of the ICA within five (5) business days of the date of execution of the corresponding decision, and shall enter into the National Fund for Agricultural Protection "FONPAGRO." Noncompliance with the payment in the terms and amounts indicated shall lead to cancellation of the registration.
3. Suspension for up to six (6) months of the registrations for manufacturers, formulators, importers, exporters, packagers, distributors, quality control laboratories and technical departments.
4. Suspension of National Registration for up to six (6) months.
5. Definitive cancellation of National Registration.
6. Definitive cancellation of the registrations for manufacturers, formulators, importers, exporters, packagers, distributors, quality control laboratories and technical departments.
7. Suspension of ICA services.

Ministerio de Agricultura y Desarrollo Rural
INSTITUTO COLOMBIANO AGROPECUARIO ICA

RESOLUCIÓN No. 03759
(16 Diciembre de 2003)

Por la cual se dictan disposiciones sobre el Registro y Control de los Plaguicidas Químicos de uso Agrícola

EL GERENTE GENERAL DEL INSTITUTO COLOMBIANO AGROPECUARIO "ICA"

En ejercicio de sus atribuciones legales, especialmente de las previstas en los Decretos 001 de 1984, 2141 de 1992 y 1840 de 1994, la Decisión Andina 436 de 1998 y el Decreto 502 de 2003, y

CONSIDERANDO:

Que de conformidad con lo dispuesto en el artículo segundo (2) de la ley 822 de 2003 y el artículo primero (1) del Decreto 502 del 5 de marzo de 2003, el Ministerio de Agricultura y Desarrollo Rural, a través del Instituto Colombiano Agropecuario "ICA", o la entidad que haga sus veces, es la Autoridad Nacional Competente, en adelante ANC, para llevar el registro y control de los plaguicidas químicos de uso agrícola y el responsable de velar por el cumplimiento de la Decisión 436 de la Comunidad Andina, su Manual Técnico, la Ley 822 y el citado decreto.

Que el artículo cuarto (4) del Decreto 502 del 5 de marzo de 2003, faculta plenamente a la Autoridad Nacional Competente, es decir, al Instituto Colombiano Agropecuario "ICA", para expedir las resoluciones mediante las cuales se establezcan los requisitos y procedimientos para el registro y control de plaguicidas químicos de uso agrícola, basándose en los principios de gradualidad, especificidad y aplicabilidad, de conformidad con lo dispuesto en la Decisión. Igualmente debe establecer los requisitos de registro de fabricantes, formuladores, importadores, exportadores, envasadores y distribuidores.

Que el día 10 de julio de 2003, el Congreso de la República expidió la ley 822, mediante la cual se dictan normas relacionadas con los agroquímicos genéricos, estableciendo trámites y plazos para el otorgamiento del registro nacional correspondiente por parte de la ANC, así como la función de coordinar con el Ministerio de la Protección Social y el Ministerio de Ambiente Vivienda y Desarrollo Territorial, dichos trámites en lo que corresponde al ámbito de sus competencias, por lo cual, se hace necesario expedir una nueva resolución por parte de la ANC – ICA, que permita la plena aplicación de la normatividad vigente en esta materia.

Que en mérito de lo expuesto, el Instituto Colombiano Agropecuario "ICA",

RESUELVE:

AMBITO DE APLICACIÓN

ARTÍCULO 1o. Definir los procedimientos y establecer los requisitos para el registro y control de plaguicidas químicos de uso agrícola.

ANNEX 20

Ministerio de Agricultura y Desarrollo Rural
INSTITUTO COLOMBIANO AGROPECUARIO

RESOLUCIÓN No. 03759
(16 Diciembre de 2003)

Por la cual se dictan disposiciones sobre el Registro y Control de los Plaguicidas Químicos de uso Agrícola

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ARTÍCULO 2o. Establecer como requisito para el uso en Colombia de plaguicidas químicos de uso agrícola, la obtención del registro nacional, de conformidad con lo dispuesto en la presente resolución.

DEFINICIONES

ARTÍCULO 3o. Para efectos de la aplicación de la presente resolución, se utilizarán las definiciones contenidas en la Decisión 436 de 1998 de la Comunidad Andina, el Manual Técnico Andino adoptado mediante Resolución 630 de 2002, Decreto 502 y Ley 822 de 2003, las demás normas complementarias o adicionales que se expidan y aquellas actualmente vigentes, que no sean contradictorias con las mismas.

REQUISITOS

ARTÍCULO 4o. Los fabricantes, formuladores, importadores, exportadores, envasadores y distribuidores de plaguicidas químicos de uso agrícola, sean estos personas naturales o jurídicas, deben estar registrados ante ANC - ICA, para lo cual deberán presentar una solicitud cumpliendo los requisitos establecidos en la presente resolución.

Solamente podrán fabricar, formular, importar, exportar, envasar y distribuir plaguicidas químicos de uso agrícola, las personas naturales y jurídicas que cuenten con el registro otorgado por la ANC-ICA en cumplimiento a las disposiciones de la presente resolución.

ARTÍCULO 5o. Los requisitos para obtener el registro de fabricantes, formuladores, importadores, exportadores, envasadores y distribuidores de plaguicidas químicos de uso agrícola serán los siguientes:

1. Solicitud debidamente diligenciada, firmada por la persona natural o por el representante legal si es persona jurídica.

2 Nombre, dirección y datos de identificación de la persona natural o jurídica y de su representación legal.

3 Certificado de la Cámara de Comercio sobre constitución y representación legal, si se trata de persona jurídica o Matrícula Mercantil si es persona natural, con fecha de expedición no mayor a noventa (90) días al momento de la presentación de la solicitud.

Ministerio de Agricultura y Desarrollo Rural
INSTITUTO COLOMBIANO AGROPECUARIO

RESOLUCIÓN No. 03759
(16 Diciembre de 2003)

Por la cual se dictan disposiciones sobre el Registro y Control de los Plaguicidas Químicos de uso Agrícola

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SANCIONES

ARTÍCULO 33o. La violación a cualquiera de las normas establecidas en la presente resolución, será sancionada mediante resolución motivada que expedirá la ANC-ICA, de acuerdo con el Decreto 1843 de 1991 y con el artículo 17 del Decreto 1840 de 1.994 o la disposición que lo reemplace, sin perjuicio de las acciones penales o civiles que correspondan.

Las sanciones serán las siguientes:

1. Amonestación escrita, en la cual se precisará el plazo que se dé al infractor para el cumplimiento de las disposiciones violadas con copia a su expediente.

2. Multas, que podrán ser sucesivas y su valor en conjunto no excederá una suma equivalente a diez mil (10.000) salarios mínimos legales. Estas multas deberán ser pagadas en la Tesorería del ICA, dentro de los cinco (5) días hábiles siguientes a la fecha de la ejecutoria de la providencia correspondiente, e ingresarán al Fondo Nacional de Protección Agropecuaria "FONPAGRO". El incumplimiento del pago en los términos y cuantías señaladas dará lugar a la cancelación del registro.

3. Suspensión hasta por seis (6) meses de los registros de fabricador, formulador, importador, exportador, envasador, distribuidor, laboratorio de control de calidad y departamentos técnicos.

4. Suspensión del Registro Nacional, hasta por seis (6) meses

5. Cancelación definitiva de Registro Nacional.

6. Cancelación definitiva de los registros de fabricador, formulador, importador, exportador, envasador, distribuidor, laboratorio de control de calidad y departamentos técnicos.

7. Suspensión de los servicios que presta el ICA.

DE LA DIVULGACION

ARTÍCULO 34o. La ANC-ICA publicará mensualmente la relación de plaguicidas químicos de uso agrícola que haya registrado en el mes anterior. En el mismo sentido publicará en el mes de enero de cada año la relación de productos con registro vigente, los que se encuentren restringidos, prohibidos, cancelados o suspendidos.

ANNEX 21

European Parliament, *Legislative Resolution of 13 January 2009 on the Council Common Position for Adopting a Directive of the European Parliament and of the Council Establishing a Framework for Community Action to Achieve a Sustainable Use of Pesticides*,
6124/2008 – C6-0323/2008 –2006/0132(COD) (13 Jan. 2009)

EUROPEAN PARLIAMENT

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Procedure : **2006/0132(COD)**

Document stages in plenary

Document selected : A6-0443/2008

Texts tabled :	Debates :	Votes :	Texts adopted :
A6-0443/2008	PV 12/01/2009 - 14 CRE 12/01/2009 - 14	PV 13/01/2009 - 6.10 Explanations of votes Explanations of votes Explanations of votes	P6_TA(2009)0010

Texts adopted

Tuesday, 13 January 2009 - Strasbourg — **Provisional edition**

Framework for Community action to achieve a sustainable use of pesticides ***II

P6_TA-PROV(2009)0010 — **A6-0443/2008**

- Resolution
- Consolidated text
- Annex
- Annex
- Annex
- Annex

European Parliament legislative resolution of 13 January 2009 on the Council common position for adopting a directive of the European Parliament and of the Council establishing a framework for Community action to achieve a sustainable use of pesticides (6124/2008 – C6-0323/2008 – 2006/0132 (COD))

(Codecision procedure: second reading)

The European Parliament ,

– having regard to the Council common position (6124/2008 – C6-0323/2008)[1] ,

– having regard to its position at first reading[2] on the Commission proposal to Parliament and the Council (**COM(2006)0373**),

– having regard to Article 251(2) of the EC Treaty,

– having regard to Rule 62 of its Rules of Procedure,

– having regard to the recommendation for second reading of the Committee on the Environment, Public Health and Food Safety (**A6-0443/2008**),

1. Approves the common position as amended;

2. Instructs its President to forward its position to the Council and Commission.

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(1) OJ C 254 E, 7.10.2008, p. 1.

(2) Texts adopted, 23.10.2007, **P6_TA(2007)0444**.

ANNEX 21

Position of the European Parliament adopted at second reading on 13 January 2009 with a view to the adoption of Directive *2009/.../EC* of the European Parliament and of the Council establishing a framework for Community action to achieve the sustainable use of pesticides

P6_TC2-COD(2006)0132

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 175(1) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee[(1)] ,

Having regard to the opinion of the Committee of the Regions[(2)] ,

Acting in accordance with the procedure laid down in Article 251 of the Treaty[(3)] ,

Whereas:

(1) In line with ***Articles 2 and 7 of*** Decision No 1600/2002/EC of the European Parliament and of the Council of 22 July 2002 laying down the Sixth Community Environment Action Programme[(4)] , ▌ a common legal framework for achieving a sustainable use of pesticides ***should be established, taking account of precautionary and preventive approaches.***

(2) At present, this Directive should apply to pesticides which are plant protection products. However, it is anticipated that the scope of this Directive will be extended to cover biocidal products.

(3) The measures provided for in this Directive should be complementary to, and not affect, measures laid down in other related Community legislation, in particular Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds[(5)] , Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora[(6)] , Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy[(7)] , Regulation (EC) No 396/2005 of the European Parliament and of the Council of 23 February 2005 on maximum residue levels of pesticides in or on food and feed of plant and animal origin[(8)] and Council Regulation (EC) No …/... of ...[(9)] on the placing of plant protection products on the market[(10)] . These measures should also not prejudice voluntary measures in the context of Regulations for Structural Funds or according to the Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD)[(11)] .

(4) Economic instruments can play a crucial role in the achievement of objectives relating to the sustainable use of pesticides. The use of such instruments at the appropriate level should therefore be encouraged while stressing that individual Member States can decide on their use without prejudice to the applicability of the state aid rules.

(5) National Action Plans aimed at setting ***quantitative objectives*** , targets, measures, ***indicators*** and timetables to reduce risks and impacts of pesticide use on human health and the environment and at encouraging the development and introduction of Integrated Pest Management and of alternative approaches or techniques in order to reduce dependency on the use of pesticides should be used by Member States in order to facilitate the implementation of this Directive. ***Member States should monitor the use of plant protection products containing substances of particular concern and establish timetables and targets for the reduction of their use in particular when it is an appropriate means to achieve risk reduction targets.*** National Action Plans ***should*** be coordinated with implementation plans under other relevant Community legislation and could be used for grouping together objectives to be achieved under other Community legislation related to pesticides.

(6) The exchange of information on the objectives and actions Member States lay down in their National Action Plans is a very important element for achieving the objectives of this Directive. Therefore, it is appropriate to request Member States to report regularly to the Commission and to the other Member States, in particular on the implementation and results of their National Action Plans and on their experiences. ***On the basis of information transmitted by the Member States, the Commission should submit to the European Parliament and the Council relevant reports, accompanied, if necessary, with appropriate legislative proposals.***

(7) For the preparation and modification of National Action Plans, it is appropriate to provide for the application of Directive

2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment[(12)] .

(8) It is essential that Member States set up systems of both initial and additional training for distributors, advisors and professional users of pesticides and certification systems to record this whereby those who use or will use pesticides are fully aware of the potential risks to human health and the environment and of the appropriate measures to reduce those risks as much as possible. Training activities for professional users may be coordinated with those organised in the framework of Regulation (EC) No 1698/2005.

(9) The sales of pesticides, including Internet sales, are an important element in the distribution chain, where specific advice on safety instructions for human health and the environment should be given to the end user at the time of sale, in particular to professional users. For non-professional users who in general do not have the same education and training, recommendations should be given, in particular on safe handling and storage of pesticides as well as on disposal of the packaging.

(10) Considering the possible risks from the use of pesticides, the general public should be better informed on the overall impacts of the use of pesticides through awareness-raising campaigns, information passed on through retailers and other appropriate measures.

(11) Research programmes aiming to determine the impacts of pesticide use on human health and the environment including studies on high-risk groups should be promoted at European and national level.

(12) To the extent that the handling and application of pesticides require the setting of minimum health and safety requirements at the workplace, covering the risks arising from exposure of workers to such products, as well as general and specific preventive measures to reduce those risks, those measures are covered by Council Directive 98/24/EC of 7 April 1998 on the protection of the health and safety of workers from the risks related to chemical agents at work[(13)] and Directive 2004/37/EC of the European Parliament and of the Council of 29 April 2004 on the protection of workers from the risks related to their exposure to carcinogens or mutagens at work[(14)] .

(13) Since Directive 2006/42/EC of the European Parliament and of the Council of 17 May 2006 on machinery[(15)] will provide for rules on the placing on the market of pesticide application equipment ensuring that environmental requirements are met, it is appropriate, in order to minimise the adverse impacts of pesticides on human health and the environment caused by such equipment, to provide for systems for regular technical inspection of pesticide application equipment already in use. Member States should describe how they will ensure the implementation of those requirements in their National Action Plans.

(14) Aerial spraying of pesticides has the potential to cause significant adverse impacts on human health and the environment, in particular from spray drift. Therefore, aerial spraying should generally be prohibited with derogations possible where it represents clear advantages in terms of reduced impacts on human health and the environment in comparison with other spraying methods, or where there are no viable alternatives, ***provided that the best available technology to reduce drift is used.***

(15) The aquatic environment is especially sensitive to pesticides. It is therefore necessary for particular attention to be paid to avoid pollution of surface water and groundwater by taking appropriate measures such as, the establishment of buffer and safeguard zones or planting hedges along surface waters to reduce exposure of water bodies to spray drift, drain flow and run-off. The dimensions of buffer zones should depend in particular on soil characteristics, pesticide properties, as well as agricultural characteristics of the areas concerned. Use of pesticides in areas for the abstraction of drinking water, on or along transport routes, such as railway lines, or on sealed or very permeable surfaces can lead to higher risks of pollution of the aquatic environment. In such areas the pesticide use should, therefore, be reduced as far as possible, or eliminated, if appropriate.

(16) Use of pesticides can be particularly dangerous in very sensitive areas, such as Natura 2000 sites protected in accordance with Directives 79/409/EEC and 92/43/EEC. In other places such as public parks, sports ***and recreation*** grounds, ***school grounds and*** children's playgrounds, ***and in the vicinity of healthcare facilities,*** the risks from exposure to pesticides ▌ are high. ***In these areas, the use of pesticides should be minimised or prohibited. When pesticides are used, appropriate risk management measures should be established and low-risk pesticides as well as biological control measures should be considered in the first place.***

(17) Handling of pesticides, including storage, diluting and mixing the pesticides and cleaning of pesticide application equipment after use, and recovery and disposal of tank mixtures, empty packaging and remnants of pesticides are particularly prone to unwanted exposure of humans and the environment. Therefore, it is appropriate to provide for specific measures addressing those activities as a complement to the measures provided for under Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste[(16)] , and Council Directive 91/689/EEC of 12 December 1991 on hazardous waste[(17)] . Measures should also encompass non-professional users, since inappropriate handling is very likely to occur in this group of users due to their lack of knowledge.

(18) The application of general principles and crop and sector specific guidelines of Integrated Pest Management by all farmers

would result in a better targeted use of all available pest control measures, including pesticides. Therefore, it contributes to a further reduction of the risks to human health and the environment and the dependency on the use of pesticides. Member States should promote low pesticide-input pest management, in particular Integrated Pest Management, and establish the necessary conditions and measures for its implementation.

(19) Whereas, on the basis of Regulation (EC) No …/… *[on the placing on the market of plant protection products]* and of this Directive, implementation of the principles of Integrated Pest Management is obligatory and whereas the subsidiarity principle applies to the way the principles for Integrated Pest Management are implemented, Member States should describe how they ensure the implementation of the principles of Integrated Pest Management, ***with priority given wherever possible to non-chemical methods of plant protection and pest and crop management, in*** their National Action Plan.

(20) It is necessary to measure the progress achieved in the reduction of risks and adverse impacts from pesticide use for human health and the environment. Appropriate means are harmonised risk indicators that will be established at Community level. Member States should use those indicators for risk management at national level and for reporting purposes, while the Commission should calculate indicators to evaluate progress at Community level. Statistical data collected in accordance with Regulation (EC) No ... of the European Parliament and of the Council of ...[(18)] concerning statistics on plant protection products [(19)] should be used. Member States should be entitled to use, in addition to harmonised common indicators, their national indicators.

(21) Member States should determine penalties applicable to infringements of national provisions adopted pursuant to this Directive and ensure that they are implemented. The penalties should be effective, proportionate and dissuasive.

(22) Since the objective of this Directive, namely to protect human health and the environment from the possible risks associated with the use of pesticides, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve this objective.

(23) This Directive respects the fundamental rights and observes the principles recognised notably by the Charter of Fundamental Rights of the European Union. In particular, this seeks to promote the integration into Community policies of a high level of environmental protection in accordance with the principle of sustainable development as laid down in Article 37 of the Charter of Fundamental Rights of the European Union.

(24) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission.[(20)]

(25) In particular, the Commission should be empowered to establish and update the Annexes to this Directive. Since those measures are of general scope and are designed to amend non-essential elements of this Directive, *inter alia* by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.

(26) In accordance with point 34 of the Interinstitutional agreement on better law-making[(21)] , Member States are encouraged to draw up, for themselves and in the interests of the Community, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public,

HAVE ADOPTED THIS DIRECTIVE:

General Provisions

Article 1

Subject matter

This Directive establishes a framework to achieve a sustainable use of pesticides by reducing the risks and impacts of pesticide use on human health and the environment and promoting the use of Integrated Pest Management and of alternative approaches or techniques ***such as non-chemical alternatives to pesticides*** .

Article 2

Scope

b) exempt from inspection handheld pesticide application equipment or knapsack sprayers. ***In this case the Member States shall ensure that operators have been informed on the need to change regularly the accessories, on the specific risks linked to that equipment, and that operators are trained for the proper use of that application equipment in accordance with Article 5.***

4. The inspections shall verify that pesticide application equipment satisfies the relevant requirements listed in Annex II, in order to achieve a high level of protection for human health and the environment.

Pesticide application equipment complying with harmonised standards developed according to *Article 20(1)* shall be presumed to comply with the essential health and safety and environmental requirements.

5. Professional users shall conduct regular calibrations and technical checks of the pesticide application equipment according to the appropriate training received as provided for in Article 5.

6. Member States shall designate bodies responsible for implementing the inspection systems and inform the Commission thereof.

Each Member State shall establish certificate systems designed to allow the verification of inspections and recognise the certificates granted in other Member States following the requirements referred to in paragraph 4 and where the time period since the last inspection carried out in another Member State is equal to or shorter than the time period of the inspection interval applicable in its own territory.

Member States shall endeavour to recognise the certificates issued in other Member States provided that the inspection intervals referred to in paragraph 1 are complied with.

7. Measures designed to amend non-essential elements of this Directive relating to amending Annex II in order to take account of scientific and technical progress shall be adopted in accordance with the regulatory procedure with scrutiny referred to in *Article 21(2)* .

Specific Practices and Uses

Article 9

Aerial spraying

1. Member States shall ensure that aerial spraying is prohibited.

2. By way of derogation from paragraph 1 aerial spraying may only be allowed in special cases provided the following conditions are met:

a) there must be no viable alternatives, or there must be clear advantages in terms of reduced impacts on human health and the environment as compared with land-based application of pesticides;

b) the pesticides used must be explicitly approved for aerial spraying by the Member State following a specific assessment addressing risks from aerial spraying;

c) the operator carrying out the aerial spraying must hold a certificate as referred to in Article 5(2). During the transitional period where certification systems are not yet in place, Member States may accept other proof of competence;

d) the enterprise responsible for providing aerial spray applications shall be certified by a competent authority for authorising equipment and aircraft for aerial application of pesticides.

e) if the area to be sprayed is in close proximity to areas open to the public, specific risk management measures to ensure that there are no adverse effects on the health of bystanders shall be included in the approval. The area to be sprayed shall not be in close proximity to residential areas .

f) as from 2013, the aircraft shall be equipped with accessories that constitute the best available technology to reduce spray drift.

3. Member States shall designate the authorities competent for establishing the specific conditions by which aerial spraying may be carried out, ***for examining requests pursuant to paragraph 4*** and ***for making*** public information on crops, areas, circumstances and particular requirements for application including weather conditions where aerial spraying may be allowed.

In the approval the competent authorities shall specify the measures necessary for warning residents and bystanders ***in due time*** and to protect the environment in the vicinity of the area sprayed.

ANNEX 21

4. A professional user wishing to apply pesticides by aerial spraying shall submit a request ***for approval of an application plan*** to the competent authority ▌ accompanied by evidence to show that the conditions referred to in paragraphs 2 and 3 are fulfilled. ***The request for application of aerial spraying in accordance with the approved application plan shall be submitted in due time to the competent authority. It shall contain information about the provisional time of spraying and the amounts and the type of pesticides applied.***

Member States may provide that requests for ***applications of aerial spraying in accordance with an approved application plan for which no answer was received on the decision taken within the time period laid down by the competent authorities, shall be deemed to be approved.***

In particular, circumstances such as emergency or specific difficult situations, single requests for application of aerial spraying may also be submitted for approval. Where justified, competent authorities shall have a possibility to apply an accelerated procedure in order to verify that the conditions referred to in paragraphs 2 and 3 are fulfilled before the application of aerial spraying.

5. Member States shall ensure that the conditions referred to in paragraphs 2 and 3 are met by conducting appropriate monitoring.

6. The competent authorities shall keep records of the requests ***and approvals as referred to in*** paragraph 4 ***and shall make available to the public the relevant information contained therein such as the area to be sprayed, the provisional day and time of the spraying and the type of pesticide, in accordance with the applicable national or Community law*** .

Article 10

Information to the public

Member States may include in their National Action Plans provisions on informing persons who could be exposed to the spray drift.

Article 11

Specific measures to protect the aquatic environment and drinking water

1. Member States shall ensure that appropriate measures to protect the aquatic environment and drinking water supplies from the impact of pesticides are adopted. These measures shall support and be compatible with relevant provisions of Directive 2000/60/EC and Regulation (EC) No … *[on the placing on the market of plant protection products]* .

2. The measures provided in paragraph 1 shall include:

a) giving preference to pesticides that are not classified as dangerous for the aquatic environment pursuant to Directive 1999/45/EC ‖ nor containing priority hazardous substances as set in Article 16(3) of Directive 2000/60/EC;

b) giving preference to the most efficient application techniques such as the use of low-drift pesticide application equipment especially in vertical crops such as hops and those found in orchards and vineyards;

c) use of mitigation measures which minimise the risk of off-site pollution caused by spray drift, drain-flow and run-off. These shall include ▌ the establishment of appropriately-sized buffer zones for the protection of non-target aquatic organisms and safeguard zones for surface and groundwater used for the abstraction of drinking water, where pesticides must not be used or stored;

d) reducing as far as possible or ▌ eliminating applications on or along roads, railway lines, very permeable surfaces or other infrastructure close to surface water or groundwater or on sealed surfaces with a high risk of run-off into surface water or sewage systems.

Article 12

Reduction of pesticide use or risks in specific areas

Member States shall, having due regard ***for the*** necessary hygiene and public health requirements and biodiversity, or the results of relevant risk assessments, ensure that the use of pesticides is ***minimised or*** prohibited ***in these specific areas. Appropriate risk management measures shall be taken and the use of low-risk plant protection products as defined by Regulation (EC) No ... [concerning the placing of plant protection products on the market] and biological control measures shall be considered in the first place. The specific areas in question are:***

1) areas used by the general public or by vulnerable ***groups as defined by Article 3 of Regulation (EC) N° ... [concerning***

the placing of plant protection products on the market] , such as parks, public gardens, sports ***and recreation*** grounds, school grounds and playgrounds ***and in the close vicinity of healthcare facilities*** ;

2) protected areas as defined in Directive 2000/60/EC or other areas identified for the purposes of establishing the necessary conservation measures in accordance with the provisions of Directives 79/409/EEC and 92/43/EEC;

3) recently treated areas used by or accessible to agricultural workers.

Article 13

Handling and storage of pesticides and treatment of their packaging and remnants

1. Member States shall adopt the necessary measures to ensure that the following operations by professional users and where applicable by distributors do not endanger human health or the environment:

a) storage, handling, dilution and mixing of pesticides before application;

b) handling of packaging and remnants of pesticides;

c) disposal of tank mixtures remaining after application;

d) cleaning of the equipment used after application;

e) recovery or disposal of pesticide remnants and their packaging in accordance with Community legislation on waste.

2. Member States shall take all necessary measures regarding pesticides authorised for non-professional users to avoid dangerous handling operations. These measures may include use of pesticides of low toxicity, ready to use formulations and limits on sizes of containers or packaging.

3. Member States shall ensure that storage areas for pesticides for professional use are constructed in such a way as to prevent unwanted releases. Particular attention shall be paid to location, size and construction materials.

Article 14

Integrated Pest Management

1. Member States shall take ***all necessary*** measures to promote low pesticide-input pest management, giving ***wherever possible*** priority ▌ to non-chemical methods, ***so that professional users of pesticides switch*** to practices and products with the lowest risk to human health and the environment among those available for the same pest problem. Low pesticide-input pest management includes Integrated Pest Management as well as organic farming according to Council Regulation (EC) No 834/2007 of 28 June 2007 on organic production and labelling of organic products[(32)] .

2. Member States shall establish or support the establishment of necessary conditions for the implementation of Integrated Pest Management. In particular, they shall ensure that professional users have at their disposal information and tools for pest monitoring and decision making, as well as advisory services on integrated pest management.

3. By 30 June 2013, Member States shall report to the Commission on the implementation of paragraphs 1 and 2 and, in particular, whether the necessary conditions for implementation of integrated pest management are in place.

4. Member States shall describe in their National Action Plan referred to in Article 4 how they ensure that the general principles of Integrated Pest Management as set out in Annex III are implemented by all professional users by 1 January 2014.

Measures designed to amend non-essential elements of this Directive relating to amending Annex III in order to take account of scientific and technical progress shall be adopted in accordance with the regulatory procedure with scrutiny referred to in *Article 21(2)* .

5. Member States shall establish appropriate incentives to encourage professional users to implement crop or sector specific guidelines for integrated pest management on a voluntary basis. Public authorities and/or organisations representing particular professional users may draw up such guidelines. Member States shall refer to those guidelines that they consider pertinent and appropriate in their National Action Plans drawn up in accordance with Article 4.

Indicators, Reporting and Information Exchange

Article 15

Indicators

ANNEX 22

United Nations Office on Drugs and Crime,
Colombia Coca Cultivation Survey for 2004 (June 2005)

UNITED NATIONS
Office on Drugs and Crime

Government of Colombia

COLOMBIA

Coca Cultivation Survey



June 2005

Table 33: Monthly aerial spraying of coca cultivation 2004 (ha)

Department	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Arauca									2,590	2,746			**5,336**
Guaviare	5,447						320	5,478	6,193	6,713	3,865	2,875	**30,892**
Meta						384	50	911	1,048	404	445	646	**3,888**
Caqueta		1,337	215		596	181			709	3,586	5,782	3,870	**16,276**
Putumayo		274	3,471	4,773	2,215	902			584	2,297	1,546	1,461	**17,524**
Santander							1,562	201	91				**1,855**
Bolivar							582	4,024	1,851				**6,456**
Antioquia		729	3,837	1,121	2,999	1,698	481	184					**11,048**
N. Santander							3,273	2,018	394				**5,686**
Nariño	10,999	9,424	5,325	5,284	114							161	**31,307**
Cauca		828								85	899		**1,811**
Caldas							15	143	31				**190**
Vichada					143	1,303							**1,446**
Magdalena							1,632						**1,632**
Guajira							449						**449**
Vaupes											524	232	**756**
Total	**16,446**	**12,590**	**2,849**	**11,177**	**6,068**	**4,468**	**8,364**	**12,959**	**13,491**	**15,833**	**13,062**	**9,244**	**136,551**

Source: DIRAN

Table 34: Monthly aerial spraying of opium poppy cultivation 2004 (ha)

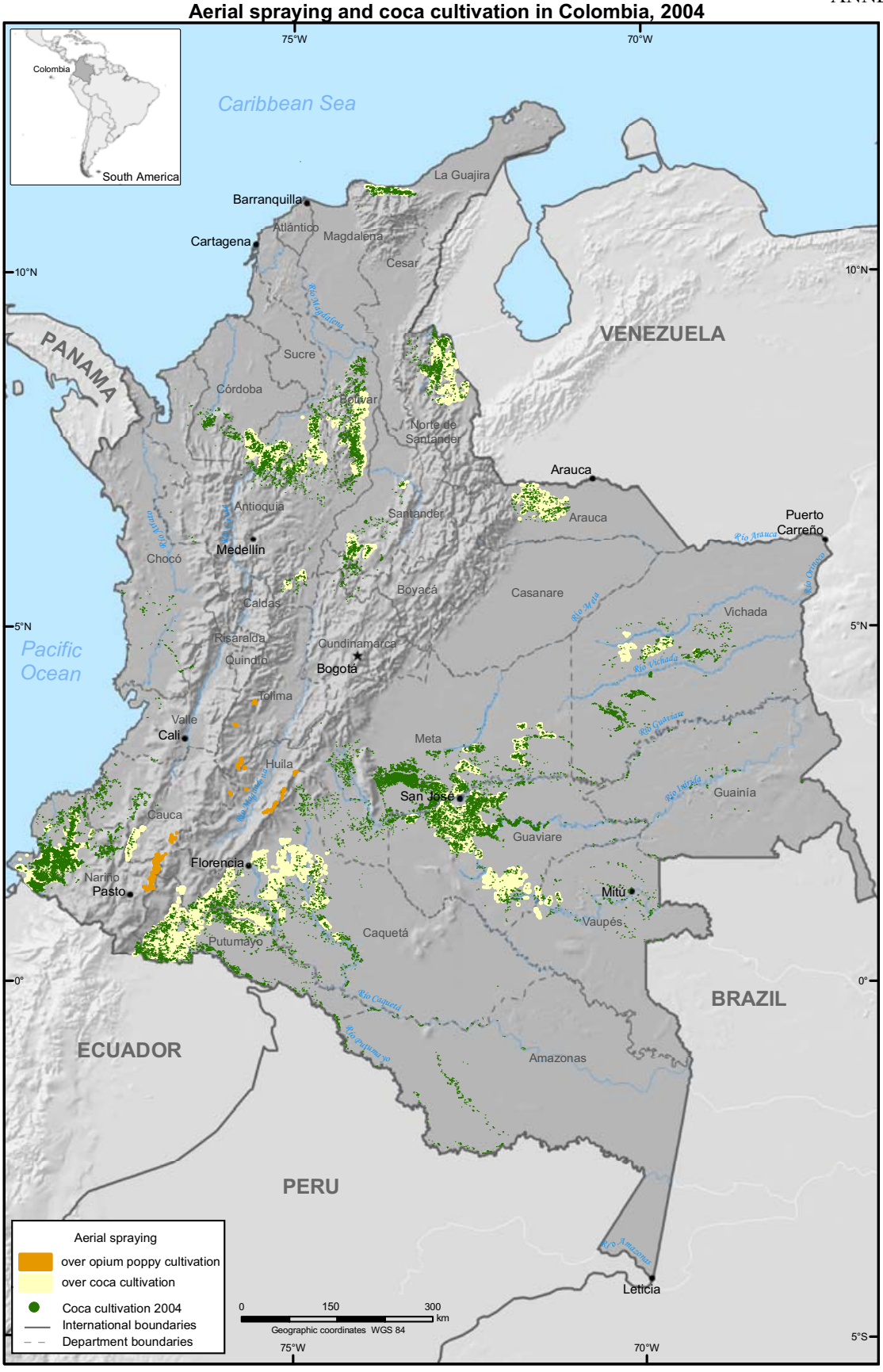
Department	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Tolima	69			58	149			427		107			**810**
Huila	91			146	135		238	206		87	8		**913**
Caqueta	39												**39**
Cesar				163			274			67			**505**
Guajira										18			**18**
Nariño	244	98											**342**
Cauca	139	12		197	62			25					**435**
Total	**582**	**110**	**-**	**565**	**346**	**-**	**513**	**658**	**-**	**279**	**8**	**-**	**3,061**

Source: DIRAN



Aerial spraying over coca fields. (Source: DIRAN)

Aerial spraying and coca cultivation in Colombia, 2004



Sources: for coca cultivation Government of Colombia, National monitoring system supported by UNODC; for aerial spraying DIRAN
The boundaries and names shown and the designations used in this map do not imply official endorsement or acceptance by the United Nations

ANNEX 23

United Nations Office on Drugs and Crime,
Colombia Coca Cultivation Survey for 2005 (June 2006)

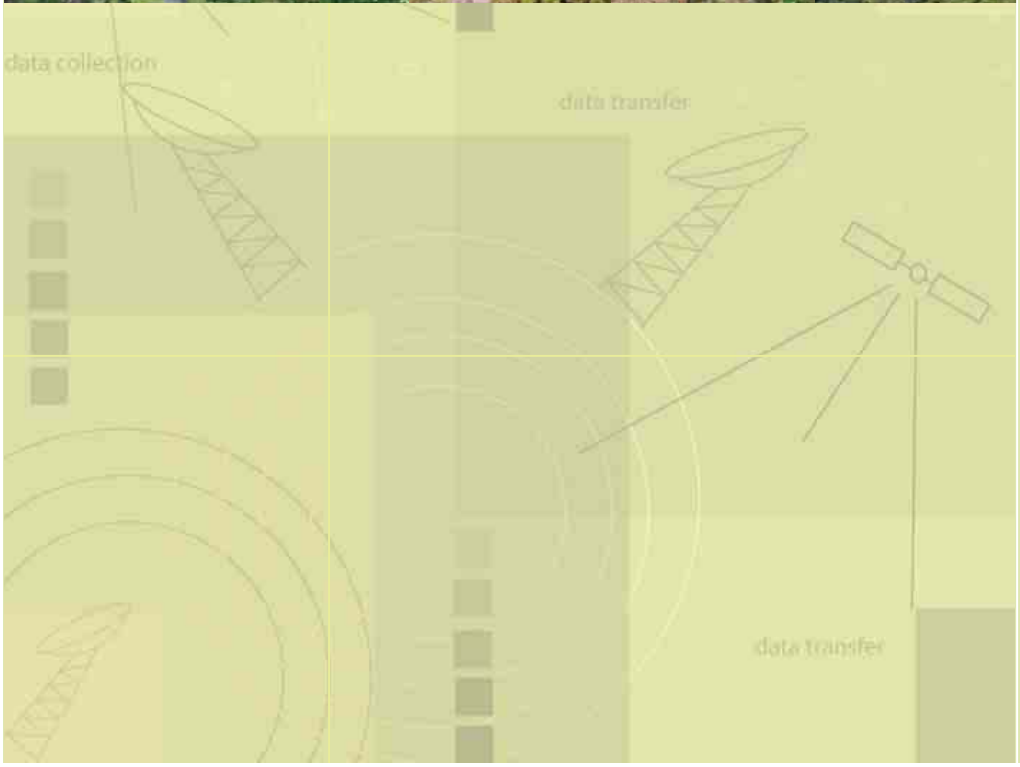
UNITED NATIONS
Office on Drugs and Crime

Government of Colombia

Colombia

Coca Cultivation Survey

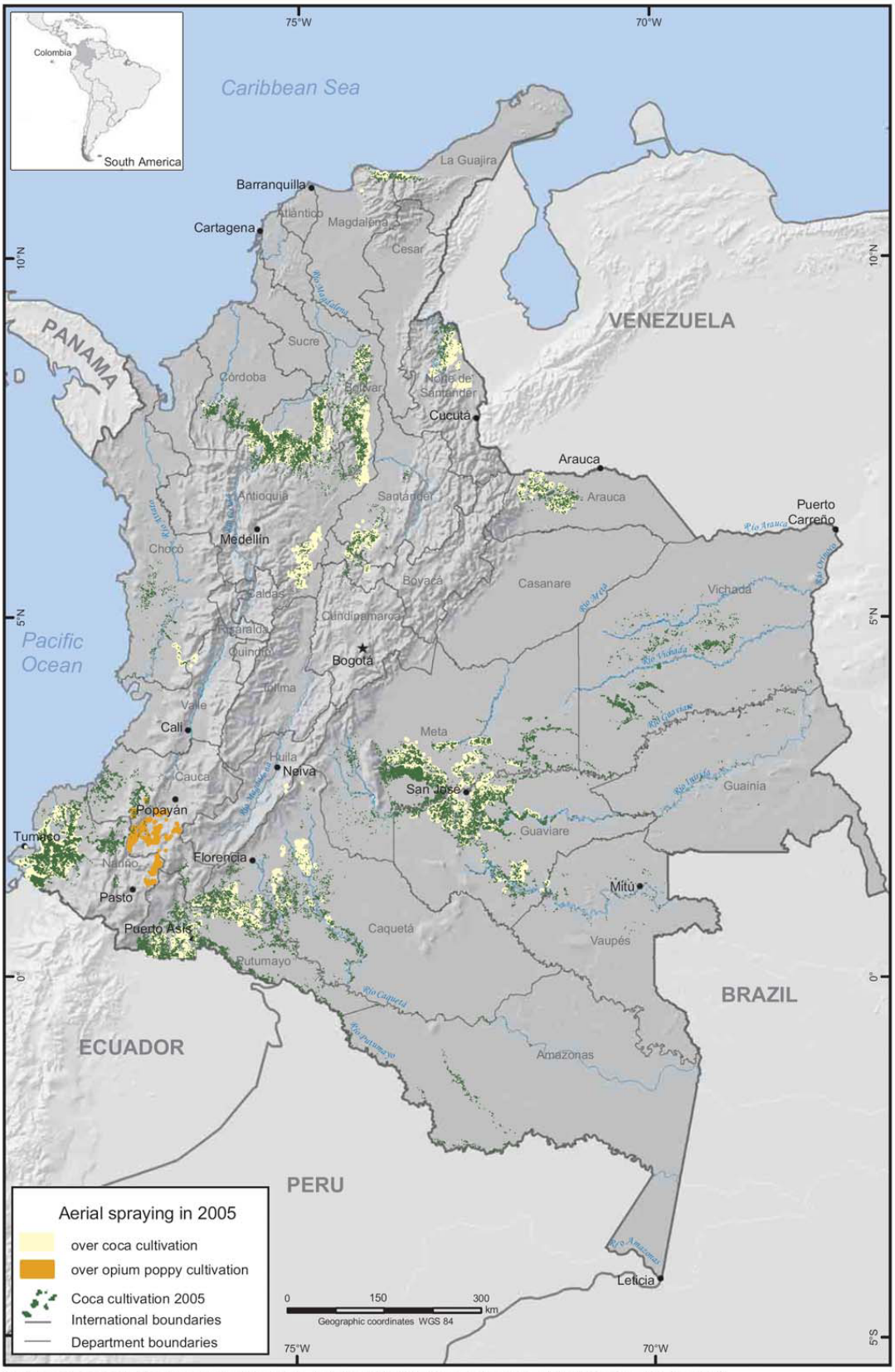




June 2006

ANNEX 23

Aerial spraying and coca cultivation in Colombia, 2005



Sources: for coca cultivation Government of Colombia, National monitoring system supported by UNODC; for aerial spraying DIRAN
The boundaries and names shown and the designations used in this map do not imply official endorsement or acceptance by the United Nations

ANNEX 24

United Nations Office on Drugs and Crime,
Colombia Coca Cultivation Survey for 2006 (June 2007)

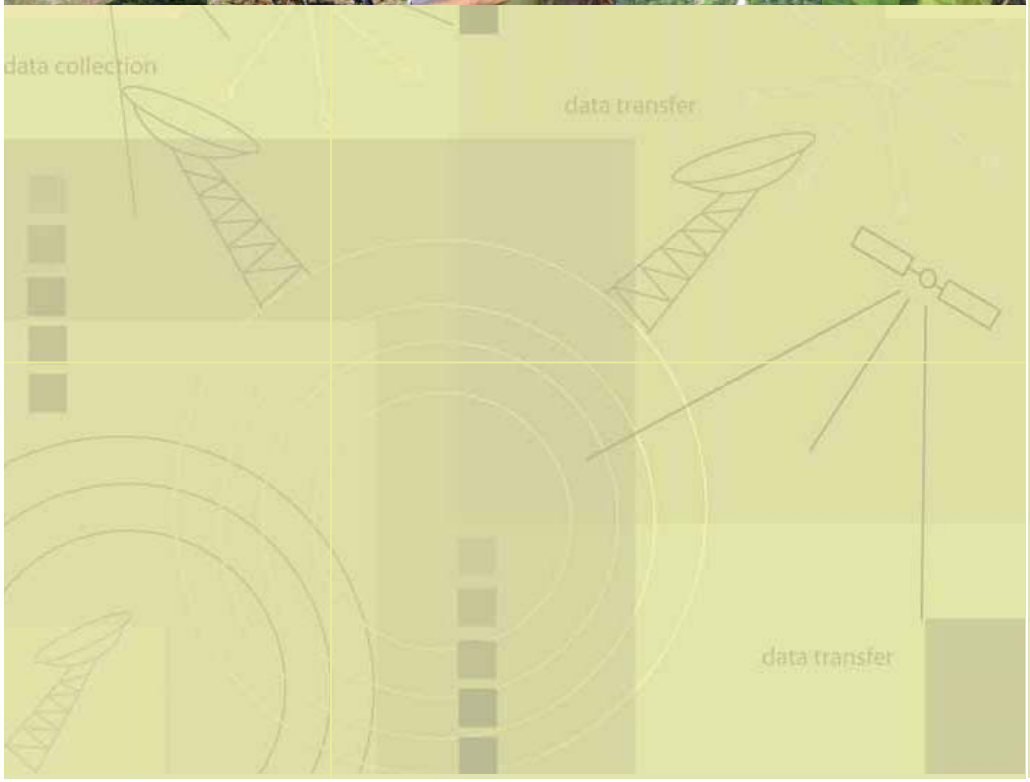
UNITED NATIONS
Office on Drugs and Crime

Government of Colombia

Colombia

Coca Cultivation Survey

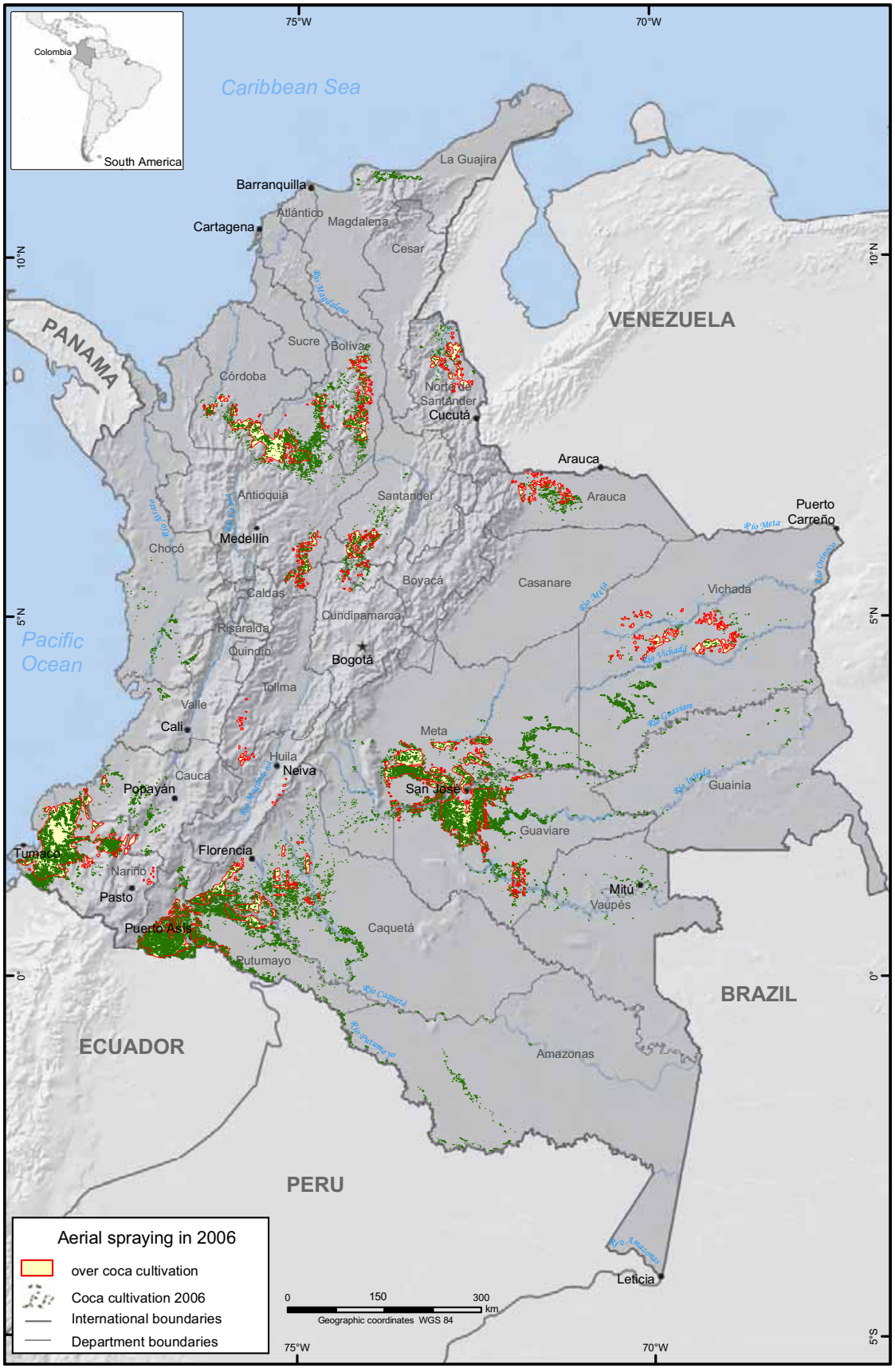




June 2007

ANNEX 24

Aerial spraying and coca cultivation in Colombia, 2006



Sources: for coca cultivation Government of Colombia, National monitoring system supported by UNODC; for aerial spraying DIRAN
The boundaries and names shown and the designations used in this map do not imply official endorsement or acceptance by the United Nations

ANNEX 25

United Nations Office on Drugs and Crime, *Coca Cultivation in the Andean Region, A Survey of Bolivia, Colombia and Peru*
(June 2008)

ANNEX 25

UNITED NATIONS
Office on Drugs and Crime

Government of Bolivia

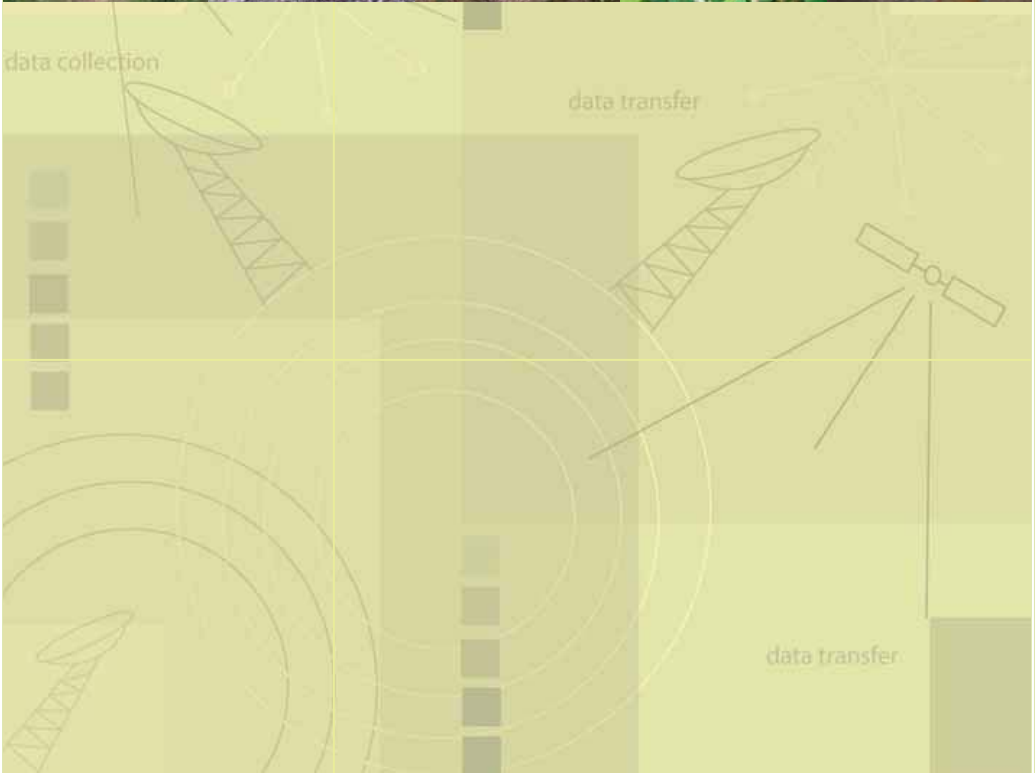
Government of Colombia

Government of Peru

COCA CULTIVATION IN THE ANDEAN REGION

A survey of Bolivia, Colombia and Peru





June 2008

ANNEX 25

FACT SHEET – Andean Coca Surveys for 2007[1]

	2006	Change on 2006	2007
Global coca cultivation	**156,900 ha**	**+16%**	**181,600 ha**
Colombia	78,000 ha	+27%	99,000 ha
Peru	51,400 ha	+4%	53,700 ha
Bolivia	27,500 ha	+5%	28,900 ha
Ecuador	< 100 ha		n/a
Global cocaine production	**984 mt**	**+1%**	**994 mt**
Colombia	610 mt	-2%	600 mt
Peru	280 mt	+4%	290 mt
Bolivia	94 mt	+11%	104 mt
Farm-gate value of coca cultivation	**US$ 1,159 million**	**+24%**	**US$ 1,440 million**
Colombia (coca products)	US$ 683 million	+37%	US$ 934 million
Peru (coca leaf)	US$ 285 million	+2%	US$ 292 million
Bolivia (coca leaf)	US$ 180 million	+19%	US$ 214 million
Farm-gate value of coca cultivation in % of GDP[2]			
Colombia	0.5%		0.5%
Peru	0.4%		0.4%
Bolivia	2.0%		2.4%
Average wholesale price of cocaine*			
Colombia (in main cities)	US$ 1,762/kg	+25%	US$ 2,198/kg
Peru (in producing regions)	US$ 825/kg	+3%	US$ 851/kg
Bolivia (in main cities)	US$ 1,870/kg	+6%	US$ 1,983/kg
Ecuador	US$ 4,000/kg	0%	US$ 4,000/kg
Reported eradication of coca bush*			
Colombia (aerial spraying)	172,026 ha	-11%	153,134 ha
(manual)	43,051 ha	+55%	66,805 ha
Peru (manual)	12,688 ha	-5%	12,072 ha
Bolivia (manual)	5,070 ha	+24%	6,269 ha
Ecuador (manual)	9 ha	+278%	36 ha[3]
Reported seizure of cocaine (base and HCl)*			
Colombia	177 mt	-9%	161 mt
Peru	20 mt	-30%	14 mt
Bolivia	14 mt	+29%	18 mt
Ecuador	34 mt	-26%	25 mt

** As reported by the respective Government.*

[1] For 2007, no survey was implemented in Ecuador.

[2] GDP of the respective year as reported by Governments.

[3] Source: INCSR 2008.

1 COCA CULTIVATION IN THE ANDEAN REGION

In 2007, the area under coca cultivation in Bolivia, Colombia and Peru amounted to 181,600 ha, 24,700 ha more than in 2006. This increase by 16% is mainly due to a significant increase in Colombia, and smaller increases in Peru and Bolivia. Despite these recent increases, the global area under coca cultivation continues to be lower than in the 1990s and 18% below the level recorded in 2000 (221,300 ha). Colombia represented 55% of the global area under coca bush, followed by Peru (30%) and Bolivia (16%).

There is no indication of large-scale coca cultivation outside the three main coca growing countries. Low levels of coca cultivation were identified in Ecuador in 2006. An assessment of coca cultivation in the Venezuela-Colombia border area of the same year also indicated marginal levels of coca cultivation in Venezuela.

Figure 1: Coca cultivation in the Andean region (ha), 1990 to 2007

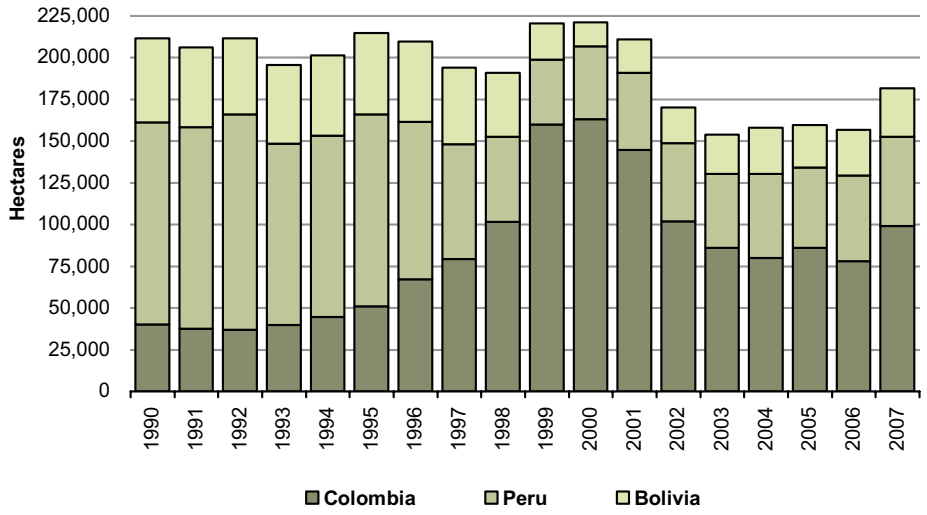


Table 1: Coca cultivation in the Andean region (ha), 1997 to 2007

	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	Change on 2006
Bolivia	45,800	38,000	21,800	14,600	19,900	21,600	23,600	27,700	25,400	27,500	28,900	+5%
Peru	68,800	51,000	38,700	43,400	46,200	46,700	44,200	50,300	48,200	51,400	53,700	+4%
Colombia	79,400	101,800	160,100	163,300	144,800	102,000	86,000	80,000	86,000	78,000	99,000	+27%
Total	194,000	190,800	220,600	221,300	210,900	170,300	153,800	158,000	159,600	156,900	181,600	+16%

Source: *United States Department of State* *National Monitoring Systems supported by UNODC*

In 2007, coca cultivation in Colombia amounted to 99,000 ha, an increase of 27% over 2006. This was mainly due to an increase in the Pacific and Central regions, which were responsible for over three quarters of the total area increase. Pacific contained the largest area under coca cultivation in 2007 with 25,960 ha, followed by Putumayo-Caquetá, Central and Meta-Guaviare. Together, these four regions represented 89% of the total area under coca cultivation in Colombia. Putumayo-Caquetá, once the largest coca region, had seen a considerable decrease in area under cultivation between 2000 and 2004. However, coca cultivation has gradually increased to almost the 2002 level. Meta-Guaviare, the second largest coca region in 2001, ranked only forth in 2007, having

2 FINDINGS

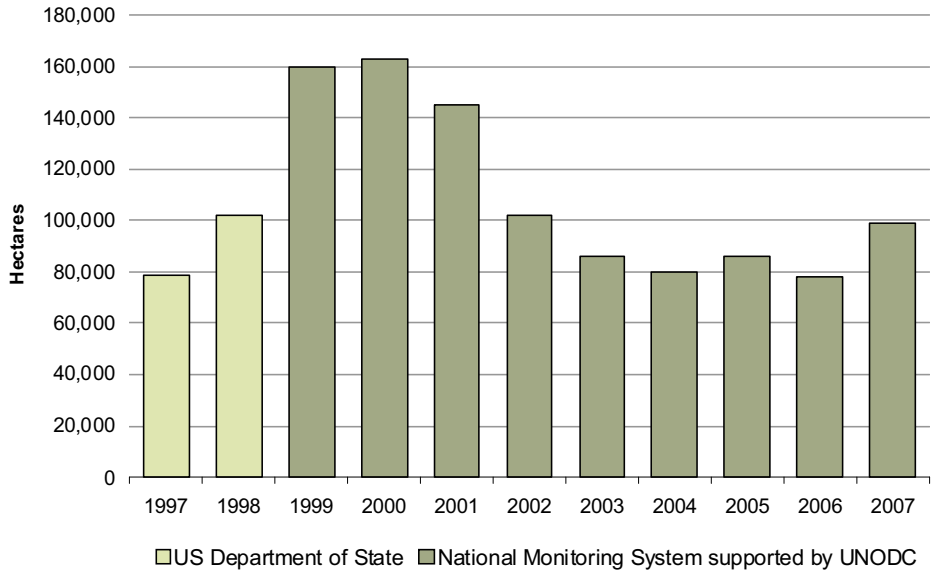
Coca cultivation

National cultivation

In 2007, the total area under coca cultivation in Colombia was estimated at 99,000 ha. This estimate represented a 27% increase in area under the illicit crop compared to 2006 (78,000 ha). This is the first significant increase in coca cultivation after four years of relatively stable cultivation.

Similar to the previous six surveys, the 2007 survey represents the situation as of the end of the year, (31 December 2007). As was the case last year, the survey covered the whole territory and detected coca cultivation in 23 out of 32 departments. In 2007, the area under coca cultivation represents 2% of the agricultural land in Colombia.

Figure 23: Coca cultivation in Colombia (ha), 1997–2007



The increase in area under coca cultivation between 2006 and 2007 took place despite heavy anti-drugs strategies implemented by the Government of Colombia. In 2007, aerial spraying of coca cultivation amounted to 153,000 ha and the Colombian Government also reported additional manual eradication of almost 67,000 ha.

Analysis of coca cultivation changes

Coca cultivation is very dynamic in Colombia. A range of variables can be associated with increases and decreases of the cultivation area over time. Factors such as favorable prices, pressure exerted by armed groups on farmers, the legal economy, and temporary crisis situations can all lead to an increase in the cultivated area. On the other hand, factors such as forced eradication, aerial spraying, improved security conditions, and plant diseases could reduce the cultivated area. This cultivation survey does not endeavor to assess how or to what extent these factors bring about change in the area under coca cultivation. Rather, it shows the situation on a given date of the year (31st of December).

Table 47: Aerial spraying of coca cultivation by department and year (ha), 1998-2007

Sources	Environmental Audit of the National Narcotics Bureau		Anti-narcotics Police Department							
Department	**1998**	**1999**	**2000**	**2001**	**2002**	**2003**	**2004**	**2005**	**2006**	**2007**
Nariño	-	-	6,442	8,216	17,962	36,910	31,307	57,630	59,865	36,275
Antioquia	-	-	6,259	-	3,321	9,835	11,048	16,833	18,022	27,058
Putumayo	3,949	4,980	13,508	32,506	71,891	8,342	17,524	11,763	26,491	26,766
Meta	5,920	2,296	1,345	3,251	1,496	6,973	3,888	14,453	25,915	15,527
Guaviare	37,081	17,376	8,241	7,477	7,207	37,493	30,892	11,865	14,714	10,950
Vichada	297	91	-	2,820	-	-	1,446	-	5,485	7,193
Bolívar	-	-	-	11,581	-	4,783	6,456	6,409	2,662	7,050
Córdoba	-	-	-	-	734	550	-	1,767	5,588	6,259
Caquetá	18,433	15,656	9,172	17,252	18,567	1,059	16,276	5,452	4,575	5,084
Cauca	-	2,713	2,950	741	-	1,308	1,811	3,292	1,536	3,557
Arauca	-	-	-	-	-	11,734	5,336	2,584	1,400	2,695
Norte Santander	-	-	9,584	10,308	9,186	13,822	5,686	899	1,687	2,683
Santander	-	-	470	-	-	5	1,855	2,042	2,146	1,754
Caldas	-	-	-	-	-	-	190	1,090	1,068	284
Chocó	-	-	-	-	-	-	-	425	-	
Valle	-	-	-	-	-	-	-	5	-	
La Guajira	-	-	-	-	-	-	449	572	-	-
Magdalena	-	-	-	-	-	-	1,632	383	-	-
Vaupés	349	-	-	-	-	-	756	340	-	-
Boyacá	-	-	102	-	-	-	-	925	831	-
Cundinamarca	-	-	-	-	-	-	-	43	41	-
Aerial Spraying	**66,029**	**43,112**	**58,073**	**94,152**	**130,364**	**132,814**	**136,552**	**138,772**	**172,026**	**153,135**
Net Culitavation (ha)	**102,000**	**160,000**	**163,000**	**145,000**	**102,000**	**86,000**	**80,000**	**86,000**	**78,000**	**99,000**

Source: DIRAN

Once coca fields are sprayed, it takes approximately six to eight months to recover productive crops when the bushes are pruned or replanted. However, when heavy rain occurs or bushes are washed by the farmers immediately after the spraying, the loss in coca leaf can be reduced and the crop recovers quickly. The sustainability of the eradication efforts depends to a large extent on the real alternatives open to the farmers and to the displacement of the cultivation into new and more remote areas of the country (balloon effect).

In order to neutralize or reduce the impact of the aerial spraying, several actions are taken by the farmers such as: to plant coca bushes interspersed with other plants, to apply protective substances on leaves, to wash the leaves, to reduce the size of the fields, to rotate coca crops with other licit crops in the same field, etc. The aerial spraying may cause the loss of one or more harvests, the reduction of productivity or the total loss of crops but it has become clear that the impact varies considerably from one region to another and that it is not the only cause for reduction or loss of coca crops.

In the department of Nariño, among the regions with the largest planted areas of coca cultivation in the country, was where the largest number of laboratories that process coca leaf derivatives (basic paste, cocaine base and cocaine) were detected and destroyed[15].

The highest number of cocaine laboratories ("cristalizaderos") were detected and destroyed in Narino, Norte de Santander, Meta and Valle.

Table 48: Illegal laboratories destroyed by department and by drug type, 2007

Department	Coca paste/base laboratories destroyed	Cocaine laboratories destroyed	Heroin laboratorios destroyed	Potassium permanganate laboratories destroyed	Total
Nariño	495	51	2	1	549
Norte de Santander	237	41			278
Meta	240	22		3	265
Putumayo	176	4			180
Cordoba	174	2			176
Antoquia	147	11			158
Vichada	148	2			150
Cauca	119	12			131
Valle	54	36			90
Bolivar	80				80
Guaviare	53				53
Magdalena	29	21			50
Amazonas	39				39
Caquetá	32				32
Boyaca	17	7			24
Cesar	6	17			23
Atlantico		21			21
Santander	10	11			21
Choco	13	2			15
Cundinamarca	7	3			10
Guainia	6				6
Arauca	5				5
Caldas	5				5
La Guajira	1	2			3
Risaralda	2				2
Total	**2,095**	**265**	**2**	**4**	**2,366**

Source: DNE

Data provided by the National Narcotics Bureau (DNE) show stable trend between 2006 and 2007 in terms of cocaine seizures (126,641 kg of reported seizures of cocaine in 2007 and 127,326 kg of reported seizures of cocaine in 2006). Most of the seizures happened in the Pacific region, in the departments of Choco, Valle, Nariño and Cuaca.

[15] *It is important to associate this with its strategic position due to its proximity to the Pacific Ocean.*

ANNEX 26

United Nations Office on Drugs and Crime, *World Drug Report* (2008)

UNITED NATIONS
Office on Drugs and Crime

2008 WORLD DRUG REPORT



Executive Summary

1. Trends in World Markets

1.1 Overview

The long-term stabilization of world drug markets continued into 2007, although notable exceptions occurred in some critical areas. As long term trends are obviously more meaningful and indicative than short term fluctuations, these limited reversals do not appear to negate the containment of the drug markets recorded since the late 1990s.

On the supply side, despite cultivation increases for both coca and opiates in 2007, the overall level of cultivation remained below the one recorded at the beginning of the UNGASS process (1998) and well below annual peaks in the last two decades (1991 for opium and 2000 for coca). In 2007, opium cultivation increased in both Afghanistan and Myanmar: coupled with higher yields, especially in southern Afghanistan, this generated much greater world output. With regard to cocaine, cultivation increased in Bolivia, Peru and especially Colombia, but yields declined, so production remained stable.

On the demand side, despite an apparent increase in the absolute number of cannabis, cocaine and opiates users, annual prevalence levels have remained stable in all drug markets. In other words, as the number of people who have used a particular drug at least once in the past 12 months has risen at about the same rate as population, drug consumption has remained stable in relative terms.

Given these yearly changes, the containment of world drug markets - recorded in these reports over the last few years - appears confirmed but under strain. Further consolidation, in 2008 and beyond, will mean tightening overall market containment and addressing slippage in areas where some expansion was registered in 2007. On the supply side this dictates two critical priorities: lowering opium poppy cultivation, especially in Afghanistan; and returning to the path of steadily declining coca cultivation registered in the first few years of this century.

On the demand side, more effectively containing the number of drug users, particularly in developing countries, has to become a critical priority; and more attention should be given to prevention, treatment and reducing the negative consequences of drug abuse. Rich countries' drugs markets fluctuate, mostly sideways and occasionally downwards: it is equally important to nurture and fortify the downward trend.

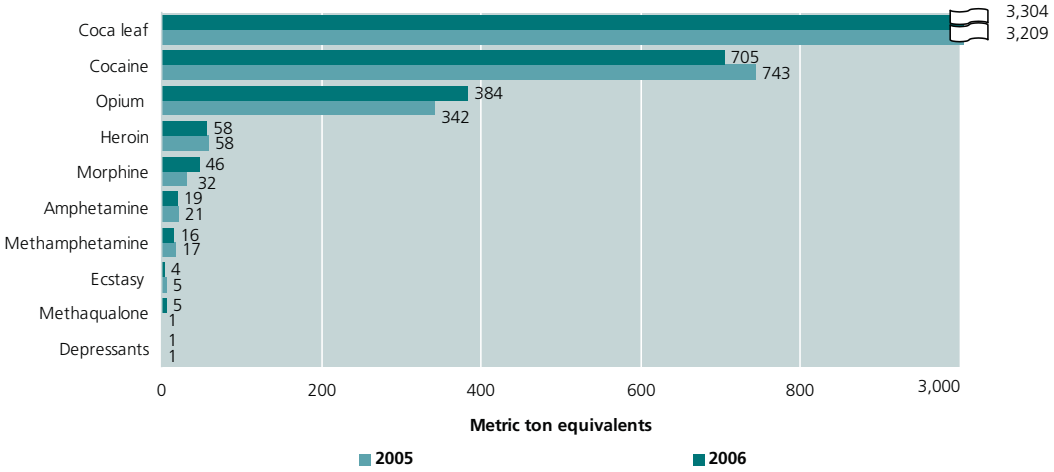
The containment of illicit drug use to less than 5% of the world population aged 15 to 64 (based on annual prevalence estimates, see Figure below) is a considerable achievement, documented historically in the pages of this report. The achievement is manifest on the two scales of time considered here: the century since the beginnings of the international drug control system (the subject of Chapter 2); or the decade since UNGASS in 1998.

In general, containment of the illicit drug problem to a relatively small fraction of the world population (aged 15 to 64) begins to look like an even more important achievement when considered in the light of three other estimates. First, problem drug use has been contained to a marginal fraction of the world population (0.6%) aged 15 to 64. Secondly, the consumption of tobacco, an addictive, psychoactive drug that is sold widely in open, albeit regulated markets, affects as much as 25% of the world adult population. Thirdly, mortality statistics show that illicit drugs take a small fraction of the lives claimed by tobacco (about 200,000 a year for illicit drugs versus about 5 million a year for tobacco).

Global trends in Drug Production

The total area under opium cultivation rose to 235,700 ha in 2007. This increase of 17% from 2006 puts global cultivation at just about the same level, though still marginally lower, than the 238,000 ha recorded in 1998. Although there was some growth in South-East Asian poppy cultivation, the global increase was almost entirely due to the 17% expansion of cultivation in Afghanistan, which is now 193,000 ha. With Afghanistan accounting for 82% of world opium cultivation, the proportion of South-East Asian expansion in overall cultivation was small. It is not unimportant, however, as it reverses six straight years of decline. Opium poppy cultivation in Myanmar increased 29%, from 21,500 ha in 2006 to 27,700 ha, in 2007. Afghanistan's higher yielding opium poppy led to a second year of global opium production increases. Opium production almost doubled between 2005 and 2007, reaching 8,870 mt in 2007, a level unprecedented in recent years. In 2007, Afghanistan alone accounted for over 92% of global opium production.

Global drug seizures (excluding cannabis): 2005 -2006



Coca cultivation increased in Colombia, Bolivia, and Peru in 2007. In Colombia, the area under cultivation expanded 27% to 99,000 ha. Increases for Bolivia and Peru were much smaller: 5% and 4% respectively. In total, coca cultivation increased 16% in 2007. Crops, however, were either not well tended or planted in poor yielding areas, as potential cocaine production only grew by 1% overall to 992 mt.

Estimates of cannabis herb production show a slight decline for the second straight year in 2006, seeming to reverse the upward trend that began in the early 1990s. Global cannabis herb production is now estimated to be 41,400 mt, down from 42,000 mt in 2005 and 45,000 in 2004. Cannabis yields continue to vary considerably and extremely high yielding hydroponically grown cannabis continues to be a cause for concern. Global cannabis resin production estimates fell around 10% from 6,600 mt in 2005 to 6,000 mt in 2006 (midpoint estimates). Global annual prevalence remained almost unchanged, going from 3.8% to 3.9% between 2005/06 and 2006/07.

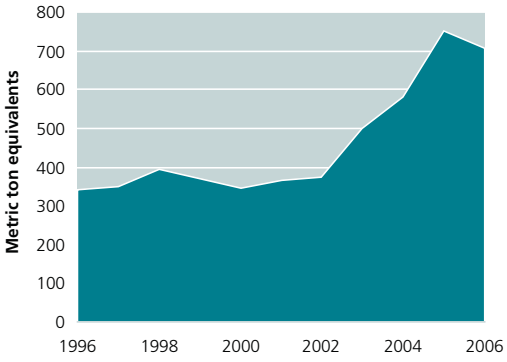
ATS production has remained in the range of 450-500 mt since in 2000. In 2007 global ATS production increased slightly to 494 mt. There has been a decline in ecstasy production (from 113 mt in 2005 to 103 mt in 2006), and a decrease in methamphetamine production (from 278 mt to 267 mt) which is again compensated by an increase in global amphetamine production (from 88 mt to 126 mt). The global annual prevalence rate remained 0.6% for amphetamines and 0.2% for ecstasy.

Global trends in Drug Trafficking

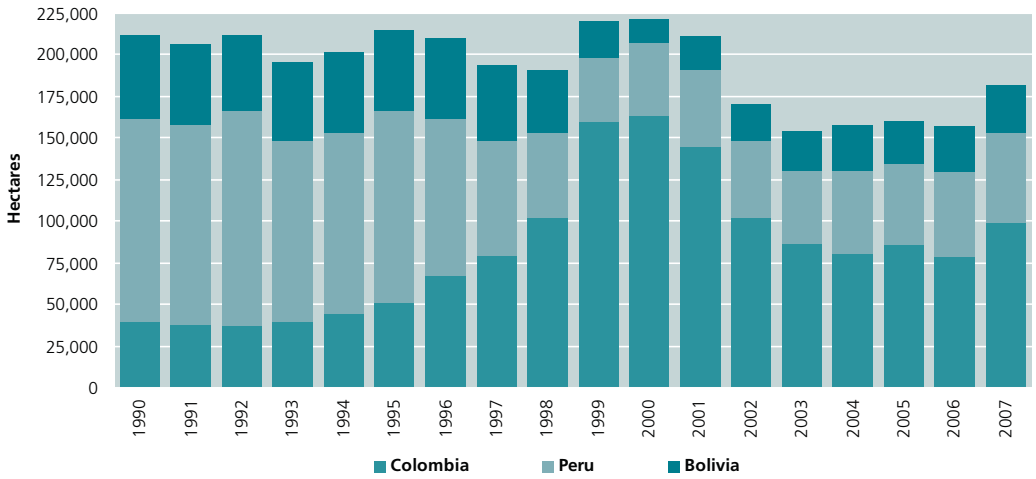
Only seizures for cannabis herb and the opiates grew year on year in 2006. The quantity of cannabis herb seized grew 12% to 5,200 mt in 2005, while the quantity of resin seizures declined by roughly 25% - most likely still reflecting a decline in production in Morocco. Cannabis herb seizures, however, were 27% down compared to 2004 (their post-1998 peak). A significant decline in cannabis plants seized was recorded in 2006.

Seizures of opium and morphine grew 10% and 31% respectively in 2006, reflecting continued production increases in Afghanistan. Heroin seizures, however, stabilized in 2006. Following five straight years of expansion, the quantity of cocaine seized fell by 5% in 2006. This is consistent with the stabilization of overall cocaine production in the 2004 to 2006 period. The quantities of amphetamine, methamphetamine and ecstasy seized were all down between 8% and 15% from 2005 to 2006. Overall ATS seizures increased by 2% reflecting seizures of non specified ATS, including "captagon" tablets.

Global cocaine seizures: 1996- 2006



Global coca cultivation (hectares), by region: 1990-2007



of 42.5 kg/ha. In Myanmar, opium production increased by 46 % to 460 mt, but was still 65% lower than it was in 1998.

Market consumption patterns appear to have remained largely the same – with the majority of opiates on the market in Europe, the Near and Middle East and Africa continuing to come from Afghanistan, those on the market in Asia sourced from Myanmar and those on the market in North and South America from Mexico and Colombia. The largest seizures of heroin and morphine occurred in Pakistan, Iran and Turkey with seizure levels increasing in 2006.

Opiates remain the main problem drug in terms of treatment. This, combined with the enormous increases in production we are now witnessing, necessitate the rigorous monitoring of demand in the opiate market. While demand has been relatively stable at the global level, the countries surrounding Afghanistan continue to experience increasing levels of use. Increases were also recorded for most countries of East and Southern Africa. Consumer markets in Western and Central Europe seem to be largely stable. Opiates use also remains stable in North America.

1.3 Coca/Cocaine Market

In 2007, the total area under coca cultivation in Bolivia, Colombia and Peru increased 16% to 181,600 ha. This was driven mainly by a 27% increase in Colombia, but cultivation also increased, at much lower rates, in Bolivia and Peru. Despite these recent increases, the global area under coca cultivation continues to be lower than in the 1990s and 18% below the level recorded in 2000 (221,300 ha). Colombia continued to account for the majority of cultivation. At 55 % of the global total, cultivation in Colombia rose to 99,000 ha in 2007. This was mainly due to an increase in the Pacific and Central regions, which were responsible for over three quarters of the total area increase. Pacific was the largest coca region in 2007 with 25,960 hectares.

In 2007, coca cultivation in Peru increased by 4 % to 53,700 ha. Despite having experienced the second consecutive increase in two years, coca cultivation remained well below the levels registered in the mid 1990s, when Peru was the world's largest cultivator of coca bush. Bolivia, the third largest producer of coca leaf, still trails behind Colombia and Peru. For a second consecutive year, coca cultivation increased in Bolivia, and amounted to 28,900 ha in 2007, an increase of 5%.

With less coca being grown in high yielding regions, there was a stabilisation in Colombian cocaine production despite the large increase in cultivation. Global potential cocaine production has remained stable over the last few years, reaching 994 mt in 2007, almost the same as in 2006 (984 mt). The majority of this, 600 mt in 2007, comes from Colombia.

The cocaine market is concentrated in the Americas, although increases in both distribution and use continue to occur in Western Europe and West Africa. The recent increases in both seizures and use in West Africa appear to reflect the development of new distribution routes through West Africa to Western Europe. This has led to a large increase in seizures in both regions. Consumption continues to increase both at destination and along the route. A contraction in the consumer markets of North America has led to a strong decline in seizures in North America. In the USA, the proportion of the workforce testing positive for cocaine declined by 19% in 2007, and by 36% since 1998. Cocaine use, however, continues to increase in South America.

ANNEX 27

United Nations,
The Northern Border of Ecuador: Evaluation and Recommendations of the Interagency Mission of the United Nations System in Ecuador
(July 2004)

United Nations System in Ecuador

THE NORTHERN BORDER OF ECUADOR: EVALUATION AND RECOMMENDATIONS OF THE INTERAGENCY MISSION OF THE UNITED NATIONS SYSTEM IN ECUADOR

Quito
July 2004

[PAGE 17]

A.2 Poverty and food security. The elimination of extreme poverty and hunger is the first of the Millennium Development Goals. In this vein, the situation of the region is worrying. In all of the provinces, with the exception of Carchi, there are cantons and precincts with levels of poverty above 90%, particularly in rural areas[8]. An in nearly all of these, the incidence of consumption poverty is higher than the national average (Table 1).

It must be taken into account that the greater part of the population (56%) of these provinces live in rural areas, as opposed to the percentage at the national level (39%). It is there that poverty strikes hardest.

Table 1. Poverty Indicators		
	Poverty by UBN (%)	Consumption Poverty (%)
National	61.3	68.8
Regional	60.6	72.68
Carchi	59.6	77.5
Esmeraldas	76.0	69.1
Imbabura	58.2	77.8
Sucumbios	81.7	66.3

Source: SIISE, version 3.5
*UBN: Unsatisfied Basic Needs, from the Population and Livelihood Census, 2001.
** Based on the Population and Livelihood Census, 1990.

[8] This is the case in the cantons of Eloy Alfaro (98%), Muisne (97%), Rioverde (98%) and San Lorenzo (98%) in Esmeraldas; in Lago Agrio (96%) and in Putumayo (96%) in Sucumbios and in Pimampiro (94%) in Imbabura. INEC, Census 2001.

The evaluation shows that, even though the northern provinces have climatic and natural conditions to produce sufficient food and cover the basic nutritional needs of the population, including satisfying internal demand[9], the malnutrition indices are alarming[10], especially among vulnerable groups. Malnutrition and food insecurity are affected by the low capacity to access productive resources or an income that allows them to have more nutritious food at their disposal.

A.3. Basic Social Services. The territorial isolation of the region is also vividly reflected in the basic social services deficit. In various and important indicators associated with this field, the region is under the national average. The population located in rural areas and some sectors of the cities on the border have great limitations in terms of their access to health, education, welfare, drinking water, and environmental cleanliness services. In the provinces studied, these limitations are due to one or a combination of the following causes: the nonexistence of proper infrastructure for service provision, the absence of a sufficient number of professionals, and the lack of proper access roads. The principal deficiencies are found in the provinces of Esmeraldas and Sucumbios, and in the rural districts of Carchi and Imbabura (see Annex 5). It must be added that the infrastructure for health and education in the northern area, which displays a level similar to the more precarious areas of the country, currently faces an additional demand because of the presence of immigrants who, for example, cross the border to receive free medical treatment because of the absence or distance of such services in their places of origin; or have emigrated to Ecuador and reside there illegally, or are refugees in the area.

Education. In the specific field of basic education (dealt with as a priority in the Millennium Development Goals framework), the entire region shows an average school attendance rate below the national average, which is 7.3 years[11]. In some districts of the area, the functional illiteracy rate of women exceeds or borders on 50%[12]. Here, as in the other social services, it can be seen that the debilities are a product of historical

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[9] Ramirez, Rene. 2002. Food Distribution and Nutritional Problems in Ecuador. SIISE, Quito.

[10] Chronic malnutrition at the rural level reaches 30.2% in Carchi, 23% in Esmeraldas, 52.7% in Imbabura, and 30.8% in Sucumbios. Larrea, Carlos et al. 2001. Equity from the Beginning: The Nutritional Situation of Ecuadorian Children.OPS-MSP.

[11] *Ibid.*

[12] In Eloy Alfaro it is 54.7%, in Muisne 53.1%, in Pimampiro 48.6%, in Urcuqual 49.8% in Otavalo 49.8%, in Cotacachi 52.7%, in Putumayo 50.7%.

abandonment, institutional de-coordination, and the climate of insecurity which permeates in the area. In this respect, attention is called to the provinces of Esmeraldas and Sucumbios, where there exist unused and abandoned schools exist. During the field visits, some family heads stated to the members of the mission that teachers refused to attend school due to the widespread insecurity.

Health. In terms of health services, human and service indicators, both for inpatient and outpatient service, show values of less than the national and regional averages. The situation in some cases is critical: the supply of beds (for patients) for each 1,000 inhabitants is half the national average, and in the case of Sucumbios it is one-third, with the aggravating factor that the majority of attention centers are private.

In some sectors of the region, the infant mortality rate (Goal No. 4 of the Millennium Declaration) has reached values higher than the national level: 54 for every 1,000 live births in Esmeraldas, 62 in Imbabura, and 72 in Carchi[13]. Regarding Millennium development goal 5 –maternal health-

the data show that in some provinces of the region the national maternal mortality rate is doubled[14], despite the fact that there is under-reporting, which prevents a complete view of the magnitude of the problem. The lack of resources and health centers to treat women is one of the principle causes of the aforementioned situation. On the other hand, in combating illnesses such as HIV/AIDS and malaria (Millennium development goal 6), the advances are minor, due to serious difficulties in the access to and quality of health services[15].

Regarding outpatient establishments, it is important to recognize the efforts made by the Ministry of Public Health and also the presence of the services provided by the Ecuadorian Social Security Institute. Greater coverage and physical access to facilities by patients in more critical situations would alleviate the suffering of those who inhabit the more distant communities. This includes working to improve roadways and means of land, water and air access.

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[13] SIISE, version 3.5, from the Population Census of 2001.
[14] According to the Health Boards of the Provincial Agencies of the Northern Border, May 2004.
[15] Esmeraldas has a high incidence of HIV/AIDS. MSP. 2003.

Some private initiatives (such as the palm heart cultivation businesses) and social projects of the Catholic Church make up for part of the deficiencies in health and education issues. Unfortunately, there are not enough indicators to confirm that these efforts can be sustainable over time, and, moreover, they are weakly articulated in national planning and policy.

Water and Sanitation. This is also a priority area in the Millennium Development Goal framework, linked to the sustainability of the environment (Goal 7). In the provinces of the northern border, the majority of populations have homes with serious deficits in their basic services (water and sanitation). In relation to the national average, which is 63.1% of the population with basic deficiencies, the districts closest to the border have numbers which vary between 80% and 100% of homes lack basic services[16]. The services which are lacking in the greatest frequency are those for the removal of sewage, water pipelines, and drainage systems for urban areas, and for the rural areas there is a lack of capacity to protect water sources, and in the availability of latrines.

The foregoing has caused an increase in preventable illnesses in the area, such as those caused by the contaminated water and lack of water. This is the case with leishmaniasis, parasitosis, and illnesses transmitted by vectors (malaria and dengue fever).

[16] SIISE, version 3.5, from the data obtained in the VI Census of the Population and V of Homes, 2001.

Sistema de las Naciones Unidas en el Ecuador

LA FRONTERA NORTE DEL ECUADOR: EVALUACION Y RECOMENDACIONES DE LA MISION INTERAGENCIAL DEL SISTEMA DE LAS NACIONES UNIDAS EN EL ECUADOR

Quito
Julio de 2004

vecindad con una zona de conflicto armado e importantes actividades ilícitas.

A. Exclusión e inequidad social. La exclusión y la inequidad se han manifestado de modo particularmente acentuado en las provincias de la frontera norte, tanto a nivel de marginación de servicios sociales básicos como de oportunidades de desarrollo económico para sus pobladores.

A.1. Aislamiento físico. En esta materia vale marcar una diferencia entre las provincias de Carchi e Imbabura, por un lado, y Esmeraldas y Sucumbíos, por otro. Estas últimas soportan una exclusión histórica del Estado, ya que se hallan en zonas de foresta tropical hasta hace poco inaccesibles, que sólo en las últimas décadas han podido integrarse de alguna manera al desarrollo del país. Esmeraldas, donde se asienta la gran mayoría de población afrodescendiente del país, en su parte septentrional estuvo incomunicada hasta hace 2 años, cuando se terminó de construir la carretera que une Ibarra (Imbabura) con San Lorenzo (Esmeraldas). En buena medida por ello, en esta zona de la provincia los niveles de pobreza y marginación de servicios básicos han sido dramáticos[7].

Sucumbíos, por su parte, permaneció aislada e inaccesible hasta la década de 1970. Prácticamente esta parte del país se empezó a colonizar con el inicio de la explotación petrolera (1972). En ese año se funda la ciudad de Lago Agrio (hoy Nueva Loja), capital de la provincia. En la actualidad, la provincia en su zona rural y en los poblados más alejados, presenta altos niveles de carencias en servicios básicos y capacidad de consumo (véase Anexo 5).

El desarrollo socioeconómico del Ecuador se ha dado históricamente en torno a dos polos urbanos (Quito y Guayaquil) y al eje vial de la carretera Panamericana, que atraviesa al país por el centro, de norte a sur, siguiendo la dirección de la Cordillera de los Andes. Las provincias de Esmeraldas y Sucumbíos están fuera de estos ejes. Su vegetación y exuberancia bio-ecológica generan de suyo dificultades para el acceso.

Imbabura y Carchi muestran en las zonas urbanas y en las inmediaciones de la carretera Panamericana un nivel de cobertura de servicios más adecuado. En las zonas rurales los niveles de pobreza y marginación son generalmente altos (véase Anexo 5).

A.2. Pobreza y seguridad alimentaria. La eliminación de la extrema pobreza y el hambre es el primero de los Objetivos de Desarrollo del Milenio. En ese rubro, la situación de la región es preocupante. En todas las provincias, con excepción de Carchi, existen cantones y parroquias con niveles de pobreza superiores al 90%, particularmente en el área rural[8]. Y en casi todas ellas la incidencia de la pobreza de consumo es superior al promedio nacional (Cuadro 1).

Debe tenerse en cuenta que la mayor parte de la población (56%) de estas provincias habita en la zona rural, al contrario de lo que sucede a nivel nacional (39%), y que es allí donde la pobreza golpea con más fuerza.

Cuadro 1. Indicadores sobre pobreza

	% Pobreza por NBI*	% Pobreza por consumo**
Nacional	61.3	68.8
Regional	60.6	72.68
Carchi	59.6	77.5
Esmeraldas	76.0	69.1
Imbabura	58.2	77.8
Sucumbíos	81.7	66.3

Fuente: SIISE, versión 3.5
* NBI: Necesidades básicas insatisfechas, a partir del Censo de Población y Vivienda 2001.
** Con base en el Censo de Población y Vivienda 1990.

[7] El cantón Rioverde, por ejemplo, presenta cifras de pobreza de mas del 97%, a nivel urbano y rural, según indicadores de necesidades básicas insatisfechas. SIISE 3.5.

[8] Es el caso de los cantones Eloy Alfaro (98%), Muisne (97%), Rioverde (98%) y San Lorenzo (98%), en Esmeraldas; de Lago Agrio (96%) y Putumayo (96%), en Sucumbíos; y de Pimampiro (94%), en Imbabura. INEC, Censo 2001

La evaluación muestra que, aun cuando las provincias del norte tienen las debidas condiciones climáticas y naturales para producir alimentos suficientes y así cubrir las necesidades nutricionales de su población, y abastecer incluso la demanda interna[9], los índices de desnutrición son alarmantes[10], especialmente en los grupos en situación de vulnerabilidad. La desnutrición e inseguridad alimentaria están mediatizadas por la poca capacidad de acceso a activos productivos o a un ingreso que les permita disponer de una canasta de alimentos más nutritiva.

A.3. Servicios sociales básicos. El secular aislamiento de la región también se refleja con nitidez en el déficit que presentan los servicios sociales básicos. En varios e importantes indicadores asociados a ese campo, la región se encuentra por debajo del promedio nacional. La población ubicada en el área rural y en algunos sectores de las ciudades de la frontera tienen grandes limitantes para su acceso a los servicios de salud, educación, vivienda, agua potable y saneamiento ambiental. En las provincias examinadas estas limitantes se deben a una o a la combinación de las siguientes causas: la inexistencia de infraestructura adecuada para la prestación del servicio, la ausencia de suficientes profesionales y la carencia de vías de acceso adecuadas. Las principales carencias se concentran en las provincias de Esmeraldas y Sucumbíos, y en los cantones rurales de Carchi e Imbabura (véase Anexo 5). Hay que agregar que la infraestructura de salud y educación en la zona norte, que muestra un nivel similar al de las áreas más precarias del país, enfrenta en la actualidad una demanda adicional fruto de la presencia de inmigrantes, quienes, por ejemplo, cruzan la frontera para recibir tratamiento médico gratuito ante la ausencia o lejanía de tales servicios en sus lugares de origen; o han emigrado a Ecuador y residen ilegalmente, o son refugiados en el área.

Educación. En el ámbito específico de la educación básica (contemplada de manera prioritaria en el marco de los Objetivos de Desarrollo del Milenio), se constata que toda la región muestra un promedio de escolaridad inferior a la media nacional, que es de 7.3 años[11]. En algunos cantones de la zona el analfabetismo funcional de las mujeres supera o bordea el 50%[12]. En éste, como en los demás servicios sociales, se puede apreciar que sus debilidades son producto del abandono histórico, la descoordinación institucional y el clima de inseguridad que se vive en la zona. A este respecto, llama la atención que en las provincias de Esmeraldas y Sucumbíos existan escuelas en desuso y abandono. En las visitas de campo, algunos padres de familia manifestaron a los miembros de la misión que los maestros se niegan a asistir a los planteles escolares debido a la inseguridad reinante.

Salud. En cuanto a los servicios de salud, los indicadores humanos y de servicios, tanto para internación como para atención ambulatoria muestran valores inferiores a los nacionales y regionales. La situación en algunos casos es crítica: la dotación de camas (para pacientes) por cada 1,000 habitantes es la mitad del promedio nacional, y en el caso de Sucumbíos, es la tercera parte, con el agravante que la mayoría de los centros de atención son privados.

En sectores de la región, la mortalidad infantil (Objetivo No. 4 de la Declaración del Milenio) ha alcanzado los valores más altos a nivel nacional: 54 por cada 1.000 nacidos vivos en Esmeraldas, 62 en Imbabura y 72 en Carchi[13]. En cuanto al Objetivo 5 del Milenio -salud materna-, los datos demuestran que algunas provincias de la región

[9] Ramírez, René. 2002. Distribución Alimentaria y Problemas Nutricionales en el Ecuador. SIISE, Quito.
[10] La desnutrición crónica a nivel rural llega al 30.2% en Carchi, 23% en Esmeraldas, 52.7% en Imbabura y 30.8% en Sucumbíos. Larrea, Carlos et al. 2001. Equidad desde el principio. Situación nutricional de los niños ecuatorianos. OPS-MSP.

[11] Idem.
[12] En Eloy Alfaro es de 54.7%, en Muisne 53.1%, en Pimampiro 48.6%, en Urcuquí 49.8%, en Otavalo 49.8, en Cotacachi 52.7%, en Putumayo 50.7%.
[13] SIISE, versión 3.5., a partir del Censo de Población de 2001.

duplican el promedio nacional de mortalidad materna[14], a pesar de que existe un subregistro, lo cual impide ver toda la magnitud del problema. La falta de recursos y la carencia de cetros de salud para atender a las mujeres es una de las principales causas de la situación descrita. Por otra parte, en el combate a enfermedades como el VIH/SIDA y la malaria (Objetivo 6 del Milenio), los avances son menores, debido a serias dificultades en el acceso y calidad de los servicios de salud[15].

En relación a establecimientos ambulatorios, es importante reconocer los esfuerzos que realiza el Ministerio de Salud Pública, y también la presencia de los servicios que suministra el Instituto Ecuatoriano de Seguridad Social. Una mayor cobertura y facilidades de acceso físico para los pacientes en situación más crítica aliviaría el sufrimiento de quienes habitan en las comunidades más apartadas. Esto implica trabajar para mejorar las vías y los medios de acceso terrestre, fluvial y aéreo.

Algunas iniciativas privadas (como la de las empresas palmicultoras) y las obras sociales de la Iglesia Católica compensan en parte las deficiencias en materia de salud y educación. Desafortunadamente, no hay suficientes elementos para afirmar que estos esfuerzos puedan ser sostenibles en el tiempo, y, por otro lado, se encuentran débilmente articulados con la planificación y las políticas nacionales.

Agua y saneamiento. Ésta es también un área prioritaria en el marco de los Objetivos de Desarrollo del Milenio, vinculada a la sostenibilidad del medioambiente (Objetivo 7). En las provincias de la frontera norte la mayoría de poblaciones tienen viviendas con altos déficit en sus servicios básicos (agua y saneamiento). Con relación al valor nacional que es de 63.1% de población con carencias básicas, los cantones más cercanos a la frontera tienen números que oscilan entre 80% y 100% de viviendas con déficit en sus servicios elementales[16]. Los servicios que faltan con mayor frecuencia son la eliminación de excretas, el agua entubada y sistemas de drenaje, para las áreas urbanas, y la capacidad de proteger las fuentes de agua y la disponibilidad de letrinas, para la zona rural.

Lo anterior ha provocado que en la zona se encuentren enfermedades prevenibles, por ejemplo las ocasionadas por la insalubridad y carencia de agua. Es el caso de la leshmaniasis, la parasitosis y aquellas transmitidas por vectores (paludismo y dengue).

A.4. Producción y empleo. Las actividades económicas de la región en gran parte son propias del sector rural: agricultura de auto subsistencia, pesca artesanal, producción agrícola y comercio de productos agrícolas. Adicionalmente, a nivel industrial figura la producción textil y artesanal en la provincia de Imbabura y, finalmente, la actividad turística. En la zona existe también presencia de importantes capitales inmersos en las actividades agroindustrial y agroforestal[17]. Por otra parte, en Sucumbíos (incluyendo el límite con la provincia de Orellana) se encuentran 131 pozos petroleros, que producen el mayor rubro de exportación del país. No deja de ser paradójico que estas actividades, que generan significativos ingresos, no incidan en una mejoría de las condiciones socioeconómicas de las población de estas provincias, donde ni siquiera se cuenta con un adecuado servicio público de electricidad.

Por otro lado, para todas las provincias de frontera la dolarización marcó un cambio diametral. Gran parte de sus ingresos dependían del mercado colombiano, tanto a nivel comercial como de turismo. Desde que se implementó la dolarización en el año 2000, cambió la dirección del comercio y el flujo de turismo; muchos productos ecuatorianos perdieron competitividad debido al muy limitado incremento de la producti-

[14] Según la Salas de Situación de Salud de las Direcciones Provinciales de Frontera Norte, mayo 2004.
[15] Esmeraldas tiene alta incidencia del VIH/SIDA. MSP, 2003.
[16] SIISE , versión 3.5, a partir de los datos obtenidos en el VI Censo de Población y V de Vivienda de 2001.
[17] Cultivo intensivo de flores, palma africana y especies maderables.

ANNEX 28

United Nations,
Report on the Preliminary Technical Mission of the United Nations (April 2006)

UNITED NATIONS

REPORT ON THE PRELIMINARY TECHNICAL MISSION OF THE UNITED NATIONS PROPOSING THAT STUDIES BE CONDUCTED ON THE IMPACT OF AERIAL SPRAYINGS AND COMPLEMENTARY ACTIONS ON THE NORTHERN BORDER OF ECUADOR

Quito, Ecuador, April 2006

[PAGE 5]
[…]

Options are presented regarding five studies required to scientifically clarify scenarios for eventual effects derived from the aerial spraying of the herbicide glyphosate – or its mixtures – on health (epidemiological cohort study regarding the rate of morbimortality in communities exposed and not exposed, and experimental toxicological studies on acute and sub-acute effects from the mixture used), the environment (study to evaluate the possible impact on biota of the water and soil) and agricultural production (study to evaluate the population dynamic of the pathogens in soils exposed and not exposed and a retrospective evaluation study regarding the behavior of agricultural production). To undertake these, it will be necessary to set the terms of reference for each, in close collaboration with actors involved in the problem.

[…]
[PAGE 14]
[…]

In the provinces of Esmeraldas and Sucumbíos, there are cantons and precincts with poverty levels above 90%, particularly in the rural area.

Sucumbíos has 81.7% poverty due to unmet basic needs, whereas Esmeraldas reaches 76%.[30]

Consumption poverty in Sucumbíos and Esmeraldas is above the national average and it is 61.9% and 66.3%, respectively. According to a Red Cross study 53% of the families in Sucumbíos have an income under $100, whereas only 1% has incomes over $800[31].

The population in Sucumbíos is engaged in subsistence agricultural production with the slash and burn method of forests (29%), extensive traditional stockbreeding (23%), trade (20%), poultry farming (8%), fishing (6%), and the rest in the sale of food, transportation and timber cutting.[32]

Both provinces, Sucumbíos and Esmeraldas, show similar characteristics of lack of progress (development) in relation to the rest of the country, and much of their economies are based on the extraction of natural resources, with a high environmental impact. In Sucumbíos, oil, the country's main export, is extracted which produced sales of $1,710 millions in 2001[33]. In Esmeraldas, timber extraction; the agribusiness of African palm oil, with about 10 companies that cover approximately 100,000 hectares of plantation; and, activities of the oil pipeline terminal are predominant.

Notwithstanding the important contribution to the national income of oil activities and palm oil and timber production, when key indicators associated with social and economic development, such as the Human Development Index (HDI) are reviewed, the inequalities are obviously seen. Being that the national HDI is 0.693, the Amazonia (which groups 6 provinces of a total of 22 in the country)[34] ranks 13 on the national scale, and Esmeraldas ranks 10. Likewise, when the Human Poverty Index (HPI) is analyzed, the Amazonia ranks 14 in the country and Esmeraldas 13.

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[30] INEC [National Institute of Statistics and Censuses]. Population and Housing Census, 2001.
[31] Ecuadorian Red Cross – American Red Cross. Northern Border Humanitarian Assistance Project. Socio-economic Study. Preliminary Results. Sucumbíos, 2006.
[32] Ecuadorian Red Cross – American Red Cross. Op. cit. 2006.
[33] UN. Ecuador. Common Country Assessment. Quito, 2003.
[34] Amazonia: set of provinces in Eastern Ecuador, Sucumbíos, Orellana, Napo, Pataza[sic], Morona and Zamora-Chinchipe).

[…]

[PAGE 24]

4.5-2. Food Security

Agricultural productivity is very low in the region, according to *campesinos* and agricultural technicians. There is a shortage of credit and technical assistance for farmers in the border cordon; in all of Sucumbios there are only 6 governmental agricultural technicians.

Many farms did not yield the expected fruits, leading to hunger among some families, especially within the indigenous population. The malnutrition indexes are high, especially among the most vulnerable populations. Chronic malnutrition at the rural level in Esmeraldas is 23%, and in Sucumbios it is 30.8%. Malnutrition and food insecurity are aggravated by the small capacity for access to productive activity, or an income which allows them to provide a more nutritious food basket[35].

In view of the situation, the government, along with international agencies, has established, among others, a school food program (School Food Program, PAE, with support from the Ministry of Education, PNUD and PMA). The PAE includes a school breakfast of a special nutritional shake and biscuits, and a lunch of rice, lentils and tuna, or another source of protein[36].

[35] UN. Ecuador. The Northern Border. Op. cit., 2004.
[36] The Mission was able to review the work of the School Food Program –PAE- in the communities of San Francisco 1 and 2, in Sucumbios, on 15 February 2006.

ORGANIZACIÓN DE LAS NACIONES UNIDAS

INFORME DE LA MISIÓN TÉCNICA PRELIMINAR DE NACIONES UNIDAS PARA PROPONER ESTUDIOS SOBRE EL IMPACTO DE LAS ASPERSIONES AÉREAS Y ACCIONES COMPLEMENTARIAS EN LA FRONTERA NORTE DE ECUADOR

Quito, Ecuador, abril de 2006

frontera norte, basadas en el análisis de contexto antes señalado, en las observaciones de las visitas de campo, y en la consideración de las distintas opiniones recolectadas. Las propuestas se hacen con espíritu constructivo, en el ánimo de fortalecer los procesos de paz, desarrollo y democracia, y para contribuir al entendimiento y compromiso binacional para la solución de los problemas de desarrollo y salud en la frontera norte de Ecuador.

Se presentan opciones sobre cinco estudios requeridos para clarificar científicamente el escenario de las eventuales afectaciones derivadas de las aspersiones aéreas del herbicida glifosato – o de sus mezclas - en la salud (estudio epidemiológico de cohorte retrospectivo sobre las tendencias de la morbi-mortalidad en comunidades expuestas y no expuestas y estudios toxicológicos experimentales de efectos agudos y subagudos de la mezcla utilizada), el ambiente (estudio para evaluar el posible impacto en la biota del agua y el suelo) y la producción agropecuaria (estudio para evaluar la dinámica poblacional de los patógenos en suelos expuestos y no expuestos y estudio de evaluación retrospectiva del comportamiento de la producción agropecuaria). Para llevarlos a cabo será necesario proceder a la elaboración de los términos de referencia de cada uno de ellos en estrecha colaboración con los actores involucrados en la problemática. Al estar suspendidas las fumigaciones no se recomienda estudios prospectivos.

La segunda parte de las propuestas sugeridas se refieren a proyectos de corto plazo orientados al mejoramiento de las condiciones básicas para el desarrollo socioeconómico integral de la región de la frontera norte, y comprenden propuestas en el ámbito socio-sanitario y ambiental-productivo. La Misión recomienda también el fortalecimiento de la vigilancia epidemiológica de las intoxicaciones por plaguicidas, que incluye acciones de monitoreo de la situación de salud de las poblaciones en relación al uso de agroquímicos.

denominador común la pobreza y la falta de oportunidades, y que además está en la vecindad de un conflicto armado de larga duración.

En las provincias de Esmeraldas y Sucumbíos existen cantones y parroquias con niveles de pobreza superior al 90%, particularmente en el área rural. Sucumbíos tiene 81.7% de pobreza por necesidades básicas insatisfechas, mientras que Esmeraldas alcanza el 76%[30].

La pobreza de consumo en Sucumbíos y Esmeraldas es superior al promedio nacional y es de 61.9% y 66.3%, respectivamente. Según un estudio de la Cruz Roja, el 53% de las familias de Sucumbíos tiene un ingreso menor de $100, mientras que sólo el 1% tiene ingresos mayores de $800[31].

La población en Sucumbíos se dedica a la producción agrícola de subsistencia con el método de corte y quema del bosque (29%), a la ganadería tradicional extensiva (23%), al comercio (20%), la avicultura (8%), la pesca (6%) y el resto a venta de comida, transporte y corte de maderas[32].

Las dos provincias, Sucumbíos y Esmeraldas, muestran características similares de atraso con relación al resto del país, y en buena parte basan sus economías en actividades extractivas de los recursos naturales, con un alto impacto ambiental. En Sucumbíos se extrae petróleo, la principal exportación del país, que produjo ventas por $ 1.710 millones en 2001[33]. En Esmeraldas predomina la extracción maderera, la agroindustria de aceite de palma africana con unas 10 empresas que cubren cerca de 100,000 hectáreas de plantación, y las actividades de la terminal del oleoducto.

A pesar de la importante contribución al ingreso nacional por petróleo y actividades de producción de aceite de palma y maderas, cuando se revisan los principales indicadores relacionados con el desarrollo social y económico, como el Índice de Desarrollo Humano (IDH), se evidencian las desigualdades. Siendo el IDH nacional de 0,693, la Amazonía (que agrupa a 6 provincias de un total de 22 del país)[34] ocupa la posición 13 a nivel nacional, y Esmeraldas la posición 10. De manera muy similar, cuando se examina el Índice de Pobreza Humana (IPH), la Amazonía ocupa la posición 14 en el país, y Esmeraldas la 13.

Desde el año 2000 el gobierno, a través de UDENOR, ha coordinado la ejecución de Proyectos financiado por la cooperación internacional (USAID y BID, en especial)[35]. Los principales resultados de estos proyectos se observan

[30] INEC. Censo de Población y Vivienda, 2001.
[31] Cruz Roja Ecuatoriana - American Red Cross. Proyecto de ayuda humanitaria Frontera Norte. Estudio Socioeconómico. Resultados preliminares. Sucumbíos, 2006.
[32] Cruz Roja Ecuatoriana - American Red Cross. Op.cit. 2006.
[33] ONU. Ecuador. Evaluación Común de País. Quito, 2003.
[34] Amazonía: conjunto de 6 provincias del este de Ecuador, Sucumbíos, Orellana, Napo, Pataza, Morona y Zamora-Chinchipe),
[35] ONU. La Frontera Norte...Op. Cit. 2004

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infecciones de piel y tejido subcutáneo, y otros síntomas relacionados con el abdomen y dolor abdominal.

El informe de la Dirección de Toxicología Humana del Instituto Nacional de Salud Pública de Québec, Canadá, Centro Colaborador de la OPS-OMS concluye que "aunque el conjunto de los datos relativos a la toxicidad subcrónica del ROUNDUP, de su materia activa y del surfactante, demuestra una buena inocuidad del producto, no podemos excluir la posibilidad de que las dosis de exposición a largo plazo sobrepasen las dosis de referencia y esto sobre todo si la frecuencia de las aplicaciones es importante"[67].

El estudio de evaluación de los efectos del PECIG[68] y de los cultivos ilícitos en la salud humana y en el medio ambiente de la CICAD-OEA concluye que "...el Glifosato y el Cosmo Flux tal y como se usan en el programa de erradicación de Colombia no presentaban un riesgo significativo para la salud humana. Las exposiciones estimadas del peor escenario de intoxicación aguda en humanos por todas las vías era menor que las dosis de importancia, aun para las respuestas crónicas"[69].

4.5-2. Seguridad alimentaria

La productividad agrícola es muy baja en la región, como lo testimonian campesinos y técnicos agrícolas. Hay escasez de crédito y de asistencia técnica para los agricultores del cordón fronterizo; en todo Sucumbíos hay solamente 6 técnicos agrícolas del Gobierno.

Muchas plantaciones no rinden los frutos esperados, de tal forma que existe hambre entre algunas familias, especialmente en la población indígena. Los índices de desnutrición son altos, especialmente en grupos los vulnerables. La desnutrición crónica a nivel rural en Esmeraldas es de 23% y en Sucumbíos del 30.8%. La desnutrición e inseguridad alimentaria se agravan por la poca capacidad de acceso a activos productivos o a un ingreso que les permita disponer de una canasta de alimentos más nutritivos[70].

En vista de esta situación el Gobierno, conjuntamente con agencias internacionales, ha instaurado, entre otros, un programa de alimentación escolar (Programa de Alimentación Escolar, PAE, con apoyo del Ministerio de Ecuación,

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[67] Samuel O. Riesgos inherentes a la utilización del ROUNDUP para el control de plantaciones de coca en Colombia. Québec. Canadá. 2001

[68] Programa de Erradicación de Cultivos Ilícitos Mediante Aspersión Aérea con Glifosato.

[69] Comisión Interamericana para el Control del Abuso de Drogas (CICAD), División de la Organización de los Estados Americanos (OEA). Estudio de los efectos del Programa de Erradicación de Cultivos Ilícitos mediante la aspersión aérea con el herbicida Glifosato (PECIG) y de los cultivos ilícitos en la salud humana y en el medio ambiente. Washington, D.C., 31 de marzo de 2005.

[70] ONU. Ecuador. La frontera norte... Op. cit., 2004.

el PNUD y el PMA). El PAE incluye un desayuno escolar de una colada nutricional especial y galletas mejoradas, y un almuerzo con arroz, lentejas, atún u otra fuente de proteína[71].

4.5-3.Probables - efectos en el ambiente y en la producción agropecuaria

4.5-3.1. Ambiente (biota)

Los informes de la población del cordón fronterizo obtenidos durante las visitas de campo y a través de los diversos documentos que se han elaborado desde los inicios de las fumigaciones aéreas[72], indican que existen problemas a nivel de los ecosistemas, los cuales pueden estar relacionados directa o indirectamente con las aspersiones aéreas. Sin embargo, hasta el presente no se han realizado estudios sistemáticos para evaluar los impactos en los componentes bióticos de las zonas afectadas.

Según los técnicos locales, organizaciones sociales y las comunidades, existe la sospecha de que la mezcla (glifosato más surfactantes) utilizada en las aspersiones aéreas pueda contener otras sustancias que incrementan sus efectos herbicidas sobre las plantas y, por tanto, tener mayor impacto a nivel de los diferentes componentes del ecosistema.[73],[74].

Las razones por lo que se sospecha que las fumigaciones aéreas están alterando la dinámica de los ecosistemas, son, entre otras, por que se ha encontrado que el glifosato más los surfactantes utilizados puede causar efectos tóxicos agudos en algunas especies, por ejemplo en las ranas y renacuajos. Los diferentes niveles de toxicidad que puede tener el glifosato dependen de los surfactantes que se le adiciona, los cuales hacen más tóxica la mezcla, especialmente para los peces[75] .

De igual manera, se informa que el glifosato afecta a las lombrices de tierra de todo tamaño, favorece el incremento de la población de hongos patógenos, interfiere en las relaciones micorrizales en el subsistema suelo, afecta a los

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[71] La Misión pudo constatar las acciones del programa Alimentación Escolar- PAE en las comunidades de San Francisco 1 y 2, en Sucumbíos, el 15 de febrero de 2006.
[72] Misión de Verificación. "Impactos en el Ecuador de las Fumigaciones realizadas en el Departamento de Putumayo dentro del Plan Colombia". Julio, 2003, e Informe Final de la Misión Internacional a la Frontera Ecuatoriana con Colombia. Junio, 2005.
[73] Nivia, Elsa. Efectos sobre la salud y el ambiente de herbicidas que contienen glifosato. Colombia, 1999.
[74] Anexo 2. Resumen de actividades realizadas por la Misión,13 al 24 de febrero.2006
[75] Cox, C. Herbicida Factsheet Glyphosate. Journal of Pesticide Reform, Volume 24, No 4, 2004.

ANNEX 29

UNHCR et al., *Impact of the Spraying Along the Colombian-Ecuadorian Border Area*
(February 2007)

IMPACTS OF THE SPRAYINGS ALONG THE COLOMBIAN-ECUADORIAN BORDER AREA

[…]
[PAGE 2]
[…]

Impact on Human Health:

With regard to the effects on human health, it was found that, after the sprayings, there were very similar reactions in both Colombian and Ecuadorian populations, especially regarding the children who exhibited symptoms very similar to those of the flu that resulted in general discomfort, headache, vomiting, and diarrhea. Similarly, other symptoms in common, in both border areas, were burning of the eyes, skin irritations and respiratory problems. These reactions were most clearly seen on the banks of the Putumayo River, where, in two Ecuadorian communities, Litoral and El Progreo [*sic*], children were unable to attend school because most of them suffered from some type of flu, which took approximately a week to cure, and which manifested itself a few days after the spraying.

In addition, 4 risks of miscarriage were registered on the banks of the Putumayo River, in the Piñuña area, after the sprayings[2].

[…]

[2] According to the information obtained, these complaints have already been referred to the Puerto Leguízamo Hospital.

IMPACTO DE LAS FUMIGACIONES EN LA ZONA DE FRONTERA COLOMBIA – ECUADOR

El río nos une, no nos divide…

Misión de observación realizada por la Pastoral Social de la Iglesia de San Miguel de Sucumbíos, ISAMIS – Ecuador y Pastoral Social de la Diócesis de Mocoa – Sibundoy – Putumayo[1].

El objetivo de la Misión era identificar los impactos en la comunidad de las fumigaciones aéreas, reanudadas por la Policía Nacional de Colombia en fecha 5 de diciembre de 2006 y que se prolongaron hasta la tercera semana de febrero de 2007 en zona fronteriza de Colombia y Ecuador, como parte de la estrategia gubernamental de erradicar los cultivos de uso ilícito en la región.

En la misión de observación que se llevó a cabo entre el 29 de enero y el 2 de febrero de 2007, las comunidades visitadas en la zona de frontera ecuatoriana fueron: Santa Marianita, Puerto Mestanza, Puerto Nuevo, Litoral, Yana Amarum y en la zona colombiana: Caucasia, El Jardín, Puerto Colombia, Puerto Ospina, Piñuña Blanco y Piñuña Negro.

Impacto sobre cultivos y fuentes de agua:

En el territorio colombiano se identificaron extensiones de tierra totalmente desérticas como consecuencia de las fumigaciones.

En la parte colombiana, si bien las aspersiones aéreas afectaron, en parte, a las plantaciones de coca, su uso indiscriminado, afectó a ríos, esteros y fuentes de agua, bien directamente por caída de la fumigación, bien indirectamente, ya que cuando caen las hojas secas de los árboles sobre los caños, única fuente de agua de la gran mayoría de las comunidades, éstas disuelven en el agua el producto con el que han sido fumigados, convirtiéndola en no apta para el consumo de las personas ni de animales, con el grave riesgo de envenenamiento en caso de consumo y la muerte cierta de las especies que habitan en el agua.

De la misma manera quedaron afectados gravemente muchos sembríos y zonas de selva, por cuanto se ha comprobado que la fumigación no ha discriminado zonas o sembríos; los cultivos de pan coger que sufrieron daños, principalmente la yuca, plátano, maíz, caña y frutales; los alimentos se observaban quemados en la parte de afuera y podridos en el interior. La situación generada por las fumigaciones en este aspecto coloca en serio riesgo la seguridad alimentaria de la población, ya comienzan a escasear los productos de consumo y los ingresos y

[1] La visita se realizó del 29 de enero al 2 de febrero de 2007 con el acompañamiento del Secretariado Nacional de Pastoral Social/Cáritas Colombia, Fundación Acción Contra el Hambre, ACNUR Putumayo y ACNUR Sucumbíos.

tras de ello disminuyen las reservas alimenticias propias y la capacidad de compra de alimentos.

Con respecto a la situación de Ecuador, aunque los efectos visibles son menores, se apreciaron cultivos cercanos a la rivera del río San Miguel afectados por la fumigación, como campos de maíz que no se han desarrollado y plantaciones de yuca, plátano, cacao o árboles frutales que se han ido secando; además los cursos de agua han quedado también afectados en una manera similar a las zonas de agua de Colombia.

***Impacto sobre la salud humana*:**

En cuanto a los efectos en la salud de las personas se identificó que, posteriormente a las fumigaciones, tanto en las poblaciones de Colombia como de Ecuador se produjeron reacciones muy similares, en especial la/os niña/os manifestaron síntomas muy similares a los de la gripe que les provocó malestar general, dolor de cabeza, vómito, diarrea; asimismo otros síntomas comunes en ambas zonas de frontera fueron ardor en los ojos, irritaciones en la piel y problemas en las vías respiratorias; éstas reacciones se evidenciaron de forma más clara en las riveras del río Putumayo, donde en dos comunidades ecuatorianas Litoral y El Progreo, los niños no pudieron asistir a la escuela por haber padecido casi todos ellos una especie de gripe que tardó en curar aproximadamente una semana, y que se manifestó pocos días después de haber pasado la fumigación.
Además, se registraron en las riveras del río Putumayo, zona del Piñuña, 4 amenazas de aborto tras las fumigaciones[2].

***Impacto sobre el desplazamiento*:**

Un aspecto importante que se ha observado con mayor preocupación en la zona colombiana son las operaciones militares con las cuales el Gobierno Nacional ha fortalecido las aspersiones aéreas, en este marco se han producido desplazamientos de familias hacia Ecuador en busca de refugio temporal o definitivamente.
Se reconoce un ciclo en el desplazamiento de población, el cual inicia con las operaciones del Ejército en territorios (realizando detenciones individuales y masivas, estigmatización de la población[3]) en los cuales hay presencia histórica de la guerrilla de las FARC-EP presentándose combates, hostigamientos, asesinatos, amenazas etc.; ante estas situaciones la población, por temor, cambia hacia un lugar seguro, en este caso Ecuador, y cuando la situación se "calma", (el Ejército suspende las operaciones), la población retorna y así sucesivamente: Uno de estos casos es el desplazamiento presentado el 23 de diciembre de 2006, en el cual 29 familias habitantes de Puerto Colombia salieron hacia la zona de Puerto Nuevo, Palma Seca o Yana Amarun – Ecuador, donde permanecieron

[2] Según la información obtenida estas quejas ya fueron remitidas al hospital de Puerto Leguízamo.
[3] Son señalados por miembros de las fuerzas militares como guerrilleros y/o colaboradores.

ANNEX 30

Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, Rodolfo Stavenhagen: Mission to Ecuador (25 April-4 May 2006), U.N. Doc. A/HRC/4/32/Add.2 (28 Dec. 2006)

UNITED
NATIONS

A

General Assembly

Distr.
GENERAL

A/HRC/4/32/Add.2
28 December 2006

ENGLISH
Original: SPANISH

HUMAN RIGHTS COUNCIL
Fourth session
Item 2 of the provisional agenda

IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251 OF 15 MARCH 2006 ENTITLED "HUMAN RIGHTS COUNCIL"

Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen

Addendum

MISSION TO ECUADOR*

* The summary of this report will be distributed in all official languages. The report itself, which is annexed to the summary, will be distributed in the original language and in English.

GE.07-10029 (E) 090207 150207

Summary

This report is submitted in accordance with Commission on Human Rights resolution 2001/57 and relates to the official visit paid to Ecuador from 24 April to 4 May 2006 by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people.

Ecuador is a multi-ethnic and multicultural country of approximately 12 million inhabitants. There are 14 officially recognized indigenous nationalities and the indigenous population ranges from less than 10 per cent to more than 30 per cent of the total population, according to various estimates. While the 1998 Ecuadorian Constitution embodies specific collective rights for indigenous peoples and nationalities in various fields, these have yet to be incorporated into the corresponding secondary legislation, making their full implementation difficult.

The Government has established a number of State institutions to address the situation of indigenous peoples, creating opportunities for indigenous people to participate in the implementation of government policies. Over the years, the State of Ecuador has recognized indigenous territories, particularly in the Amazon region, and has allowed communities to negotiate agreements governing the use of land and resources. Indigenous organizations have played an important role in negotiating forms of social and political participation with the Government that have transformed them into a national political force.

Despite recent economic growth, the various indigenous economic, social and human development indicators remain below the national average. In addition to accumulated problems of low income and unemployment in indigenous communities, the issue of emigration has arisen. To compound rural poverty, the situation of indigenous people living in urban areas, especially women, has become increasingly difficult. Indigenous communities are also concerned about the possible harmful effects of the outcome of negotiations on a free trade agreement.

Indigenous access to basic social services such as education and health is limited. Bilingual intercultural education and health programmes for indigenous people have not borne the expected fruit, principally owing to the shortfall in budgetary and technical resources.

The lack of compatible legislation in the area of indigenous justice leads to instances of conflict between indigenous jurisdiction and ordinary justice. The non-existence of an adequate ombudsman system, the lack of translators and the low level of intercultural sensitivity among justice practitioners worsen problems concerning indigenous people's access to the justice system.

The gradual destruction of the indigenous habitat and the impact of extractive activities on the environment and the rights of indigenous peoples, mainly in the areas around the Amazon, the northern border and the Pacific coast, have raised great concern. The situation of uncontacted or voluntarily isolated populations merits special attention, as they are adversely affected by the illegal felling of trees and other illicit activities in their territories. Oil exploration activities on indigenous lands have likewise triggered resistance in some communities, as in the case of the Sarayaku people in the Amazon region, who have sought protection through the inter-American human rights system. On the northern border with Colombia, concern has been voiced about the effects on the health of indigenous peoples of the aerial spraying of illicit crops and other acts originating from the internal conflict in Colombia.

Annex

REPORT OF THE SPECIAL RAPPORTEUR ON THE SITUATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS OF INDIGENOUS PEOPLE, RODOLFO STAVENHAGEN, ON HIS VISIT TO ECUADOR (25 APRIL-4 MAY 2006)

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Introduction and context

1. Pursuant to Commission on Human Rights resolution 2001/57 of 24 April 2001, which established his mandate, and at the invitation of the Government, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people visited Ecuador from 25 April to 4 May 2006.

2. The purpose of the visit was, among other things, to better gain an understanding of the situation of the human rights of the indigenous peoples of Ecuador through discussions with various social players on issues such as the effects of the 1998 Ecuadorian Constitution, which recognizes the collective rights of indigenous peoples; their access to justice; their rights to land and natural resources; the impact of the oil industry on their communities; and concerns over negotiations on the free trade agreement with the United States of America.

3. The Special Rapporteur would like to express his gratitude to the Government of Ecuador and, in particular, to the Council for the Development of Ecuadorian Nationalities and Peoples (CODENPE) and its head, Dr. Lourdes Tibán, for their invitation and cooperation, in addition to the many indigenous organizations for their hospitality and information. The Special Rapporteur also expresses his special gratitude to Dr. Diego Iturralde, of the Inter-American Institution for Human Rights, for his support throughout the mission.

I. PROGRAMME OF THE VISIT

4. The Special Rapporteur visited the provinces of Pichincha, Imbabura, Esmeraldas, Chimborazo and Pastaza, in addition to the capital, Quito. In the capital, he met representatives of the Ecuadorian Government, including the President and members of the Cabinet, in addition to representatives from indigenous institutions such as CODENPE, the Department of Bilingual Intercultural Education (DINEIB) and the Department of Health for Indigenous Peoples (DNSPI).

5. The Special Rapporteur also met the President of Congress; the President of the Supreme Court; the Constitutional Court; the Supreme Electoral Tribunal; the Office of the Ombudsman, and the National Department for the Indigenous Peoples (DINAPIN).

6. During his visit, the Special Rapporteur interviewed local authorities and representatives of indigenous nationalities and peoples, local indigenous community leaders and members of civil and grass-roots organizations. In Imbabura, he met leaders of the Kayambi, Kitu-kara, Otavalo, Natabuela and Caranqui peoples. In San Lorenzo (Esmeraldas), he met Awá, Chachi and Épera leaders. In Riobamba (Chimborazo) he met representatives from the Quechua, Waranka, Puruha, Kañari, Chibuleo, Saraguro, Panzaleo and Salasaka peoples and nationalities. In Pastaza, in the Amazon region, he visited the Sarayaku community; in Puyo he interviewed representatives from the Shuar, Achuar, Huaorani, Zápara, Shiwiar and Andoa communities from the provinces of Zamora Chinchip, Morona Santiago, Napo and Orellana. In the capital, he spoke with representatives from the Cofán, Quechua, Shuar, Siona and Secoya communities from the border with Colombia.

7. The Special Rapporteur also met representatives from the United Nations, international cooperation agencies, the business sector, non-governmental and civil society organizations and academic centres.

II. LEGAL AND INSTITUTIONAL FRAMEWORK

8. Ecuador is a multi-ethnic and multicultural country of approximately 12 million inhabitants. Its territory is often divided into four large regions: the Pacific Coastal region, the Sierra (highland or Andean region), Amazonia (the most extensive region, yet containing barely 5 per cent of the population) and the Galápagos archipelago.

9. In ethnic terms, there are mestizo, Afro-Ecuadorian, white and indigenous populations, the latter comprising 14 nationalities, of which the Quechua are the majority. No specific figures are available for the total indigenous and Afro-Ecuadorian population. Depending on the definition used, the census records the indigenous population at 6 per cent, whereas other sources put it at between 35 and 45 per cent of the total. In 9 of the country's 22 provinces, indigenous people make up the majority or a significant minority of the population, while approximately 12 per cent live in the highly urbanized cantons of Quito and Guayaquil.

10. The 1998 Ecuadorian Constitution defines the State as a multicultural and multi-ethnic body (art. 1). It lays down a significant range of specific collective rights for indigenous peoples and nationalities (arts. 83 and 84), and establishes various political and administrative bodies pertaining to such rights. Indigenous rights cover such areas as cultural diversity, identity, territories, indigenous jurisdiction, official use of languages, health, education, economic issues, cultural heritage, indigenous women, and indigenous border peoples.

11. Various laws and executive decrees govern the realization and protection of some of these rights, such as the Criminal Code (1971), the Decentralization and Social Participation Act (1997), the Agrarian Development Act (1997), the National Human Rights Plan (1999), and the Regulations on Consultation and Participation in Oil Activities (2002).

12. Progress has been made on lands and territories. The emergence on the social and political scene of the indigenous movement meant that, from 2002, the State began to return ancestral territories amounting to approximately 4 million hectares to the peoples of the coastal and Amazon regions, and began to recognize indigenous communal lands in the highland regions as inalienable, imprescriptible and not subject to seizure. The National Institute for Agrarian Development (INDA) is involved in allocating these lands, which are not put on the free land market, and form the material basis of support for indigenous peoples. Titling of collectively owned indigenous lands has permitted negotiations on the management of their natural resources.

13. Indigenous land ownership is not suitably covered by legislation. This therefore frustrates efforts by communities and peoples to exercise their autonomy and to participate fully in the management of natural resources in their territories. Various specialists believe that territorial reorganization is needed if this pending issue is to be resolved, while respecting the collective human rights of the indigenous peoples.

14. The Constitution includes some requests made during the long period of political organization of the Ecuadorian indigenous peoples, which first had repercussions at the national level during the 1990s. These requests were made, among others, by the Confederation of Indigenous Nationalities (CONAIE), the Federation of Peoples of the Quechua Nationality of Ecuador (ECUARUNARI), the National Confederation of Rural, Indigenous and Black Organizations (FENOCIN), the Ecuadorian Federation of Evangelical Indigenous People (FEINE), and the Ecuadorian Indigenous Federation (FEI). All these organizations, although not always acting in unison, share the main demands of Ecuador's indigenous peoples and communities.

15. In 1998, an Indigenous Peoples Commission was constituted in the National Congress. Since its creation this had been led by an indigenous woman deputy, which facilitated both the 1998 ratification of the 1989 International Labour Organization (ILO) Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, and the debate and subsequent approval of the Indigenous Nationalities and Peoples Act. In November 2002 after its adoption in full this was vetoed by the then president, Gustavo Noboa Bejarano.

16. The constitutional rights of indigenous peoples have not yet been incorporated into adequate secondary legislation, which has made the management of public policies, administration of justice and allocation of resources to these peoples difficult. They are urging action in this respect and have even suggested the need to convoke a new Constituent Assembly on this issue. An oft-cited example of the failure to develop proper legal arrangements is the lack of any regularization of indigenous land.

17. Recent advances include the establishment of CODENPE, a representative and participative authority, whose executive secretary holds the rank of a minister. The establishment of DNSPI, DINEIB, the Ecuadorian Nationalities and Peoples Information and Research System (SIDENPE), the Indigenous Peoples' Development Fund (FODEPI) and DINAPIN, as part of the Office of the Ombudsman, were also significant. As these institutions were established by presidential or ministerial decree, they are not subject to government legislation, which weakens their ability to shape policies and generate resources for indigenous peoples.

III. HUMAN RIGHTS SITUATION OF THE INDIGENOUS PEOPLES OF ECUADOR: PRIORITY AREAS

A. Impact of oil exploration on indigenous communities

18. In the 1970s, oil exploration became one of the main economic activities and sources of foreign exchange earnings in Ecuador. It is seen as an activity of national interest, through which the State can regularly meet its current and social expenditures. The oil areas, particularly in the Amazon region, were divided into "blocks" and subsequently granted in concession to various transnational companies. These activities have had considerable impact on the environment and living conditions of local peoples, particularly indigenous peoples, and provoked tension and conflict between some indigenous communities, oil companies and the State.

19. A case in point is the indigenous Quechua community of the Sarayaku, in the Amazonian province of Pastaza. In 1992, the ancestral lands of the Sarayaku in Pastaza were legally recognized by Ecuador. Four years later, the State signed a participation contract with the Argentine oil company Compañía General de Combustibles (CGC) for oil exploration and development of over 200,000 hectares in block 23, 65 per cent of which comprises the ancestral land of the Sarayaku and other indigenous communities. The Sarayaku community complain that the contract was signed without consultation or their prior informed consent and allege non-compliance with ILO Convention No. 169, ratified by Ecuador after the oil concession. The Sarayaku also complain of non-compliance with an agreement between CGC, Pastaza police and indigenous organizations to respect Sarayaku ancestral territories. They have protested and demanded that the company withdraw, although some members of other indigenous communities in Sarayaku territory wish to maintain a working relationship with the company that provides them with income and certain services. This has further divided the community.

20. Sarayaku members complain that oil activities have polluted their rivers and affected the health of the region's indigenous peoples. In 2003, community leaders complained of threats, the militarization of the area and the permanent harassment of their members by the CGC private security services. The case was brought to the attention of the Inter-American Commission on Human Rights, which asked the Government to take protective measures in favour of the community. As no satisfactory response was received from the State and the threats continued, the Commission then referred the case to the Inter-American Court of Human Rights, which ordered provisional measures to protect the community. These measures were upheld by the Court in its decision of June 2005, triggering a limited response from the Ecuadorian authorities.

21. Further complaints have been lodged concerning the placing of explosive charges in Sarayaku territory for seismic exploration by CGC and the destruction of holy places and plant life. The Government informed the Special Rapporteur that some of these complaints had been upheld, but that removing the explosive charges would be too expensive. In March 2006, in a new hearing before the Inter-American Commission for Human Rights, government representatives proposed an amicable settlement with the Sarayaku, consisting of the voluntary withdrawal of CGC from block 23, recognition of and public apologies for human rights violations committed against the Sarayaku, the establishment of an economic fund for the central-south Amazon region, and reforms to the prior consent rules relating to oil operations. The proposal has been rejected pending a ruling by the Commission or Court. The Ecuadorian Office of the Ombudsman, along with the Sarayaku community, has asked the State to comply with the measures laid down by the Commission and the Court, but the Special Rapporteur has been informed that this compliance is still pending.

22. Relations between the State, the oil companies (both national and transnational) and the indigenous communities are complex, requiring the full attention of the authorities and human rights defenders. A director of the State oil company assured the Special Rapporteur that, in some regions, the companies are careful to comply with the law, adjust their activities to environmental and human rights requirements, and maintain satisfactory relationships with the indigenous communities in which they are based. Nevertheless, he recognized that there are other regions in which this does not occur and where there is, in his own words, "chaotic chaos".

23. Although the State company, PetroEcuador, offers open participation to the indigenous population in oil exploration projects, indigenous organizations complain that this has not always occurred in practice. The Government also states that it played an important role in establishing tripartite dialogue between the companies, the State and the indigenous communities. In 2002, after almost 15 months of negotiations, a consensus was achieved by which the oil companies would carry out environmental impact studies before each contract. According to the Government, this has worked well. For the last seven years, oil companies have contributed to a fund for indigenous development; however, indigenous organizations complain of cronyism and paternalistic practices.

24. The Special Rapporteur received statements from many indigenous communities stressing the negative effects on them of failure by such oil companies as Texaco, Occidental, Chevron, Repsol, Shell and Perenco to comply with human rights and environmental protection rules. The Cofán complained about the degradation and pollution of their territories, the child health and nutrition problems caused by oil operations and the fact that the company is putting the communities affected under pressure. In Orellana, 12 Quechua communities pointed to pressure and violations of their collective human rights by an oil company in block 7. This is one of many cases demonstrating the incompatibility of the constitutional human rights of indigenous peoples and the oil concessions awarded by the State with the consent of some communities. With no State social policy, the local indigenous population must make do with the minimal social services provided by the oil companies, and they complain that their collective right to prior, free and informed consultation, as guaranteed in the Constitution, is not respected. In order to comply with the constitutional principle of consultation, the Consultation and Participation Act was adopted in 2002. Indigenous organizations have requested that it be repealed, owing to its limitations and problems, in addition to the numerous conflicts provoked by its application in various regions.

25. Among the complaints made to the Special Rapporteur, contracts between oil companies and the armed forces for the provision of security services are particularly significant, as members of the security services have been accused of committing abuse and acts of violence against local indigenous populations. The Minister of Defence assured the Special Rapporteur that these contracts had been suspended during his term in office. Complaints continue, however, of violations of the human rights of indigenous peoples, including acts of persecution, torture, degrading treatment and the illegal detention of opposition organization leaders. It is claimed that those responsible for these violations have gone unpunished.

B. Situation of indigenous peoples on the northern border

26. The border between Ecuador and Colombia includes a number of provinces on the coast, in the highlands and in Amazonia, inhabited by six indigenous peoples. The Awá and Quechua live in the highlands, while the Cofán, Siona, Secoya and Quechua live in Amazonia. The main problems for these communities arise from the implementation of Plan Colombia, drug trafficking, the expansion of palm and oil companies and the almost total lack of State institutions to protect and guarantee the rights of these indigenous peoples.

27. The Awá have been particularly affected. In all, 3,500 Awás live in Ecuador and 36,000 hectares of the approximately 120,000 hectares of their ancestral territories have been recognized. They live in extreme poverty in the border provinces of Carchi, Esmeraldas and

Imbabura. In addition to lacking such basic services as electricity, telephone, drinking water and sewerage, they face pressure from logging companies on their forests; gold-mining companies, which have had concessions since the 1980s; and oil palm companies. These activities are placing pressure on Awá resources, forcing many members of the community to emigrate to the cities.

28. Currently, the region's most serious problem is the aerial spraying of illicit crops on the Colombian side of the border, using glysophate mixed with other products, under the auspices of Plan Colombia (see the report of the Special Rapporteur on Colombia, E/CN.4/2005/88/Add.2). Damage caused by this practice has affected Ecuador, particularly its indigenous communities, and has given rise to complaints by the Ecuadorian Government and to bilateral negotiations between the two countries. International studies indicate that this practice has negative effects on environmental resources and the health of people and animals. Skin and other diseases, pollution of rivers and aquifers, and other damage have been reported. Furthermore, spraying has been seen as having serious effects on banana plantations and varieties of tuber crops, the local staple. In addition, the population often uses untreated water from the river forming the border between the two countries.

29. In some communities in Sucumbíos, short-cycle crops are disappearing fewer than 15 days after spraying. It is stated that, four years after the spraying began, some banana varieties, yucca, maize, fruit trees and aromatic herbs have disappeared, or their yield has considerably diminished. It is alleged that spraying has also had a negative effect on the health and food security of border populations by polluting their water sources and the aquatic life. Complaints have been made concerning large traces in many rivers, including the Mira river in the province of Esmeraldas, of the chemical product used for spraying in Colombia. The situation of these river communities is a matter of concern, as they use the river for domestic purposes.

30. Some indigenous communities in the area, including the Awá, are vulnerable and this is particularly worrying. In addition to the impact of spraying, they complain that their rights are being violated and that they are being subject to other abuses. They protest that their rights to food and health have been affected by spraying. Apparently, after spraying, the entire Sumac Pamba community was displaced and did not return to their place of origin. As a consequence, it appears that the local wildlife, which provided a source of daily consumption, both for households and for recreational purposes, has died and various activities have been affected, as polluted water cannot be used. Spraying appears to be destroying subsistence crops, diminishing soil quality and reducing yields, affecting both the economic activities of communities and the population's access to adequate food. In addition to the involuntary displacements caused by these activities, attention is also drawn to the lack of access to public services and the militarization of the border zone.

31. Another study carried out in Sucumbíos province on children and education in schools concluded that, since the implementation of Plan Colombia, there has been an upsurge in armed conflict and violence in the area and the number of children in schools has halved. Children go to school irregularly and teachers are working in precarious conditions as the area is one of high risk. Conditions were unsanitary in 45 per cent of schools visited. Children became ill for months on end owing to effects from spraying, and only half of the teachers had the necessary teaching materials.

32. The Ecuadorian Government is concerned by the effects of these practices on the indigenous border population and has begun bilateral negotiations with the Colombian Government. As a result, Colombia announced that it would suspend spraying, but this has not definitively ended the controversy. Ecuador has requested a complete halt to spraying in a 10-kilometre strip along the border. Although technical studies on the environmental impact of spraying glysophate have provided various results, the Special Rapporteur has received testimony from members of affected communities which clearly indicates that, in the long term, the effects of such practices are considerable.

33. An international study undertaken in March 2006 concludes: "a thoroughgoing investigation must urgently be launched into the situation affecting the Awá indigenous people, which is linked to the consequences of spraying, and to their abandonment by the State". The Awá request "a study to ascertain the effects of these spraying exercises, sufficient support for indigenous health, the creation of a health department for the Awá people, the denunciation of the land invasion, eviction and paramilitary threats made under the auspices of Plan Colombia and which affect Colombian and now Ecuadorian indigenous Awás, and the conduct of continuous immunization campaigns".

34. In 2004, a United Nations inter-agency mission was sent to study the problems affecting indigenous and non-indigenous populations on both sides of the border, leading to the preparation of a report for the Government of Ecuador. In 2005, on the basis of this report, the United Nations established an inter-agency programme for peace and development on the northern border, in order to provide a coordinated framework for action in both countries. In 2006, at the request of the Ecuadorian Government, a United Nations technical mission examined the issue of glysophate spraying. This report was sent to the Government of Colombia. According to the latest information, Colombia has ceased spraying within a 10-kilometre strip along the Ecuadorian border.

35. Drug trafficking has eroded the growing of environmentally friendly crops by introducing coca farming as an illicit survival strategy, i.e., traditional crops are giving way to the small-scale cultivation of coca. The number of refugees from conflict zones in Colombia has increased. According to testimony received, the presence of soldiers, guerrillas and drug traffickers in the area bordering Colombia has had a negative impact on the living conditions of indigenous border peoples. Acts of violence and harassment, particularly against women, are reported. The sexual exploitation of women, young girls and teenagers, and trafficking in persons has increased alarmingly. The number of indigenous Ecuadorian farmers, including minors, carrying out illicit planting on the Colombian side of the border has risen.

36. According to reports, the expansion of oil palm companies has progressively dispossessed communities of their ancestral territories. One study shows that these companies currently own 60,000 hectares, of which 30,000 are under crops, and there are plans to acquire in total 150,000 hectares, using loans from Brazil. The conflict in the zone specifically affects women and girls from communities living in areas directly and indirectly influenced by the northern border conflict.

C. Uncontacted peoples and threats to their existence

37. Since the 1960s, the Huaorani (or Huao Tiriro), living in the north-east of the Ecuadorian Amazon, have been subject to growing pressure from oil and logging companies on the one hand and, on the other, the Summer Institute of Linguistics (SIL), an evangelical organization from the United States of America. In its work SIL promoted the development of economic activities which took advantage of the region's natural resources. Over this period, the State has also encouraged colonization of the area by introducing oil activities and extending the agricultural border. These activities led to an increase in the non-indigenous population, which reached 80 per cent of the area's population at the end of the twentieth century. The swift transformation of this area took place against a backdrop of violent clashes with the native peoples of Amazonia, which steadily weakened the Huaorani family groups and led to the extermination of the Tetetes in the Aguarico-Napoas region.

38. In a few decades, these processes aggressively transformed the living conditions and culture of the Huaorani, who have only managed to rally in defence of their collective, territorial and economic rights in recent years. As a consequence of this pressure, some clans separated from the central Huaorani group and retreated deeper into the jungle, rejecting all contact with the outside world. Despite this, as a result of oil incursions in recent decades, some violent encounters have taken place, leading to deaths on both sides, but mainly among the Huaorani. In addition to oil incursions, the illegal felling of timber species of high commercial value has put further pressure on the territories of these peoples living in voluntary isolation, in addition to increasing inter-ethnic tension.

39. In the 1990s, the State recognized 700,000 hectares of Huaorani land. This was smaller than their traditional territory and included areas taken from the Yasuní National Park. The land allocated to the Huaorani also includes the Tagaeri-Taromenani people, who are uncontacted, semi-nomadic hunter-gatherers, today also known as peoples in voluntary isolation. In 1999, the Tagaeri-Taromenani area was decreed "untouchable land", a conservation area where all types of extractive activity are prohibited in perpetuity. The exact limits of this vast jungle region are yet to be determined and it is not clear how many people make up the indigenous population that this action aims to protect.

40. In this area, the State does not have a sufficient presence or a carefully designed management plan to be able to prevent the progressive incursion of Ecuadorian and Colombian settlers and illegal loggers, or resist the growth of what is termed international "eco-tourism". In recent decades, this situation has led to a series of violent clashes between the invaders (the majority of whom are also of Huaorani lineage) and the isolated groups. In 2003, a massacre left at least 20 dead and in April 2006, during the Special Rapporteur's visit, another violent encounter was reported, although the truth and scale of this has yet to be confirmed. The land allocated to the Tagaeri-Taromenani borders similar land in neighbouring Colombia and Peru. Only concerted international action in the long term will be able to save these peoples from extinction. At the time of finalizing this report, it has not been possible to obtain information to corroborate joint regional action in this field.

41. In 1995, the Organization of American States (OAS) suggested that the Government of Ecuador establish special measures to protect the Tagaeri-Taromenani. According to information received by the Special Rapporteur, by 2006, the State had not fully complied with these recommendations or with the provisions contained in the 1999 executive decree that established the "untouchable" area, in which all types of extractive activities were prohibited. The Government is continuing to award oil concessions in "untouchable" land and permit the removal of timber species prohibited under the Convention on the International Trade in Endangered Species of Wild Fauna and Flora (CITES).

D. Páramos (heathlands) in the Andean region

42. Indigenous communities in the Ecuadorian highlands have a long history of harmonious and productive integration with the environment. Their traditional forms of social and economic organization have enabled them to maintain a rural survival economy and satisfy their basic needs for many generations. This balance has been lost in recent decades because of growing environmental degradation and demographic pressure on natural resources.

43. Environmental degradation in the Andean heathlands has affected the living conditions of the Quechua highland communities, in addition to their water, soil and forests. The heathlands, a highly fragile ecosystem, are essential for water conservation, but are threatened, along with the communities who form part of this habitat. "Ecological corridors" have been created for conservation, with participation from non-governmental and private international organizations. Regional indigenous organizations are calling for the right to be full participants in conservation and of forestation projects, demanding that the Government enact the corresponding legislation. Depletion of water sources in the heathlands is a severe problem for communities. Environmental degradation is impoverishing communities and encouraging emigration in search of alternative opportunities.

E. Population movements and social and economic conditions

44. The growing population density and the decline in agricultural, forest and water resources in the highlands, in addition to poverty and unemployment, have spurred emigration by rural people to the cities, lowland areas, particularly in eastern Ecuador, and abroad. Many indigenous people emigrate to North America and Europe. Migration is one of the country's most serious issues, with major implications for human rights, as was noted in 2001 by the Special Rapporteur on the human rights of migrants. The situation of indigenous women is particularly distressing.

45. Various studies show that, recently, an increasing number of women are involved in international migration and more specifically, indigenous migration, as a response to, among other things, the incorporation of women into paid and productive activities. This trend has also been observed in Ecuador. Because of the discrimination from which they suffer, indigenous women migrants are particularly vulnerable, becoming easy prey for trafficking and slavery networks, in addition to numerous abuses in the workplace.

46. In 2003, the Committee on the Elimination of Racial Discrimination concluded that, despite legal and constitutional guarantees, indigenous and Afro-Ecuadorian peoples continued to suffer from discrimination, and also drew attention to double discrimination against women.

In 2004, the Committee on Economic, Social and Cultural Rights expressed its concern that the Government's efforts to improve health and safety in the workplace were insufficient, particularly in the mining sector and on banana plantations. The Special Rapporteur was able to note in situ that these continue to be problems requiring immediate governmental action.

47. Poor working conditions on farms growing flowers for export represent another common problem. Indigenous people make up the majority of workers and suffer health problems due to the lack of hygiene in the workplace. Thousands of children and young people are exploited without State supervision and are thus particularly vulnerable. In Cotopaxi, for example, there are farms where conditions are reminiscent of the worst periods of slavery, as workers are often paid a mere two or three dollars per day, for 20 hours' work.

48. The Épera, Ecuador's smallest ethnic group, live in Esmeraldas province and their current settlement dates back to the 1950s. They have complained of a lack of land, as their 400 members possess only 330 hectares. Their principal water source, the Cayapa river, is polluted and drying up. As a consequence, inhabitants of the community are suffering from various illnesses. They also report a major shortfall in basic social services. Although they received land, there have been no development projects to improve their situation and many community members are emigrating in search of other opportunities. Furthermore, other Épera are arriving from neighbouring Colombia, fleeing the armed conflict and placing further strain on the already precarious local family economy.

49. The Tsa'chila in Santo Domingo de los Colorados complain of the systematic loss of land, pollution of rivers and soil, a housing shortage, lack of bilingual intercultural education, a deficient health service and low health indicators, insufficient State support for development programmes and scanty municipal budgets. They ask that the "development with identity" concept be promoted, to provide opportunities to communities and slow the migratory flow of their members.

50. The canton of Guamote, established in 1944, now has 35,600 inhabitants, of which 90 per cent are indigenous. It has one of the highest illiteracy rates due to the lack of resources at the provincial and national levels. In terms of health, the child mortality rate is high and there are serious health problems. The people lack adequate technical assistance for production, and all of this has led to growing emigration.

51. Confronted with such problems, the State has promoted, among other measures, a development project for the indigenous and black peoples of Ecuador (PRODEPINE). Its first phase lasted for four years (1998-2002), with an investment of $50 million from the United States of America. The World Bank and the International Fund for Agricultural Development (IFAD), indigenous and black organizations, and the national Government were all involved in this process. This project was rejected by a CONAIE assembly because of its harmful interference in the organizational framework of indigenous nationalities and was discontinued.

F. Social welfare indicators

52. The Ministry of Housing states that Ecuador has a major deficit of some 1.1 million houses. The supply of drinking water and the collection and disposal of solid waste are also in a state of crisis. The Government has proposed to solve these problems by 70 per cent over the next 15 years, but it lacks the necessary resources. A 2004 survey on indigenous health shows that the percentage of indigenous people with access to piped water is three times less than the rest of the population, as is the case with access to domestic sanitary facilities connected to mains sewerage. In all, 23 per cent of indigenous homes lack sufficient food and 36 per cent find it difficult to meet food costs (this figure is higher than among mestizos). Indigenous child mortality (aged under five) is 50 per cent greater than the national average (51 per thousand live births compared to 35 per thousand). Chronic malnutrition among indigenous children is more than double that of mestizo children (46.7 per cent compared to 21.2 per cent).

53. DNSPI states that indigenous health has not received the attention it deserves under the Government's general policies. The problem is acknowledged, as is the need to take steps to resolve it, but the necessary resources are not allocated. The Pan American Health Organization (PAHO) and the World Health Organization (WHO) are together promoting 93 indigenous health initiatives designed to ensure that the Government's health model is properly intercultural. Only 0.25 per cent of the total State budget is allocated to this area.

54. The Andean Regional Office of the United Nations Development Fund for Women (UNIFEM) has developed a programme focusing on indigenous women, in particular on combating poverty, exclusion and violence; promoting gender equality in democratic processes and citizenship-building; and fighting against HIV/AIDS, through, among other measures, a project in Sucumbíos and another with indigenous migrant women from the highlands.

G. Indigenous political participation and social movements

55. An intercultural election observation mission undertaken in various provinces during the 2004 local elections concluded that there was ill-treatment and ethnic discrimination within polling stations and that these problems remain a major factor in the political exclusion of indigenous peoples. The study concludes that the Supreme Electoral Court is promoting discriminatory practices against the country's indigenous citizens, given the lack of any specific policy to promote the rights of indigenous peoples within the electoral process.

56. Since 1996, the Pachakutik movement, the political wing of the indigenous organization CONAIE, has made gains at the local level. In the May 2000 elections, it made its greatest electoral gain since it was founded and later briefly participated in the national Government. In the 2006 electoral process, it again took part, putting forward its own candidate for the post of President of Ecuador.

57. Since November 2003, the Ecuadorian Government has negotiated a free trade treaty with the United States of America. For the Government, most members of the business sector and part of the population, this treaty would solve the country's numerous economic problems. Within indigenous organizations, however, there is concern over the impact that the treaty may have on the life of indigenous communities. The Government's negotiator informed the Special Rapporteur that he had endeavoured to raise some of the issues that trouble indigenous peoples

during the negotiations. For example, he had conveyed their concerns about biodiversity and patents and there is reference in the draft treaty to the awareness of communities, who must be consulted and who must give consent, the first time such a provision has been included in this area. In addition, he said that he was aware of the impact that the treaty could have on the countryside, particularly the land and water resources of indigenous small producers, which is why they will remain outside the scope of the treaty. It is believed that some products for domestic consumption, produced primarily by coastal indigenous peoples, such as rice, soya or meat, would only be considered after 10 years, during which time the State should implement support policies for these small-scale producers.

58. In their discussions with the Special Rapporteur, indigenous organizations expressed their distrust of the treaty and their disagreement with the Government. They fear that the effects on the indigenous economy, particularly small producers, will be disastrous, as has been the case in other countries. They demand that the indigenous peoples are consulted in negotiations on the free trade treaty and that their needs are taken into account.

59. Indigenous protests against the free trade treaty during the first months of 2006 drew the attention of Ecuadorian society. In March 2006, indigenous organizations again held large protests, taking to the streets and marching through cities, which included a march to Quito and a strike by indigenous local authorities. They were demonstrating against both the Government's policies on free trade and on other matters and against the powerful oil companies.

60. In response, the Government declared a state of emergency in various provinces and civil society organizations reported acts of repression and police brutality in various parts of the country (Imbabura, Pinchincha, Chimborazo, Cotopaxi, Tunguraha, Cañar, Pastaza and Zamora). Reports were also filed of numerous acts of ethnic discrimination against indigenous people (particularly women) that were recorded by the media. There were also violent clashes between demonstrators and the forces of law and order, which led to injuries and arrests. Some media outlets incited racial hatred against the indigenous population, accusing them of being responsible for social protest and conflict in Ecuadorian society. After some weeks, the state of emergency was lifted, but social tensions concerning the free trade treaty, oil companies and government policies were still in evidence during the Special Rapporteur's visit.

H. Administration of justice and indigenous justice

61. Under the Constitution, ombudsmen shall be appointed to protect the interests of indigenous communities and communities shall be entitled to use their mother tongue in any action against them. The Constitution also states that indigenous authorities shall exercise judicial function by applying their own rules and procedures to solve internal conflicts in accordance with their customs or customary law. There are no legal provisions stipulating the scope of the powers vested in the indigenous authorities under article 191 of the Constitution or the manner in which these are to be exercised, nor has any law been passed to harmonize these functions with the national system. In 2002, a draft bill to harmonize and allocate responsibilities for the administration of justice was submitted to the National Congress, but, following an unfavourable report by the Civil and Criminal Specialized Standing Commission, the draft was shelved.

62. The absence of legislation has not prevented indigenous communities from various regions invoking in practice their constitutionally established right to exercise their authority and what they consider their legal uses and customs and to do so more and more frequently, to resolve situations of a conflict of interest and to protect themselves from external aggression. In this context, there have been numerous conflicts of jurisdiction between indigenous and legal authorities, apparent abuses by both authorities, instances of their taking the law into their own hands and even the formation of self-defence groups which claim that their actions are protected by indigenous customary law.

63. The President of the Supreme Court told the Special Rapporteur of the need to harmonize these two justice systems and cited various examples in which courts tried cases that had already been tried and resolved in the indigenous justice system. Refusal to recognize these decisions based on customary law is a crucial aspect of the more general issue of the failure to develop legislation to implement innovative provisions of the Constitution. He also spoke of the need to establish a court specifically for indigenous issues, in addition to a network of justices of the peace and judges in indigenous law. Congress urgently needs to consider issuing regulations giving effect to the constitutional principle recognizing indigenous justice so that it may be harmonized with the ordinary system of justice.

64. DINAPIN has operated as part of the Office of the Ombudsman since 2000. Its mission is to monitor and uphold the rights of indigenous nationalities, peoples and organizations in Ecuador through the dissemination, promotion and defence of those rights. To carry out this task, DINAPIN has created a network of indigenous human and collective rights activists at the national level who, protected by the Ombudsman Act, defend and promote human and collective rights throughout Ecuador. The Office of the Ombudsman is also developing other initiatives within its mandate, such as providing court-appointed lawyers, proposing solutions to intracommunity conflicts or securing the release of indigenous prisoners.

65. The difficulty of legislating in the area of indigenous justice and determining its scope represents a significant gap in private contracts negotiated by community representatives in foreign languages, such as Spanish or English, relating to specialized legal issues in the financial or intellectual property domain that affect indigenous people and territories.

I. Bilingual intercultural education

66. DINEIB, established in 1987, is legally responsible for education programmes for indigenous peoples and nationalities. It has the status of a national institution, although it lacks the necessary resources to perform all the tasks assigned to it. Bilingual intercultural education is provided in 2,802 schools in 16 provinces, to some 123,400 pupils of 14 nationalities.

67. Nevertheless, not all indigenous children have access to schooling. A 2003 study in Cotopaxi showed that 526 rural children did not go to school, as their homes were too far away. In State schools, the Government runs a school meals programme for indigenous children, but a study shows that more than 1.3 million children still do not receive breakfast and lunch regularly, the meals provided under the programme as an inducement to ensure their attendance at school.

68. As a general rule, the so-called "Hispanic" schools (which are neither intercultural nor bilingual) have better resources, meaning that many parents prefer their children to attend these schools, leaving intercultural bilingual schools for poor indigenous people. In terms of good-quality, culturally appropriate indigenous education, the Ecuadorian bilingual intercultural education programme is generally considered one of the most successful in Latin America, despite its aforementioned limitations.

69. During 2005, the United Nations Educational, Scientific and Cultural Organization (UNESCO) undertook various activities and projects on literacy and bilingual intercultural education, organizing two educational workshops to support native languages, in coordination with DINEIB and promoting the Literacy and Education Programme for Life in the canton of Cayambe. Within the framework of an agreement between the Provincial Council of Chimborazo and the United Nations, the United Nations Children's Fund (UNICEF) undertook to facilitate children's access to basic education, by implementing a programme to provide schoolbooks to 5,182 children aged 5.

J. International cooperation

70. Ecuador is carrying out a number of programmes explicitly targeting indigenous and Afro-Ecuadorian peoples through multilateral and bilateral cooperation. These projects relate to bilingual intercultural education and, in conjunction with the German Agency for Technical Cooperation (GTZ), the training of indigenous university teachers. The European Union is cooperating in the implementation of a credit scheme specifically targeting women in Chimborazo province, and another development project in Cotopaxi province, with the local provincial council and the Cotopaxi Indigenous and Campesino Movement (MICC). The Spanish Agency for International Cooperation (AECI), together with the organization CODENPE, is currently running a development project with 31 municipalities led by indigenous people (referred to as "alternative municipalities").

IV. CONCLUSION

71. In recent decades, the indigenous peoples of Ecuador have made important steps forward in securing recognition of their human rights and fundamental freedoms. Constitutionally, Ecuador is a multicultural and multi-ethnic country, which recognizes a range of collective rights of the country's 14 indigenous nationalities.

72. One of Ecuador's principal challenges is to give full effect to the constitutional principles concerning indigenous rights through secondary legislation and regulations on various constitutional rights. There are worrying delays in this field, given that the political instability of recent years has prevented the Government from adopting the necessary laws arising from the Constitution in this matter.

73. The same situation obtains among the various governmental authorities created by presidential or ministerial decree to tackle issues of particular concern to indigenous peoples, such as CODENPE, DINEIB, DNSI and DINAPIN. These institutions, which enjoy the active participation of indigenous representatives, lack the necessary legislative support and budgetary resources to allow them adequately to meet the needs of these peoples.

74. The situation of indigenous peoples is particularly sensitive where the administration of justice and the efforts to harmonize the ordinary system of justice with the indigenous justice system recognized in the Constitution are concerned.

75. Available data indicate that, as a rule, more indigenous people live in poverty and extreme poverty, and meet fewer indicators of social and human development than other sectors of the population. In the inter-Andean corridors and the Andean heathlands, where demographic pressure on the land's limited resources is greater, indigenous agricultural production and living conditions are precarious, causing growing emigration to the cities and abroad, a phenomenon that particularly affects indigenous communities. Indigenous women and children are particularly vulnerable in this process.

76. Ecuador has made important steps forward in bilingual intercultural education and in the application of an intercultural approach to indigenous health, but these programmes are still weak, as they have insufficient institutional underpinning and lack resources. International cooperation agencies and the United Nations are running some indigenous support programmes in these areas.

77. For some decades, the Ecuadorian economy has been highly dependent on oil exports. Oil operations are carried out primarily in indigenous territories, with negative effects on the environment and the communities' living conditions. This situation has led to numerous conflicts between the State, oil companies and indigenous communities, who oppose the operations of these companies. Indigenous people are calling for the full application of their right to consent, through a process of free, prior and informed consultation.

78. Similar conditions govern the situation among Amazonian communities, which are confronted by the activities - sometimes illicit - of, among others, mining and logging companies and oil palm plantations. Among the indigenous nationalities on the northern border, this situation is further complicated by the aerial spraying of illicit crops, carried out in neighbouring Colombia under the auspices of Plan Colombia, which has negative effects on the Ecuadorian indigenous border populations. Some indigenous populations are living in voluntary isolation in the forest in these regions, and their situation is particularly worrying. Their survival and "untouchable" territory are threatened by such factors as pressure from illicit logging activities and the incursion of settlers.

79. The use of elements of the armed forces to secure the interests of oil, mining and logging companies operating in indigenous territories has triggered various abuses and complaints, and led to numerous incidents with the indigenous population, who complain of the militarization of their communal areas.

80. In March 2006, a large number of indigenous people suffered violations of their rights while protesting against the free trade treaty being negotiated by Ecuador with the United States of America. This led to the declaration of a state of emergency in some provinces and the disproportionate use of the police against the demonstrators.

V. RECOMMENDATIONS

A. Legislation

81. **The Special Rapporteur recommends that the National Congress of Ecuador enact legislation concerning the collective rights of indigenous nationalities, peoples and communities, as established in the country's Constitution, relating in particular to the administration of justice; indigenous territorial areas; rules governing such economic activities as oil operations, mining, logging, agriculture, fishing and tourism, in addition to others that affect natural resources in indigenous territories; bilingual intercultural education; conservation and preservation of the cultural heritage of indigenous peoples; respect and protection of peoples in voluntary isolation; the right to prior, free and informed consultation and consent in accordance with international law; indigenous health services; prevention and punishment of sexual offences; exploitation in conditions of servility, the forced and commercial exploitation of women and girls belonging to indigenous peoples and nationalities; extension of various social services to indigenous communities; biodiversity and environmental conservation and management; economic development plans and projects; an office for the human rights of indigenous peoples; and local, communal and regional forms of indigenous government.**

82. **The Special Rapporteur recommends strengthening the legal arrangements underpinning indigenous institutional structures in the various established bodies. Specifically, the Special Rapporteur recommends that DINEIB, the Department for Intercultural Health and CODENPE be given the appropriate legal status, and that the necessary resources be assigned to them so that they can raise the quality of their services.**

83. **The Special Rapporteur recommends that the Ordinary and Indigenous Justice Compatibility Act be adopted and that the Government request the Office of the United Nations High Commissioner for Human Rights (OHCHR) to provide technical support for the legislative development of indigenous justice.**

84. **The Special Rapporteur recommends that all Ecuadorian authorities, particularly notaries and registrars of property, be trained in the legal system pertaining to ancestral and historical indigenous territories and the creation of rights in rem.**

B. Northern border and environment

85. **The Special Rapporteur recommends that the Governments of Ecuador and Colombia appoint an independent international commission to study the effects of aerial spraying on indigenous border populations. Corresponding binding measures are also recommended, to provide compensation for the damages caused.**

86. **The Special Rapporteur recommends that Colombia definitively halt the aerial spraying of illicit crops in the border region with Ecuador.**

87. **The Special Rapporteur recommends that the Ecuadorian Government draw up and apply an emergency plan (in consultation with the region's indigenous peoples) on the critical situation of indigenous border communities (particularly the Awá), as a result of**

the impact of the internal conflict in Colombia, illicit drug production and trafficking activities, environmental degradation, the influx of indigenous refugees from Colombia and the situation of violence and insecurity in the area. Concessions granted to oil and mining companies must be reviewed. The State must shape public policies aimed at protecting the various sectors, peoples and communities who live on the northern border, with their full participation, including the right to free, prior and informed consultation.

88. **The Special Rapporteur recommends that Ecuador implement measures (including those under CITES) to ensure rigorous control of timber species in indigenous lands, in particular those inhabited by peoples in voluntary isolation, and coordinate actions with the various State authorities to ensure effective protection in the trade and export of all species.**

C. Consultation, participation and recognition

89. **The Special Rapporteur recommends that all Ecuadorian authorities comply with the provisions of the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights in the Sarayaku case, and more specifically, that the State Procurator-General unconditionally uphold the unimpeded protection of the Sarayaku community, including its rights, its land ownership and the life and physical integrity of all of its members.**

90. **The State must recognize the ancestral lands of the Shuar and other Amazonian peoples who have yet to receive this recognition.**

D. Security, social protest and justice-related activities

91. **The Special Rapporteur recommends that the armed forces abstain from concluding service provision contracts with oil companies that could damage the rights of the indigenous communities in whose territories they are operating.**

92. **The Special Rapporteur recommends that Ecuador carry out a thoroughgoing investigation into accusations of abuse and violence against members of indigenous communities committed by some elements of the armed forces, under the auspices of the said contracts, and that those responsible are punished. It is further recommended that any inappropriate arrangement between the aforementioned companies and the armed forces, which has its aim to protect the private economic interests of the companies and could damage the legitimate rights of the indigenous peoples and communities in the regions affected by the activities of the oil companies, be prevented.**

93. **Following the disproportionate response of the authorities to the social protest mounted by indigenous organizations during the state of emergency against the free trade treaty, the Special Rapporteur recommends that the Government carry out a thoroughgoing investigation into the events and punish, among others, those who abused the human rights of the indigenous demonstrators.**

E. Peoples in voluntary isolation

94. **The Special Rapporteur recommends that the Human Rights Council call on the three countries involved in protecting the peoples living in voluntary isolation (Colombia, Ecuador and Peru) and the international community to pool forces and resources in order to protect and safeguard endangered indigenous peoples living in the Amazonian region. (The Special Rapporteur made a similar recommendation to the Colombian Government following his mission there in 2005.)**

95. **In the "untouchable" area and the Yasuní National Park, any oil activities shall be suspended and illegal logging shall be punished, in addition to any activity that disturbs the peace of peoples living in voluntary isolation. Furthermore, an integrated programme for the restructuring of the local economy in Huaorani regions shall be drawn up, and real and effective controls shall be set in place to prevent the removal of timber from these territories.**

96. **Prompt steps should be taken to enact the necessary national legislation for the promotion, protection and safeguarding of the rights of peoples in voluntary isolation, in strict compliance with ILO Convention No. 169 and the United Nations Declaration on the Rights of Indigenous Peoples, adopted by the Human Rights Council.**

97. **In the Andean region, the Special Rapporteur recommends that the State take into consideration the intercultural realities of the area, in addition to the needs and rights of indigenous communities, in connection with any State activities relating to the conservation, management and development of inter-Andean corridors, forests and heathlands in the region, and ensure respect for the lands and territories of indigenous peoples and nationalities.**

F. International cooperation and the academic sector

98. **The Special Rapporteur recommends that international cooperation agencies consider and pay particular attention to indigenous needs in their various specialized areas.**

99. **The Special Rapporteur recommends that university and research institutions, both in Ecuador and abroad, focus on and adapt their programmes to the constitutional principles of multiculturalism and the promotion of the human rights of indigenous peoples.**

ANNEX 31

Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, Paul Hunt: Preliminary Note on Mission to Ecuador and Colombia, Addendum, A/HRC/7/11/Add.3 (4 Mar. 2007)

UNITED
NATIONS

A

General Assembly

Distr.
GENERAL

A/HRC/7/11/Add.3
4 March 2007

Original: ENGLISH
ENGLISH AND SPANISH ONLY

HUMAN RIGHTS COUNCIL
Seventh session
Agenda item 3

PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS, CIVIL, POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS, INCLUDING THE RIGHT TO DEVELOPMENT

Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Preliminary note on the mission to Ecuador and Colombia

Addendum*

* The present note was submitted late in order to reflect the most recent information.

Annex

MISSION TO ECUADOR AND COLOMBIA: PRELIMINARY NOTE

I. INTRODUCTION

1. At the fourth session of the Human Rights Council, in March 2007, the Government of Ecuador extended an invitation to the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. The Special Rapporteur undertook a mission to Ecuador from 14 to 18 May 2007.

2. At the invitation of the Government, the Special Rapporteur visited Colombia from 20 to 22 September 2007.

3. The mission was undertaken with the objective of examining, from the viewpoint of the right to the highest attainable standard of health, the impact of the aerial spraying of glyphosate, combined with additional components, by Colombia along the Ecuador-Colombia border.[1]

4. In Ecuador, the Special Rapporteur had consultations with civil society organizations on other issues concerning the right to the highest attainable standard of health in Ecuador. As previously agreed, these additional issues on the right to health are the subject of public correspondence between the Government of Ecuador and the Special Rapporteur, and are not part of the mission report.

5. The Special Rapporteur visited New York and discussed the issue of aerial spraying with the United Nations Department of Political Affairs. Furthermore, he visited Washington, DC and discussed the issue with representatives of the Organization of American States (OAS) and of the Pan American Health Organization.

6. During the mission in Ecuador, the Special Rapporteur met with the Ministers for Foreign Affairs and Coordination for Internal and External Security, as well as with senior officers in both ministries. He also met the Scientific Commission of Ecuador, the Ombudsperson, senior officials in the Ministries of Finance and Health, the Governors of Sucumbios and Orellana, senior public officials in Lago Agrio and the United Nations country team. The Special Rapporteur also visited three communities in the northern border zone and met with many representatives of civil society.

7. The Special Rapporteur also sought to discuss aerial spraying with the Government of Colombia, and was extended an invitation to visit Colombia in September 2007. While in Bogotá, the Special Rapporteur met the Vice-President, the Deputy Minister for International Relations, the Deputy Minister for Health, the Director of the Anti-Narcotics Police, and representatives of United Nations agencies and civil society organizations. The Special Rapporteur also undertook a field trip to San José de Guaviare.

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[1] In the present note, the term “glyphosate” will be used to denote a combination of glyphosate and additional components.

8. The Special Rapporteur is grateful to the Governments of Ecuador and Colombia for the invitation to undertake a mission and for the support and information provided before, during and after the mission.

9. In the present note, the Special Rapporteur outlines the mission and provides some preliminary observations. When the Special Rapporteur submits his mission report to the Human Rights Council in September 2008, however, he will go beyond the observations presented in the present note.

II. AERIAL SPRAYING OF GLYPHOSATE

10. The focus of the Special Rapporteur's mission to Ecuador and Colombia was the aerial spraying of glyphosate along the Ecuador-Colombia border. The mission did not take samples or conduct laboratory tests, because it was not a scientific mission. Rather, the Special Rapporteur reviewed the existing scientific evidence, received personal testimonies and consulted with experts, then examined all this material from the viewpoint of the right to the highest attainable standard of health.

11. The right to the highest attainable standard of physical and mental health includes access to both medical care and the underlying determinants of health, such as safe water, adequate sanitation and a safe environment.

12. The aerial spraying of illicit coca crops with glyphosate is carried out as part of Plan Colombia, adopted in 1999. Supported by the United States of America,[2] the plan, inter alia, addresses the financing of illegal armed groups and drug trafficking. Aerial spraying is one of several complementary techniques aimed at the eradication of coca crops. Colombia is the only country in the world using aerial spraying for the eradication of coca. The Special Rapporteur recognizes that illicit coca cultivation gives rise to a range of extremely grave issues that the Government of Colombia, in accordance with its international commitments, takes very seriously.

13. The aerial spraying of coca in the border zone with Ecuador (the provinces of Narino and Putumayo) began in 2000 and was conducted periodically until December 2005, when the Government of Colombia agreed to temporarily suspend spraying within the 10-km border zone. When Colombia then recommenced spraying (until February 2007), Ecuador brought the issue before the Permanent Council of OAS. There were allegations that Colombian airplanes continued spraying when turning around over Ecuadorian territory. Additionally, it was alleged that the spray drifted from Colombian airspace into Ecuador and adversely affected the health and crops of people living on the border in Ecuador.

14. The issue has been the subject of various multilateral and bilateral initiatives and studies, such as the United Nations inter-agency report of 2004 and the Inter-American Drug Abuse Control Commission study of 2005. The Governments of Ecuador and Colombia established the Binational Scientific Commission to look into the issue and submit a report. The Commission

[2] See website of the U.S. Department of State at www.state.gov.

met in April and July 2007 but, regrettably, was unable to reach a consensus. Thus, each commission published its own report: the Ecuadorian commission in April 2007 and the Colombian one in September 2007.

15. The Special Rapporteur took note of the stark differences of opinion between the Governments of Ecuador and Colombia (and scientific commission members) and emphasized the need to carry out independent, reliable studies that have the confidence of both parties.

16. The Special Rapporteur welcomes the fact that aerial spraying of coca crops in the 10-km border zone ceased in February 2007, and appreciates that manual eradication, as an alternative method of eradication, has been accelerated. The Special Rapporteur also welcomes the Colombian Vice President's statement confirming that manual eradication tends to be more effective than aerial spraying, although it can be more hazardous to those carrying it out. The Rapporteur also welcomes the increasing recognition of the vital importance of measures to promote effective, alternative, sustainable development as part of a strategy to eradicate the illicit cultivation of coca.

17. While in Ecuador, the Special Rapporteur's preliminary view was that there was credible and reliable evidence that the aerial spraying of glyphosate along the border damages the physical and mental health of people living in Ecuador. The Special Rapporteur's preliminary conclusion was that the evidence provided during the mission was sufficient to call for the application of the precautionary principle and that, accordingly, Colombia should not recommence aerial spraying in the 10-km border zone with Ecuador, thus ensuring conformity with its international human rights responsibilities.

18. While in Colombia, the Special Rapporteur had the opportunity to discuss some of his preliminary views with the authorities. He notes the position of the Government of Colombia that there is no scientific uncertainty about the impact on human health of glyphosate, which is routinely used in both Colombia and Ecuador, and that the precautionary principle does not apply in this situation. The Special Rapporteur notes that the use of glyphosate in Ecuador (direct and manual) is different from the method used on the border by Colombia (aerial spraying). Furthermore, as the composition and concentration of the spraying appear to differ between Ecuador and Colombia, the suggested equivalence between Ecuadorian and Colombian practice is misleading.

19. In some quarters, the glyphosate aerial spraying issue has become deeply politicized. When an issue becomes politicized in this way, human rights are always among the first victims. The health and lives of ordinary people, especially the most disadvantaged and poor, are often forgotten or obscured.

20. It is imperative that, when considering this very important issue, the human right to health, and thus the well-being of disadvantaged individuals and communities, is placed at the centre of all decision-making.

III. NORTHERN ZONE AND PLAN ECUADOR

21. In order to assess the degree to which the right to the highest attainable standard of health has been taken into account, the aerial spraying of glyphosate along the northern border has to be seen in the context of the conditions of the people - refugees, indigenous peoples, Afro-Ecuadorians, internally displaced persons and other disadvantaged groups - living in the northern zone.

22. Plan Ecuador, launched in 2007, is an integrated development plan for the northern provinces of the country in response to the historic neglect of the area and to the problems generated by the Colombian conflict, such as the movement of refugees from Colombia into the northern zone. Projected until 2018, and informed by the United Nations inter-agency report, the plan includes activities regarding institution-building and cooperation, improvement of basic infrastructure, sustainable management of natural resources and so on. It is financed through budget reallocations and international cooperation. The Special Rapporteur urges the Government to reinforce the integration of human rights into Plan Ecuador. This multisectoral plan, with its emphasis on enhanced coordination, represents a huge stride in the right direction and the Special Rapporteur highly commends the Government for recognizing the gravity of the situation and for adopting Plan Ecuador.

23. When visiting the northern zone, the Special Rapporteur was alarmed by the seriously inadequate health system available to individuals and communities.

24. It is very important that the Government allocate adequate funds for Plan Ecuador, otherwise it will become merely a paper exercise. Further elaboration of the Plan and its implementation should be as inclusive and participatory as possible. Also, the Special Rapporteur strongly urges the development partners of Ecuador to provide matching funds and technical assistance for Plan Ecuador, consistent with their human rights responsibilities of international assistance and cooperation.

25. The Special Rapporteur recommends that the Government establish an accountability mechanism for the Plan, namely, an independent unit that monitors whether the Plan is reaching its targets and achieving its objectives. Such an independent mechanism would help to identify where the Plan is working and where there are difficulties; it might report annually to the Government but, to be credible, the mechanism should be independent of it.

IV. CONCLUSIONS

26. **The Special Rapporteur will carefully consider all information received before taking a final stance regarding the issue of aerial spraying and the right to the highest attainable standard of health and before submitting his report to the Human Rights Council on the issue.**

ANNEX 32

Report of the Special Rapporteur, Okechukwu Ibeanu, *Adverse Effects of the Illicit Movement and Dumping of Toxic and Dangerous Products and Wastes on the Enjoyment of Human Rights*
U.N. Doc. A/HRC/5/5 (5 May 2007)

UNITED
NATIONS

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General Assembly

Distr.
GENERAL

A/HRC/5/5
5 May 2007

Original: ENGLISH

HUMAN RIGHTS COUNCIL
Fifth session
Item 2 of the provisional agenda

IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251 OF 15 MARCH 2006 ENTITLED "HUMAN RIGHTS COUNCIL"

Adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights

Report of the Special Rapporteur, Okechukwu Ibeanu

Summary

This report focuses on the impact of armed conflict on exposure to toxic and dangerous products and wastes. Although war has always had an adverse effect on the environment, the voluntary or incidental release of toxic and dangerous products in contemporary armed conflicts has an important adverse effect on the enjoyment of human rights. The report not only examines the direct impact of armed conflict, but also its consequences on control of the movement and storage of toxic and dangerous products and wastes.

The report also analyses the human rights dimension of this issue in the particular context of armed conflict, notably those rights which can be adversely affected. It sets out the legal framework applicable to this issue and identifies the potential duty bearers.

The Special Rapporteur ends his report with a series of recommendations which aim to prevent or at least to mitigate the adverse effects of exposure to toxic and dangerous products as a result of armed conflict.

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Agent Orange and other herbicides during the Viet Nam War. During this operation, over 70 million litres of defoliants and other herbicides were released over Viet Nam, Laos and Cambodia in order to destroy jungle cover and crops.[26] A very large number of people, including military personnel from all parties to the conflict as well as between 2.1 and 4.8 million civilians were exposed to these dangerous products during this operation.[27] When these herbicides degrade they release dioxins which are linked to numerous health problems. The United States Department of Veteran Affairs lists prostate cancer, respiratory cancers, multiple myeloma, type II diabetes, Hodgkin's disease, non-Hodgkin's lymphoma, chronic lymphocytic leukaemia, soft tissue sarcoma, chloracne, porphyria cutanea tarda, peripheral neuropathy, and spina bifida in children, as illnesses that can be linked to exposure to Agent Orange.[28] Although scientific evidence of association remains insufficient, other adverse effects on human health have been linked to the release of dioxin laden herbicides in South-East Asia. These include several types of cancers, birth defects, stillbirths, infant death as well as reproductive system, cognitive, respiratory and circulatory disorders. In addition to direct exposure to dioxins through spraying, indirect exposure to dioxins is also dangerous as the chemical can build up in the food chain, and people may be exposed to contaminated food and water.

20. Secondly, herbicides have also been used in the course of armed conflict to destroy crops. The objective is to deny sustenance to the adversary or to limit revenue generating activities. The herbicides used often contain toxic products that can, depending on their concentration, affect human health. Moreover, although the objective of such tactics is to limit the enemy's access to food, it will often also affect crops which are destined for the civilian population. It is indeed rare to find fields exclusively dedicated to growing food for combatants, therefore the destruction of crops can have a negative effect on the survival of the civilian population. More recently herbicides have been used to destroy drug crops in the context of armed conflicts. However, because the herbicides used cannot distinguish between drug crops and other legitimate crops and because of the use of aircraft to disperse the herbicide, which renders the dispersion less precise, fumigation of coca and poppy crops can result in the destruction of nearby agricultural crops, thus limiting access of the population to food. Furthermore, although there are no definitive scientific studies on the potential health impacts of fumigation, continued reports of adverse effects on human health are cause for concern. Medical services in affected regions have reported a rise in low-level poisoning and eye, skin and breathing problems immediately following the fumigation. There are also concerns that drinking water could be contaminated by the chemicals contained in the herbicides used in such operations. Finally, reports suggest that

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[26] *In re Agent Orange Products Liability Litigation*, US District Court for the Eastern District of New York, 10 March 2005.

[27] Ibid.

[28] United States Department of Veteran Affairs, *Agent Orange General Information Brochure*, http://www1.va.gov/agentorange/.

although the herbicides used to destroy drug crops in an area affected by armed conflict use the same toxic ingredient as that used by commercially available herbicides, the concentration of this active ingredient varies from 1 per cent in herbicides used in agriculture to 26 per cent for those used to destroy drug crops, making it much more toxic.[29]

21. A final issue of concern is that of war debris. War debris can be a major source of discharge of toxic or dangerous products into the environment. Debris can present a risk because of the numerous toxic and dangerous products which are to be found in building materials or, as mentioned above, on industrial sites. Ash is of particular concern; fires often occur following an attack and if the burning debris contains toxic products, for example paint, solvents or plastic products, it is likely that the ash will be contaminated. If this ash is not disposed of in an appropriate manner it can result in the contamination of the environment surrounding the disposal site, and could potentially adversely affect human health. Toxic materials contained in construction materials can also be dangerous when buildings are destroyed. Asbestos poses a particular problem. For example, in the Middle East, an area greatly affected by armed conflict, asbestos sheeting is often found in buildings. Undisturbed, asbestos does not pose any problems. However, according to a UNEP study, when destroyed, asbestos sheeting can produce asbestos fibre which can be dangerous to the health of persons living in the proximity of destroyed buildings.[30] Risks to the health of the local population are increased when there has been much damage to buildings in a limited area, for example in an urban setting. Although, not per se war debris, military remnants of war can also be the source of a release of toxic and dangerous products. This includes unexploded ordnance which may contain toxic and dangerous products, which over time may be released into the environment. Abandoned military vehicles may also pose a threat, as they may be used by the local population at the end of hostilities and may contain toxic materials. War debris, including ash contaminated with asbestos or other toxic products must be treated as dangerous; however, in the rush of clean-up and reconstruction efforts, the threat posed by these materials is often not taken seriously.

B. Negative impact of armed conflicts on the control of toxic and dangerous products and wastes

22. Armed conflicts create great difficulties for States in controlling their territory and protecting their population. As a consequence, armed conflicts can facilitate trafficking in dangerous products and wastes and their illicit dumping. Thus, the contamination of the environment, through soil, water, air or the food chain can lead to the denial of enjoyment of basic rights, such as the right to life, to health, to food, to safe and decent housing, etc. Given the absence of the rule of law in conflict situations, the population often suffers from a lack of access to exact information on toxic and dangerous products and wastes which may affect them. There is also an absence of remedy. The population is thus left without protection. These human rights

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[29] Accion Ecologica, *Green Alert 115* (September 2001), http://www.accionecologica.org/webae/images/docs/fumigaciones/alertas/fumigations.doc.

[30] UNEP, *Desk Study on the Environment in the Occupied Palestinian Territories* (2003).

ANNEX 33

Report of the Special Rapporteur on the Right to Food, Jean Ziegler, Addendum: Communications Sent to Governments and Other Actors and Replies Received, U.N. Doc. A/HRC/4/30/Add.1 (18 May 2007)

[…]

A/HRC/4/30/Add.1
18 May 2007

[…]

Report of the Special Rapporteur on the right to food, Jean Ziegler

Addendum

Communications sent to Governments and other actions and replies received**

[…]
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Colombia

Communication sent

15. On 10 February 2006, the Special Rapporteur, together with the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, brought to the Government's attention information on the sprayings conducted in the border area between Ecuador and Colombia under Plan Colombia. According to the information received, despite the information regarding the suspension of spraying, the effects of the fumigations in both countries are a matter of concern. Certain impacts appear to have resulted as a consequence of the fumigations under the Plan Colombia, among others, the destruction of subsistence crops, the weakening of soil quality and the reduction of production capacity of the border populations, a majority of which are inhabited by indigenous people and peasants. These populations, mostly indigenous and peasants, have seen great deterioration in their already difficult socio-economic situation. Furthermore, reports confirm that the effects of the fumigations have severely affected private incentives to produce and market food, such as the case of the plantain flour factory in Santa Marianita or the Puerto Mestaza agribusiness project in Ecuador. Several communities have lost their livestock and there are reports of an increase in birth defects and miscarriages of cattle near the border, during and after the sprayings. All of this seems to have caused a severe state of food insecurity in border populations, thus triggering a wave of migration to the interior of the country. According to reports, malnutrition, a constant feature in impoverished communities, has reached alarming levels. In other communities, short-cycle crops are disappearing in less than 15 days after spraying. It has been further reported that four years after the spraying

began, some crops of plantains, banana, baby banana [*orito*], cassava, maize, fruit trees and certain aromatic herbs have disappeared or have suffered a significant negative impact due to a decrease in quality and quantity in comparison with periods prior to the spraying. It is alleged that spraying has also had a negative effect on the health of border populations by contaminating their water sources and aquatic life. Large traces of the chemical products used for spraying have been observed in many rivers, including the Mira River, which flows into Ecuadorian territory. The Special Rapporteur believes that the alleged facts appear to indicate a violation of the right to food of border populations between Ecuador and Colombia. The fumigations appear to be causing the destruction of subsistence crops, the weakening of soil quality and the reduction of crop yields, affecting the economic activities of the communities and the population's access to adequate food. In addition, the most vulnerable groups, in particular, the fundamental rights of the Awá indigenous people, have been particularly affected by the effects of displacement that, in turn, have had a negative impact on the livelihood of these groups of people. Furthermore, the contamination of the water in the rivers threatens the communities' right to health.

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[…]

Follow-up

17. The Special Rapporteurs are grateful to the Government for providing the details. The Special Rapporteurs reacted on 20 June 2006, saying that so far there is no clarity about the formulation used for aerial sprayings. There are reports that different chemicals such as Fusarium Oxisporum, Imazapir, 2-4-D, and Paraquat have been used. Furthermore, it seems that the proportion of glyphosate being employed and the actual composition of the final product being used are unknown. With regard to the spraying process, it is alleged that the aerial sprayings are conducted at an altitude (from 15 to 60 m) in which they become uncontrollable and affect houses, schools, legal crops, animals, forests, water sources, and rivers. This imprecision has led to the contamination of the Ecuadorian border, allegedly affecting people living in that area. As to the right to food, the concern of the Special Rapporteurs is not just limited to food security risk but also to the right to food free from harmful substances. A report from the police of the Valle de Guamuez acknowledges that, after the January and February 2001 sprayings of 29,000 hectares of coca, more than 4,430 food crops were affected, over 1,791 people were reported to be affected and more than 96,222 animals were either dead or very ill. A report filed with the Ombudsman of Ecuador, in December 2001, stated that after the sprayings at the beginning

of the year, 2,560 hectares of legal crops were affected and more than 11,828 animals were either sick or dead as a result of the sprayings. It is argued that the famine that this situation created has led to migration levels of 50 to 80% of the total population in the communities, during the year 2005. Even the Ecuadorian Red Cross acknowledges that the second largest cause for displacement of the Colombian population to Ecuador, 54%, is due to sprayings that affect their products. The local and indigenous communities have been particularly vulnerable, since the sprayings affect the foundations of their farming culture. Destruction of the yucca, for example, has kept them from preparing chicha, a basic food in their diet. In spite of the declared suspension of these sprayings, the Special Rapporteurs have also pointed to reports…that state that on 20 May 2006, the communities of El Charco, Mataco and San Miguel del Río were affected by the sprayings conducted by 4 planes and 5 helicopters, which lasted approximately an hour. It seems that these sprayings also affected important staple farm crops such as *papachina*, *chivo*, banana, yucca and plantain.

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Ecuador

Communications sent

23. On 10 February 2006, the Special Rapporteur, along with the Special Rapporteur on the situation of the human rights and fundamental liberties of indigenous people, called to the Government's attention the information they had received regarding the sprayings executed in the border area between Ecuador and Colombia under the aegis of Plan Colombia. Despite information regarding the suspension of sprayings in the area, they were very concerned with respect to allegations regarding their effects. According to the information brought to their attention, the destruction of

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subsistence crops, the impoverishment of soil quality, and the reduction of the production capacity of border populations, among other impacts, have all been generated as a consequence of the sprayings carried out under Plan Colombia. These populations, mostly of indigenous and *campesino* descent, have seen a serious deterioration in their already difficult socioeconomic situation. In addition, the reports have confirmed that the effects of the sprayings have gravely affected private food production and

commercialization initiatives, including the production of plantain flour in Santa Marianita or the agro-industrial project in Puerto Mestaza. In several communities there have been losses of livestock and there have been reports of an increase in deformities and miscarriages among livestock near the border during and after the sprayings. All of this appears to have caused a strong state of food insecurity among the border populations and, in consequence, has unleashed a wave of migration into the interior of the country. According to the reports, malnutrition, which is a constant in impoverished communities, is reaching alarming levels. In some of the communities of Sucumbios, such as Union Lojana, Chone II, Santa Marianita and Monterrey, the disappearance of short-cycle crops was evident less than 15 days after the sprayings. Several studies appear to demonstrate that the concentration of phosphorus in the plants 3 km from the border is far higher than the concentration in the soil. It has been reported that four years after the commencement of the sprayings, some crops of plantains, bananas, "oritos", yucca, maize, fruit plants, and specific aromatic herbs have disappeared or suffered a major negative impact, reducing their quality and quantity in comparison with periods prior to the sprayings. It has been alleged that the sprayings have also had a negative effect on the health of border populations by contaminating their water sources and aquatic life. In many rivers, among them the Mira River, which flows into Ecuadorian territory, a high percentage of the remnants of the chemical product used in the sprayings carried out in Colombian territory has been detected. The situation of the communities which sit near the Mira River, in the province of Esmeraldas, is troublesome due to the fact that the river is used for the personal and domestic uses of these communities. In particular, the Special Rapporteur called attention to the situation of vulnerability of certain indigenous communities which live in the area, such as the Awas communities, which in addition to the impacts from the sprayings have reported being the object of a number of abuses against their fundamental rights and liberties. The agrarian reform allegedly stripped the indigenous peoples of their important lands for the development of petroleum activities and extraction. As a consequence, their rights to food and health have been affected. It was reported that after the sprayings the entire community of Sumac Pamba was displaced, and that they did not return to their place of origin. It has also been reported that palmiculture businesses have caused grave contamination to drinking water through the use of 18 kinds of chemical. As a consequence, it appears that biofauna, which was used for daily consumption, domestic purposes and recreation, has died. Various activities have been affected, due to the impossibility of using the contaminated water, which, in addition to exhibiting coloration and oil slicks visible to the naked eye, has odors that affect the population. The Rapporteur believes that these facts, as alleged, indicate a violation of

the dietary right of the border population between Ecuador and Colombia. The sprayings appear to have produced the destruction of subsistence crops, the impoverishment of soil quality, and the reduction of the productive capacity of the harvest, which not only impacts in economic activities of the

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communities, but the population's access to a proper diet. In addition, the most vulnerable groups, and in particular the fundamental rights of the Awa indigenous population, have been particularly affected by the effects of the displacement which, successively, has had negative consequences on the ways of life of these groups of the population. The lack of access to public services and the constant militarization of the border area, which directly or indirectly accentuates the violation of dietary rights should also be taken into account. In addition, the contamination of the waters of the rivers threatens the communities' right to health.

UNITED
NATIONS

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General Assembly

Distr.
GENERAL

A/HRC/4/30/Add.1
18 May 2007

ENGLISH/SPANISH

HUMAN RIGHTS COUNCIL
Fourth session*
Agenda item 2

IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251 OF 15 MARCH 2006 ENTITLED "HUMAN RIGHTS COUNCIL"

Report of the Special Rapporteur on the right to food, Jean Ziegler

Addendum

Communications sent to Governments and other actors and replies received**

* The present document, which carries the symbol number of the fourth session of the Human Rights Council, is scheduled for consideration by the fifth session of the Council.

** The present document is being circulated as received, in the languages of submission only, as it greatly exceeds the word limitations currently imposed by the relevant General Assembly resolutions.

ANNEX 33

Colombia

Communication sent

15. El 10 de febrero de 2006 el Relator Especial, junto con el Relator Especial sobre la situación de los derechos humanos y las libertades fundamentales de los indígenas, señaló al Gobierno la información en relación con las fumigaciones llevadas a cabo en la zona fronteriza entre el Ecuador y Colombia en el contexto del Plan Colombia. Según las informaciones recibidas, a pesar de las informaciones sobre la suspensión de estas fumigaciones, son preocupantes los efectos de las mismas en ambos países. Como consecuencia de las fumigaciones efectuadas en el contexto del Plan Colombia se habría producido, entre otras, la destrucción de los cultivos de subsistencia, el empobrecimiento de la calidad del suelo y la reducción de la capacidad de producción de las poblaciones fronterizas mayoritariamente habitadas por poblaciones indígenas y campesinas. Estas poblaciones, en su mayoría de origen indígena y campesino, habrían observado un gran deterioro en su ya de por sí difícil situación socioeconómica. Además, los informes afirman que los efectos de las fumigaciones han afectado gravemente a los incentivos privados de producción y comercialización de alimentos como la fábrica de harina de plátano de Santa Marianita o el proyecto agroindustrial en Puerto Mestaza en el Ecuador. En varias comunidades se han dado pérdidas de ganado y se denuncia un incremento en las malformaciones y abortos del ganado cerca de la frontera durante las fumigaciones y después de ellas. Todo esto parece que haya ocasionado un fuerte estado de inseguridad alimentaría en las poblaciones fronterizas y, en consecuencia, ha desencadenado una ola de migración al interior del país. Según los informes, la desnutrición, siendo una constante en comunidades empobrecidas, estaría alcanzando niveles preocupantes. En otras comunidades se observó como desaparecían los cultivos de ciclo corto en menos de 15 días tras las fumigaciones. Se informa también de que cuatro años después del comienzo de las fumigaciones algunos cultivos de plátanos, guineos, oritos, yuca, maíz, frutales y determinadas hierbas aromáticas habrían desaparecido o habrían sufrido un impacto negativo importante, al reducirse su calidad y cantidad en comparación con los periodos previos a las fumigaciones. Se alega que las fumigaciones han tenido además un efecto negativo en la salud de las poblaciones fronterizas al contaminar sus fuentes de agua y la vida acuática. En muchos ríos, entre ellos el río Mira, que fluye dentro del territorio del Ecuador, se habría observado un gran porcentaje de restos del producto químico utilizado en estas fumigaciones. El Relator Especial cree que los hechos alegados parecen indicar una violación del derecho a la alimentación de las poblaciones fronterizas entre el Ecuador y Colombia. Las fumigaciones parecen producir la destrucción de los cultivos de subsistencia, el empobrecimiento de la calidad del suelo, y la reducción de la capacidad productiva de las cosechas, lo cual no sólo repercute en las actividades económicas de las comunidades sino también en el acceso de la población a una alimentación adecuada. Además, los grupos más vulnerables, y en particular, los derechos fundamentales de las poblaciones indígenas awas, han sido particularmente afectados por los efectos del desplazamiento que, sucesivamente, ha tenido consecuencias negativas sobre los medios de vida de estos grupos de la población. Además la contaminación del agua de los ríos amenaza el derecho a la salud de las comunidades.

Communication received

16. El 22 de marzo de 2006 el Gobierno contestó a los Relatores Especiales sobre el asunto de las fumigaciones indicando que la erradicación de los cultivos ilícitos mediante la aspersión aérea con glifosato no produce inseguridad alimentaria, no produce efectos nocivos sobre los cultivos, los animales ni agua, y tampoco produce riesgos para la salud de los pobladores de las zonas aledañas. El Gobierno en su respuesta habla de manera muy completa del funcionamiento del Programa de Erradicación de los Cultivos Ilícitos mediante aspersión aérea con herbicida Glifosato (PECIG) incluso el manejo de las operaciones de aspersión, la detección y la aspersión. La carta del Gobierno también explica muy en detalle las medidas especiales tomadas en relación con la erradicación des los cultivos ilícitos mediante la aspersión aérea con glifosato, como las medidas legislativas, ejecutivas y reglamentarias.

Follow-up

17. Los Relatores Especiales agradecen mucho los detalles que el Gobierno proporcionó. Los Relatores Especiales reaccionaron el 20 de junio de 2006 diciendo que hasta el momento no hay claridad de cuál es la formulación con la que se producen las aspersiones aéreas. Existen denuncias de que se han utilizado diferentes tipos de químicos como el Fusarium Oxisporum, el Imazapir y el 2-4-D y el Paraquat. Además parece que no se sepa en qué proporción el glifosato es usado y cuál es la composición real del producto finalmente utilizado. Respecto al proceso de aspersión, se alega que las aspersiones aéreas se realizan a una altura tal (de 15 a 60 m) que se hacen incontrolables, y afectan a casas, escuelas, cultivos lícitos, animales, selvas, fuentes de agua y ríos. Esta imprecisión ha permitido la contaminación de la frontera del Ecuador, afectando, como se alega, a las personas que viven en ella. En lo que respecta al derecho a la alimentación, la preocupación de los Relatores Especiales no se limita sólo al riesgo sobre la seguridad alimentaría sino también al derecho a que los alimentos no contengan sustancias nocivas. Un informe de la policía del Valle de Guamuez reconoce que tras las fumigaciones de enero y febrero de 2001 sobre 29.000 ha de coca, se produjeron afectaciones de más de 4.430 ha de cultivos de alimentos, denuncias de más de 1.791 personas afectadas y más de 96.222 animales muertos o muy enfermos. Una denuncia presentada ante la Defensoría del Pueblo de Ecuador, en diciembre de 2001, recoge que tras las fumigaciones de principios de año, fueron afectadas 2.560 ha de cultivos legales y más de 11.828 animales resultaron enfermos o muertos por las fumigaciones. Se alega que la situación de hambruna que generó esta situación ha provocado que en el año 2005 haya comunidades con niveles de migración del 50 al 80% del total de la población. Incluso la Cruz Roja Ecuatoriana reconoce que la segunda causa de desplazamiento de la población colombiana al Ecuador, en un 54%, se debe a las fumigaciones que afectan a sus productos. Las nacionalidades y pueblos indígenas han sido particularmente vulnerables, pues las fumigaciones afectan las bases de su cultura agrícola. La destrucción de la yuca, por ejemplo, les ha impedido la elaboración de la chicha, alimento fundamental de su dieta. A pesar de la declarada suspensión de estas fumigaciones, los Relatores Especiales también señalaron informaciones sobre informaciones que el 20 de mayo de 2006 las comunidades de El Charco, Mataco y San Miguel del Rió fueran afectadas por fumigaciones desde 4 avionetas y 5 helicópteros que duraron aproximadamente una hora. Parece que estas fumigaciones afectaron también importantes cultivos de pancoger como papachina, chivo, banano, yuca y plátano.

ANNEX 33

Communication sent

18. El 21 de marzo 2006 el Relator Especial con el Relator Especial sobre la situación de los derechos humanos y las libertades fundamentales de los indígenas escribieron al Gobierno sobre la información en relación con la situación de varias comunidades indígenas asentadas en la cuenca del río Atrato que se están viendo afectadas por la lucha entre las Fuerzas Armadas colombianas y los grupos insurgentes y paramilitares. Según la información recibida, estas comunidades están sufriendo un bloqueo económico por parte de la fuerza pública colombiana con el fin de evitar que los alimentos comprados por los indígenas puedan ser utilizados por la guerrilla. Para ayudar a estas familias, se informa de que el ejército ha llevado a cabo algunas acciones encaminadas a abastecer de alimentos a algunas comunidades urbanas de la región, alimentos que, sin embargo, no llegan a las comunidades rurales más alejadas. La escasez de alimentos estaría provocando el aumento de los precios de los productos de primera necesidad y hambrunas en ciertas localidades. Asimismo, se informa de que a esta precariedad se añade el minado de campos de cultivo por parte de la guerrilla, lo que amenaza las vidas de los indígenas y les impide cultivar la tierra, obtener alimentos de su medio ambiente y moverse libremente por su territorio. A esta situación general de dificultad, se añaden las informaciones de que supuestamente el 12 de marzo se produjo un tiroteo en la comunidad indígena de Conondo entre militares del Ejército Nacional y guerrilleros de las Fuerzas Armadas Revolucionarias de Colombia (FARC) con el resultado de la muerte de un niño (Wallington Arce Vitucay) y heridas a otros seis indígenas. El Relator Especial cree que los hechos alegados parecen indicar una violación de la obligación de respectar el derecho a la alimentación de las comunidades indígenas como los bloqueos económicos por parte de la fuerza pública tienen el efecto de impedir el acceso de las comunidades a una alimentación adecuada. También el Relator Especial cree que los hechos alegados parecen indicar una violación de la obligación de proteger el derecho a la alimentación de estas comunidades en cuanto las autoridades no han tomado todas las medidas necesarias para que la guerrilla no ponga minas en los campos utilizados para la cultivación.

Communication received

19. El 18 de julio de 2006 el Gobierno indicó en su respuesta que se inició investigación previa por parte de la Fiscalía 100 Especializada de Quibdo el 17 de marzo de 2006 bajo el radicado Nº 153570 con testimonios de Aureliano Arce Mamundia y David Vitucay Manugama. Como resultado, el 27 de marzo se ordenó por competencia remitir las diligencias a la justicia penal militar, Batallón de Infantería Alfonso Manosalva Florez. El Gobierno continúa diciendo que seguirá atento al resultado de estas investigaciones respecto de lo cual informará oportunamente a los Relatores Especiales.

Follow-up

20. Los Relatores Especiales quisieran agradecer al Gobierno la información enviada sobre las investigaciones que se estaban llevando a cabo sobre la muerte del niño Wallington Arce Vitucay y quisieran expresar su reconocimiento de la importancia que esta medida tiene para el esclarecimiento de las responsabilidades en la muerte del menor antes mencionado. Sin embargo, los Relatores Especiales recordaron el 15 de agosto de 2006 que la comunicación precedente solicitaba asimismo información sobre la situación en la que se encontraban las comunidades

indígenas asentadas en la cuenca del río Atrato, las que, de acuerdo con la información recibida, estaban sufriendo un bloqueo económico. Este bloqueo tendría como fin dificultar el acceso a alimentos a miembros de la guerrilla, aunque estaba afectando igualmente a las comunidades indígenas de la región. Los Relatores Especiales permanecen interesados en recibir información sobre la situación y los efectos que el presunto bloqueo económico habría tenido para los derechos humanos de las comunidades indígenas anteriormente mencionadas.

Democratic People's Republic of Korea

Communication sent

21. On 17 May 2006 the Special Rapporteur together with the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea wrote to the Government concerning reports of recent governmental decisions to restrict emergency food assistance by international organizations, ban the private sale of grain and fully reinstate the Public Distribution System (PDS), which could lead to violations of the right to food particularly for the poor and destitute communities. The allegations received claim that in October 2005, the Government returned to banning the private buying and selling of grain, the main source of nutrition for most of the population. In addition, it was also reportedly announced that the PDS, which provided coupons for food and consumer goods to the population through their places of work or study, was to be fully reinstated. During the food crisis of the 1990s, a large number of people who depended on their PDS rations died from starvation and many suffered severe malnutrition and hunger as the system broke down. The Special Rapporteur believes that these facts indicate a possible violation of the obligation to respect the right to food as relevant authorities have not refrained from reverting to food policies which may impinge on people's access to adequate and sufficient food, including banning the private sale of grain, reinstating the PDS and restricting international food assistance operations. In addition, the alleged facts would appear to indicate a violation of the obligation to fulfil the right to food as relevant authorities have failed to provide adequate access to food to the people who are unable to do so themselves.

Communication received

22. On 7 July 2006 the Government replied, rejecting the communication on the basis that it was another attempt to spread fabricated information to defame, disintegrate and overthrow the State and social system of the country on the pretext of human rights. According to the Government, this communication has no relevance to genuine human rights.

Ecuador

Communications sent

23. El 10 de febrero de 2006 el Relator Especial, juntamente con el Relator Especial sobre la situación de los derechos humanos y las libertades fundamentales de los indígenas, señaló a la atención del Gobierno la información que habían recibido en relación con las fumigaciones llevadas a cabo en la zona fronteriza del Ecuador con Colombia en el contexto del Plan Colombia. A pesar de las informaciones sobre la suspensión de las fumigaciones en la zona, eran muy preocupantes las alegaciones sobre los efectos de las mismas. Según las informaciones

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llevadas a su atención, como consecuencia de las fumigaciones efectuadas en el contexto del Plan Colombia, se habría producido, entre otras, la destrucción de los cultivos de subsistencia, el empobrecimiento de la calidad del suelo y la reducción de la capacidad de producción de las poblaciones fronterizas. Estas poblaciones, en su mayoría de origen indígena y campesino, habrían observado un gran deterioro en su ya de por sí difícil situación socioeconómica. Además, los informes afirmaban que los efectos de las fumigaciones habían afectado gravemente a las iniciativas privadas de producción y comercialización de alimentos como la fábrica de harina de plátano de Santa Marianita o el proyecto agroindustrial en Puerto Mestaza. En varias comunidades se habían dado pérdidas de ganado y se denunciaba un incremento en las malformaciones y abortos del ganado cerca de la frontera durante las fumigaciones y después de ellas. Todo esto parecía que hubiera ocasionado un fuerte estado de inseguridad alimentaría en las poblaciones fronterizas y, en consecuencia, había desencadenado una ola de migración al interior del país. Según los informes, la desnutrición, que es una constante en comunidades empobrecidas, estaría alcanzando niveles preocupantes. En algunas de las comunidades de Sucumbios, como por ejemplo en Unión Lojana, Chone II, Santa Marianita y Monterrey, se observó cómo desparecían los cultivos de ciclo corto en menos de 15 días tras las fumigaciones. Varios estudios parecerían demostrar que la concentración de fósforo en las plantas a 3 km de la frontera es muy superior a la concentración en el suelo. Se informaba que cuatro años después del comienzo de las fumigaciones algunos cultivos de plátanos, guineos, oritos, yuca, maíz, frutales y determinadas hierbas aromáticas habrían desaparecido o habrían sufrido un impacto negativo importante reduciéndose su calidad y cantidad en comparación con los períodos previos a las fumigaciones. Se alegaba que las fumigaciones habían tenido además un efecto negativo en la salud de las poblaciones fronterizas al contaminar sus fuentes de agua y la vida acuática. En muchos ríos, entre ellos el río Mira, que fluye dentro del territorio del Ecuador, se habría observado un gran porcentaje de restos del producto químico utilizado en las fumigaciones que se llevan a cabo en territorio de Colombia. La situación de las comunidades que se asientan en el río Mira, en la provincia de Esmeraldas, parecía ser preocupante debido al hecho de que el río es utilizado para el uso personal y doméstico de estas comunidades. En particular el Relator Especial llamó la atención sobre la situación de vulnerabilidad de ciertas comunidades indígenas que viven en la zona como las comunidades awas que además de los impactos de las fumigaciones denunciaban ser objeto de un número de abusos contra sus derechos y libertades fundamentales. La reforma agraria presuntamente despojó de importantes territorios a los indígenas para el desarrollo de actividades petrolíferas y extractivas en sus territorios. Como consecuencia sus derechos a la alimentación y a la salud se habrían visto afectados. Se había denunciado que tras las fumigaciones se produjo el desplazamiento de toda la comunidad de Sumac Pamba que no volvió a su lugar de origen. Se denunciaba también que las empresas palmicultoras han causado grave contaminación del agua potable por el uso de 18 tipos de químicos. En consecuencia, parecía que la biofauna, que servía para el consumo diario, doméstico y de recreo, ha muerto. Diversas actividades se habían visto afectadas por la imposibilidad de utilizar el agua contaminada que, además de presentar coloración y grasas que son detectables a simple vista, tenía olores que afectaban a la población. El Relator cree que estos hechos alegados parecen indicar una violación del derecho a la alimentación de las poblaciones fronterizas del Ecuador con Colombia. Las fumigaciones parecen producir la destrucción de los cultivos de subsistencia, el empobrecimiento de la calidad del suelo, y la reducción de la capacidad productiva de las cosechas lo cual no sólo repercute en las actividades económicas de las comunidades sino también en el acceso de la población a una alimentación

adecuada. Además, los grupos más vulnerables, y en particular, los derechos fundamentales de las poblaciones indígenas awas, han sido particularmente afectados por los efectos del desplazamiento que, sucesivamente, ha tenido consecuencias negativas sobre los medios de vida de estos grupos de la población. A todo esto se debe agregar la falta de acceso a servicios públicos y la constante militarización de la zona fronteriza que acentúan directa o indirectamente las violaciones del derecho a la alimentación. Además la contaminación del agua de los ríos amenaza el derecho a la salud de las comunidades.

Follow-up

24. El Gobierno todavía no ha contestado a esta comunicación. Sin embargo el Relator Especial dio seguimiento a esta comunicación el 30 de agosto de 2006 expresando que seguía preocupado por la situación de las comunidades afectadas por las fumigaciones. El Relator Especial, tras ser informado de la reciente finalización de un informe realizado por las Naciones Unidas tras una misión conjunta llevada a cabo en el mes de febrero de 2006 en seguimiento a la solicitud del Gobierno para evaluar el impacto potencial de las fumigaciones en las comunidades afectadas, también pidió una copia de este informe. El Relator Especial quisiera agradecer al Gobierno por su diligencia en enviar el informe, el 18 de septiembre de 2006.

Communication sent

25. El 21 de julio de 2006 el Relator Especial junto con el Relator Especial sobre la vivienda adecuada señalaron a la atención del Gobierno la información en relación con la situación de cerca de 120 familias campesinas, que fueron víctimas de un desalojo en hechos ocurridos en La Yuca, en el cantón de Palenque. De acuerdo con esta información, existía seria preocupación por la situación general, en particular por la seguridad y la integridad física y psicológica de estas familias que fueron desalojadas de manera violenta el 18 de junio de 2006, tras de una masiva operación policial en el Cantón de Palenque. Ese día, la policía obligó a hombres, mujeres y niños a abandonar sus viviendas y a que se suspendieran abruptamente las clases en la escuela del recinto La Yuca, en Palenque y en Los Ríos, en donde la policía también obligó a decenas de niños a desalojar las aulas. Además, según las denuncias, al menos 12 viviendas incluyendo la escuela habrían sido destruidas. Se afirma que la orden del desalojo fue dada por el intendente de policía, Mario del Rosario Moreno, luego de que, según el Gobernador de Los Ríos, Néstor Orlando Coello, la orden fuera emitida por el Director del Instituto Nacional de Desarrollo Agrario (INDA), Carlos Aguirre. Se alega también que durante el desalojo la policía utilizó excavadoras para destruir las viviendas, así como tanquetas antidisturbios y bombas lacrimógenas para impedir cualquier concentración de los moradores. Además, no se permitió la entrada de personas, defensores o abogados que pudieran ser testigos de estas actuaciones policiales. Además, se afirma que las tierras en disputa involucran a decenas de familias asentadas en La Yuca, Artillería, Los Mosquitos, La Victoria, Aguacatal y otros recintos. Actualmente unas 120 familias residen en la Yuca y poseen el título de propiedad de las tierras otorgado por el antiguo Instituto de Reforma Agraria y Colonización (IERAC) -institución ahora reemplazada por el INDA-, además de que pagan los respectivos impuestos en el municipio de Palenque. Los terrenos en litigio son reclamados por los herederos de una persona apellidada Pimentel Delgado, quienes han estado reclamando esas tierras, con el argumento que son una herencia de sus ancestros. Sin embargo, las familias desalojadas parece que tienen escrituras otorgadas por el IERAC, el cual no reconoce los documentos anteriores sobre esas tierras. Parece

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United Nations Compensation Commission,
Report and Recommendations made by the Panel of Commissioners concerning the First Instalment of "F4" Claims, U.N. Doc. S/AC.26/2001/16 (2001)

UNITED NATIONS **S**

Security Council

Distr.
GENERAL

S/AC.26/2001/16
22 June 2001

Original: ENGLISH

UNITED NATIONS
COMPENSATION COMMISSION
GOVERNING COUNCIL

REPORT AND RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS CONCERNING THE FIRST INSTALMENT OF "F4" CLAIMS

GE.01-62590

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IV. REVIEW OF MONITORING AND ASSESSMENT CLAIMS

A. Special aspects of monitoring and assessment claims

28. The monitoring and assessment claims reviewed in this report relate to expenses resulting from three different categories of activities, namely:

(a) Investigations to ascertain whether environmental damage or depletion of natural resources has occurred;

(b) Studies to quantify the loss resulting from the damage or depletion; and

(c) Assessment of methodologies to abate or mitigate the damage or depletion.

Some of the claims relate to activities falling into more than one of the above categories.

29. The monitoring and assessment claims present special problems in that they are being reviewed before decisions have been taken on the compensability of any substantive claims. Thus, the claims are being reviewed at a point where it may not have been established that environmental damage or depletion of natural resources occurred as a result of Iraq's invasion and occupation of Kuwait. Yet, the results of the monitoring and assessment activities may be critical in enabling claimants to establish the existence of damage and evaluate the quantum of compensation to be claimed. Hence, although it may be correct in some cases to say that a claimant is seeking compensation for monitoring and assessment without prior proof that environmental damage has in fact occurred, it would be both illogical and inequitable to reject a claim for reasonable monitoring and assessment on the sole ground that the claimant did not establish beforehand that environmental damage occurred. To reject a claim for that reason would, in effect, deprive the claimant of the opportunity to generate the very evidence that it needs to demonstrate the nature and extent of damage that may have occurred.

30. For that reason, the Panel does not consider that conclusive proof of environmental damage is a prerequisite for a monitoring and assessment activity to be compensable in accordance with paragraph 35 of Governing Council decision 7. In the view of the Panel, the purpose of monitoring and assessment is to enable a claimant to develop evidence to establish whether environmental damage has occurred and to quantify the extent of the resulting loss.

31. However, the Panel is of the view that compensation should not be awarded for monitoring and assessment activities that are purely theoretical or speculative, or which have only a tenuous link with damage resulting from Iraq's invasion and occupation of Kuwait. There should be a sufficient

nexus between the activity and environmental damage or risk of damage that may be attributed directly to Iraq's invasion and occupation of Kuwait. In assessing the strength of the nexus, and hence the reasonableness of the monitoring and assessment activity, the Panel has taken into account, inter alia, the following considerations:

(a) Whether there is a possibility that environmental damage or depletion of natural resources could have been caused as a result of Iraq's invasion and occupation of Kuwait. This entails an inquiry regarding the plausibility that pollutants released as a result of Iraq's invasion and occupation of Kuwait, or other effects of the invasion, could have impacted the territories of the Claimants;

(b) Whether the particular areas or resources in respect of which the monitoring and assessment activity is undertaken could have been affected by pollutants released as a result of Iraq's invasion and occupation of Kuwait, or other effects of the invasion. This entails, in appropriate cases, an examination of the possible pathways and media by which pollutants resulting from Iraq's invasion and occupation of Kuwait could have reached the areas or resources concerned;

(c) Whether there is evidence of environmental damage or risk of such damage as a result of Iraq's invasion and occupation of Kuwait; and

(d) Whether, having regard to the stated purpose of the monitoring and assessment activity and the methodologies to be used, there is a reasonable prospect that the activity will produce results that can assist the Panel in reviewing any related substantive claims.

32. In applying these considerations to determine the appropriateness of monitoring and assessment activities, due account needs to be taken of the particular circumstances of each case. Thus the possibility that a monitoring and assessment activity might not establish conclusively that environmental damage has been caused is not necessarily a valid reason for rejecting a claim for expenses resulting from that activity. In the view of the Panel, a monitoring and assessment activity could be of benefit even if the results generated by the activity establish that no damage has been caused. The same may be the case where the results indicate that damage has occurred but that it is not feasible or advisable to undertake measures of remediation or restoration. Confirmation that no damage has been caused or that measures of remediation or restoration are not possible or advisable in the circumstances could assist the Panel in reviewing related substantive claims. It could also be beneficial in alleviating the concerns of Claimants regarding potential risks of damage, and help to avoid unnecessary and wasteful measures to deal with non-existent or negligible risks.

33. A further complication presented by claims for monitoring and assessment of environmental damage and depletion of natural resources

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H. Public health impacts

1. Claim No. 5000390

266. Iran seeks compensation in the amount of USD 899,000 for a study to investigate the effects that airborne pollutants from the oil fires in Kuwait may have had on the mitochondrial respiratory condition of inhabitants of the western provinces of Iran. Iran proposes to measure mitochondrial respiratory chain enzyme activity in the platelets of non-smokers in the western provinces of Iran who are known to have been affected by pollutants from the oil fires, and compare the results with those found in the platelets of non-smoking relatives in unaffected areas.

267. The stated rationale for the study is that airborne pollutants can cause mitochondrial dysfunction and neuronal toxicity in exposed populations.

268. In its written response, Iraq argues that Iran lacks adequate baseline data against which to compare the health effects allegedly caused by exposure to pollutants from the oil fires. Iraq also questions the feasibility of detecting any adverse health effects so long after the alleged exposure.

269. In the Panel's view, there is no justification for a study that purports to detect effects of smoke inhalation on mitochondrial function by examining platelets nine to ten years after exposure to the smoke. Even if measurable effects on mitochondrial function could have been detected in platelets among a few highly exposed persons during the period of the oil fires, it is highly unlikely that such effects would still be measurable in circulating platelets of such persons after such a long lapse of time.

270. The Panel, therefore, finds that the proposed study does not constitute reasonable monitoring of public health for the purposes of paragraph 35(d) of Governing Council decision 7.

271. Accordingly, the Panel recommends no compensation for this claim.

2. Claim No. 5000391

272. Iran seeks compensation in the amount of USD 1,468,819 for a project to investigate the effects that airborne pollutants from the oil fires in Kuwait may have had on the pulmonary health of inhabitants of Iran. According to Iran, the project would be carried out by experts from the University of California/Los Angeles and the City University of New York. The purpose is to assess the impacts of the pollutants on the health of exposed populations, based on the level and duration of exposure. It would also attempt to identify, through the use of model exposure data, diseases that may arise in exposed populations in the future.

273. In the opinion of the Panel, the objectives of the study would duplicate those of claim Nos. 5000393 and 5000395 (paras. 283-287 and 291-296, respectively).

274. The Panel finds that the study does not constitute reasonable monitoring and assessment for the purposes of paragraph 35(c) of Governing Council decision 7.

275. The Panel, therefore, recommends no compensation for this claim.

3. Claim No. 5000392

276. Iran seeks compensation in the amount of USD 1,926,220 for a project to investigate the psychiatric effects on the Iranian population that may have resulted from trauma experienced during Iraq's invasion and occupation of Kuwait, and to estimate the cost of treating any such psychiatric disorders. According to Iran, the project would use the Composite International Diagnostic Interview IV method to compare levels of psychiatric symptoms and rates of psychiatric disorder in the following three sections of its population:

(a) Persons who were exposed to both the war between Iran and Iraq of 1980-1988 and the oil fires in Kuwait;

(b) Persons who were exposed only to the oil fires; and

(c) Persons who were not exposed to either of the above two conditions.

277. Iraq argues that the proposed project has several flaws. First, it states that "retrospective studies are meaningless unless backed with [a] reliable database". Second, it states that no database is available, and that no sampling was carried out at the time. Third, Iraq states that the number of inhabitants covered by the study is not mentioned.

278. The evidence in the scientific literature indicates that psychiatric disorders, such as post-traumatic stress disorder ("PTSD") and associated co-morbid psychiatric disorders, may result from events such as those that occurred during Iraq's invasion and occupation of Kuwait. These disorders can persist for long periods after the events that led to the trauma. It is also possible that Iraq's invasion and occupation of Kuwait triggered in some persons a recurrence of PTSD or associated disorder that they had previously suffered as a result of the war between Iran and Iraq.

279. In the view of the Panel, it is appropriate for Iran to attempt to investigate psychiatric disorders that may have been suffered by its inhabitants as a result of Iraq's invasion and occupation of Kuwait. Thus the project constitutes reasonable monitoring of public health, and the expenses qualify for compensation in accordance with paragraph 35(d) of Governing Council decision 7.

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280. The Panel notes that the usefulness of the results of the project will depend on how accurately the investigators are able to determine the regions of the country that were affected by the war between Iran and Iraq or by the oil fires in Kuwait or by both. Accurate determination of such regions would also provide useful information for the analysis of the incidence of disorders and costs of treatment. The Panel also emphasizes that it will be necessary to translate the Composite International Diagnostic Interview IV into Farsi in accordance with World Health Organization protocols to ensure that inferences drawn from the results of the interviews would be valid.

281. Following a review of the cost estimates presented by Iran, the Panel has made adjustments as follows:

(a) The costs of labour have been reduced to reflect a decrease in the overall amount of labour required;

(b) The rates of pay for some categories of personnel have been reduced to reflect standard rates;

(c) The costs for consumables have been reduced to take account of a correction made by Iran; and

(d) The costs for equipment and supplies have been reduced.

These adjustments reduce the estimated cost to USD 1,226,044.

282. The Panel, therefore, recommends compensation in the amount of USD 1,226,044 for this claim.

4. Claim No. 5000393

283. Iran seeks compensation in the amount of USD 449,000 for a project to investigate the possible impacts of airborne pollutants from the oil fires in Kuwait on the respiratory health of young persons in Iran. According to Iran, the project would examine a representative sample of young persons in Iran living within a radius of 400 kilometres from the centre of Kuwait, in order to determine adverse health effects that may have resulted from airborne pollutants released by the oil fires. The project would be conducted by means of questionnaires and medical examinations. The data collected would be compared with data collected from young persons living in non-affected areas.

284. The Panel considers that the project is an appropriate attempt to monitor and assess the respiratory health of young persons living in areas that could have been affected by the oil fires. The project is based on an epidemiological design that is clearly described and reasonable; and the proposed age group, sample size, and health measures are all appropriate. In the view of the Panel, the project could be further refined by including a control sample of unexposed young persons for comparison with the high-

exposure group, using a similar investigation protocol and matching the groups by sex and age.

285. The Panel finds that this project constitutes reasonable monitoring of public health. Consequently, expenses of the project qualify for compensation in accordance with paragraph 35(d) of Governing Council decision 7.

286. Following a review of the cost estimates presented by Iran, the Panel finds that the amount claimed is reasonable.

287. The Panel, therefore, recommends compensation in the amount of USD 449,000 for this claim.

5. Claim No. 5000394

288. Iran seeks compensation in the amount of USD 2,112,500 for a study to investigate possible links between petroleum-based pollutants from the oil fires and oil spill in Kuwait and the incidence of cancers and haematological disorders in the populations of 12 Iranian provinces. Iran proposes to compare the incidence of various haematological disorders and solid malignant neoplasms in the period prior to Iraq's invasion and occupation of Kuwait with the incidence of similar disorders after Iraq's invasion.

289. In the Panel's view, this claim is premature because it is unlikely that significant evidence of increased cancer rates will be found ten years after the release of pollutants from the oil fires and oil spill. For cancers and haematological disorders, especially solid tumour cancers, there is generally a latency period of 15 to 20 years between exposure to a carcinogen and the first clinical evidence of the cancer.

290. The Panel has, therefore, decided to transfer this claim to a later instalment, where it may be reviewed by the Panel with the substantive claims.

6. Claim No. 5000395

291. Iran seeks compensation in the amount of USD 459,000 for a project to investigate the impact of airborne pollutants from the oil fires on the health of the 3,000,000 inhabitants of the Zagros Mountains region of Iran. According to Iran, the project would involve medical examinations, with an emphasis on respiratory functions and cardiovascular diseases, of a randomly selected sample of 3,000 persons of all age groups living in that region within a radius of 200 to 500 kilometres from the oil fires in Kuwait. The medical examinations would be supplemented by questionnaires to be completed by the persons examined. The results would be extrapolated for the entire population of the region and analysed to estimate the scale of damage that may have been caused.

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292. In the opinion of the Panel, the project is an appropriate attempt to assess the public health damage that might have resulted from airborne pollutants from the oil fires in Kuwait. The epidemiological design for the project is clearly stated and the target populations, sample sizes, and health measures are appropriate.

293. Thus the project constitutes reasonable monitoring of public health, and the expenses qualify for compensation in accordance with paragraph 35(d) of Governing Council decision 7.

294. However, the Panel stresses that the use of residents from an unaffected area as a control group, using the same investigation protocol, is essential for the usefulness of this project.

295. Following a review of the cost estimates presented by Iran, the Panel finds that the amount claimed is reasonable.

296. The Panel, therefore, recommends compensation in the amount of USD 459,000 for this claim.

5. Claim No. 5000436

489. Kuwait seeks compensation in the amount of USD 184,125 for a study to assess the economic value of the loss of desert recreational camping opportunities that may have resulted from Iraq's invasion and occupation of Kuwait. Kuwait states that during Iraq's invasion and occupation of Kuwait, its residents were not allowed to use desert camping sites, and that, after liberation, the sites could not be used until mines and ordnance were cleared. The study would use the "travel cost" methodology to determine the economic value of the loss of this amenity.

490. In its written response, Iraq asserts that camping activities are a "personal matter", and that, although they may affect some people economically, they have no relation to environmental problems. Iraq further argues that camping itself is an activity that usually results in deterioration of the environment.

491. In the view of the Panel, this study suffers from the same defects as those stated in relation to the studies on loss of beach use (claim No. 5000401, paras. 444-447) and loss of recreational sport fishing opportunities (claim No. 5000402, paras. 448-450). For the same reasons, the Panel considers that this study is unlikely to be of much utility.

492. Accordingly, the Panel finds that the study does not constitute reasonable monitoring and assessment for the purposes of paragraph 35(c) of Governing Council decision 7.

493. The Panel, therefore, recommends no compensation for this claim.

E. Public health impacts

1. Common elements

494. Kuwait alleges that Iraq's invasion and occupation of its territory resulted in many adverse public health effects, and will continue to pose serious risks to the health of its population. According to Kuwait, long-term risks to public health are posed by pollutants that were released into the environment from the oil spill and oil fires, the traumatic stress experienced by the population, and the collapse of Kuwait's public health infrastructure during Iraq's invasion and occupation of Kuwait.

495. According to Kuwait, although short-term and medium-term adverse health effects of Iraq's invasion and occupation of Kuwait have already been identified, the long-term effects remain largely unknown. Kuwait, therefore, considers it necessary to conduct a surveillance programme to enable it to identify any increased long-term health risks so that appropriate prevention and treatment measures may be undertaken.

496. According to Kuwait, a carefully designed surveillance programme would enable it to "co-ordinate the collection of existing and future data on all

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health-related aspects of the Iraqi Aggression; identify and monitor exposed individuals; provide diagnoses of diseases in their primary stages; and study associations between environmental contamination, public health infrastructure damage, and traumatic events resulting from the Iraqi Aggression and adverse health effects".

497. Kuwait contends that failure to conduct such a surveillance programme would leave substantial gaps in knowledge concerning the long-term human health effects of Iraq's invasion and occupation of Kuwait which could prevent the identification and implementation of appropriate prevention and treatment programmes.

498. The surveillance programme proposed by Kuwait consists of five related components:

(a) Establishment and operation of a data repository and exposure registry for five years;

(b) A human health risk assessment;

(c) Studies to determine long-term health impacts. These studies would also provide support and guidance for other environmental monitoring and assessment activities relating to Iraq's invasion and occupation of Kuwait;

(d) A five-year clinical monitoring programme; and

(e) A public health survey.

These components are reviewed separately as claim Nos. 5000403 to 5000407 in paragraphs 506-532 below.

499. In its written response, Iraq raises general objections to the public health monitoring and assessment claims of Kuwait. It states that the detection of a substance does not, in any way, imply that it will cause damage. According to Iraq "[b]oth the concentration and duration must be of a certain magnitude in order to cause the damage". Iraq also argues that it is "illogical" to ask for compensation for unspecified "health damage", and that such damage must be specified clearly so that the source can be identified. It states that more details and more precise "effects" must be identified before any monitoring and assessment programme can commence.

500. Furthermore, Iraq questions how Kuwait would be able to identify any damage to public health ten years after the events that are alleged to have given rise to the damage. In particular, it doubts whether Kuwait would be able to distinguish damage or risks to public health attributable to pollutants released by the oil fires from damage or risks from other pollutants to which the populations of the region are continuously exposed. In this regard, Iraq notes that Kuwait is located in one of the major sand

and dust storm regions of the world, and is also exposed to persistent emissions from operational flares of oil wells.

501. Iraq reiterated these views and contentions during the oral proceedings.

502. In its submissions during the oral proceedings, Kuwait stressed that its proposed monitoring activities were intended to identify the nature, quantum and source of adverse health effects that its population may have suffered as a result of Iraq's invasion and occupation of its territory. The proposed activities would assist it to determine whether any environmental damage had been caused and, if so, whether the damage posed significant health risks. Consequently, it argued that it is not reasonable to suggest that it should prove that specific damage had been caused before submitting a claim or claims for monitoring.

503. As stated in paras. 29-30, the Panel does not consider that the absence of prior proof of damage constitutes a valid objection to the award of compensation for reasonable monitoring for the purposes of paragraph 35(d) of Governing Council decision 7.

504. Although the Panel also recognizes that, with the passage of time, it may be difficult for Kuwait to identify public health damage that is solely or primarily attributable to Iraq's invasion and occupation of Kuwait, as opposed to other possible causes, that difficulty does not make it inappropriate for Kuwait to undertake reasonable studies to determine the existence and nature of potential damage.

505. With regard to the contention that some damage to public health could be the result of ambient pollutants in the region, such as those from sand and dust storms or operational flares of oil wells, the evidence in the scientific literature indicates that the adverse effects of these phenomena are distinguishable from those originating from the oil fires and massive oil spill that resulted from Iraq's invasion and occupation of Kuwait. The evidence also shows that the dispersion of large quantities of airborne pollutants from the oil fires and oil spill could have increased the risks of certain health problems, such as respiratory ailments. These risks have the capacity to persist for many years after the events that gave rise to them.

2. Claim No. 5000403

506. Kuwait seeks compensation in the amount of USD 6,906,162 for a programme to establish and operate a data repository and an exposure registry. The data repository would collect and manage health information, including documents and data concerning health problems that may have resulted from Iraq's invasion and occupation of Kuwait, and the medical records of persons participating in the programme. The exposure registry would be used to identify persons who were exposed to environmental pollution and consequential traumas or who were adversely affected by the damage to

Kuwait's medical infrastructure as a result of Iraq's invasion and occupation of Kuwait.

507. There are valid reasons for the inclusion of a data repository and an exposure registry in a long-term public health surveillance programme. These facilities provide a central resource useful to epidemiological and clinical researchers because they help to co-ordinate medical data in a central location. This would make it easier to identify diseases and their potential causes.

508. The Panel finds that the programme constitutes reasonable monitoring of public health. Consequently, the expenses qualify for compensation in accordance with paragraph 35(d) of Governing Council decision 7.

509. Kuwait provided estimates of the costs for staffing, labour and equipment, including computers. The Panel finds these estimates reasonable.

510. Kuwait proposes to construct a new building to house the data repository and exposure registry. The Panel finds that such a facility is necessary for the effectiveness of the programme. The Panel agrees with Kuwait that it would be more cost-effective to construct a new building than to enter into a long-term lease of premises. However, the estimated construction costs presented by Kuwait are excessive and do not take account of the residual value of the building after completion of the programme. The Panel has adjusted the costs accordingly. These adjustments reduce the estimated cost to USD 6,763,546.

511. The Panel, therefore, recommends compensation in the amount of USD 6,763,546 for this claim.

3. Claim No. 5000404

512. Kuwait seeks compensation in the amount of USD 1,150,771 to conduct a human health risk assessment programme. The purpose of the programme would be to identify the potential risks of long-term adverse health effects in Kuwait resulting from Iraq's invasion and occupation of Kuwait. The risk assessment consists of five components, namely:

(a) Compilation of background information and a conceptual model of potential human exposures;

(b) Identification of pollutants considered as presenting potential risks to human health;

(c) An assessment to identify possible pathways by which people were exposed to pollutants, and the likely amounts of exposure;

(d) A toxicity assessment of each potential contaminant considered to present risks to human health; and

(e) A risk assessment integrating the results of the exposure assessment and toxicity assessment.

513. Human health risk assessments are commonly used to identify and assess potential health risks and to provide guidance on the design of monitoring programmes and the development of clean-up standards. In the view of the Panel the basic methodology proposed by Kuwait is consistent with standard practices.

514. The Panel finds that the programme constitutes reasonable monitoring of public health. Consequently, the expenses qualify for compensation in accordance with paragraph 35(d) of Governing Council decision 7.

515. The total amount claimed consists of estimated labour costs. The Panel finds that these costs are reasonable.

516. The Panel, therefore, recommends compensation in the amount of USD 1,150,771 for this claim.

4. Claim No. 5000405

517. Kuwait seeks compensation in the amount of USD 4,940,547 for a programme to identify and assess the long-term health impacts of Iraq's invasion and occupation of its territory. A major part of the programme would be to compare persons exposed to the environmental and infrastructure damage during Iraq's invasion and occupation of Kuwait with those who were not exposed. The programme would also provide support and guidance for other environmental monitoring and assessment activities being undertaken by Kuwait.

518. The programme would involve long-term epidemiological studies, and investigations into relationships between invasion-related environmental damage and changes in disease patterns. The programme would also provide necessary data for the exposure registry envisaged in claim No. 5000403 (paras. 506-511).

519. The Panel finds that the programme constitutes reasonable monitoring of public health. Consequently, the expenses qualify for compensation in accordance with paragraph 35(d) of Governing Council decision 7.

520. Kuwait has presented an estimate of the costs of the various components of the programme, including staffing and labour. The Panel finds that most of the estimates are reasonable and necessary to achieve the objectives stated in the claim.

521. One of the components of the programme is a "feasibility studies working seminar" to be held in Kuwait. The cost estimate includes provision for 12 medical experts to travel from the United States to attend the seminar for five days. The Panel does not consider such a seminar to be necessary, and

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has therefore eliminated all expenses related to it. Elimination of these expenses reduces the estimated cost to USD 4,846,396.

522. The Panel, therefore, recommends compensation in the amount of USD 4,846,396 for this claim.

5. Claim No. 5000406

523. Kuwait seeks compensation in the amount of USD 14,121,103 for a clinical monitoring programme. The purpose of the programme would be to trace persons in Kuwait whose health may have been adversely affected as a result of Iraq's invasion and occupation of Kuwait, and to track the development of their clinical symptoms and health problems. The clinical monitoring programme would involve:

(a) A review of existing clinical studies and data;

(b) Clinical testing (pulmonary function tests, X-rays, blood tests, etc.);

(c) Comprehensive medical screening and examinations for sections of the population who may be identified by the exposure registry to be established under claim No. 5000403 (paras. 506-511); and

(d) Integration of the data obtained from the tests and screenings into Kuwait's existing national health care database.

524. The programme is expected to last for at least 40 years. However, the amount claimed is for costs to be incurred during the first five years of the programme.

525. Kuwait has stated, and the Panel agrees, that many public health effects from Iraq's invasion and occupation of Kuwait may only be identified after many years. It is, therefore, appropriate for Kuwait to undertake a long-term clinical monitoring programme as proposed.

526. Accordingly, the Panel finds that the programme constitutes reasonable monitoring of public health, and the expenses qualify as compensation in accordance with paragraph 35(d) of Governing Council decision 7.

527. Following a review of the project as presented by Kuwait, the Panel suggests certain modifications, details of which are set out in annex XXV to this report. In particular, the frequency of medical and X-ray examinations should be reduced. To take account of these modifications, the Panel has made adjustments to the estimates provided by Kuwait. These adjustments reduce the estimated cost of the programme to USD 7,278,268.

528. The Panel, therefore, recommends compensation in the amount of USD 7,278,268 for this claim.

6. Claim No. 5000407

529. Kuwait seeks compensation in the amount of USD 770,190 for a public health survey. The purpose of the survey is to assess the costs of dealing with the increased incidence of various diseases that may have resulted from Iraq's invasion and occupation of Kuwait. Kuwait states that the survey would enable it to obtain health statistics needed to identify disease prevalence patterns among persons who received treatment in the national health care system of Kuwait as well as those who may have received treatment in other ways.

530. The Panel finds that the survey constitutes reasonable monitoring of public health. Consequently, the expenses qualify for compensation in accordance with paragraph 35(d) of Governing Council decision 7.

531. Following a review of the cost estimates presented by Kuwait, the Panel finds that the amounts claimed are reasonable.

532. The Panel, therefore, recommends compensation in the amount of USD 770,190 for this claim.

Table 7. Recommended amounts for Kuwait's monitoring and assessment claims

Claim number	Subject matter	Amount claimed (USD)	Amount recommended (USD)
5000373	Groundwater and Surface Water	842,812	nil
5000374	Groundwater and Surface Water	981,635	441,523
5000375	Groundwater and Surface Water	830,661	638,516
5000376	Groundwater and Surface Water	10,922,933	4,873,620
5000377	Marine and Coastal	612,600	nil
5000378	Marine and Coastal	57,554,587	37,546,888
5000397	Marine and Coastal	76,620,762	18,077,770
5000398	Marine and Coastal	157,249,044	8,237,792
5000399	Marine and Coastal	543,792	nil
5000400	Marine and Coastal	1,985,633	nil
5000401	Marine and Coastal	208,455	nil
5000402	Marine and Coastal	184,125	nil
5000432	Terrestrial	84,575,306	10,484,988
5000433	Terrestrial	160,344	160,344
5000434	Terrestrial	38,684,607	7,246,880
5000435	Terrestrial	390,920	390,920
5000436	Terrestrial	184,125	nil
5000403	Public Health	6,906,162	6,763,546
5000404	Public Health	1,150,771	1,150,771
5000405	Public Health	4,940,547	4,846,396
5000406	Public Health	14,121,103	7,278,268
5000407	Public Health	770,190	770,190
Total		460,421,114	108,908,412

ANNEX 35

United Nations Compensation Commission,
Report and Recommendations made by the Panel of Commissioners concerning the Fifth Instalment of "F4" Claims,
U.N. Doc. S/AC.26/2005/10 (2005)

UNITED NATIONS **S**

Security Council

Distr.
GENERAL

S/AC.26/2005/10
30 June 2005

Original: ENGLISH

UNITED NATIONS
COMPENSATION COMMISSION
GOVERNING COUNCIL

REPORT AND RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS CONCERNING THE FIFTH INSTALMENT OF "F4" CLAIMS

GE.05-62030

43. In the fourth "F4" instalment, the Panel reaffirmed that, in determining what remediation measures are necessary, "primary emphasis must be placed on restoring the environment to pre-invasion conditions, in terms of its overall ecological functioning rather than on the removal of specific contaminants or restoration of the environment to a particular physical condition".[10] In particular, the Panel noted that, in some circumstances, measures to recreate pre-existing physical conditions might not produce environmental benefits and could indeed pose unacceptable risks of ecological harm. The Panel went on to affirm that, in its view, where proposed measures for the complete removal of contaminants are likely to result in more negative than positive environmental effects, such measures should not qualify as reasonable measures to clean and restore the environment, within the meaning of article 35(b) of Governing Council decision 7.

5. Damage to natural resources without commercial value

44. Some of the claims in the fifth "F4" instalment are for compensation for losses in relation to natural resources alleged to have been damaged as a result of Iraq's invasion and occupation of Kuwait. The compensation sought includes compensation for loss of use of the resources during the period between the occurrence of the damage and the full restoration of the resources, either through natural recovery or as a result of remediation or restoration measures undertaken by a claimant.

45. Iraq contends that there is no legal justification for compensating claimants for "interim loss" of natural resources that have no commercial value; i.e., resources that "are not traded in the market". It argues that compensation for damage to non-commercial resources is limited to the costs of reasonable measures of remediation or restoration. According to Iraq, claims for interim loss of non-commercial resources have no basis in Security Council resolution 687 (1991) or Governing Council decision 7. Specifically, Iraq argues that there is no evidence that the Security Council intended that Iraq is to be held liable for temporary damage to a natural resource that has been or will be restored at its expense.

46. Iraq maintains that interpretation and application of Security Council resolution 687 (1991) must be carried out by applying the relevant rules of international law. It asserts that claims for interim loss of natural resources without commercial value have no precedent in general international law. According to Iraq, compensation in international law can only be paid for damage that is "financially assessable", and it argues that, under current international law, interim loss of non-commercial environmental resources is not financially assessable.

47. Iraq, therefore, argues that all claims for compensation for interim loss of non-commercial environmental resources should be rejected. In the view of Iraq, awarding compensation for any such claim, even if only for a small amount, would constitute a revolutionary change in international law.

48. For their part, the Claimants contend that temporary loss of the use of natural resources, such as the loss of biomass in the marine environment or the presence for long periods of oil contamination on beaches, clearly represents "environmental damage" within the language and meaning of Security Council resolution 687 (1991) and Governing Council decision 7. According to the Claimants, the absence of a specific reference to interim loss in Security Council resolution 687 (1991) or Governing Council decision 7 does not in any way suggest a limitation. They point out that the criteria enumerated

in Governing Council Decision 7 were not intended to resolve every issue that might arise with respect to claims presented pursuant to Security Council resolution 687 (1991), and they refer to the conclusion of the Panel, in the third "F4" report, that the term "environmental damage" in paragraph 16 of Security Council resolution 687 (1991) is not limited to losses or expenses resulting from the activities and events listed in paragraph 35 of Governing Council decision 7.[11]

49. The Claimants further argue that, under general international law, it would be an absurd and unreasonable result to deny compensation for temporary loss of resources resulting from a deliberate internationally wrongful act of aggression. They assert that entitlement to compensation for such damage under international law is mandated by the fundamental principle articulated by the Permanent Court of International Justice in the Factory at Chorzów case that "reparation must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed".[12] They point out that this principle, which predates 1991 and Security Council resolution 687 (1991), has been accepted by the International Law Commission of the United Nations and many other international authorities.

50. According to the Claimants, all losses that were a direct result of Iraq's illegal acts must be compensated in order to wipe out all the consequences of those illegal acts. In their view, compensation for temporary losses pending remediation or restoration is an appropriate form of compensation because it "mirrors" the restitution in kind that is favoured as a matter of principle by international law authorities such as the judgement in the Factory at Chorzów case.

51. The Claimants, therefore, maintain that they are entitled to recover compensation for "ongoing losses" of natural resources resulting from Iraq's invasion and occupation of Kuwait, and that such compensation should be measured from the time that the resources were damaged up to the time when recovery to pre-invasion conditions has been or will be completed. They assert that the Security Council intended that such loss should be compensated, and that there are international precedents for doing so.

52. Although both the Claimants and Iraq have framed their arguments in terms of whether claims for interim loss are compensable in principle, the Panel considers that the fundamental issue to be resolved is whether, pursuant to Security Council resolution 687 (1991), claimants who suffer damage to natural resources that have no commercial value are entitled to compensation beyond reimbursement of expenses incurred or to be incurred to remediate or restore the damaged resources. In other words, the question is whether the term "environmental damage", as used in Security Council resolution 687 (1991), includes what is referred to as "pure environmental damage"; i.e., damage to environmental resources that have no commercial value. In this regard, the Panel notes that Iraq does not deny that claimants are entitled to claim compensation for the temporary loss of resources which have an economic value ("which are traded in the market"), such as fisheries and crops. The Panel, therefore, concludes that Iraq's objection to the claims for the temporary losses in the fifth "F4" instalment is based on the fact that the resources involved are "non-commercial" in nature, rather than on the fact that the losses are of a temporary duration.

53. The Panel recalls that, in the third "F4" instalment, Iraq argued that the Panel should have regard to the applicable rules of international law in determining what environmental damage or loss resulting from Iraq's invasion and occupation of Kuwait qualifies for compensation under Security Council resolution 687 (1991). In that context, Iraq argued that damage resulting from the invasion and occupation of Kuwait was not compensable unless it reached the "threshold" that is generally required in international law for compensation in cases of state responsibility for transboundary environmental damage.[13] In the present instalment, Iraq's contention is that the compensability of the temporary loss of natural resources that have no commercial value must be determined by reference to principles of general international law.

54. In the third "F4" report, the Panel noted that the primary sources of the law to be applied by the Panel in the review of claims for compensation are listed in article 31 of the Rules. These are "Security Council resolution 687 (1991) and other relevant Security Council resolutions, the criteria established by the Governing Council for particular categories of claims, and any pertinent decisions of the Governing Council". The Panel observed that "other relevant rules of international law" were to be applied "where necessary". In the view of the Panel, this meant that recourse to other relevant rules of international law was only necessary where Security Council resolutions and the decisions of the Governing Council did not provide sufficient guidance for the review of a particular claim.[14] For the review of the claims in the third "F4" instalment, the Panel found that Security Council resolution 687 (1991) and the relevant decisions of the Governing Council provided sufficient guidance.[15]

55. For the claims in the fifth "F4" instalment, the Panel equally finds that Security Council resolution 687 (1991) and the relevant decisions of the Governing Council provide sufficient guidance for the review of the claims for compensation for loss of or damage to natural resources. Security Council resolution 687 (1991) states that Iraq is "liable under international law for any direct loss, damage, including environmental damage and the depletion of natural resources … as a result of Iraq's unlawful invasion and occupation of Kuwait". Paragraph 35(e) of Governing Council decision 7 provides further guidance by stating that Iraq is liable for "losses or expenses" resulting from "depletion of or damage to natural resources." As the Panel stated in the fourth "F4" report, part one, Security Council resolution 687 (1991) and Governing Council decision 7 establish the general principle that Iraq is liable for all damage and losses that result directly from its invasion and occupation of Kuwait. In the opinion of the Panel this means that any loss of or damage to natural resources that can be demonstrated to have resulted directly from Iraq's invasion and occupation of Kuwait must be deemed to be encompassed in the concept of "environmental damage and the depletion of natural resources" within the meaning of Security Council resolution 687 (1991). The Panel does not consider that there is anything in the language or context of Security Council resolution 687 (1991) or Governing Council decision 7 that mandates or suggests an interpretation that would restrict the term "environmental damage" to damage to natural resources which have commercial value.

56. Furthermore, the Panel does not consider that the fact that the effects of the loss of or damage to natural resources might be for a temporary duration should have any relevance to the issue of the compensability of the damage or loss, although it might affect the nature and quantum of

compensation that may be appropriate. In the view of the Panel, it is not reasonable to suggest that a loss that is documented to have occurred, and is shown to have resulted from the invasion and occupation of Kuwait, should nevertheless be denied compensation solely on the grounds that the effects of the loss were not permanent. As the Panel sees it, the critical issue to be determined in each claim is whether the evidence provided is sufficient to show that there has been a loss of or damage to natural resources as alleged and, if so, whether such loss or damage resulted directly from Iraq's invasion and occupation of Kuwait.

57. The Panel, therefore, finds that a loss due to depletion of or damage to natural resources, including resources that may not have a commercial value is, in principle, compensable in accordance with Security Council resolution 687 (1991) and Governing Council decision 7 if such loss was a direct result of Iraq's invasion and occupation of Kuwait. It follows, therefore, that temporary loss of the use of such resources is compensable if it is proved that the loss resulted directly from Iraq's invasion and occupation of Kuwait.

58. The Panel does not consider that this finding is inconsistent with any principle or rule of general international law. In the view of the Panel, there is no justification for the contention that general international law precludes compensation for pure environmental damage. In particular, the Panel does not consider that the exclusion of compensation for pure environmental damage in some international conventions on civil liability and compensation[16] is a valid basis for asserting that international law, in general, prohibits compensation for such damage in all cases, even where the damage results from an internationally wrongful act.

6. Damage to public health

59. The claims in the fifth "F4" instalment include claims by governments for losses or expenses resulting from damage to public health, in terms of adverse health effects on specific categories of residents of the claimant countries or on the general population. The damage or losses for which compensation is claimed include expenses of medical treatment for specific diseases and mental conditions as well as general claims for loss of life or reduced quality of life of the population.

60. With regard to claims for expenses resulting from public health expenditures, Iraq contends that there is no legal basis for such claims. Iraq argues that there is no mention of public health damage in Security Council resolution 687 (1991), and that the only reference to public health damage in Governing Council decision 7 is in paragraph 35(d) where mention is made of expenses resulting from "[r]easonable monitoring of public health and performing medical screenings for the purposes of investigation and combating increased health risks as a result of the environmental damage". According to Iraq, the only public health expenses for which compensation can be claimed by governments are expenses for reasonable monitoring and medical screening for the purpose of investigating and combating increased health risks.

61. With regard to expenses incurred by governments in providing medical services to members of their populations, Iraq argues that there is no basis for awarding compensation for such expenses since this is a basic service which governments provide in general whether there is only one patient or more

patients to be treated. According to Iraq, a government may only be entitled to compensation for medical treatments if it can demonstrate that these expenses were additional to what it would normally have incurred, and also that the additional expenditure was the direct result of any of the events specified in paragraph 34 of Governing Council decision 7.

62. In connection with the claims by governments for loss of life and reduced quality of life of their nationals, Iraq asserts that the claims are inadmissible because the Claimants concerned lack legal standing to bring such claims before the Commission. According to Iraq, the rules established by the Governing Council provide for the compensation of claims submitted by individuals for personal injury or mental pain and anguish. Individual claimants were given the opportunity to claim for these injuries under the "B", "C" and "D" claims categories; and indeed have done so, claiming for personal injury and death, mental pain and anguish resulting from hostage taking, illegal detention and other similarly traumatic events. Iraq contends that under the scheme established by the Governing Council, a government is not entitled to bring a claim by way of "diplomatic protection" for the loss of life or health of its nationals. This is because the UNCC system offers access to the individual who has suffered injury; and it is, therefore, an exception to the normal situation in international law where the individual does not have access to the adjudicating authority.

63. For their part, the Claimants concerned assert that they are entitled to submit claims for public health losses. They argue that, under the settled principles of international law, loss of life and reduced quality of life of nationals of a State represent injuries to the State, and claims for such injuries can be asserted as State claims rather than as the claims of individual nationals. The Claimants assert that international law has consistently taken the view that injury to a national of one State by another State gives rise to a claim that belongs to the State of the national and not to the injured person. The Claimants refer to pronouncements by a number of international courts and tribunals, as well as by noted commentators, as constituting "a long list of authority" confirming that injuries to nationals of a State represent injuries to the State of their nationality and give rise to claims by that State.

64. With regard to Iraq's contention that some of the claims are for indirect losses, the Claimants state that these claims are not for indirect losses since, by their very nature, they can only be claims of the State. They point out that the claims are not for losses of individual nationals and have not been brought on behalf of any specific individuals, and they argue that, according to the principle of diplomatic protection, the injuries to nationals of a State are also deemed to be direct injuries to the State that espouses the claims.

65. The Claimants point out that none of the individual claims that have been processed by the Commission to date has included compensation for damage from loss of life or reduced quality of life that is now sought in the fifth "F4" instalment. They note in this regard that compensation previously awarded on individual claims arising from death in category "C" and category "D" claims was limited to medical, burial and other expenses, loss of financial support that would have gone to a spouse, a child or parent as well as compensation for mental pain and anguish to the survivors. No compensation has been awarded for the pain and suffering of the persons who died. With regard to the

claims made for pain and suffering for non-fatal injuries, the Claimants state that these are distinct from the government claims for reduced quality of life. Claims for compensation for individual pain and suffering were limited to the specific circumstances set forth in Governing Council decision 3 (S/AC.26/1991/3) and to the narrowly limited amounts specified in Governing Council decision 8 (S/AC.26/1992/8). The compensation did not take into account the broad impairments of reduced quality of life or the increased risks that Iraq imposed on the entire populations of the Claimants.

66. With regard to the admissibility of claims for loss of life and reduced quality of life, the Claimants maintain that loss of life and reduced quality of life are clearly and properly compensable by the Commission. They point out that paragraph 16 of Security Council resolution 687 (1991) states that compensation is due for "any direct loss". In response to Iraq's assertion that Governing Council decision 7 makes specific reference only to compensation for expenses of "monitoring and medical screening", they assert that this does not exclude compensation for other losses related to public health, noting that compensation under Security Council resolution 687 (1991) is not limited to the heads of loss and expenses that are specifically itemized in Governing Council decision 7.

67. The Panel has previously stated that Iraq's liability for environmental damage under Security Council resolution 687 (1991) and Governing Council decision 7 is comprehensive and extends to all damage and losses related to the environment and any consequences of such damage that can reasonably be attributed directly to Iraq's invasion and occupation of Kuwait. In this regard, the Panel recalls its previous statements that paragraph 35 of Governing Council decision 7 does not purport to give an exhaustive list of the activities and events that can give rise to compensable losses or expenses. As the Panel noted in the second "F4" report, paragraph 35 of Governing Council decision 7 should be considered as providing guidance regarding the types of activities and events that can result in compensable losses, rather than a limitative enumeration of all such activities and events.[17] Accordingly, the Panel considers that the fact that paragraph 35 of Governing Council decision 7 specifically refers only to expenses of "monitoring of public health" and "medical screenings" does not imply in any way that compensation may not be appropriate for other damage or losses relating to public health. In particular, the Panel does not consider that paragraph 35 of Governing Council decision 7 can be interpreted to deny compensation for public health expenses incurred by a government as a direct result of Iraq's invasion and occupation of Kuwait. In the view of the Panel, it is illogical to argue that a government is entitled to compensation for expenses of monitoring activities and medical screening for the purposes of investigating and combating increased health risks which result from Iraq's invasion and occupation of Kuwait, but that expenses actually incurred by the government in combating increased health risks that have been identified as a result of the monitoring and screening are not compensable.

68. The Panel, therefore, concludes that expenses incurred by a State in combating increased public health problems or public health risks caused by environmental damage that resulted directly from Iraq's invasion and occupation of Kuwait are, in principle, compensable in accordance with Security Council resolution 687 (1991). As with all claims, the test to be applied is whether the expense or loss for which compensation is claimed has actually occurred and can reasonably be demonstrated to be a direct result of Iraq's invasion and occupation of Kuwait.

69. With regard to Iraq's contention that the Claimants do not have standing to bring claims for general damage related to public health, such as claims for loss of life or reduced quality of life, the Panel notes that Security Council resolution 687 (1991) expressly states that Iraq is liable under international law for direct loss, damage, or injury to foreign governments as a result of Iraq's unlawful invasion and occupation of Kuwait. Similarly, paragraph 34 of Governing Council decision 7 provides that compensation is available with respect to any direct loss, damage or injury to Governments as a direct result of Iraq's unlawful invasion and occupation of Kuwait. It follows that a Government is entitled to bring a claim for compensation for a loss, damage or injury suffered by it, so long as the claim is in conformity with Security Council resolution 687 (1991) and other relevant Security Council resolutions, the criteria established by the Governing Council for particular categories of claims and other pertinent decisions of the Governing Council. In the view of the Panel, there is no provision in the relevant resolutions of the Security Council or decisions of the Governing Council which prevents a government from bringing a claim for a public health loss, damage or injury for which it would be entitled to claim under international law.

70. In this connection, the Panel notes that general international law recognizes the right of a State to bring claims on the international plane against another State for damage to a national of the claimant State. Where a claim is brought by a State in such a case, the State is not acting on behalf of the injured national but rather is asserting its own right to ensure compliance with the rules of international law in respect of its nationals. In the view of the Panel, the fact that an injured national can bring an individual claim for a specific injury or damage does not affect the right or standing of a State to bring a national claim, so long as there is no duplication in compensation awarded for the same injury or damage. Whether, and if so to what extent, any such claim by a government will succeed depends on the nature of the claim and the evidence produced to support it.

71. However, the Panel recognizes that governments may not be entitled to bring claims for compensation for injury or damage where the applicable decisions of the Security Council or the Governing Council restrict the right to bring such claims to certain categories of persons or entities. Thus, for example, the Panel considers that Governing Council decisions 3 and 8 reflect a policy decision of the Governing Council regarding the categories of persons who may bring claims for mental pain and anguish, the criteria to be met for such claims to succeed, and the limits of compensation that may be awarded for various categories of injury or damage. For that reason, the Panel finds that claims for compensation for mental pain and anguish can only be brought by individuals who satisfy the criteria established by the Governing Council in its decision 3. Accordingly, no such claims can be brought by a government.

7. Valuation methodologies

72. In support of the claims for loss or depletion of natural resources and for damage to public health resulting from Iraq's invasion and occupation of Kuwait, the Claimants have relied on statistical evidence and calculations as well as certain methodologies for estimating the extent of damage and quantifying the losses to be compensated.

73. In presenting their claims for temporary loss of natural resources, some Claimants have utilized the methodology known as "Habitat Equivalency Analysis" ("HEA") to determine the nature and extent of compensatory restoration that is necessary to compensate for the loss of ecological services that were provided by the resources before they were damaged. Based on the results of the HEA, some Claimants propose to undertake compensatory restoration projects that are intended to offset the ecological services that have been lost between the time of initial damage to the resources and the time of their full recovery. The compensatory restoration projects are aimed at providing equivalent ecological service gains either in the same area or at other locations.

74. Iraq contends that the methodologies that have been used by the Claimants are not acceptable. Iraq states that, in international law, compensation can only be paid for financially assessable damage; and it claims that both the proof of damage and the assessment of damage must be made in accordance with established principles of international law. According to Iraq, international law and practice do not recognize the methodologies relied upon by the Claimants in these claims. Iraq considers that these methodologies are "novel and untried", and are "shot through with uncertainty". In the view of Iraq, they are "abstract and theoretical methodologies" of the kind that international bodies, for example, the International Oil Pollution Compensation Fund (the "IOPC Fund"), have expressly rejected. In this regard, Iraq refers to resolution 3 of the Assembly of the IOPC Fund which stated that "the assessment of compensation to be paid by the [IOPC] Fund is not to be made on the basis of abstract quantification of damage calculated in accordance with theoretical models".[18]

75. Iraq also notes that there is no international treaty or other international practice which could support the use of these "abstract and theoretical" models in computing damage to natural resources or damage to public health. Moreover, Iraq states that there is no general national practice to support the use of such methodologies and, consequently, that it cannot be argued that the use of these methodologies is reflected as a general principle of law recognized by civilized nations.

76. Iraq argues that the Panel would be taking international law into a new domain if it were to adopt the approach proposed by the Claimants. In the view of Iraq, it is not the function of the Panel to legislate or progressively develop the rules of international law.

77. With regard to the use of statistical evidence by the Claimants to support some of the claims, Iraq contends that, in order to succeed with a claim for damages, it has to be proved with certainty that damage or harm to a legally protected interest, for example, health, life or property, has actually occurred. According to Iraq, statistical evidence that damage must have occurred is not sufficient in any private law system. Iraq asserts that, for a claim for damage to succeed, it is not sufficient to show that a person was exposed to a risk of becoming infected with a severe disease. Without proof of actual damage, no claim should succeed. Accordingly, Iraq argues that the Panel can only take exposure to risk into consideration if the risk actually results in damage or harm.

78. The Claimants maintain that the methodologies adopted by them in estimating damage suffered by them or the compensation claimed for such damage are fully in accordance with Security Council resolution 687 (1991) and Governing Council decision 7 and are not inconsistent with any rules or principles of international law. They assert that compensatory restoration, as proposed by them in the

fifth "F4" instalment claims, is intended to provide the equivalent of the natural resource services of which the Claimants would be deprived until the damaged natural resources are restored to the baseline conditions in which they would have been but for the wrongful acts of Iraq.

79. With regard to the use of HEA, the Claimants state that HEA is a methodology that is widely accepted and is often used to quantify the ecological loss of services caused by oil spills and other released contaminants. According to the Claimants, HEA provides an appropriate mechanism to assign the costs of compensatory restoration to alternatives that can provide resources and gains equivalent in type and quality to the losses sustained. In their view, the methodologies utilized by them in the fifth "F4" instalment claims are internationally accepted methods for measuring the extent of loss of natural resources so that proper compensation can be made for such losses.

80. In the view of the Panel, international law does not prescribe any specific and exclusive methods of measurement for awards of damages for internationally wrongful acts by states. The general rule is to restore what has been damaged to integrity or, if this is not possible, to provide an equivalent for it. The overall criterion is always that of effective reparation for the wrongful act. Hence, even in the absence of precise rules or prescriptions on the methods for evaluating damage, courts and tribunals are entitled and required to evaluate damage and determine appropriate compensation, relying on general principles for guidance, particularly the principle that reparation must, as far as possible, wipe out all the consequences of the illegal act. As the Tribunal in the Trail Smelter Arbitration stated in its interim award: "Where the [wrongful act] itself is of such a nature as to preclude the ascertainment of the amount of damages with certainty, it would be a perversion of fundamental principles of justice to deny all relief to the injured person, and thereby relieve the wrongdoer from making any amend for his acts. In such case, while the damages may not be determined by mere speculation or guess, it will be enough if the evidence show the extent of the damages as a matter of just and reasonable inference, although the result be only approximate."[19]

81. The Panel recognizes that there are inherent difficulties in attempting to place a monetary value on damaged natural resources, particularly resources that are not traded in the market. With specific regard to HEA, the Panel recognizes that it is a relatively novel methodology, and that it has had limited application at the national and international levels. The Panel is also aware that there are uncertainties in HEA calculations, especially for establishing a metric that appropriately accounts for different types of service losses and for determining the nature and scale of compensatory restoration measures that are appropriate for damage to particular resources. For these reasons, the Panel considers that claims presented on the basis of HEA or similar methodologies of resource valuation should be accepted only after the Panel has satisfied itself that the extent of damage and the quantification of compensation claimed are appropriate and reasonable in the circumstances of each claim. However, the Panel does not consider that these potential difficulties are a sufficient reason for a wholesale rejection of these methodologies, or for concluding that their use is contrary to international law principles.

82. With regard to the claims for compensatory restoration in the fifth "F4" instalment, the Panel reiterates its previous statements that remediation measures for damaged resources should focus on

primary restoration, in terms of the restoration of ecological functioning.[20] Consequently, compensatory restoration measures should be considered only where there is sufficient evidence that primary restoration will not fully compensate for any identified losses. It is only in such cases that HEA may be considered as a helpful tool in determining how much compensatory restoration is necessary and feasible in the circumstances. Accordingly, in each case where a claimant seeks an award to undertake compensatory restoration, the Panel has considered whether the claimant has sufficiently established that primary restoration has not or will not fully compensate for the losses. Compensation is recommended only where the evidence available shows that, even after primary restoration measures have been undertaken, there are, or there are likely to be, uncompensated losses.

8. Set-off

83. Iraq has argued that, in order to put each claimant in the position in which it would have been but for Iraq's invasion of Kuwait, account should be taken of any profits or other benefits that accrued to that claimant as a result of the invasion and occupation. Iraq asserts that this approach is consistent with the practice adopted by other panels of Commissioners.

84. The Panel considers that, in assessing compensation for damage or loss suffered by a claimant as a result of Iraq's invasion and occupation of Kuwait, due account should be taken of any extraordinary profit or other benefit that accrued to the claimant as a result of the event or activity in respect of which the claim for compensation is submitted.

85. Where the extent and value of any such profit or other benefit can be ascertained, it should be set off against the compensation to be awarded. However, the Panel considers that such a set-off is only justified where the profit or other benefit in question results from an event or damage that is the subject of the particular claim being reviewed.

86. In relation to the claims reviewed in the fifth "F4" instalment, the evidence presented to the Panel does not indicate that any profit or other benefit accrued to any of the Claimants in connection with the events or damage in respect of which the claims for compensation have been submitted. Accordingly, the Panel does not consider it necessary to make any recommendations on set-off.

III. REVIEW OF THE FIFTH INSTALMENT OF "F4" CLAIMS

A. Article 36 of the Rules

87. Article 36 of the Rules provides that a panel of Commissioners may "(a) in unusually large or complex cases, request further written submissions and invite individuals, corporations or other entities, Governments or international organizations to present their views in oral proceedings" and "(b) request additional information from any other source, including expert advice, as necessary". Article 38(b) of the Rules provides that a panel of Commissioners "may adopt special procedures appropriate to the character, amount and subject-matter of the particular types of claims under consideration."

for a reduction in the quality of crops; and the third claim unit is for a proposed long-term monitoring and assessment project.

1. First claim unit – Reduced crop yields

103. Iran seeks compensation in the amount of USD 217,247,112 for losses due to reduced yields of several varieties of agricultural crops in the provinces of Bushehr, Fars, Hormozgan, Khuzestan, Kerman and Kohgiloyeh (the "Southern Provinces") in 1991.

104. According to Iran, the oil well fires in Kuwait and evaporation from millions of barrels of crude oil spilt into the Persian Gulf as a result of Iraq's invasion and occupation of Kuwait produced large quantities of soot and sulphur, much of which were deposited in several areas of the Southern Provinces in the form of black rain. Iran states that this resulted in heavy agricultural production losses, due to reductions in the yields of several agricultural crops in the affected areas.

105. According to Iran, the damage resulted from (a) direct impacts of the increased amounts of airborne pollutants such as sulphur dioxide (SO_2), nitrogen oxides (NO_X,), ozone, and polycyclic aromatic hydrocarbons; (b) leaf infections due mainly to black rain; and (c) "infection" of the soil by deposits of heavy metals and toxic hydrocarbons.

106. Iran estimates its crop losses by comparing the actual production of each crop in each of the affected provinces during 1991 with the expected production of those crops, based on a statistical analysis of crop yields over a period of 11 years from 1986 to 1996. For each crop, Iran calculates the compensation sought by multiplying the decrease in production in 1991, which it considers to be the result of Iraq's invasion and occupation of Kuwait, by the market price of that crop.

107. Iran relies on evidence from the published literature to support its claim. In addition, Iran submitted other information, including remote sensing data and photographic evidence of damage to agricultural crops across the Southern Provinces.

108. Iraq argues that Iran has not demonstrated that any loss of crops occurred or that there is any causal connection between the alleged reduction in crop production and pollution resulting from the invasion and occupation of Kuwait. In particular, Iraq points out that Iran has produced no evidence showing the quantities of specific crops in identified areas that were exposed to, or affected by, pollution that resulted from the invasion and occupation.

109. Iraq also contends that modelling of the smoke plume shows that soot and SO_2 depositions were restricted to the extreme south of Iran in the province of Khuzestan, and were not as widespread as alleged by Iran.

110. Iraq contends that reduced crop yields in 1991 may be due to causes other than pollution resulting from the conflict. In particular, Iraq suggests that reduced rainfall and late rains during the 1991 growing season could have had an impact on crop yields in the regions alleged to have been affected. Iraq further states that the photographic evidence submitted by Iran shows problems with

crops that could possibly have been caused by a variety of factors, including frost, disease, lack of water, etc.

111. Iraq also argues that Iran inappropriately used international market prices for crops in calculating the value of the alleged damage. According to Iraq, local producer prices are more appropriate for this purpose.

112. In the first "F4" report, the Panel noted that there was evidence in the scientific literature that emissions from the oil well fires reached some parts of Iran and, accordingly, that it was likely that some airborne pollutants from the oil well fires in Kuwait reached the ground in Iran, mainly through wet deposition.[24]

113. Although Iran has not submitted evidence, such as ground-level monitoring data on SO_2, ozone, and soot levels, to show the nature and extent of pollution in the areas concerned that could have resulted in crop losses, other evidence provided by Iran, including statistical analyses of data on crop yields, remote sensing data, photographic evidence and information from published literature, indicates that there were reductions in the yields of some crops in the Southern Provinces during 1991. In the view of the Panel, these reductions were, at least in part, a direct result of Iraq's invasion and occupation of Kuwait.

114. The Panel considers that the statistical approach used by Iran to quantify the impacts of pollutants from the oil well fires on its crops in 1991 is, in general, reasonable and appropriate. However, the Panel finds that some of Iran's assumptions for estimating the quantities of crop losses are not appropriate. Specifically, the Panel notes that Iran's approach does not take due account of changes in crop yields that may be due to the impacts of pests and diseases. In addition, in calculating its losses, Iran does not make allowance for the fact that certain expenses, such as transportation costs, were reduced or not incurred in 1991 because of the decrease in the crops produced.

115. Taking the above factors into account, the Panel has made the following modifications to Iran's calculations of the quantities of crops lost:

(a) Addition of a variable to Iran's statistical model to account for changes in agricultural productivity over time. Changes in productivity are possible during the 11-year modeling period, and the inclusion of an independent variable in the model to track such changes will enhance the overall accuracy of the estimates of crop losses that are directly attributable to the impacts of pollution from the oil well fires.

(b) Use of the 1991 local producer prices from the Food and Agriculture Organization of the United Nations ("FAO") instead of the market prices from FAO and the Iranian Ministry of Commerce. The local producer prices are the prices that are received by the farmers and do not include market and transportation costs. They therefore more accurately reflect the losses incurred by the agricultural producers.[25]

116. An adjustment has also been made to take account of the fact that part of the loss of production was due to factors unrelated to Iraq's invasion and occupation of Kuwait.

117. These modifications and the adjustment reduce the compensable loss to USD 24,034,892.

118. Accordingly, the Panel recommends compensation in the amount of USD 24,034,892 for this claim unit.

2. Second claim unit – Reduced crop quality

119. Iran seeks compensation in the amount of USD 174,648,879 for losses due to reduced quality of several varieties of agricultural crops in the Southern Provinces in 1991. Iran states that the reduction in the quality of crops produced in the Southern Provinces in 1991 was caused by exposure of crops to pollutants from the oil well fires in Kuwait and the resulting adverse environmental conditions.

120. Iran estimates the alleged reduction in crop quality by comparing crop prices in the Southern Provinces in 1991 with national crop prices. According to Iran, the differences in prices were due to the poor quality of the crops produced in the Southern Provinces. For each crop, Iran calculates the compensation sought for the decreased quality by multiplying the difference between the local and national prices by the quantity produced in 1991.

121. Iraq contends that the use of price indices as the basis for the assessment of loss is not appropriate and argues that Iran does not explain clearly why a reduction in the market price of crops necessarily results from a reduction in the quality of crops. Iraq states that "Iran should have presented information on the actual quantities and value of the produce that could not be sold because of poor quality directly resulting from smoke plume damage".

122. The Panel notes that, although loss in quality could reduce the prices of crops, crop prices can fluctuate for a variety of other reasons related to the economics of supply and demand. Thus the reduction in the prices of crops in the Southern Provinces of Iran during 1991 could have been due to factors unrelated to the oil well fires in Kuwait, such as differences in supply and demand in the different provinces of Iran. In the view of the Panel, an appropriate assessment of loss suffered by Iran as a result of reductions in crop quality can only be made on the basis of a statistical analysis that is capable of controlling for all the supply and demand factors that can affect crop prices. Iran has neither provided such a statistical analysis nor submitted information that provides a sufficient basis for the Panel to make such an analysis.

123. The Panel, therefore, concludes that the evidence presented is not sufficient to establish the extent of loss due to a reduction in the quality of the specified crop varieties in the Southern Provinces. Consequently, Iran has failed to meet the evidentiary requirements for compensation as specified in article 35(3) of the Rules.

124. Accordingly, the Panel recommends no compensation for this claim unit.

particular, the information available does not provide a basis for determining what proportion of the increase, if any, can reasonably be attributed to the invasion and occupation. Although Iran was requested to provide the full results of its statistical analysis, it did not do so. Consequently, Iran has failed to meet the evidentiary requirements for compensation as specified in article 35(3) of the Rules.

281. Accordingly, the Panel recommends no compensation for this claim unit.

4. Fourth claim unit – Post-traumatic stress disorder and panic disorder cases

282. Iran seeks compensation in the amount of USD 2,489,695,071 for expenses and other losses due to an increase in the number of cases of mental disorders requiring treatment in Iran as a result of Iraq's invasion and occupation of Kuwait. Iran asserts that, following Iraq's invasion of Kuwait and the appearance of the smoke plume from the oil well fires over Iran, residents of the provinces of Khuzestan and Bushehr, who had been previously traumatized by the Iran-Iraq conflict, suffered from a new source of stress.

283. Iran claims that the "stressors" resulting from Iraq's invasion and occupation of Kuwait led to an increase in cases of post-traumatic stress disorder ("PTSD") and panic disorder requiring treatment in Khuzestan and Bushehr. Examples of stressors identified by Iran include: fear of air strikes and chemical contamination, especially after natural resources were contaminated and many blasts of ordnance accompanied by smoke were observed; fear of blast sounds which were frequently heard in Abadan and Khorramshahr; fear of direct chemical or biological attacks; fear of the possibility of missiles of the Allied Coalition Forces accidentally hitting Abadan and Khorramshahr; and fear of possible harm from Iraqi and American aircraft flying over the border zone and Iranian territory that had been attacked during the Iran-Iraq conflict.

284. Iran relies on the results of a monitoring and assessment study on mental health in Iran to demonstrate the increased number of cases of PTSD and panic disorder requiring treatment, and also to establish a direct causal link between this increase and Iraq's invasion and occupation of Kuwait.[49] Iran's monitoring and assessment study consists of four parts: (a) an epidemiological study to identify cases of mental health disorders caused by Iraq's invasion and occupation of Kuwait; (b) a qualitative study to identify the characteristics of exposure zones and potentially affected populations, the nature of mental health problems, and past methods of treatment employed; (c) a clinical trial to assess the cost and efficacy of treatment protocols; and (d) the calculation of costs associated with mental health damages.

285. Iran asserts that the results of the monitoring and assessment study demonstrate that an additional 102,792 people in Khuzestan and Bushehr provinces suffered from PTSD and/or panic disorder as a result of Iraq's invasion and occupation of Kuwait. Iran claims compensation for past expenses incurred in treating these additional cases of PTSD and panic disorder; past indirect costs, including lost income associated with reduced functioning at work, unemployment, days spent by family members providing care, and transportation; and costs of future medical care. Iran also seeks compensation for the value of past and future reduced well-being suffered by individuals with PTSD or panic disorder.

286. Iraq states that Iran has not established that there was a direct causal link between the increase in the number of cases of PTSD and panic disorder requiring treatment. According to Iraq, Iran has not demonstrated that its residents were exposed to the type of traumatic events required for a diagnosis of PTSD as a result of the invasion and occupation of Kuwait.

287. Iraq also comments on the quantification of cases of mental disorders in Iran's monitoring and assessment study. Iraq notes that Iran bases its estimate of the increase in the number of cases of PTSD and panic disorder requiring treatment on a study sample of 2,764 people and then applies the results to the entire population of Khuzestan and Bushehr over 12 years of age in 2003. Iraq asserts that the use of 2003 population data, and the inclusion of people who were infants in 1991, results in an artificially high estimate of the number of cases of PTSD and panic disorder. Iraq states that the percentage of selected samples that were diagnosed with PTSD as a result of screening cannot be extrapolated to a larger population.

288. In the view of the Panel, the results of Iran's monitoring and assessment study do not establish that the increase in the number of cases of PTSD and panic disorder requiring treatment in Iran was a direct result of Iraq's invasion and occupation of Kuwait. The Panel notes that the stressors to which Iran claims the population in the affected areas were subjected are not of the type that would cause PTSD. In this regard, the Panel notes that no combat activity took place in Iran during Iraq's invasion and occupation of Kuwait. The Panel further notes that the zone analysis used by Iran to link cases of PTSD and panic disorder to Iraq's invasion and occupation of Kuwait is not supported by the data that Iran submitted.

289. In the view of the Panel, Iran has not provided sufficient evidence to establish that there was an increase in the number of cases of PTSD and panic disorder requiring treatment in Iran as a direct result of Iraq's invasion and occupation of Kuwait. Consequently, Iran has failed to meet the evidentiary requirements for compensation specified in article 35(3) of the Rules.

290. Accordingly, the Panel recommends no compensation for this claim unit.

5. Fifth claim unit – Claim preparation costs

291. Iran seeks compensation in the amount of USD 51,075 for project implementation costs. The Panel considers that this is a claim for claim preparation costs.

292. As stated in paragraph 223 above, in a letter dated 6 May 1998, the Executive Secretary informed all panels of Commissioners that the Governing Council intends to resolve the issue of the compensability of claims preparation costs in the future.

293. The Panel, therefore, makes no recommendation in respect of this claim unit.

6. Recommended award

294. The Panel's recommendations in respect of claim No. 5000287 are summarized in table 5.

treatment of five years for each case, is overstated. The Panel has, therefore, adjusted the recommended amount to take into account variations in the times required for treatment of different cases. The adjustment reduces the total number of treatment visits for PTSD patients to 29,615.

510. The Panel also notes that only 12,000 visits occurred at the Al-Riggae Centre, and that the Al-Riggae Centre costs are higher than the costs for psychological treatment at other facilities in Kuwait. As a result, the Panel has adjusted the cost-per-visit rate for treatment received in facilities other than the Al-Riggae Centre to USD 78 per visit.

511. These adjustments reduce the compensable expenses for the treatment of PTSD cases to USD 5,909,343.

512. Accordingly, the Panel recommends compensation in the amount of USD 5,909,343 for this part of the claim unit.

(b) Loss of well-being

513. Kuwait also seeks compensation for loss of well-being (i.e., reduced quality of life) of persons suffering from PTSD. Kuwait states that for each year an individual suffers from PTSD, there is a loss measurable in health-adjusted life years. Kuwait estimates the loss of well-being by multiplying the period during which a person suffered from PTSD symptoms by a disability weight representing the loss of well-being as a result of living with these symptoms. The specific disability weights used by Kuwait were derived from a study involving a person trade-off survey in which clinicians were asked to assume the role of a policy maker and to make judgements about the relative values of sick people as compared to healthy people. Kuwait claims that each individual with PTSD suffered a decrease in well-being equivalent to the loss of one-fourth of a life year. Accordingly, based on a value of USD 50,000 per life year, Kuwait claims USD 12,500 for each case of PTSD resulting from the invasion and occupation.

514. Iraq argues that governments can only submit claims before the Commission for losses that they have sustained directly, and that they may not seek compensation for losses suffered by individuals. Iraq states that Kuwait's claim for loss of individual well-being is inadmissible because it relates to losses suffered directly by individuals who could have submitted such claims to the Commission. Since the Government of Kuwait has not suffered any direct loss, Iraq states that this part of the claim unit should be dismissed. Iraq further states that the claim for loss of well-being is merely theoretical.

515. As indicated in paragraphs 69-70 above, the Panel considers that there is nothing either in Security Council resolution 687 (1991) and Governing Council decision 7 or in general international law that prevents Kuwait from claiming for death or other injury to its nationals as a result of the unlawful actions of Iraq. However, in the present case, the Panel does not consider that the evidence provided by Kuwait is sufficient to establish the nature and extent of the damage for which it seeks compensation. In particular, the Panel notes that, in calculating its losses, Kuwait uses disability weights that are normally intended for making decisions on the cost-effectiveness of alternative

investments in health policies and programmes rather than for compensating individuals with mental illness.

516. The Panel further finds that Kuwait does not provide a reasonable justification for using USD 50,000 per life year to value its loss. Although Kuwait states that this value is at the low end of the range of values that economists use to evaluate the cost-effectiveness of alternative medical interventions in the United States, there is no evidence that the range used by Kuwait is appropriate for the population of Kuwait. In the view of the Panel, there are major cultural, demographic and economic differences between Kuwait and the United States which make it very doubtful that the range of values used by Kuwait is suitable in this context.

517. The Panel, therefore, concludes that the information provided by Kuwait is not sufficient to enable it to determine the nature and circumstances of the loss for which compensation is claimed. Consequently, Kuwait has failed to meet the evidentiary requirements for compensation as specified in article 35(3) of the Rules.

518. Accordingly, the Panel recommends no compensation for this part of the claim unit.

3. Third claim unit – Increased mortality

519. Kuwait seeks compensation in the amount of USD 192,500,000 for increased mortality in Kuwait due to increased pollution resulting from the oil well fires in Kuwait. In particular, Kuwait seeks compensation for loss of economic value resulting from 35 premature deaths that it estimates occurred due to the exposure of its population to airborne particulate matter from the oil well fires. Kuwait calculates the compensation requested on the basis of USD 5,500,000 per life lost.

520. Kuwait relies on the results of its monitoring and assessment enumeration study[83] to estimate the ground-level concentrations of airborne particulate matter to which its citizens were exposed during the period when the oil well fires were burning. Based on the results of an air dispersion model, Kuwait estimates daily concentrations of particulate matter and calculates population-weighted exposure estimates. According to Kuwait, the results of its monitoring and assessment study demonstrate that the emissions from the oil well fires resulted in increased concentrations of particulate matter in populated regions of Kuwait in quantities sufficient to cause premature deaths.

521. In order to estimate the number of these premature deaths, Kuwait relies on the results of a monitoring and assessment study on human health risks.[84] In the risk assessment study, Kuwait generated a statistical estimate of the expected increase in mortality in Kuwait based on estimates of concentrations of particulate matter to which the population was exposed as derived from the monitoring and assessment enumeration study. According to Kuwait, the results of the risk assessment show that the number of deaths due to exposure to particulate matter from the oil well fires range between 0 and 116. Kuwait seeks compensation for 35 deaths, which is their "central estimate".[85]

ANNEX 36

Diplomatic Note 12437-47 SP/DGA/DTANC, sent from the Ministry of Foreign Affairs of Ecuador to the Embassy of Colombia in Ecuador (24 July 2000)

Verbal Note No. *12437* -47SP/DGA-DTANC

THE MINISTRY OF FOREIGN AFFAIRS has the honor to write to the Honorable Embassy of the Republic of Colombia to express the concern of the Government of Ecuador regarding the upcoming fumigations of coca crops in Colombian territory with toxic and/or biological substances that may cause serious impacts on human health and the environment, with possible repercussions for Ecuador, on the fragile ecosystems of the Amazon region and on the health and livelihoods of local populations.

THE MINISTRY OF FOREIGN AFFAIRS considers it important and would appreciate receiving information regarding the environmental repercussions of the possible use of toxic and/or biological substances. ***Of special importance*** is learning if environmental impact studies and/or mitigation measures have been planned and carried out before the realization of the aforementioned spraying activities in the areas that may be possibly affected.

THE MINISTRY OF FOREIGN AFFAIRS expresses its gratitude for the kind attention given to this request, and avails itself of this opportunity to reiterate to the Honorable Embassy of the Republic of Colombia the assurances of its high and distinguished consideration.

Quito, 24 July 2000

TO THE HONORABLE
EMBASSY OF COLOMBIA
PRESENT.-

[Seal]

Nota Verbal No. 12437-47 SP/DGA-DTANC

EL MINISTERIO DE RELACIONES EXTERIORES tiene a honra dirigirse a la Honorable Embajada de la República de Colombia para expresarle la preocupación del Gobierno ecuatoriano en torno a las próximas fumigaciones de plantaciones de coca en territorio colombiano, con sustancias tóxicas y/o biológicas que podrían causar graves impactos a la salud humana y al medio ambiente, con posibles repercusiones para el Ecuador, en los frágiles ecosistemas de la región amazónica y en la salud y forma de vida de las poblaciones locales.

EL MINISTERIO DE RELACIONES EXTERIORES considera importante y apreciará recibir información acerca de las repercusiones ambientales por la posible utilización de sustancias tóxicas y biológicas. De especial importancia es conocer si se han previsto y efectuado estudios de impacto ambiental, previos a la realización de las indicadas actividades de fumigación y/o medidas de mitigación en las posibles zonas afectadas.

EL MINISTERIO DE RELACIONES EXTERIORES agradece la deferente atención a este pedido y hace propicia la oportunidad para reiterar a la Honorable Embajada de la República de Colombia las seguridades de su alta y distinguida consideración.

Quito, a 24 de julio del 2000.

MINISTERIO DE RELACIONES EXTERIORES
Dirección General de América

A LA HONORABLE
EMBAJADA DE LA REPÚBLICA DE COLOMBIA
PRESENTE.-

ANNEX 37

Diplomatic Note E-1766, sent from the Embassy of Colombia in Quito to the Ministry of Foreign Affairs of Ecuador (19 Dec. 2000)

[seal]

EMBASSY OF COLOMBIA

E-1766

*THE **EMBASSY OF THE REPUBLIC OF COLOMBIA** presents its compliments to the **HONORABLE MINISTRY OF FOREIGN AFFAIRS – General Directorate of Protocol**, on the occasion of forwarding, as agreed by telephone, a copy of the Aide Memoire **"Proposal of Panama to hold a meeting on the implementation of Plan Colombia"** to Doctor Heinz Möeller Freile, Minister of Foreign Affairs of Ecuador. The Government of Colombia considers this document to be inappropriate and inconvenient.*

*THE **EMBASSY OF THE REPUBLIC OF COLOMBIA** avails itself of this opportunity to reiterate to the **HONORABLE MINISTRY OF FOREIGN AFFAIRS** the assurances of its highest and distinguished consideration.*

Quito, 19 December 2000

To the Honorable
MINISTRY OF FOREIGN AFFAIRS
General Directorate of Protocol
City.

EMBAJADA DE COLOMBIA

E-1766

*La **EMBAJADA DE LA REPUBLICA DE COLOMBIA**, saluda muy atentamente al **HONORABLE MINISTERIO DE RELACIONES EXTERIORES – Dirección General de Protocolo**, con ocasión de remitirle con destino al Doctor Heinz Möeller Freile, Ministro de Relaciones Exteriores del Ecuador, de acuerdo a lo convenido telefónicamente, copia de la ayuda de memoria **"Propuesta de Panamá de realizar un encuentro sobre la puesta en marcha del Plan Colombia"**, la cual el Gobierno Colombiano considera improcedente e inconveniente.*

*La **EMBAJADA DE LA REPUBLICA DE COLOMBIA**, se vale de la oportunidad para reiterarle al **HONORABLE MINISTERIO DE RELACIONES EXTERIORES**, las seguridades de su más alta y distinguida consideración.*

Quito, Diciembre 19 de 2000

MINISTERIO DE RELACIONES EXTERIORES
PARA TRAMITE DE: SP-DIA
Ingreso No. 32713
Con Anexo [X]
Sin Anexos [ ]
Fecha de Ingreso 20 DIC 2000
Ingreso Funcionario

Al Honorable
MINISTERIO DE RELACIONES EXTERIORES
Dirección General de Protocolo
Ciudad

ANNEX 38

Diplomatic Note 21085 SSN/DGST, sent from the Ministry of Foreign Affairs of Ecuador to the Embassy of Colombia in Quito
(16 Feb. 2001)

ANNEX 38

N° 21085 SSN/DGST

THE MINISTRY OF FOREIGN AFFAIRS presents its compliments to the Honorable Embassy of Colombia, on the occasion of referring to the spraying operations to eradicate coca crops that are being conducted on Colombian territory, in the provinces of Putumayo and Nariño, bordering Ecuador.

In this sense, the Ministry of Foreign Affairs would appreciate that the Honorable Embassy of Colombia provides, within the shortest possible time, all the information available regarding the type of substances that are being used in the fumigations, as well as on the specific areas where these operations are being conducted and where they are expected to be conducted in the future.

THE MINISTRY OF FOREIGN AFFAIRS avails itself of this opportunity to renew to the Honorable Embassy of Colombia the assurances of its highest and distinguished consideration.

Quito, 16 February 2001

[signature]

To the Honorable
EMBASSY OF COLOMBIA,
Present

Nº 2085 SSN/DGST

EL MINISTERIO DE RELACIONES EXTERIORES saluda muy atentamente a la Honorable Embajada de Colombia, con ocasión de referirse a las tareas de fumigación para erradicar plantaciones de coca que se están desarrollando en territorio colombiano, en áreas de los departamentos de Putumayo y Nariño, fronterizos con el Ecuador.

Al respecto, el Ministerio de Relaciones Exteriores agradecerá a la Honorable Embajada de Colombia se digne proporcionarle, a la brevedad posible, la mayor información sobre el tipo de sustancias que se está utilizando en la fumigación así como sobre las áreas específicas en las que se efectúan esas tareas y en las que se proyecta realizarlas en el futuro.

EL MINISTERIO DE RELACIONES EXTERIORES hace propicia la oportunidad para reiterar a la Honorable Embajada de Colombia las seguridades de su más alta y distinguida consideración.

Quito, a 16 de febrero de 2001.

A la Honorable
EMBAJADA DE COLOMBIA,
Presente.

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Diplomatic Note E-297, sent from the Embassy of Colombia in Quito to the Ministry of Foreign Affairs of Ecuador (12 Mar. 2001)

[seal] **EMBASSY OF COLOMBIA**

E-297

Quito, 12 March 2001

Doctor
HEINZ MOELLER FREILE
MINISTER OF FOREIGN AFFAIRS
City

Mr. Minister:

In recent weeks, the Government of Ecuador has repeatedly voiced its concern with regards to the potential adverse effects arising from the execution of Plan Colombia.

To that effect, we must clarify that the internal displacement of indigenous communities or the supposed mass exodus of populations from the south of Colombia, as well as various criminal acts that have occurred in some border zones should not be attributed to Plan Colombia. It is a matter of concern that this type of information is accepted at certain official levels without the prior verification and characterization of the events. The fact that some of these events may have some connection with the Colombian conflict, and not, we repeat, with Plan Colombia, is something else altogether.

It is worth reiterating that Plan Colombia constitutes the central strategy adopted by the Colombian Government to address the serious problems that affect our society, aiming, above all, at the progressive eradication of illicit crops and combating related activities, as well as putting an end to the armed conflict through political negotiation.

[PAGE 2]

[seal] **EMBASSY OF COLOMBIA**

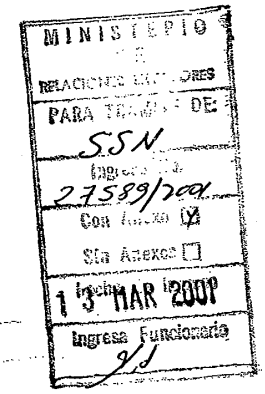
Furthermore, Plan Colombia is precisely the most effective method of protecting the brother country of Ecuador from the perverse effects of drug trafficking and armed conflict, as it is aimed at preventing them from continuing to strengthen and to spread into Ecuador.

For all the above reasons, we hope to continue counting on the understanding and the solidarity of the people and the Government of Ecuador, especially since preserving and enhancing the deep and beneficial friendship that has accompanied and strengthened us throughout our history is of great significance to both or our countries at this time.

Yours respectfully,

[signature]
ELISEO RESTREPO LONDOÑO
Ambassador of Colombia

EMBAJADA DE COLOMBIA



E-297

Quito, Marzo 12 de 2001

Señor Doctor
HEINZ MOELLER FREILE
MINISTRO DE RELACIONES EXTERIORES
Ciudad

Señor Ministro:

En las últimas semanas el Gobierno del Ecuador ha hecho pública, de manera reiterada, su preocupación con relación a los eventuales efectos desfavorables derivados de la ejecución del Plan Colombia.

En tal sentido, debemos puntualizar que no cabe atribuir al Plan Colombia los desplazamientos internos de comunidades indígenas o los supuestos éxodos masivos de pobladores del sur de Colombia, al igual que diversos hechos delictivos que se han presentado en algunas zonas fronterizas, por lo que resulta preocupante que en ciertas instancias oficiales se le de cabida a este tipo de versiones sin proceder previamente a la verificación y caracterización de los acontecimientos. Cosa distinta es que algunos de estos últimos puedan tener alguna conexidad con el conflicto colombiano, que no, repetimos, con el Plan Colombia.

Es pertinente reiterar que el Plan Colombia constituye la estrategia central adoptada por el Gobierno Colombiano para enfrentar los serios problemas que afectan a nuestra sociedad, para lo cual se procura, ante todo, la erradicación progresiva de los cultivos ilícitos y el combate a las actividades conexas, así como la superación del conflicto armado mediante la negociación política.

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EMBAJADA DE COLOMBIA

Por lo demás, el Plan Colombia es, precisamente, el método más efectivo para precaver al país hermano del Ecuador de los efectos perversos del narcotráfico y del conflicto armado, en la medida en que está orientado a evitar que se sigan fortaleciendo y hagan metástasis en el Ecuador.

Por todo lo anterior, esperamos seguir contando con la comprensión y la solidaridad del pueblo y del Gobierno del Ecuador, máxime cuando resulta de la mayor trascendencia para ambos países la conservación y el acrecentamiento de la entrañable y provechosa amistad que nos ha acompañado y fortalecido a lo largo de nuestra historia.

Del Señor Ministro atentamente,

ELISEO RESTREPO LONDOÑO
Embajador de Colombia

ANNEX 40

Diplomatic Note 31036/2001 SG/SSN, sent from the Ministry of Foreign Affairs of Ecuador to the Embassy of Colombia in Quito (27 Mar. 2001)

ANNEX 40

No. 31036/2001 SG/SSN

Quito, 20 March 2001

Mister
ELISEO RESTREPO
Ambassador of Colombia
City.

Mister Ambassador:

In reference to communication number E-297, dated 12 March 2001, and the comments made by you when you delivered it to me in person, I would like to state the following:

In the first place, I reiterate what I said when I received the letter, which I am answering hereby, that the Ministry of Foreign Affairs cannot admit that the Head of the Diplomatic Mission of a friendly country intends to reprimand the Foreign Minister of the Republic for declarations made by him or by other high-ranking authorities of the State, concerning issues of national interest.

The declarations of the Ministry of Foreign Affairs concerning the Colombian conflict and the so-called "Plan Colombia," picked up by the national press these past few weeks, respond to the perception and the views of the National Government regarding these matters. Ecuador believes that both the illicit activities carried out in the south of Colombia and the actions that the Colombian Government has undertaken to combat them – Plan Colombia, among others – have visible effects on Ecuadorian territory. It is not up to the Government of Ecuador, respectful of the principle of non-intervention and non-interference in the affairs of other States, to become involved in the internal affairs of Colombia, but it does have the right to adopt the measures it deems appropriate to preserve its security and that of its citizens.

To conclude, Mister Ambassador, I also wish to reiterate the shock and annoyance of the Ministry of Foreign Affairs regarding your statements, made public by the newspaper "El Comercio" in its 12 March 2001 edition,

which contains comments about the internal affairs of the country that should not be made by foreign diplomats.

Sincerely yours,

[signature]
Jaime Marchan
SECRETARY GENERAL OF FOREIGN AFFAIRS

ANNEX 40

Nº 31036/2001 SG/SSN

Quito, a 26 MAR. 2001

Señor Don
ELISEO RESTREPO,
Embajador de Colombia,
Ciudad.

Señor Embajador:

En relación con la comunicación número E-297, de 12 de marzo en curso, y a los comentarios formulados por usted al entregármela personalmente, le expreso lo siguiente:

Le reitero, en primer lugar, lo que le manifesté al recibir la comunicación que ahora contesto, en el sentido de que el Ministerio de Relaciones Exteriores no puede admitir que el Jefe de la Misión Diplomática de un país amigo pretenda reconvenir al Canciller de la República por pronunciamientos hechos por él y otras altas autoridades del Estado, en relación con temas de interés nacional.

Las declaraciones del Ministro de Relaciones Exteriores con respecto al conflicto colombiano y al denominado "Plan Colombia", que la prensa nacional ha recogido a lo largo de las últimas semanas, responden a la percepción y criterios que el Gobierno Nacional tiene sobre esos asuntos. El Ecuador considera que tanto las actividades ilícitas que se desarrollan al sur de Colombia como las acciones que el Gobierno colombiano ha emprendido para combatirlas -el Plan Colombia, entre ellas- tienen efectos evidentes en territorio ecuatoriano. No le corresponde al Gobierno ecuatoriano, respetuoso como es del principio de no intervención y de no injerencia en los asuntos de otro Estado, involucrarse en asuntos internos de Colombia, pero sí le asiste el derecho de adoptar las medidas que considere adecuadas para preservar su seguridad y la de sus ciudadanos.

Para concluir, señor Embajador, deseo reiterarle también la sorpresa y desagrado del Ministerio de Relaciones Exteriores por las declaraciones de usted, hechas públicas por el diario "El Comercio" en su edición de 12 de marzo de 2001, en las que constan afirmaciones sobre asuntos internos del país que no corresponde hacer a diplomáticos extranjeros.

Del señor Embajador, atentamente,

Jaime Marchán
SECRETARIO GENERAL DE RELACIONES EXTERIORES

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Diplomatic Note 55416/2001- GM/SOI/SSN, sent from the Ministry of Foreign Affairs of Ecuador to the Ministry of Foreign Affairs of Colombia (2 July 2001)

[seal]

REPUBLIC OF ECUADOR
MINISTRY OF FOREIGN AFFAIRS

N° 55416/2001-GM/SOI/SSN

Quito, 2 July 2001

Your Excellency:

The Government of Ecuador has followed closely the actions that the Illustrious Government of Colombia is conducting in the framework of the application of the so-called "Plan Colombia", particularly those that are involved in the spraying of illicit crops on Colombian territory neighboring Ecuador.

My country's attention is warranted, among other reasons, by the possibility that atmospheric phenomena or other causes may eventually cause the sprayings in the south of Colombia to produce harmful effects on human health, on crops or on the environment of the Ecuadorian territory bordering that country.

For this reason, my Government is worried by information regarding the use in Colombia of the chemical formulation Roundup Ultra, whose active ingredient is glyphosate and contains a substance called POEA, which is much more toxic than glyphosate, combined with a product called Cosmoflux 411F, which substantially increases the product's power.

According to data available to Ecuador, there are no sufficient studies regarding the safety of using inert substances as Dioxane and other ingredients that are part of the formula currently used to spray coca crops in southern Colombia. Furthermore, the fact that the doses applied are four times higher than those recommended must also be taken into account, as this increases the risk of damaging the vegetation as a result of the drift.

Renowned institutions such as the WWF (World Wildlife Fund) have warned of the risks of using Roundup, and have recommended making assessments on the potential short-term environmental impacts of this product.

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His Excellency
GUILLERMO FERNANDEZ DE SOTO,
Minster of Foreign Affairs,
Bogotá, COLOMBIA

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[seal]

REPUBLIC OF ECUADOR
MINISTRY OF FOREIGN AFFAIRS

In view of the foregoing, and without prejudice to the precautions surely considered in the planning of the sprayings by Colombian authorities, my Government deems it necessary to ask the Illustrious Government of Colombia that applications of the chemical formulations in its territory are made at least 10 kilometres away from the border with Ecuador, in order to prevent the drift caused by winds from reaching Ecuadorian territory and producing harmful effects on the people and the vegetation.

My Government also believes that, among the alternatives contemplated by Colombia to put an end to illicit crops in its territory, the most adequate and effective one is concerted manual eradication, and I very respectfully urge the Illustrious Government of Colombia to intensify it.

I avail myself of this opportunity to reiterate to Your Excellency the assurances of my highest and distinguished consideration.

[signature]
Heinz Moeller Freile
MINISTER OF FOREIGN AFFAIRS

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REPUBLICA DEL ECUADOR
MINISTERIO DE RELACIONES EXTERIORES

Nº 55446/2001 - GM/SOI/SSN

Quito, a 2 de julio de 2001.

Excelencia:

El Gobierno del Ecuador ha venido siguiendo atentamente el desarrollo de las acciones que el Ilustrado Gobierno de Colombia está ejecutando, en el marco de la aplicación del llamado "Plan Colombia", particularmente las que tienen que ver con la fumigación de plantaciones ilícitas en territorio colombiano vecino con el Ecuador.

La atención de mi país se justifica, entre otras razones, por la posibilidad de que fenómenos atmosféricos u otras causas pudieran eventualmente determinar que las fumigaciones en el sur de Colombia produzcan efectos perjudiciales en la salud humana, en los cultivos o en la ecología del territorio ecuatoriano fronterizo con ese país.

Han causado, por eso, preocupación en mi Gobierno las informaciones sobre el uso en Colombia de la formulación química Roundup Ultra, cuyo ingrediente activo es el glifosato y que contiene una sustancia llamada POEA, mucho más tóxica que dicho ingrediente, a lo que se añade el producto denominado Cosmoflux 411F que incrementa sustancialmente su acción.

De acuerdo con datos de que dispone el Ecuador, no existen estudios suficientes sobre la seguridad en el uso de sustancia inertes como el Dioxano y otros ingredientes que son parte de la fórmula actualmente usada para las fumigaciones de plantaciones de coca en el sur de Colombia. Por lo demás, hay que tomar en cuenta que las dosis aplicadas son cuatro veces mayores a las recomendadas, lo cual aumenta el riesgo de afectación a la vegetación por efecto de la deriva.

Instituciones de prestigio como WWF (World Wildlife Found) han advertido sobre los riesgos del uso del Roundup y han recomendado evaluaciones sobre potenciales impactos ecológicos a corto plazo de ese producto.

Su Excelencia
GUILLERMO FERNANDEZ DE SOTO,
Ministro de Relaciones Exteriores,
Bogotá, COLOMBIA.

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REPUBLICA DEL ECUADOR
MINISTERIO DE RELACIONES EXTERIORES

Por lo anterior y sin perjuicio de las precauciones que seguramente habrá contemplado la planificación de las fumigaciones, por parte de las autoridades colombianas, mi Gobierno ha considerado necesario solicitar al Ilustrado Gobierno de Colombia que las aplicaciones de las formulaciones químicas utilizadas en su territorio se realicen al menos 10 kilómetros adentro de la línea de frontera con el Ecuador, de manera de prevenir que la dispersión causada por los vientos llegue a territorio ecuatoriano y produzca efectos nocivos para las personas y para la vegetación.

Considera, por lo demás, mi Gobierno que entre las alternativas contempladas por Colombia para acabar con los cultivos ilícitos en su territorio, la más adecuada y efectiva es la erradicación manual concertada, por cuya intensificación me permito exhortar muy respetuosamente al Ilustrado Gobierno de Colombia.

Hago propicia la oportunidad para reiterar a Vuestra Excelencia las seguridades de mi más alta y distinguida consideración.

Heinz Moeller Freile
MINISTRO DE RELACIONES EXTERIORES

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Diplomatic Note DM/AL No. 25009, sent from the Ministry of Foreign Affairs of Colombia to the Ministry of Foreign Affairs of Ecuador (14 July 2001)

[seal] **REPUBLIC OF COLOMBIA**
MINISTRY OF FOREIGN AFFAIRS

DM/AL No. 25009

Bogotá, D.C., 14 July 2001

Mr. Minister:

I have the honor to write to Your Excellency with reference to your Note No. 55416/2001-GM/SOI/SSN of 2 July 2001, which expresses the concern of Ecuadorian authorities regarding the alleged use by Colombia of formulas that contain toxic products and substances potentially harmful to the population and the environment in Ecuadorian territory in the spraying of illicit crops.

In light of this concern, I wish to inform Your Excellency that the Government of Colombia has assumed, in a responsible way, the commitment to eradicate illicit coca crops, and to do so, it is conducting a program of spraying of illicit industrial crops in a technical, programmed and controlled way. This eradication program is carried out in accordance with parameters that minimize any risk that may affect the environment and human and animal health.

To His Excellency
Mr. **HEINZ MOELLER FREILE**
Minister of Foreign Affairs
Quito-Ecuador

[seal] **REPUBLIC OF COLOMBIA**
MINISTRY OF FOREIGN AFFAIRS

Furthermore, Colombia uses products which have been demonstrated to have no harmful effects and it has based its illicit crops eradication program on reliable and consistent international scientific studies. Indeed, the chemical substances used against illicit crops are the same used by both countries on their plantations of bananas and flowers for export.

The Government of Colombia is aware of the effects that the inappropriate use of herbicides can have. For that reason, I must draw your attention on the harmful environmental consequences of the substances used by the coca growers of our two countries, which have affected the ecosystems of the region in a significant way.

For a better illustration of the matter, we have been guided by two studies prepared by NAS /Plan Colombia – PECI and by the Counternarcotics Directorate of the National Police of Colombia. I would like to stress the following points contained in these studies:

- The herbicide used by the Program of Eradication of Illicit Crops - PECI- is a commercial formulation made with glyphosate, which has the registered name of Roundup Ultra, manufactured by the company Monsanto Inc.
- Its toxicological category is No. IV, which means that it is at the bottom of the universally accepted toxicity scale.

- Scientific studies on the irritation caused by this product show that the herbicide Roundup and Johnson & Johnson baby shampoo have less irritating potential than cleansers and dish detergents.

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[seal] **REPUBLIC OF COLOMBIA**
MINISTRY OF FOREIGN AFFAIRS

- Concerning possible harm to human health, to this moment there are no scientific reports to indicate health damages. This chemical does not have teratogenic, carcinogenic or mutagenic characteristics, nor does it accumulate on adipose tissue. Likewise, the EPA has classified Glyphosate in category E, which means that there is negative evidence of cancer.
- Its half-life in soil is between 1 and 4 weeks at the most, and in tropical soils – such as ours – less than one week, and then it is biodegraded. The dosages applied are inoperable in bushes, trees and other vegetation with higher degrees of lignification than coca bushes.
- Glyphosate, POEA and the herbicide Roundup have been tested in numerous sub-chronic, chronic, reproductive, and developmental studies, including tests to determine adverse effects on the nervous system, and the conclusion is that there is no evidence of neurotoxicity in any of these studies. Therefore, it is evident that no neuropathies or alterations of the nervous system or alterations of the fetal nervous system have been observed.

- The surfactant Cosmoflux 411F is a coadjuvant commonly used in commercial farming, added to many herbicides used in many cash crops, including rice, corn, sorghum, soy, etc.
- Dioxin is 100 times below WHO and FAO standards, so there is no reason for concern regarding human or animal health.
- The Program of Eradication of Illicit Crops – PECI – has fifteen (15) technical parameters that must be strictly observed and that, applied together, guarantee a negligible drift, that is, less than 5 meters. Percentagewise, it represents less than 2% of the dose applied. In the particular case of the border with Ecuador, the safety margin of 2.7 to 3.0 kilometres is believed to be enough.

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[seal] **REPUBLIC OF COLOMBIA**
MINISTRY OF FOREIGN AFFAIRS

Bearing in mind the concerns expressed by Your Excellency, I propose holding a seminar-workshop in Colombia within the next thirty (30) days. During this event, the Government of Colombia will have the opportunity to illustrate its program of eradication of illicit crops and provide all the technical information required by Ecuadorian officials, in view of allaying all existing concerns and strengthening the spirit of bilateral cooperation.

I avail myself of this opportunity to reiterate to Your Excellency the assurances of its highest and most distinguished consideration and esteem.

[Signature]
GUILLERMO FERNANDEZ DE SOTO
Minister of Foreign Affairs

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REPUBLICA DE COLOMBIA
MINISTERIO DE RELACIONES EXTERIORES

MINISTERIO DE RELACIONES EXTERIORES
PARA TRAMITE DE: GM
Ingreso No. 58685
Con Anexo [X]
Sin Anexo [ ]
Fecha de Ingreso 16 JUL 2001
Ingreso Funcionario

DM/AL. No. 25009

Bogotá, D.C., julio 14 de 2001

Señor Ministro:

Tengo el honor de dirigirme a Vuestra Excelencia para referirme su nota No. 55416/2001-GM/SOI/SSN de fecha 2 de julio de 2001, .la cual expresa la preocupación de las autoridades ecuatorianas acerca de la utilización que estaría haciendo Colombia, en la fumigación de cultivos ilícitos, de fórmulas que contienen productos tóxicos y sustancias que podrían eventualmente afectar a la población y al medio ambiente en territorio ecuatoriano.

Frente a esta inquietud, deseo informar que el Gobierno de Colombia ha asumido con responsabilidad el compromiso de erradicar los cultivos ilícitos de coca y para ello adelanta un programa de fumigación contra los cultivos ilícitos industriales de manera técnica, programada y controlada. Este programa de erradicación se lleva a cabo de acuerdo con parámetros que minimicen cualquier riesgo que pueda afectar al medio ambiente y a la salud humana y animal.

A Su Excelencia
El Señor **HEINZ MOELLER FREILE**
Ministro de Relaciones Exteriores
Quito - Ecuador

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REPUBLICA DE COLOMBIA
MINISTERIO DE RELACIONES EXTERIORES

A su vez, Colombia utiliza productos que han demostrado no tener efectos nocivos y ha basado su programa de erradicación de cultivos ilícitos en los resultados de los estudios científicos internacionales, serios y consistentes. En efecto, las sustancias químicas usadas contra los cultivos ilícitos son las mismas que aplican ambos países en los cultivos de banano y flores de exportación.

El Gobierno de Colombia es consciente de los efectos que puede provocar la inadecuada utilización de herbicidas. Es por ello que debo llamar la atención sobre las nefastas consecuencias ambientales de las sustancias utilizadas por los cultivadores de hoja de coca de nuestros dos países, las cuales han afectado de manera importante los ecosistemas de la región.

Para una mayor ilustración sobre esta materia, nos hemos basado en dos estudios que fueron elaborados por NAS / Plan Colombia – PECI y por la Dirección Antinarcóticos de la Policía Nacional de Colombia. De éstos deseo resaltar los siguientes puntos:

- El herbicida que utiliza el Programa de Erradicación de Cultivos Ilícitos –PECI- es una formulación comercial a base de glifosfato, el cual tiene el nombre comercial de Roundup Ultra de la casa comercial Monsanto Inc.
- Su categoría toxicológica es la No. IV, lo cual significa que está en la menor escala de toxicidad que es aceptada universalmente.
- Los estudios científicos sobre la irritación que causa este producto demuestran que el herbicida Roundup y el champú Johnson & Johnson para bebés tienen menor potencial irritante que el limpiador y el detergente para lavar platos.

REPUBLICA DE COLOMBIA
MINISTERIO DE RELACIONES EXTERIORES

- En cuanto a posibles daños sobre la salud humana, hasta el momento no existen reportes científicos que indiquen perjuicios sobre la salud. Este químico no posee características teratogénicas, cancerígenas o mutagénicas y tampoco se acumula en tejido adiposo. De igual forma, la EPA ha clasificado al Glifosfato en la categoría E, lo cual significa evidencia negativa de cáncer.
- Su vida media en el suelo es de 1 a 4 semanas, como máximo, y en suelos tropicales – como los nuestros – es menos de 1 semana, y luego se biodegrada. Sus dosis aplicadas son inoperantes en arbustos, árboles y demás vegetación que tenga mayor grado de lignificación que los arbustos de coca.
- Se ha probado el Glifosfato, POEA y el herbicida Roundup en numerosos estudios subcrónicos, crónicos y reproductivos y del desarrollo, ellos incluyen exámenes para determinar si habían efectos adversos en el sistema nervioso, y la conclusión es que no se presentó evidencia de neurotoxicidad, en cualquiera de estos estudios. Por lo tanto, es evidente que no se han observado neuropatías o alteraciones del sistema nervioso o alteraciones del sistema nervioso fetal.
- El surfactante Cosmoflux 411F es un coadyuvante de común uso en la agricultura comercial adicionado a muchos herbicidas utilizados en cultivos agrícolas de arroz, maíz, sorgo, soja, entre otros.
- La dioxina está 100 veces por debajo de la norma aceptada por la OMS y la FAO, por lo que no hay motivo de preocupación en materia de salud humana o animal.
- El Programa de Erradicación de Cultivos Ilícitos – PECI – cuenta con quince (15) parámetros técnicos de estricto cumplimiento, los cuales aplicados en su conjunto, garantizan una deriva negligible, es decir, menor de 5 metros y que

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REPUBLICA DE COLOMBIA
MINISTERIO DE RELACIONES EXTERIORES

en porcentaje significa menos del 2% de la dosis aplicada. Para el caso particular de la frontera con el Ecuador el margen de seguridad de 2,7 a 3,0 kilómetros dejado se considera suficiente.

Teniendo en cuenta las preocupaciones manifestadas por Vuestra Excelencia, propongo la realización de un seminario-taller en Colombia, en los próximos treinta (30) días. En este evento el Gobierno colombiano tendrá la oportunidad de ilustrar su programa de erradicación de cultivos ilícitos y brindar toda la información técnica que los funcionarios ecuatorianos requieran, con el ánimo de resolver todas aquellas inquietudes existentes y de fortalecer el espíritu de cooperación bilateral.

Aprovecho la oportunidad para reiterar a Vuestra Excelencia las seguridades de mi más alta y distinguida consideración y aprecio.

GUILLERMO FERNANDEZ DE SOTO
Ministro de Relaciones Exteriores

ANNEX 43

Diplomatic Note E-180, sent from the Embassy of Colombia in Quito to the Ministry of Foreign Affairs of Ecuador (20 Feb. 2002)

[PAGE 1]

[seal] **EMBASSY OF COLOMBIA**

E-180

Your Excellency Mister Foreign Minister:

Until I was certain of it, I deliberately did not want to refer formally to our phone conversation regarding the alleged violation of Ecuadorian airspace by Colombian aircraft. Fortunately, the Ecuadorian authorities themselves have affirmed that it was nothing but false rumors.

I avail myself of this opportunity to refer to another matter that has caused concern in Ecuador. I am referring to the fumigations of illicit crops. During the visit made to Colombia by an Ecuadorian delegation last week, they were able to verify that sprayings do not have harmful effects on Ecuadorian territory or in Colombia, for that matter; the care with which they are carried out and the products used are a guarantee of their innocuousness. Furthermore, it is evident that as drugs are a scourge of humanity, one cannot renounce this tool to destroy coca and poppy crops.

Save unlikely human error, you can rest assured, Mr. Foreign Minister, of the respect of the military forces and of the Government of Colombia for the sovereignty of Ecuador.

As you are aware, a coordinating meeting of the highest military commanders of both countries was held in Cali this past weekend. This type of meeting and those of Combifron serve to monitor the effects of the activities of irregular Colombian groups in Ecuadorian territory, and not of Plan Colombia,

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as often thought, which result in a risk for your country and in the trafficking of weapons, ammunition, dynamite and chemical precursors to Colombia, which aggravate our conflict and is, naturally, cause for concern for Ecuador.

Finally, I would like to convey the solidarity of the Government and of the people of Colombia with their Ecuadorian counterparts. Clear proof of

this is the recent collaboration in the rescue of the victims of the unfortunate airplane crashes; even before receiving requests for assistance from Vice-Minister Jaime Marchan and from the Minister of Government, Marcelo Merlo, the Colombian Air Force had already taken effective actions in this regard. I should mention in particular the rescue of the patrol that had gotten lost in Cerro El Tigre, which involved huge risks for the crew that acted with skill and courage, as well as to the costly and sophisticated equipment that was used.

Quito, 20 February 2002

[signature]
ELISEO RESTREPO LONDOÑO
Ambassador of Colombia

To His Excellency
HEINZ MOELLER FREILE
MINISTER OF FOREIGN AFFAIRS
City

EMBAJADA DE COLOMBIA

MINISTERIO DE RELACIONES EXTERIORES
PARA TRAMITE DE: GM/SB
Ingreso No. 9562
Con Anexo ☐
Sin Anexos ☑
Fecha de Ingreso 25 FEB 2002
Firma Funcionario

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Excelentísimo Señor Canciller :

Deliberadamente, hasta tener una certeza sobre ello, no quise referirme formalmente a nuestra conversación telefónica acerca de la supuesta violación de los cielos ecuatorianos por naves colombianas. Por fortuna las mismas autoridades ecuatorianas han afirmado que todo obedeció a una falsa versión.

Valga la oportunidad para hacer referencia a otro asunto que ha causado preocupación en Ecuador. Me refiero a las fumigaciones de cultivos ilícitos. Durante la visita que efectuó a Colombia la semana pasada una delegación del Ecuador, fue posible probar que las fumigaciones no tienen efectos nocivos en territorio ecuatoriano, como tampoco en Colombia; el esmero con que se hacen y los productos que se utilizan son garantía de su inocuidad. Es evidente por lo demás, que siendo las drogas un flagelo de la humanidad, no se puede renunciar al uso de esta herramienta para destruir los cultivos de coca y amapola.

Descartando improbables errores humanos, puede tener la seguridad, Señor Canciller, del respeto de las fuerzas militares y del Gobierno colombianos por la soberanía ecuatoriana.

Como es de su conocimiento, durante el pasado fin de semana tuvo lugar en la ciudad de Cali una reunión de coordinación entre los altos mandos militares de ambos países. Este tipo de reuniones y las de la Combifron, sirven para controlar los efectos de la actuación de los grupos irregulares colombianos en terrritorio ecuatoriano y no del Plan Colombia

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como frecuentemente se supone, que se traducen en un riesgo para su país y en el tráfico hacia Colombia de armas, municiones, dinamita y precursores químicos, lo cual agrava nuestro conflicto y con tanta razón preocupa al Ecuador.

Por último, quiero poner de presente la solidaridad del Gobierno y del pueblo colombianos con sus homólogos ecuatorianos. Prueba fehaciente de ello es la reciente colaboración en el rescate de las víctimas de los deplorables accidentes aéreos; aún antes de las solicitudes de apoyo que recibimos de parte del Vicecanciller Jaime Marchán y del Ministro de Gobierno, Marcelo Merlo, la Fuerza Aérea Colombiana ya había tomado acciones efectivas para este propósito. Especial mención debe hacerse del rescate de la patrulla que se hallaba extraviada en el cerro El Tigre, lo cual significó un alto riesgo para la tripulación que actuó con pericia y arrojo, asi como tambien para los costosos y sofisticados equipos que se utilizaron.

Quito, Febrero 20 de 2002

ELISEO RESTREPO LONDOÑO
Embajador de Colombia

Al Excelentísimo Señor
HEINZ MOELLER FREILE
MINISTRO DE RELACIONES EXTERIORES
Ciudad

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Diplomatic Note E-340, sent from Embassy of Colombia in Quito to the Ministry of Foreign Affairs of Ecuador (15 Apr. 2002)

[seal]

EMBASSY OF COLOMBIA

E-340

*THE **EMBASSY OF THE REPUBLIC OF COLOMBIA** presents its compliments to the **HONORABLE MINISTRY OF FOREIGN AFFAIRS – Under-Secretariat for Bilateral Affairs** –, and allows itself to again submit for its consideration several reflections concerning the Colombian conflict and Plan Colombia.*

In order to tackle the serious threat faced by the democratic system as a result of a gurerrilla that is relentless in its acts, that combined with drug trafficking activities, have bled into Colombian society and undermined and corrupted its institutional and social bodies, the government of President Andrés Pastrana, with the support of the international community, devised Plan Colombia as an instrument that was needed to defend more than 40 million Colombians from these scourges and to contribute so that universal threat of such as drug trafficking does not continue to have a base in our country.

It is worth insistently repeating that Plan Colombia is in essence a program to eradicate coca and poppy crops, providing an alternative economic activity to the campesinos *who grow these crops; it is a strategy of strengthening the economy, to provide greater well being to the population and to lower unemployment rates, which reach 20%; it is an intent to strengthen justice and protect human rights, and, above all, it is a commitment of the Government to find a solution to the armed conflict and to achieve the reconciliation of all Colombians.*

A plan of this nature has opponents, for the most part among extreme left organizations, drug traffickers and a few environmental groups. The distortion and demonization of the plan have had a deep impact on uninformed and unaware sectors, to such a point that today, vast areas of the public opinion, and even official agencies have an erroneous, and not always objective image, of Plan Colombia. For example, it is believed that Plan Colombia can have adverse effects on neighboring countries, as would be the case of Ecuador.

EMBASSY OF COLOMBIA

Specifically, it is said that, as a result of the measures taken in Colombia, numerous displaced persons could reach that country, and there would be a risk of the guerrilla and drug trafficking relocating to its territory. Similarly, it is believed that the fumigation of illicit crops could have an adverse effect on the Ecuadorian population and the environment.

Despite these perceptions, that initially appear to be true, they are not the reality in practice. Beginning with the fumigations that have been carried out at a massive scale, it has been demonstrated that they have had no adverse effects in Colombia, and therefore could hardly have them in Ecuador. In this sense, it is worth noting that its results on the eradication of crops have been huge.

Likewise, regarding the other possible adverse effects of Plan Colombia, the following clarifications are worth making:

Concerning displaced populations, in October 2000, it was noted that there was a confrontation between members of FARC and Paramilitaries in the Department of Putumayo; this was made worse by an armed strike that blocked the roads leading towards the interior of Colombia. In these conditions, many campesinos *of the region, who were caught between two fires, fled towards Ecuadorian territory, but most returned immediately to Colombia, mainly using the road from Tulcán. This was the only case of a massive displacement, and it is worth noting that it had a specific cause, unconnected with Plan Colombia, which began in January 2001.*

It is worth recalling that throughout the history of our countries, there has been a flow of Colombians to Ecuador, who for the most part have settled and contribute with their efforts and work to the progress of that country. The huge investments made by Colombian companies and citizens should also be added to this.

The phenomenon of human displacements, ***originating from the Colombian conflict*** *and* ***not from Plan Colombia****, has taken on alarming proportions in Colombian territory and constitutes the main social problem of the country. Fortunately, its repercussions in Ecuador have been limited, and to handle them, the country has the support of eminent agencies, such as the UNHCR.*

Concerning the possible movement of the guerrilla and drug trafficking to Ecuador, it cannot be said that this is a consequence of the application of Plan Colombia. Indeed, much before the beginning of the latter, there have been sporadic incursions of both activities, and other, more permanent ones, in border areas like Sucumbíos, where these groups go to rest and obtain supplies, such as weapons, ammunitions, dynamite, and chemical precursors. In the context of a porous border, the phenomenon has been so notorious that these illicit activities have had the support and acceptance of some of the people who live in these regions.

The presence of Ecuadorian military forces in the northern border has now been reinforced and there is greater control, but we cannot ignore the fact that these criminal groups continue trafficking drugs and committing crimes, such as muggings and kidnappings, as they have done for many years. Both countries should only contribute to prevent and control these acts.

The Colombian government believes that Plan Colombia has been successful, that it is an irreplaceable instrument to solve the Colombian conflict and to alleviate the danger that it may affect other countries, more particularly its neighbors. This reality has been acknowledged by the international community, which has given our country its decided solidarity and support, while accepting its responsibility in finding a solution, under the principles of shared responsibility, and to tackle activities, such as drug trafficking and terrorism, that are a threat to the whole of humanity.

THE ***EMBASSY OF THE REPUBLIC OF COLOMBIA*** *avails itself of this opportunity to renew to the* ***HONORABLE MINISTRY OF FOREIGN AFFAIRS*** *the assurances of its highest and distinguished consideration.*

Quito, 15 April 2002

[Signature]

To the Honorable
MINISTRY OF FOREIGN AFFAIRS
Under-Secretariat for Bilateral Affairs
City

EMBAJADA DE COLOMBIA

DE
RELACIONES EXTERIORES
PARA TRAMITE
DAPB
Ingreso No.
17952
Con Anexo
Sin Anexos
Fecha de Ingreso
4 ABR 2002

E-340

*La **EMBAJADA DE LA REPUBLICA DE COLOMBIA** saluda atentamente al **HONORABLE MINISTERIO DE RELACIONES EXTERIORES – Subsecretaria de Relaciones Bilaterales-**, y se permite presentar nuevamente a su consideración algunas reflexiones sobre el conflicto colombiano y el Plan Colombia.*

Para hacerle frente a la grave amenaza que para el sistema democrático representa una guerrilla implacable en sus actuaciones, que unida al narcotráfico han desangrado a la sociedad colombiana y han socavado y corrompido sus estamentos institucionales y sociales, el gobierno del Presidente Andrés Pastrana, con el apoyo de la comunidad internacional, concibió el Plan Colombia como un instrumento necesario para defender a más de 40 millones de colombianos de estos flagelos y contribuir a que una amenaza universal como es el tráfico de drogas no siga teniendo una base en nuestro país.

El Plan Colombia, conviene repetirlo con insistencia, es en esencia un programa para erradicar los cultivos de coca y amapola, brindándole una actividad económica alternativa a los campesinos que se dedican a ellos; es una estrategia de fortalecimiento a la economía para procurar mayor bienestar a la población y disminuir el desempleo que asciende al 20%; es un propósito de fortalecimiento de la justicia y de protección de los derechos humanos; y, por encima de todo, es el compromiso del gobierno de buscar una solución al conflicto armado y lograr la reconciliación de los colombianos.

Un plan de esta naturaleza encuentra opositores que en su mayor parte son organizaciones de extrema izquierda, elementos del narcotráfico, y algunos grupos ambientalistas. La tergiversación y satanización que se ha hecho del plan ha calado hondamente en sectores desprevenidos y poco informados, hasta el punto de que hoy, en vastas áreas de la opinión pública y aún en organismos oficiales, se tiene una imagen errónea y no siempre objetiva del Plan Colombia. Por ejemplo, se piensa que el Plan Colombia puede tener efectos negativos en los países vecinos como sería el caso del Ecuador.

Concretamente se dice que, como resultado de las medidas que se tomen en Colombia, podrían llegar a este país numerosos desplazados y se correría el riesgo de que la guerrilla y el narcotráfico se trasladen a su territorio. Igualmente, se cree que la fumigación de los cultivos ilícitos podría tener un efecto adverso para la población y el medio ambiente ecuatorianos.

No obstante estas apreciaciones, que a primera vista lucen como ciertas, en la práctica, no resultan serlo. Empezando por las fumigaciones que se han llevado a cabo masivamente, se ha demostrado que en Colombia no han tenido efectos negativos, por lo cual mal podrían tenerlos en el Ecuador, siendo del caso anotar que sus resultados en la erradicación de los cultivos ilícitos han sido muy considerables.

Del mismo modo, con respecto a los otros posibles efectos negativos del Plan Colombia, cabe hacer algunas precisiones:

En relación con los desplazados, en octubre del año 2000 se registró un enfrentamiento entre elementos de las FARC y de las autodefensas en el departamento del Putumayo, a lo cual se sumó un paro armado que bloqueó las vías hacía el interior de Colombia. En estas condiciones, muchos campesinos de la región, encontrándose en medio de dos fuegos, huyeron hacia territorio ecuatoriano, pero la gran mayoría regresó de inmediato a Colombia, principalmente por la vía de Tulcán. Esta ha sido la única ocasión en que se ha presentado un desplazamiento numeroso, siendo del caso anotar que tuvo una causa puntual, ajena al Plan Colombia, el cual se inició en enero del 2001.

Cabe recordar que a lo largo de la historia de nuestros países ha habido una afluencia de colombianos hacia el Ecuador, que en la mayor parte de los casos se han arraigado y contribuyen con su esfuerzo y trabajo al progreso de este país. A esto se agregan las cuantiosas inversiones que llevan a cabo empresas y ciudadanos colombianos.

El fenómeno de los desplazamientos humanos, ***originados en el conflicto colombiano y no en el Plan Colombia,*** *ha tomado alarmantes proporciones en territorio colombiano y constituye el principal problema social del país. Por fortuna, su repercusión en el Ecuador ha sido reducida y para su manejo se cuenta con el apoyo de organismos idóneos, como el ACNUR.*

EMBAJADA DE COLOMBIA

En cuanto hace relación al posible traslado de la guerrilla y el narcotráfico al Ecuador, no puede hablarse que ello suceda como consecuencia de la aplicación del Plan Colombia. En efecto, desde mucho antes de la iniciación de este último ha habido unas incursiones esporádicas de ambas actividades, y otras más permanentes en zonas de frontera como Sucumbíos, a donde se han trasladado para descansar y proveerse de elementos como armas, municiones, dinamita y precursores químicos. En el contexto de una frontera porosa el fenómeno ha sido tan notorio que estas actividades ilícitas han contado con el apoyo y aceptación de algunos pobladores de esas regiones.

Hoy en día la presencia de las fuerzas militares del Ecuador en la frontera norte se ha reforzado y hay un mayor control, sin que pueda desconocerse que estos grupos delincuenciales, al igual que desde hace bastantes años, siguen traficando y cometiendo ilícitos como asaltos y secuestros. A la prevención y control de estos hechos deben contribuir conjuntamente ambos países.

El gobierno Colombiano considera que el Plan Colombia ha sido exitoso y que es un instrumento insustituible para solucionar el conflicto colombiano y alejar el peligro de que éste afecte a otros países, más concretamente a los vecinos. Esta realidad ha sido reconocida por la comunidad internacional que, decididamente, es solidaria y apoya a nuestro país, al tiempo que acepta su responsabilidad para su solución, dentro del principio de la responsabilidad compartida, para hacerle frente a actividades que, como el narcotráfico y el terrorismo, son una amenaza para la humanidad entera.

*La **EMBAJADA DE LA REPUBLICA DE COLOMBIA** se vale de la oportunidad para reiterar al **HONORABLE MINISTERIO DE RELACIONES EXTERIORES** las seguridades de su más alta y distinguida consideración.*

Quito, Abril 15 de 2002

Al Honorable
MINISTERIO DE RELACIONES EXTERIORES
Subsecretaría de Relaciones Bilaterales
Ciudad

ANNEX 45

Diplomatic Note 47839 DGAF, sent from the Ministry of Foreign Affairs of Ecuador to the Embassy of Colombia in Quito (18 Oct. 2002)

No. *47839* DGAF

THE MINISTRY OF FOREIGN AFFAIRS – General Directorate of Border Affairs – presents its compliments to the Honorable Embassy of Colombia on the occasion of sending a copy of the letter addressed to this Ministry by the prefect of Sucumbios, as well as by the Agricultural Center of Lago Agrio Canton, in which they condemn the possible adverse effects on the agricultural crops of this province as a result of the implementation of the fumigation plan by the Government of Colombia.

THE MINISTRY OF FOREIGN AFFAIRS – General Directorate of Border Affairs – would greatly appreciate the assistance of the Honorable Embassy of Colombia in forwarding this information to the Honorable Ministry of Foreign Affairs of Colombia and other competent entities in this matter.

THE MINISTRY OF FOREIGN AFFAIRS – General Directorate of Border Affairs – avails itself of this opportunity to reiterate to the Honorable Embassy of the Republic of Colombia the assurances of its highest and most distinguished consideration.

Quito, 18 October 2002

To the Honorable
Embassy of Colombia
Quito.-

ANNEX 45

No. 47939 DGAF

EL MINISTERIO DE RELACIONES EXTERIORES – Dirección General de Asuntos Fronterizos- saluda muy atentamente a la Honorable Embajada de Colombia, con ocasión de remitir una copia de la comunicación dirigida a esta Cartera de Estado por parte del prefecto de Sucumbíos así como del Centro Agrícola Cantonal de Lago Agrio, en las que denuncian posibles efectos negativos en las plantaciones agrícolas de esta provincia por la ejecución del plan de fumigaciones implementado por el Gobierno de Colombia.

EL MINISTERIO DE RELACIONES EXTERIORES – Dirección General de Asuntos Fronterizos- mucho agradecerá a esa Misión Diplomática se sirva transmitir esta información al Honorable Ministerio de Relaciones Exteriores de Colombia y demás entidades competentes en la materia.

EL MINISTERIO DE RELACIONES EXTERIORES – Dirección General de Asuntos Fronterizos- hace propicia la ocasión para renovar a la Honorable Embajada de Colombia, las seguridades de su más alta y distinguida consideración.

Quito, 18 de octubre de 2002

A la Honorable
Embajada de Colombia,
Ciudad.-

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Diplomatic Note 48975-2002/DGPB, sent from the Ministry of Foreign Affairs of Ecuador to the Embassy of Colombia in Quito (23 Oct. 2002)

N° 48975-2002/DGPB.

THE MINISTRY OF FOREIGN AFFAIRS - General Directorate of Bilateral Policy - presents its cordial greetings to the Honorable Embassy of the Republic of Colombia and has the honor to transmit a summary of the report sent by the Governor of the Province of Sucumbios related to accusations and complaints made by Ecuadorian peasants who live on the riverbanks of the San Miguel River as a result of the spraying operations that are being conducted as part of Plan Colombia. The damages have been verified by this local authority, who reports that he has been able to confirm the damages suffered by crops of *orito*, plantain, bananas, maize, yucca and other vegetation. He has also found dead farm animals and fishes in various ponds, products that are staple foods of this population.

Concerning the residents of the area, he has also been able to confirm the effects caused by the sprayings on the health of these people, including irritations, skin rashes and various types of respiratory problems.

THE MINISTRY OF FOREIGN AFFAIRS - General Directorate of Bilateral Policy - avails itself of this opportunity to renew to the Honorable Embassy of the Republic of Colombia the assurances of its highest and distinguished consideration.

Quito, 23 October 2002

[signature]

To the Honorable
EMBASSY OF THE REPUBLIC OF COLOMBIA
City.-

Nº 48875-2002/DGPB.

EL MINISTERIO DE RELACIONES EXTERIORES – Dirección General de Política Bilateral- saluda muy atentamente a la Honorable Embajada de la República de Colombia y tiene a bien darle a conocer el resumen del informe presentado por el Gobernador de la Provincia de Sucumbíos, con ocasión de las denuncias y quejas presentadas por los campesinos ecuatorianos que habitan en la ribera del río San Miguel, por causa de las labores de fumigación que se vienen llevando a cabo como parte del Plan Colombia, daños que han sido verificados por parte de esta autoridad seccional, quien menciona que ha podido constatar los daños sufridos en las plantaciones de orito, plátano, guineo, maíz, yuca, y otras, así como que pudo encontrar muertos animales de corral y peces de distintas piscinas, productos que son sustento básico de esa población.

En cuanto a los habitantes de la zona también pudo apreciar la existencia de los efectos causados por la fumigación en la salud de las personas tales como picazón, afecciones en la piel y distintos tipos de problemas respiratorios.

EL MINISTERIO DE RELACIONES EXTERIORES- Dirección General de Política Bilateral- aprovecha de esta oportunidad para reiterar a la Honorable Embajada de la República de Colombia las seguridades de su más alta y distinguida consideración.

Quito, a 23 de octubre de 2002

A la Honorable
EMBAJADA DE LA REPUBLICA DE COLOMBIA,
Ciudad.-

ANNEX 47

Diplomatic Note 23205/GM, sent from the Ministry of Foreign Affairs of Ecuador to the Embassy of Colombia in Quito (10 Apr. 2003)

[seal]
REPUBLIC OF ECUADOR
MINISTRY OF FOREIGN AFFAIRS

Note No. 23205/GM
Quito, 10 April 2003

Mrs.
María Paulina Espinosa de López
Ambassador of Colombia
City.-

Madame Ambassador:

I have the honor to refer to the conversations held during the visit paid to this Foreign Ministry on 26 February by Dr. Sandra Suárez, Director of Plan Colombia, aimed at establishing the Binational Commission charged with evaluating the effects of the chemical substances used by the Colombian Government in aerial sprayings operations, which would consist of representatives of the Ministries of the Environment, Health, Agriculture and Foreign Affairs of both countries.

As the Honorable Embassy of Colombia is aware, the Government and the Ecuadorian State agencies have received various complaints from border populations and communities, including a lawsuit to recover damages, which is underway.

For these reasons, and in accordance with its responsibilities, the Ecuadorian Foreign Ministry would greatly appreciate that the illustrious Government of Colombia provide a list of the persons who will make up the aforementioned Binational Commission.

On the other hand, concerning the conversations held with Ambassador Eduardo Mora, General Director of Border Affairs, I allow myself to send a draft Memorandum of Understanding and to propose to your Illustrious Government the endorsement thereof within the spirit of brotherly cooperation that characterizes the relations between Ecuador and Colombia

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I avail myself of this occasion to renew to you the feelings of my highest and distinguished consideration.

Sincerely,

[signature]
Dr. Nina Pacari Vega
MINISTER OF FOREIGN AFFAIRS

MEMORANDUM OF UNDERSTANDING

The Republic of Ecuador, represented by ……, and the Republic of Colombia, represented by ……., within the scope of their cordial relations hereby agree to put into writing the following Agreement with regard to illicit crops and spraying operations for their eradication:

FIRST.- The Parties acknowledge the need to eliminate illicit coca crops and other plants used in the manufacturing of narcotic substances, elimination that must be carried out by each one of the Parties within the limits of their respective territories and based on procedures compatible with the protection of human health and the environment.

SECOND.- In the event that one of the Parties is required to conduct aerial spraying operations aimed at the elimination of illicit crops, these shall be undertaken at a distance of no less than ten kilometers from the line marking the border between the two countries. In order to prevent harm or inconveniences to border towns of the other Party, the aircrafts shall not spray during aerial maneuverings involving over-flights of the aforementioned buffer safety zone.

THIRD.- To ratify their support of the Inter-Institutional Bi-National Commission responsible for the assessment of the effects of the chemical substances used by Colombia in the aerial spraying operations.

FOURTH.- Notwithstanding the provisions contained in the previous paragraphs, in the event that harm to human health or to the environment of the nationals and/or territory of the one of the Parties is confirmed and attributed to the other Party due to the use of chemical substances in aerial spraying operations, the affected Party shall be entitled to the corresponding reparations.

Quito, on……..

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REPUBLICA DEL ECUADOR
MINISTERIO DE RELACIONES EXTERIORES

Nota No. 23205 /GM
Quito, 10 abril de 2003

Señora
María Paulina Espinosa de López
Embajadora de Colombia
Ciudad.-

Señora Embajadora:

Tengo a honra dirigirme a usted en relación con las conversaciones que se mantuvieron durante la visita que realizó a esta Cancillería, el 26 de febrero último, la Dra. Sandra Suárez, Directora del Plan Colombia, orientadas a la conformación de la Comisión Binacional encargada de evaluar los efectos de las sustancias químicas utilizadas por el Gobierno colombiano en las operaciones de fumigación aérea, la misma que estaría integrada por representantes de los Ministerios de Medio Ambiente, Salud, Agricultura y Relaciones Exteriores de los dos países.

Como es de conocimiento de la Honorable Embajada de Colombia, el Gobierno y los organismos del Estado ecuatoriano han recibido varias reclamaciones de las poblaciones y comunidades fronterizas e incluso se ha planteado una demanda que está en trámite y que exige indemnizaciones.

Por estas razones y de conformidad con sus funciones, la Cancillería ecuatoriana apreciará sobremanera que el ilustrado Gobierno de Colombia nos de a conocer la nómina de las personas que integrarán la antes referida Comisión Binacional.

Por otro lado y en relación con las conversaciones mantenidas con el Embajador Eduardo Mora, Director General de Asuntos Fronterizos, me permito remitir un proyecto de Memorando de Entendimiento y proponer a su Ilustrado Gobierno la suscripción del mismo dentro del espíritu de fraterna cooperación que caracteriza a las relaciones entre Ecuador y Colombia

Hago propicia la ocasión para renovar a usted los sentimientos de mi más alta y distinguida consideración.

Atentamente,

Dra. Nina Pacari Vega
MINISTRA DE RELACIONES EXTERIORES

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MEMORANDO DE ENTENDIMIENTO

La República del Ecuador representada por ..... y la República de Colombia representada por ..... dentro del ámbito de sus cordiales relaciones convienen en dejar por escrito el siguiente Acuerdo, relativo a los cultivos ilicitos y las operaciones de fumigación para erradicarlos:

PRIMERO.- Las Partes reconocen la necesidad de eliminar los cultivos ilicitos de coca y otras plantas que sirven para la fabricación de sustancias estupefacientes, eliminación que debe ser efectuada por cada una de las Partes dentro de los limites de sus respectivos territorios y en base a procedimientos compatibles con la preservación de la salud humana y del medio ambiente.

SEGUNDO.- En caso de que una Parte requiera efectuar operaciones de fumigación aérea tendientes a la eliminación de cultivos ilicitos, éstas se realizarán a una distancia no menor a diez kilómetros de la linea que marca la frontera entre ambos paises. A fin de evitar perjuicios o inconvenientes a las poblaciones fronterizas de la otra parte, las aeronaves no fumigarán durante las maniobras aéreas que impliquen sobrevuelo sobre la antedicha franja de seguridad.

TERCERO.- Ratificar su apoyo a la Comisión Binacional Interinstitucional encargada de evaluar los efectos de las sustancias quimicas utilizadas por Colombia en las operaciones de fumigación aérea.

CUARTO.- No obstante las disposiciones recogidas en los numerales anteriores, caso de comprobarse daños a la salud humana o al medio ambiente en los nacionales y/o territorio de una de las Partes, atribuibles a la otra Parte por el uso de sustancias quimicas en las operaciones de fumigación aérea, la Parte que resultare afectada podrá reclamar las reparaciones correspondientes.

Quito, a.....

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Diplomatic Note VRE 32759, sent from the Ministry of Foreign Affairs of Colombia to the Embassy of Ecuador in Bogotá (23 Sep. 2003)

[seal]

REPUBLIC OF COLOMBIA
MINISTRY OF FOREIGN AFFAIRS

VRE No. 32759

The Ministry of Foreign Affairs presents its compliments to the Honorable Embassy of Ecuador and refers to Note No. 4-2-234/03 dated 25 August, whose content refers to a previous letter, number 23205/GM, dated 10 April 2003.

In this letter, the Illustrious Government of Ecuador proposed establishing a Bi-national Commission to examine the effects of the aerial sprayings on the illicit crops of the common border region, and signing a "Memorandum of Understanding" on a 10-km spraying-free strip along the border.

The Government of Colombia, aware of the importance assigned to the world drug problem and related crimes in the bilateral agenda of both countries, carefully examined Note No. 23205/GM dated 10 April 2003. From the analysis of the content it is clear that the Government of Ecuador acknowledges the need to eliminate illicit crops used as basis to manufacture narcotic substances, although it has a different appreciation of the effect of the aerial sprayings with which the Government of Colombia hopes to eradicate these crops during the present Administration, to contribute in a decisive way to the world fight against the problem of drugs.

To the Honorable
EMBASSY OF ECUADOR
City

The establishment of an aerial spraying-free strip along the common border, as proposed by the Government of Ecuador in the aforementioned Memorandum, is unacceptable to the Government of Colombia, for multiple reasons, including the following:

1. The eradication of illicit crops is conducted within the boundaries of the Colombian territory, pursuant to the United Nations Convention against illicit traffic in narcotic drugs and psychotropic substances (1998), other relevant international agreements and the Declaration and Plan of Action to counter the World Drug Problem adopted by the United Nations in 1998, commitments that have been assumed by the Governments of Colombia and Ecuador.

2. Forced eradication is accepted as a legitimate means in the fight against illicit crops and is conducted on the basis of procedures compatible with the preservation of human health and the environment, pursuant to the precautionary principle enshrined in the 1992 Rio Declaration on Environment and Development. Prior to the spraying, a satellite system is used to identify the illicit crops, thus guaranteeing the exact perimeter of the area that will be sprayed. In addition, the technology with which the aircraft that execute these operations are equipped guarantees an accurate target.

3. The very size of the crops prevents considering manual eradication as a viable method to eliminate them. Therefore, it is

necessary to resort to sprayings from the air. Declaring a crop zone free from aerial sprayings in the common border would open a door for the free movement of international networks of drug trafficking, smuggling of weapons and chemical precursors, in partnership with terrorist groups that operate in the south of Colombia, and would create an even bigger danger for the security of both nations, particularly for the residents of the border zone.

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REPUBLICA DE COLOMBIA
MINISTERIO DE RELACIONES EXTERIORES

VRE No.32759

El Ministerio de Relaciones Exteriores saluda muy atentamente a la Honorable Embajada del Ecuador con ocasión de hacer referencia a la Nota numero 4-2-254/03 del 25 de agosto del año en curso, cuyo contenido remite a una comunicación previa señalada con el número 28205/CM del 10 de abril de 2003.

En esta comunicación el Ilustrado Gobierno del Ecuador proponía que se integrara una Comisión Binacional para examinar el efecto de las aspersiones aéreas sobre cultivos ilícitos en la región fronteriza común y se suscribiera un "Memorándum de Entendimiento" sobre una franja libre de aspersiones de 10 kilómetros a lo largo de la frontera.

El gobierno de Colombia, consciente de la importancia que tiene en la agenda bilateral de los dos países el problema mundial de las drogas y sus delitos relacionados, examinó con atención la nota número 28205/CM del 10 de abril de 2003. Del examen de su contenido, resultó claro que el gobierno del Ecuador reconoce la necesidad de eliminar los cultivos ilícitos que sirven de base para la fabricación de sustancias estupefacientes, si bien valora de manera diferente el efecto de las aspersiones aéreas con las cuales el Gobierno de Colombia aspira a erradicar dichos cultivos durante la presente administración de Gobierno, para contribuir en forma decidida a la lucha mundial contra el problema de las drogas.

A la Honorable
EMBAJADA DEL ECUADOR
Ciudad

EMBAJADA DEL ECUADOR
Recibido
Fecha 23-09-03 Hora

ANNEX 48

REPUBLICA DE COLOMBIA
MINISTERIO DE RELACIONES EXTERIORES

El establecimiento de una franja libre de aspersiones aéreas a lo largo de la frontera común, como lo propone el Gobierno del Ecuador en el citado Memorando, resulta inaceptable para el Gobierno de Colombia por múltiples razones, entre las cuales resulta pertinente citar las siguientes.

1. La erradicación de cultivos ilícitos se efectúa dentro de los límites del territorio colombiano, de conformidad con el Convenio de las Naciones Unidas contra el Tráfico Ilícito de Estupefacientes y Sustancias Sicotrópicas (1988), los demás convenios internacionales relevantes y la Declaración y Plan de Acción contra el Problema Mundial de las Drogas adoptado por las Naciones Unidas en 1998, compromisos estos aceptados por los gobiernos de Colombia y Ecuador.

2. La erradicación forzada es aceptada como medio legítimo en la lucha contra los cultivos ilícitos, y se realiza basándose en procedimientos compatibles con la preservación de la salud humana y del medio ambiente, de conformidad con el principio de precaución consagrado en la Declaración de Río sobre el Medio Ambiente y el Desarrollo de 1992. Previamente a la aspersión, se utiliza un sistema satelital de identificación de cultivos ilícitos que garantiza el perímetro exacto de la zona a asperjar y, adicionalmente, la dotación tecnológica de las aeronaves que ejecutan dicha labores asegura el objetivo con precisión.

3. La extensión misma de los cultivos no permite pensar que la erradicación manual sea un método viable para acabar con ellos, por lo tanto es necesario recurrir a la aspersión desde el aire. Declarar una zona de cultivos libre de aspersión aérea en la frontera común, abriría la puerta para el libre movimiento de las redes internacionales del tráfico de drogas, el contrabando de armas y los precursores químicos, en asocio con grupos terroristas que operan en el sur de Colombia, y crearía un peligro mayor para la seguridad de las dos naciones, en particular de los residentes de la zona fronteriza.

ANNEX 49

Diplomatic Note No. DBR/CAL 37677, sent from the Ministry of Foreign Affairs of Colombia to the Embassy of Ecuador in Bogotá (9 Oct. 2003)

DBR/CAL No. 37677

The Ministry of Foreign Affairs - Directorate of Bilateral and Regional Affairs – presents its compliments to the Honorable Embassy of Ecuador and refers to Diplomatic Note No. DM/DBR No. 35024, dated 23 September 2003, which informed the names of the members of the Scientific Commission on aerial sprayings in the border zone, and has the honor to confirm the list of the representatives of Colombia:

- Colonel (ret.) Luis Alfonso Plazas Vega
  National Director of Narcotics
  Coordinator of the Colombian Scientific Commission

- Brigadier General Jaime Augusto Vera
  Director, National Antinarcotics Police

- Colonel Carlos Arturo Narváez Martínez
  Head, Unit of Eradication of Illicit Crops
  DIRAN National Police

- Capt. Miguel Tunjano
  Agronomist, Unit of Eradication of Illicit Crops
  DIRAN National Police

- Dr. Camilo Uribe Granja
  Toxicologist-Researcher
  External Advisor, National Narcotics Directorate

- Jorge Bochell Samper
  General Director, National Institute of Health

- Marcela Eugenia Barona Uribe
  Doctor specialized in Epidemiology and Toxicology
  Coordinator, Epidemiology in Environmental Health
  National Institute of Health

- Mario Enrique Hoyos Falla
  Director, Regional Affairs and Eradication

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National Narcotics Directorate

- Dr. Alvaro Valencia Parra
  Assistant Director, Strategy and Research

[PAGE 2]

National Narcotics Directorate

- Dr. René Castro
  Chemist, National Laboratory of Agricultural Inputs
  Agricultural Institute of Colombia – ICA

- Dr. Herbert Matheus Gómez
  Professional specialized in phytosanitary risk control
  Agricultural Institute of Colombia – ICA

- Jorge Hernán Botero Tobón
  Toxicologist. External Advisor
  National Narcotics Directorate

- Hector Hernando Bernal Contreras
  Chemist. Professional specialized in Chemistry and Environment
  Sub-directorate of Strategy and Research
  National Narcotics Directorate

The Ministry of Foreign Affairs, Directorate of Bilateral and Regional Affairs, has the honor to inform that Minister Councilor Alvaro Sandoval Bernal, Coordinator of Drug Affairs of the Directorate of Multilateral Political Affairs, Dr. Gustavo Paredes, and Dr. Karin Rubio, professionals in charge of the desk of Ecuador, and Dr. Ricardo Montenegro, Executive Secretary of the Colombia-Ecuador Neighborhood Commission, have been designated as observers.

Likewise, the Ministry of Foreign Affairs has the honor to confirm that the meeting will be held on Tuesday, 14 April 2003 starting at 8:30 a.m. in the Windsor House Hotel, located on Calle 95 N° 9-97 in this city.

The Ministry of Foreign Affairs, Directorate of Bilateral and Regional Affairs, avails itself of this opportunity to reiterate to the honorable Embassy of Ecuador the assurances of its highest and distinguished consideration.

ANNEX 49

Bogotá, D.C., 9 October 2003

To the Honorable
EMBASSY OF THE REPUBLIC OF ECUADOR
City

DBR/CAL No. 37677

El Ministerio de Relaciones Exteriores – Dirección de Asuntos Bilaterales y Regionales, - saluda muy atentamente a la Honorable Embajada del Ecuador con ocasión de hacer referencia a la Nota Diplomática número DM/DBR No. 35024 del 23 de septiembre de 2003, en la cual se informaba sobre los miembros de la Comisión Científica sobre aspersiones aéreas en zona de frontera, y tiene a bien confirmar la lista de los representantes de Colombia:

- Coronel ® Luis Alfonso Plazas Vega.
  Director Nacional de Estupefacientes
  Coordinador de la Comisión Científica colombiana

- Brigadier General Jaime Augusto Vera
  Director de la Policía Nacional Antinarcóticos

- Coronel Carlos Arturo Narváez Martínez
  Jefe Area de Erradicación Cultivos Ilícitos
  DIRAN Policía Nacional

- Cap. Miguel Tunjano
  Agrónomo Area de Erradicación Cultivos Ilícitos.
  DIRAN Policía Nacional

- Dr. Camilo Uribe Granja,
  Investigador Toxicólogo,
  Asesor Externo Dirección Nacional de Estupefacientes

- Jorge Bochell Samper
  Director General del Instituto Nacional de Salud

- Marcela Eugenia Barona Uribe
  Médica Epidemióloga Toxicóloga
  Coordinadora Epidemiología en Salud Ambiental
  Instituto Nacional de Salud

- Mario Enrique Hoyos Falla
  Director Asuntos Regionales y Erradicación
  Dirección Nacional de Estupefacientes

- Dr. Alvaro Valencia Parra
  Subdirector de Estrategica e Investigaciones

ANNEX 49

Dirección Nacional de Estupefacientes

- Dr. René Castro
  Químico. Laboratorio Nacional de Insumos Agrícolas
  Instituto Colombiano Agropecuario - ICA.

- Dr. Herbert Matheus Gómez
  Profesional Especializado en control de riesgos fitosanitarios
  Instituto Colombiano Agropecuario - ICA.

- Jorge Hernán Botero Tobón.
  Toxicólogo. Asesor Externo
  Dirección Nacional de Estupefacientes

- Héctor Hernando Bernal Contreras
  Químico. Profesional Especializado. Química y Medio Ambiente
  Subdirección Estratégica e Investigaciones
  Dirección Nacional de Estupefacientes

El Ministerio de Relaciones Exteriores, Dirección de Asuntos Bilaterales y Regionales tiene a bien informar que en calidad de observadores ha designado al Ministro Consejero Alvaro Sandoval Bernal Coordinador de Asuntos de Drogas de la Dirección de Asuntos Políticos Multilaterales, a los Drs. Gustavo Paredes, y Karin Rubio, profesionales a cargo del escritorio del Ecuador y al Dr. Ricardo Montenegro, Secretario Ejecutivo de la Comisión de Vecindad Colombo-Ecuatoriana

De igual manera el Ministerio de Relaciones Exteriores tiene el honor de confirmar que la reunión se celebrará el martes 14 de abril de 2003, a partir de las 8:30 a.m. en el Hotel Windsor House ubicado en la Calle 95 N° 9–97 de esta ciudad.

El Ministerio de Relaciones Exteriores, Dirección de Asuntos Bilaterales se vale de esta oportunidad para reiterar a la honorable Embajada del Ecuador las seguridades de su más alta y distinguida consideración.

Bogotá D.C. 9 de octubre de 2003

A la Honorable
EMBAJADA DE LA REPUBLICA DEL ECUADOR
Ciudad

ANNEX 50

Diplomatic Note VRE/DBR 40153, sent from the Ministry of Foreign Affairs of Colombia to the Ministry of Foreign Affairs of Ecuador (12 Nov. 2003)

[seal] REPUBLIC OF COLOMBIA
MINISTRY OF FOREIGN AFFAIRS

VRE/DBR 40153

Bogotá D.C., 12 November 2003

Mr. Minister:

I have the honor to write to Your Excellency with reference to your kind Note No. 68964/2003-GM dated 23 October 2003, requesting that a copy of the environmental impact and epidemiology studies, reports subsequent to the sprayings and information concerning the sprayed areas be forwarded to the Ministry of Foreign Affairs of Ecuador.

With regard to this matter, I would like to forward a copy of the following related documents:

1. Toxicity studies in laboratory animals – Inmunopharmos Ltd.

2. Final Report – A study of reports on health damage related to aerial eradication in Colombia – Dr. Camilo Uribe Granja.

3. Retrospective study on potential effects on human health due to exposure to glyphosate in aerial spraying.

4. Analysis – Executive Summary "Impacts in Ecuador of sprayings in Putumayo under Plan Colombia".

I avail myself of this occasion to renew to Your Excellency the assurances of my highest and distinguished consideration and esteem.

[signature]
CAROLINA BARCO
Minister of Foreign Affairs

To His Excellency
PATRICIO ZUQUILANDA DUQUE
Minister of Foreign Affairs of the Republic of Ecuador
Quito

REPÚBLICA DE COLOMBIA
MINISTERIO DE RELACIONES EXTERIORES

VRE/DBR 40153

Bogotá D.C., 12 de noviembre de 2003

Señor Ministro:

Tengo el agrado de dirigirme a su Excelencia con el propósito de hacer referencia a su amable Nota No 68964/2003-GM, de fecha 23 de octubre de 2003, mediante la cual tiene a bien solicitar se haga llegar a la Cancillería del Ecuador, copia de los documentos correspondientes a los estudios de impacto ambiental y de epidemiología, reportes posteriores a las aspersiones, así como la información relativa a las zonas de aspersión.

Sobre el particular, comedidamente me permito hacerle llegar copia de los documentos relacionados a continuación:

1- Estudio de toxicidad en animales de laboratorio - Inmunopharmos Ltda.

2- Informe final Estudio de las Denuncias de daños a la salud relacionados con la erradicación aérea en Colombia - Dr. Camilo Uribe Granja.

3- Estudio retrospectivo acerca de los posibles efectos sobre la salud humana por exposición a glifosato en la aspersión aérea.

4- Análisis resumen ejecutivo "Impactos en Ecuador de las fumigaciones en el Putumayo dentro del Plan Colombia".

Hago propicia la ocasión para renovarle las seguridades de mi más distinguida consideración y aprecio.

Carolina Barco

CAROLINA BARCO
Ministra de Relaciones Exteriores

A su Excelencia
el Señor PATRICIO ZUQUILANDA DUQUE
Ministro de Relaciones Exteriores
de la República del Ecuador
Quito

ANNEX 51

Diplomatic Note 75204/2003-GM, sent from the Ministry of Foreign Affairs of Ecuador to the Ministry of Foreign Affairs of Colombia (21 Nov. 2003)

[seal]
REPUBLIC OF ECUADOR
MINISTRY OF FOREIGN AFFAIRS

Note No. 75204/2003-GM

Quito, 21 November 2003

Your Excellency Madame Minister,

I hereby wish to thank Your Excellency for forwarding the important scientific information that the Illustrious Government of the Republic of Colombia had concerning the issue of sprayings with glyphosate in our common border.

At the same time, I would like to ask Your Excellency to order that the "Environmental impact assessment conducted prior to the applications of glyphosate", offered to the Scientific and Technical Commission of Ecuador during the meeting held in Bogotá on 14 October, be forwarded to the Foreign Ministry of Ecuador, as the Commission needs it to make the most thorough analysis possible.

All the documentation will be analyzed by the Scientific and Technical Commission of Ecuador, and it is expected that the next meeting of both Commissions might be held on 17 December 2003, in the city of Quito.

I avail myself of this opportunity to reiterate to Your Excellency the assurances of my highest esteem and personal appreciation.

[Signed]
Patricio Zuquilanda Duque
Minister of Foreign Affairs

[Seal that reads:
REPUBLIC OF ECUADOR
MINISTER'S OFFICE
MINISTRY OF FOREIGN AFFAIRS]

ANNEX 51

To Her Excellency
Ambassador Carolina Barco
Minister of Foreign Affairs
of the Republic of Colombia
Bogotá.-

REPUBLICA DEL ECUADOR
MINISTERIO DE RELACIONES EXTERIORES

Nota No. 75204/2003-GM

Quito, 21 de noviembre de 2003

Excelentísima Señora Ministra,

Con la presente, me cumple agradecer a Su Excelencia, por el envío de la importante información científica que el Ilustrado Gobierno de la República de Colombia poseía en torno al tema de las aspersiones con glifosato en nuestra frontera común.

Al mismo tiempo, me permito solicitarle, disponga que se remita a la Cancillería del Ecuador, el "Estudio de Impacto Ambiental realizado previo a las aplicaciones del glifosato", ofrecido a la Comisión Científico Técnica Ecuatoriana, durante la reunión del pasado 14 de octubre en Bogotá, y requerido por ésta para efectuar un estudio lo más completo posible.

Toda la documentación será analizada por la Comisión Científico Técnica Ecuatoriana, con lo que se prevé que la próxima reunión de ambas Comisiones pueda efectuarse el 17 de diciembre de 2003, en la ciudad de Quito.

Hago propicia la ocasión para reiterar a usted las seguridades de mi más alta estima y aprecio personal.

Patricio Zuquilanda Duque
Ministro de Relaciones Exteriores

REPUBLICA DEL ECUADOR
GABINETE DEL MINISTRO
MINISTERIO DE RELACIONES EXTERIORES

A la Excelentísima Señora
Embajadora Carolina Barco
Ministra de Relaciones Exteriores
de la República de Colombia
Bogotá.-

ANNEX 52

Diplomatic Note 68934/2003-GM, sent from the Ministry of Foreign Affairs of Ecuador to the Ministry of Foreign Affairs of Colombia (23 Oct. 2003)

[seal]

REPUBLIC OF ECUADOR
MINISTRY OF FOREIGN AFFAIRS

Note No. 68934/2003-GM

Quito, 23 October 2003

Your Excellency Madame Minister,

Upon the successful conclusion of the first meeting of the Scientific-Technical Commissions of Ecuador and Colombia held in Bogotá on 14 October, pursuant to the offer made by the Colombian side during the meeting, I have the honor to request that, in order to further the proposed process of scientific and technical research, you to instruct that the information requested by the Ecuadorian Scientific-Technical Commission concerning fumigation zones, existing environmental impact studies, epidemiological studies, reports subsequent to sprayings, and all scientific records available and deemed appropriate is sent to the Foreign Ministry of Ecuador, to allow the CCTE to conduct an analysis as thorough as possible.

Additionally, I am pleased to inform you that, with respect to the issues of "epidemiological surveillance," the CCTE is also ready to begin the pertinent joint activities with the Colombian Scientific-Technical Commission.

As soon as the above documentation is supplied by the Foreign Ministry of Colombia and after it is duly analyzed by the CCTE, the Ecuadorian Foreign Ministry will propose a date for the commissions to hold the relevant evaluation meeting, in the city of Quito, as well as a provisional calendar of the visits to the border area that will have to be made.

I avail myself of this opportunity to reiterate to you assurances of my highest esteem and personal appreciation.

[signature]
Patricio Zuquilanda Duque
Minister of Foreign Affairs

ANNEX 52

To Her Excellency
Ambassador Carolina Barco
Minister of Foreign Affairs
of the Republic of Colombia
Bogotá.-

ANNEX 52

REPUBLICA DEL ECUADOR
MINISTERIO DE RELACIONES EXTERIORES

Nota No.68934/2003-GM

Quito, 23 de octubre de 2003

Excelentísima Señora Ministra,

Una vez efectuada con éxito la primera reunión de las Comisiones Científico – Técnicas de Ecuador y Colombia, el pasado 14 de octubre en la ciudad de Bogotá, y de conformidad con el ofrecimiento formulado por la parte colombiana durante la misma, me cumple solicitarle que con el objeto de adelantar en el proceso de investigación científica y técnica propuesto, disponga que se remitan a la Cancillería del Ecuador, las informaciones solicitadas por la Comisión Científico Técnica Ecuatoriana, en cuanto a las zonas de aspersión, a los estudios de impacto ambiental existentes, estudios epidemiológicos, reportes posteriores a las aspersiones, y todo registro científico disponible que usted estime conveniente, y que permita a la CCTE un estudio, lo más completo posible.

Por otra parte, me es grato comunicarle que con relación a los temas de "vigilancia epidemiológica", la CCTE está también atenta para iniciar las acciones conjuntas pertinentes con la Comisión Científico-Técnica Colombiana.

Tan pronto como la citada documentación sea proporcionada por la Cancillería de Colombia, y debidamente analizada por la CCTE, la Cancillería ecuatoriana propondrá una fecha en la cual las comisiones podrán efectuar la reunión de evaluación correspondiente, en la ciudad de Quito, así como un calendario tentativo para orientar las visitas que deberán realizarse en la frontera.

Hago propicia la ocasión para reiterar a usted las seguridades de mi más alta estima y aprecio personal.

Patricio Zuquilanda Duque
Ministro de Relaciones Exteriores

A la Excelentísima Señora
Embajadora Carolina Barco
Ministra de Relaciones Exteriores
de la República de Colombia
Bogotá.-

ANNEX 53

Diplomatic Note DM/DBR 47356, sent from the Ministry of Foreign Affairs of Colombia to the Ministry of Foreign Affairs of Ecuador (15 Dec. 2003)

[seal] **REPUBLIC OF COLOMBIA**
MINISTRY OF FOREIGN AFFAIRS

DM/DBR No. 47356

Bogotá, D. C, 15 December 2003

Your Excellency:

I have the honor to write to Your Excellency with reference to your kind letter N° 5204/2003-GM of 21 November, requesting additional documentation for the Ecuadorian Scientific and Technical Commission.

I wish to inform Your Excellency that after making the relevant consultations, none of the competent entities reported having the document entitled "Environmental Impact Assessment conducted prior to sprayings of Glyphosate" in their possession.

On the other hand, I am enclosing a document entitled "Determination of residues of the herbicide glyphosate and its metabolite AMPA in waters," which was offered to the Ecuadorian delegation by the representative of the Colombian Agricultural Institute ICA during the meeting held on 14 October in Bogota, and which I hope will be useful to the Scientific and Technical Commission of Ecuador.

I would also like to inform Your Excellency that the Colombian scientific delegation will not be able to travel to Ecuador on 17 December, due to difficulties in its agenda. Accordingly, the Ministry of Foreign Affairs will propose a new date for the holding of the meeting of the Technical and Scientific Commissions of Colombia and Ecuador.

I avail myself of this opportunity to reiterate to Your Excellency the assurances of my highest and most distinguished consideration.

[signature]
CAROLINA BARCO
Minister of Foreign Affairs

To His Excellency
PATRICIO ZUQUILANDA DUQUE
Minister of Foreign Affairs of the Republic of Ecuador
Quito

ANNEX 53

REPÚBLICA DE COLOMBIA
MINISTERIO DE RELACIONES EXTERIORES

DM/DBR No. 47356

Bogotá, D. C., 15 de diciembre de 2003

Excelencia:

Tengo el agrado de dirigirme a Vuestra Excelencia en la oportunidad de referirme a su amable comunicación N° 75204/2003-GM del pasado 21 de noviembre, en la cual solicita documentación adicional para la Comisión Científico Técnica Ecuatoriana

Deseo informar a Vuestra Excelencia que después de haber hecho las consultas correspondientes, ninguna de las entidades competentes manifestó tener a su disposición el documento titulado "Estudio de Impacto Ambiental realizado previo a las Aplicaciones del Glifosato".

Por otra parte, tengo a bien a adjuntar el documento titulado: "Determinación de residuos del herbicida glifosato y de su metabolito AMPA en aguas", el cual fue ofrecido a la delegación ecuatoriana por la representación del Instituto Colombiano Agropecuario ICA, durante la reunión del pasado 14 de octubre en Bogotá, y el cual espero sea de utilidad al Comité Científico Técnico del Ecuador.

De igual manera me permito informar que la delegación científica colombiana no podrá desplazarse al Ecuador el día 17 de diciembre por dificultades de agenda y en ese sentido el Ministerio de Relaciones Exteriores propondrá en breve una fecha para la realización del encuentro de las Comisiones Científico Técnicas de Colombia y el Ecuador.

Me valgo de esta oportunidad para renovar a Vuestra Excelencia las seguridades de mi más alta y distinguida consideración.

Carolina Barco

CAROLINA BARCO
Ministra de Relaciones Exteriores

A Su Excelencia
PATRICIO ZUQUILANDA DUQUE
Ministro de Relaciones Exteriores de la República del Ecuador
Quito.

ANNEX 54

Diplomatic Note DBR/CAL 1405, sent from the Ministry of Foreign Affairs of Colombia to the Embassy of Ecuador in Bogotá (14 Jan. 2004)

[seal]

REPUBLIC OF COLOMBIA
MINISTRY OF FOREIGN AFFAIRS

DBR/CAL No. 1405

The Ministry of Foreign Affairs, Directorate of Bilateral and Regional Affairs, presents its compliments to the Honorable Embassy of Ecuador on the occasion of forwarding the document *"Environmental Risk of the Herbicide Glyphosate"*, sent by the Anti-Narcotics Directorate of the National Police of Colombia, in order that it be delivered to the Scientific Commission of Ecuador.

The Ministry of Foreign Affairs, Directorate of Bilateral and Regional Affairs, avails itself of this opportunity to reiterate to the honorable Embassy of Ecuador the assurances of its highest and distinguished consideration.

Bogotá D.C., 14 January 2004

To the Honorable
EMBASSY OF THE REPUBLIC OF ECUADOR
City.

REPÚBLICA DE COLOMBIA
MINISTERIO DE RELACIONES EXTERIORES

DBR/CAL No.1405

El Ministerio de Relaciones Exteriores, Dirección de Asuntos Bilaterales y Regionales, saluda muy atentamente a la Honorable Embajada del Ecuador con ocasión de remitir el documento *"Riesgo Ambiental del Herbicida Glifosato"*, remitido por la Dirección Antinarcóticos de la Policía Nacional de Colombia, con el fin que el mismo sea entregado a la Comisión Científica del Ecuador.

El Ministerio de Relaciones Exteriores, Dirección de Asuntos Bilaterales y Regionales, se vale de la oportunidad para reiterar a la Honorable Embajada del Ecuador las seguridades de su más distinguida consideración.

Bogotá, D. C., 14 de enero de 2004

A la Honorable
EMBAJADA DE LA REPUBLICA DEL ECUADOR
Ciudad.

ANNEX 55

Diplomatic Note 4820/2004-GM, sent from the Ministry of Foreign Affairs of Ecuador to the Ministry of Foreign Affairs of Colombia (10 Feb. 2004)

[seal]

REPUBLIC OF ECUADOR
MINISTRY OF FOREIGN AFFAIRS

Note No. 4820/200-GM

Quito, 10 February 2004

Your Excellency Madame Minister:

I am honored to inform you that the II Meeting of the Scientific Technical Commissions of Ecuador and Colombia was held successfully on 9 February 2004, in the city of Quito. At the closing of the II Meeting, the following points were reviewed, and were recorded as the agreed findings of this important binational meeting.

1.- The need to define the characteristics of a "Model" that, based on the calculation of variables and factors present in the mechanics of sprayings, allows the prevention of mistakes that cause damage to Ecuadorian territory. The CCTC offered to send the *record* of past sprayings, and all the information on the parameters taken into consideration for these spraying operations in areas close to the border with Ecuador. The CCTC agreed to send the route maps used, altitude and other information on winds and other relevant data.

2.- The need to make a joint visit to the Province of Sucumbios. The Commissions agreed on the importance of conducting joint field observations and gathering the testimonies of the residents of the area directly, to verify the research conducted by the CCTE. Both Commissions are willing to make this trip before President Lucio Gutiérrez' visit to Colombia, scheduled for March 2. The delegations undertook to limit the group to an essentially scientific representation. This trip should be made under the strictest security measures and with a list of concrete goals. The trip will last three days and two nights.

3.- Exchange of the information requested by both parties regarding the further elaboration and the scientific and methodological bases (protocols) of the studies discussed, as well as the full delivery of new data and documents that allow the confirmation or rule out damages on Ecuadorian territory as a result of the sprayings.

ANNEX 55

To Her Excellency …1/2
Ambassador Carolina Barco
Minister of Foreign Affairs
of the Republic of Colombia
Bogota.-

[PAGE 2]
…2/2

4.- Review and broaden existing cooperation agreements concerning the issues generated by the sprayings to ensure their proper reactivation, and draft new agreements to be signed by healthcare institutions and other sectors. The possibility of reaching an agreement on the implementation of a project that would include a hospital ship that would travel along border rivers, providing medical assistance along the riverbanks of both countries, was mentioned

5.- The CCTE again requested the CCTC's report on environmental impact. This report has been deemed essential since the beginning of the inquiries, and it was presented during the II Meeting.

In view of the foregoing, and considering the significant agreements fortunately reached by the Scientific Commissions of our countries, permit me, Madame Minister, to request that this Ministry is informed of the date and the requirements of the CCTC to implement the project of the joint trip of the commissioners to the border area of the Province of Sucumbios, which I hope may be organized before 2 March.

In addition to the points listed in this note, I would also appreciate your assistance in sending the information concerning the international certification of the company that carried out the toxicological studies that were presented by the CCTC on 9 February.

Trusting that the procedures agreed during the II Meeting of the Scientific and Technical Commissions will be carried out with your illustrious cooperation, in order to give the required continuity to the investigations underway and to make feasible the opportune proposition of possible protocols for cooperation feasible, I reiterate, Madame Minister, the assurances of my highest esteem and personal appreciation.

[Signed]

Patricio Zuquilanda Duque
Minister of Foreign Affairs

REPUBLICA DEL ECUADOR
MINISTERIO DE RELACIONES EXTERIORES

Nota No. 4820/2004-GM

Quito, 10 de febrero de 2004

Excelentísima Señora Ministra,

Me es grato comunicarle que la II Reunión de las Comisiones Científico Técnicas de Ecuador y de Colombia se realizó con todo éxito el día 9 de febrero de 2004, en la ciudad de Quito. Al cierre de la II Reunión se revisaron los siguientes puntos que fueron consignados como conclusiones acordadas y finales de tan importante encuentro binacional.

1.- Necesidad de definir las características de un "Modelo" que en función del cálculo de factores y variables presentes en la mecánica de aspersiones, permita evitar errores que generen afectaciones en territorio ecuatoriano. La CCTC ofreció remitir el *record* de las aspersiones pasadas, y toda la información sobre los parámetros considerados para esas operaciones de aspersión en las zonas cercanas a la frontera con el Ecuador. La CCTC acordó remitir hojas de ruta utilizadas, altitud e información sobre vientos y demás elementos pertinentes.

2.- Necesidad de efectuar un viaje conjunto a la Provincia de Sucumbios. Se coincidió en la importancia de efectuar observaciones conjuntas de campo y receptar directamente los testimonios de los pobladores de la zona, para verificar las investigaciones realizadas por la CCTE. Existe la voluntad de ambas Comisiones para intentar el viaje de preferencia antes de la visita del Presidente Lucio Gutiérrez a Colombia, el próximo 2 de marzo. Las delegaciones se comprometerían a mantener una representación eminentemente científica. Este viaje deberá efectuarse bajo las más estrictas medidas de seguridad y con una lista de objetivos concretos. El viaje tendría una duración de tres días y dos noches.

3.- Intercambio de la información solicitada por ambas partes, relativa a la profundización y base científica y metodológica (protocolos), de los estudios discutidos, así como la remisión completa de nuevos elementos y documentos que permitan evidenciar o descartar afectaciones en territorio ecuatoriano como resultado de las aspersiones.

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A la Excelentísima Señora
Embajadora Carolina Barco
Ministra de Relaciones Exteriores
de la República de Colombia
Bogotá.-

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4.- Analizar y ampliar los convenios de cooperación existentes para su adecuada reactivación en lo relativo a la problemática generada por las aspersiones, y la creación de nuevos convenios que pueden ser suscritos entre instituciones de salud y de otras áreas. Se mencionó la posibilidad de acordar sobre la puesta en marcha de un proyecto que comprenda un buque hospital que navegue por los ríos fronterizos proveyendo de asistencia médica a las riveras de ambos países.

5.- La CCTE solicitó una vez más el informe sobre impacto ambiental que posee la CCTC. Este informe ha sido considerado básico desde el inicio de las investigaciones y fue presentado durante la II Reunión.

En virtud de lo expuesto, me permito, Señora Ministra, solicitarle que en función de las importantes coincidencias a las que afortunadamente han arribado las Comisiones Científicas de nuestros países, se informe a este Ministerio la fecha y los requerimientos de la CCTC, para poner en ejecución el proyecto de viaje conjunto de los comisionados a la zona fronteriza de la Provincia de Sucumbios, que ojalá pueda coordinarse antes del 2 de marzo.

Además de los puntos citados en esta nota, apreciaré también impulsar la remisión de la información relativa a la certificación internacional de la empresa que realizó los estudios toxicológicos presentados el 9 de febrero, por la CCTC.

En espera de que las diligencias acordadas durante la II Reunión de las Comisiones Científicas, sean adelantadas con su digna intercesión, para la necesaria continuación de las investigaciones en curso, y que hagan factible el oportuno planteamiento de eventuales protocolos de cooperación, le reitero señora Ministra las seguridades de mi más alta estima y aprecio personal.

Patricio Zuquilanda Duque
Ministro de Relaciones Exteriores

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Diplomatic Note 10181/2004-GM, sent from the Ministry of Foreign Affairs of Ecuador to the Ministry of Foreign Affairs of Colombia (16 Feb. 2004)

[seal]

REPUBLIC OF ECUADOR
MINISTRY OF FOREIGN AFFAIRS

Note No. 10181/2004GM
Quito, 16 February 2004

Your Excellency Madame Minister,

Concerning my Note No. 4820/2004-GM dated 10 February, by which I was honored to inform you of the results of the II Meeting of the Scientific Technical Commissions of Ecuador and Colombia, held in this city on 9 February, I am honored to request the Illustrious Government of Colombia that, as long as the procedures agreed during the II Meeting of the Scientific-Technical Commissions are not materialized in a definitive solution, the suspension of sprayings continue to be maintained, according to a press release of the Embassy of Colombia, dated 19 January, that between the previous year (2003) and the date of the release, "Colombia has not carried out fumigations to fight illicit crops in the border zone with Ecuador".

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest esteem and personal appreciation.

[Signature]
Patricio Zuquilanda Duque
Minister of Foreign Affairs

To Your Excellency
Ambassador Carolina Barco
Minister of Foreign Affairs
of the Republic of Colombia
Bogotá.-.

REPUBLICA DEL ECUADOR
MINISTERIO DE RELACIONES EXTERIORES

Nota No. 10181/2004-GM

Quito, 16 de febrero de 2004

Excelentísima Señora Ministra,

En relación con mi Nota No. 4820/2004-GM, de 10 de febrero pasado, mediante la cual me fue grato poner en su conocimiento los resultados de la II Reunión de las Comisiones Científico Técnicas de Ecuador y de Colombia, efectuada en esta ciudad el 9 de febrero, me cumple solicitar al Ilustrado Gobierno de Colombia, que en tanto se concreten las diligencias acordadas durante la II Reunión de las Comisiones Científicas, que culminen en una solución definitiva, se mantengan suspendidas las aspersiones que según el comunicado de prensa de la Embajada de Colombia fechado el 19 de enero pasado, informó que desde el año anterior (2003), hasta la fecha de publicación del referido comunicado, "no se están realizando fumigaciones para combatir los cultivos ilícitos en la zona de frontera con el Ecuador".

Hago propicia la ocasión para reiterar a usted señora Ministra las seguridades de mi más alta estima y aprecio personal.

Patricio Zuquilanda Duque
Ministro de Relaciones Exteriores

A la Excelentísima Señora
Embajadora Carolina Barco
Ministra de Relaciones Exteriores
de la República de Colombia
Bogotá.-

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Diplomatic Note DM/DBR 8092, sent from the Ministry of Foreign Affairs of Colombia to the Ministry of Foreign Affairs of Ecuador (23 Feb. 2004)

[SEAL]

REPUBLIC OF COLOMBIA
MINISTRY OF FOREIGN AFFAIRS

DM/DBR No. 8092

Bogotá, D.C., 23 February 2004

Your Excellency:

I am honored to write to Your Excellency concerning your kind Note No. 10181/2004-GM of 16 February 2004, regarding the program of aerial sprayings for the eradication of illicit crops in the southern region of Colombia.

In this sense, I would like to point out that, for reasons of the schedule of sprayings for this year, at present the Antinarcotics Police is not carrying out aerial sprayings in areas near the border line with Ecuador. However, in case aerial surveillance conducted over these areas provides information on new crops, the program of sprayings will continue, in application of the national policy of eradication of illicit crops and in compliance with the international commitments to fight the drug problem assumed by Colombia.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest and distinguished consideration.

[Signed]
CAROLINA BARCO
Minister of Foreign Affairs

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To His Excellency
Mr. PATRlCIO ZUQUILANDA DUQUE
Minister of Foreign Affairs of the Republic of Ecuador
Quito.-

REPÚBLICA DE COLOMBIA
MINISTERIO DE RELACIONES EXTERIORES

DM/DBR No. 8092

Bogotá, D. C., 23 de febrero de 2004

Excelencia:

Tengo el agrado de dirigirme a Vuestra Excelencia en la oportunidad de referirme a su amable nota N° 10181/2004-GM del 16 de febrero de 2004, concerniente al programa de aspersiones aéreas para la erradicación de los cultivos ilícitos en la región sur de Colombia.

Al respecto quisiera señalar que, por razones del calendario de aspersiones para el presente año, actualmente la Policía Antinarcóticos no está realizando procedimientos de aspersiones aéreas en zonas aledañas a la línea de frontera con el Ecuador. Sin embargo, en caso de que los reconocimientos aéreos efectuados sobre estas zonas arrojen información sobre nuevos cultivos, se continuará con el programa de aspersiones, en aplicación de la política nacional de erradicación de cultivos ilícitos y en cumplimiento de los compromisos internacionales de lucha contra el problema de las drogas, que ha adquirido Colombia.

Me valgo de esta oportunidad para renovar a Vuestra Excelencia las seguridades de mi más alta y distinguida consideración.

Carolina Barco

CAROLINA BARCO
Ministra de Relaciones Exteriores

6M/VH
15920
10-03-2004

A Su Excelencia
El señor **PATRICIO ZUQUILANDA DUQUE**
Ministro de Relaciones Exteriores de la República del Ecuador
Quito

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Diplomatic Note 15715/2004-GM, sent from the Ministry of Foreign Affairs of Ecuador to the Ministry of Foreign Affairs of Colombia (9 Mar. 2004)

[PAGE 1]

[seal]

REPUBLIC OF ECUADOR
MINISTRY OF FOREIGN AFFAIRS

Note No. 15715/2004-GM

Quito, 09 March 2004

Your Excellency Madame Minister:

Concerning your Note DM/DBR No. 8092 of 23 February 2004, received in this office on 8 March, I am honored to inform you that:

As you are aware, the Scientific and Technical Commissions of Ecuador of Colombia acknowledged the current issues and the great uncertainty of the Ecuadorian population living in the border zone with Colombia during the dialogues held in the framework of the II Meeting that took place in Quito last 9 February 2004. This issue involves, among other things, a serious social situation in this region, as a result of the great psychological pressure exerted on the Ecuadorian and Colombian refugee populations by the announcements of new aerial sprayings in nearby Colombian territory.

The Foreign Ministry of Ecuador along with the Ecuadorian Scientific and Technical Commission participated with members of the Human Rights Commission of the Parliament and the national and international press in an observation and fact-finding visit, which has resulted in several interpretations of the phenomenon. One that has prevailed among the press and the indicated political sectors is the version that all

existing effects in the zone, including the uncertainty and the fear of the population to grow crops and to remain in the area with their families arise from the sprayings conducted as part of the Colombian program for the eradication of illicit crops.

To Her Excellency Madame
Ambassador Carolina Barco,
Minister of Foreign Affairs
of the Republic of Colombia
Bogotá.-

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In this context, it is worth pointing out that the inquiries that this Foreign Ministry has entrusted to the Ecuadorian Scientific and Technical Commission are exclusively aimed at determining the scientific truth that the alleged damage in the Ecuadorian border area would be caused by the spraying of glyphosate with other chemicals.

With the goal of controlling this serious situation, the Government of Ecuador will undertake parallel scientific investigations regarding the issue of the fumigations with glyphosate, as well as health, agricultural technical cooperation, education and other programs to reactivate the economy of the zone.

In this sense, the Government of Ecuador kindly requests the Illustrious Government of Colombia to monitor and reinforce to the maximum extent its controls over its southern border region neighboring Ecuador, as well as to take all steps deemed appropriate in its territory to prevent new illicit crops and the resumption of possible aerial sprayings in the aforementioned zone.

In view of the foregoing, I am honored to reiterate to you and through you to the Illustrious Government of Colombia the request that the suspension of sprayings that, according to the Diplomatic Note quoted in my reference, would not be underway at present, continue to be enforced while the procedures agreed during the II Meeting of the Scientific Commissions, of which you were informed by Diplomatic Note No. 4820/2004-GM of February 10, are put into effect.

I avail myself of this opportunity to renew to you, Madame Minister, the assurances of my highest esteem and personal appreciation.

[signature]
Patricio Zuquilanda Duque
Minister of Foreign Affairs

REPUBLICA DEL ECUADOR
MINISTERIO DE RELACIONES EXTERIORES

Nota No. 15715 /2004-GM

Quito, 09 de marzo de 2004

Excelentísima Señora Ministra,

En relación con su Nota DM/DBR No.8092, de 23 de febrero de 2004, recibida en este despacho el día 8 de marzo pasado, me cumple manifestarle lo siguiente:

Como es de su conocimiento, la actual problemática y la grave incertidumbre de la población ecuatoriana en la zona fronteriza con Colombia, fue reconocida por las Comisiones Científico Técnicas de Ecuador y de Colombia durante los diálogos en el marco de la II Reunión que tuvo lugar en Quito, el pasado 9 de febrero de 2004. Dicha problemática involucra entre otros, una grave situación social en esa zona, como resultado de la gran presión psicológica que ejercen sobre la población ecuatoriana y colombiana refugiada, los anuncios de nuevas aspersiones aéreas en territorio colombiano aledaño.

La Cancillería del Ecuador conjuntamente con la Comisión Científico Técnica Ecuatoriana participó con la Comisión de Derechos Humanos del Parlamento y la prensa nacional e internacional, en una visita de observación y de recopilación de información, que ha provocado diversas interpretaciones del fenómeno, entre las que ha prevalecido para la prensa y los sectores políticos indicados, la versión de que todas las afectaciones existentes en la zona, incluyendo la incertidumbre y el temor de la población a cultivar y permanecer

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A la Excelentísima Señora
Embajadora Carolina Barco
Ministra de Relaciones Exteriores
de la República de Colombia
Bogotá.-

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en la zona con sus familias, se deberían a las aspersiones aplicadas como parte del programa colombiano de erradicación de cultivos ilícitos.

En este contexto, cabe señalar que las investigaciones que esta Cancillería ha encomendado a la Comisión Científico Técnica Ecuatoriana están encaminadas a determinar exclusivamente la verdad científica sobre las supuestas afecciones en la zona fronteriza ecuatoriana que provocaría la aplicación de glifosato con otros químicos.

Con el objeto de controlar la grave situación, el Gobierno ecuatoriano emprenderá paralelamente a las investigaciones científicas en torno al tema de las aspersiones con glifosato, programas de salud, de cooperación técnica agrícola, de educación, etc., en aras de reactivar la economía de la zona.

En este sentido, el Gobierno del Ecuador se permite solicitar al Ilustrado Gobierno de Colombia, vigile y refuerce al máximo los controles en las zonas de la frontera sur colindantes con el Ecuador, así como arbitrar todas las medidas que estime convenientes en su territorio, a fin de que no se produzcan nuevos cultivos ilícitos, y se evite la reiniciación de posibles aspersiones aéreas en la referida zona.

En tal virtud, me cumple reiterar a usted y por su intermedio al Ilustrado Gobierno de Colombia, que en tanto se concreten las diligencias acordadas durante la II Reunión de las Comisiones Científicas, puestas en su conocimiento mediante Nota No. 4820/2004-GM, de 10 de febrero pasado, se mantengan suspendidas las aspersiones que según su nota que cito en mi referencia, no se estarían realizando en la actualidad.

Hago propicia la ocasión para reiterar a usted señora Ministra las seguridades de mi más alta estima y aprecio personal.

Patricio Zuquilanda Duque
Ministro de Relaciones Exteriores

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Diplomatic Note 15839/2004-GM-VM, sent from the Ministry of Foreign Affairs of Ecuador to the Embassy of Colombia in Quito (10 Mar. 2004)

[PAGE 1]

[seal]

REPUBLIC OF ECUADOR
MINISTRY OF FOREIGN AFFAIRS

No. 15839/2004-GM-VM

The **Ministry of Foreign Affairs** presents its compliments to Honorable Embassy of the Republic of Colombia, and has the honor to transmit Note No. 15715/2004-GM of 9 March 2004, to that Honorable Diplomatic Representation, with the request that it is conveyed to Her Excellency Ambassador Carolina Barco, Minister of Foreign Affairs.

This Foreign Ministry also requests an opportune response to Note No. 482012004-GM, dated Quito, 10 February 2004, which contains the conclusions reached during the II Meeting of the Scientific and Technical Commissions of both countries, including significant procedures regarding the progress of the joint research on the harmful effects of glyphosate or on the methodology of application near Ecuadorian territory. In its response, the Foreign Ministry of Colombia was expected to: 1) Fix a suitable date for the joint trip of the Scientific and Technical Commissions of both countries to the Ecuadorian zone where the problems indicated above have occurred. 2) Provide information on the methodology for the aerial sprayings conducted in the border region with Ecuador, for the determination of a model. 3) Provide the scientific basis of the research made by Colombia on this matter. 4) Report on the international certification of the companies that have conducted toxicological studies on behalf of Colombia. 5) Send the impact report of the aerial sprayings with glyphosate and other chemicals,

which has been requested repeatedly, and 6) facilitate an exchange of views regarding the broadening of the existing cooperation agreements aimed at the recovery of the zones affected by the problem.

TO THE HONORABLE EMBASSY
OF THE REPUBLIC OF COLOMBIA
QUITO.- .

[PAGE 2]

The **Ministry of Foreign Affairs** avails itself of this opportunity to reiterate to the Honorable Embassy of the Republic of Colombia the assurances of its highest and most distinguished consideration.

Quito, 10 March 2004

REPUBLICA DEL ECUADOR
MINISTERIO DE RELACIONES EXTERIORES

No. 15839 /2004-GM-VM

El **Ministerio de Relaciones Exteriores** saluda atentamente a la Honorable Embajada de la República de Colombia, y tiene a honra remitir a esa Honorable Representación Diplomática la Nota No. 15715/2004-GM, de 09 de marzo de 2004, con el ruego de que se sirva trasladarla a conocimiento de la Excelentísima señora Embajadora Carolina Barco, Ministra de Relaciones Exteriores.

Esta Cancillería se permite también solicitar una oportuna contestación a la Nota No. 4820/2004-GM, fechada en Quito el 10 de febrero de 2004, que contiene las conclusiones acordadas durante la II Reunión de las Comisiones Científico-Técnicas de ambos países, entre las cuales figuran importantes diligencias para el avance de las investigaciones conjuntas, sobre los efectos nocivos del glifosato o de su metodología de aplicación cercana al territorio ecuatoriano. En dicha contestación se esperaba de la Cancillería de Colombia: 1) fije la fecha conveniente para efectuar un viaje conjunto a la zona ecuatoriana donde se ha producido la problemática en referencia, en el que puedan participar las Comisiones Científico-Técnicas de ambos países, 2) proporcione información sobre la metodología de aspersiones aéreas utilizada en la región fronteriza con el Ecuador, para la determinación de un modelo, 3) proporcione la base científica de las investigaciones realizadas por Colombia en esta materia, 4) informe sobre la certificación internacional de las empresas que han realizado estudios toxicológicos para Colombia, 5) remita el informe de impacto ambiental de las aspersiones aéreas con glifosato y otros químicos, particular que ha sido requerido en múltiples ocasiones y 6) facilite el intercambio de criterios para la ampliación de los convenios de cooperación existentes que coadyuven a reactivar las zonas inmersas en la problemática.

A LA HONORABLE EMBAJADA
DE LA REPUBLICA DE COLOMBIA
QUITO.-

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MINISTERIO DE RELACIONES EXTERIORES

El **Ministerio de Relaciones Exteriores** hace propicia la ocasión para reiterar a la Honorable Embajada de la República de Colombia, las seguridades de su más alta y distinguida consideración.

Quito, a 10 de marzo de 2004

Es/.-

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Presidential Joint Declaration between Ecuador and Colombia, Bogotá
(17 Mar. 2004)

JOINT STATEMENT BY THE PRESIDENT OF THE REPUBLIC OF ECUADOR, LUCIO GUTIERREZ BORBUA AND THE PRESIDENT OF THE REPUBLIC OF COLOMBIA, ALVARO URIBE VELEZ

The President of the Republic of Ecuador, Engineer Lucio Gutiérrez Borbúa, paid a State Visit to Colombia on 16 and 17 March 2004, in response to the invitation made by the President of the Republic of Colombia, Doctor Alvaro Uribe Velez.

During the visit, both Presidents and their respective Ministers of State held a series of working meetings with the purpose of strengthening the traditional bonds of friendship and fraternity between the two countries, with a view towards broadening integration, cooperation and the fraternal ties that have always characterized the relations between both countries.

Both Presidents reiterated their adherence to the principles of International Law enshrined in the Charter of the United Nations and in the Charter of the Organization of American States.

The Presidents took note of the results of the meetings held during the month of February 2004, including the III High-Level Ministerial Meeting and the XIV Plenary Meeting of the Neighbor Relations Commission between the two countries, as well as the I Meeting of the Special Binational Commission on Immigration issues and of the Scientific and Technical Commission on fumigations, held in the cities of Bogotá and Quito.

Both Presidents held a productive work meeting, as a continuation of the dialogue started in Quito last August, and reviewed the bilateral agenda, particularly regarding immigration, trade, security and integration and border development issues and, to this effect, they ratified their will to continue advancing in the constructive and proactive treatment of these issues.

[…]

14. The Heads of State examined the work carried out by the Scientific-Technical Commissions of the two countries regarding the sprayings, and they gave instructions to hold a third meeting and joint inspection and scientific evaluation visits on both sides of the border in April 2004. The Presidents reiterated the importance of examining the conclusions of the Commission within the shortest possible amount of time.

[…]

16. The Government of Colombia will give the Government of Ecuador explanations and scientific support that demonstrate that the fumigation of illicit crops is not harmful to human beings or to the environment.

17. Ecuadorian complaints regarding alleged damages suffered by Ecuadorian nationals or environment as a result of the fumigation of illicit crops will be studied by the Scientific-Technical Commissions.

[…]

Signed in Bogotá, D.C., on the seventeenth (17) day of the month of March of the year two thousand and four (2004)

[signature]
LUCIO GUTIERREZ BORBUA
President of the Republic of
Ecuador

[signature]
ALVARO URIBE VELEZ
President of the Republic of
Colombia

DECLARACION CONJUNTA DEL SEÑOR PRESIDENTE DE LA REPUBLICA DEL ECUADOR, LUCIO GUTIERREZ BORBUA Y EL SEÑOR PRESIDENTE DE LA REPUBLICA DE COLOMBIA, ALVARO URIBE VELEZ

El Presidente de la República del Ecuador, Ingeniero Lucio Gutiérrez Borbúa, efectuó una Visita de Estado a Colombia los días 16 y 17 de marzo de 2004, en atención a la invitación formulada por el Presidente de la República de Colombia, Doctor Alvaro Uribe Vélez.

Durante la visita, ambos Mandatarios y sus respectivos Ministros de Estado llevaron a cabo una serie de reuniones de trabajo con el objeto de fortalecer los tradicionales vínculos de amistad y hermandad entre los dos países, con miras a ampliar la integración, la cooperación y los fraternales lazos que siempre han caracterizado las relaciones entre los dos países.

Los dos Presidentes reiteraron su adhesión a los principios del Derecho Internacional consagrados en la Carta de Naciones Unidas y en la Carta de la Organización de Estados Americanos.

Los Mandatarios tomaron nota de los resultados de las reuniones celebradas durante el mes de febrero de 2004, como la III Reunión Ministerial de Alto Nivel y de la XIV Reunión Plenaria de la Comisión de Vecindad entre los dos países, así como de la I Reunión de la Comisión Binacional Especial de temas Migratorios y de la Comisión Científico Técnica en materia de aspersiones, que tuvieron lugar en las ciudades de Bogotá y Quito.

Ambos Mandatarios sostuvieron una fructífera reunión de trabajo, como continuación del diálogo que iniciaron en Quito en agosto pasado, e hicieron una revisión de la agenda bilateral, en especial sobre los asuntos migratorios, comerciales, de seguridad y de integración y desarrollo fronterizo y, en este sentido, ratificaron su voluntad de continuar avanzando en el tratamiento de los temas de manera constructiva y propositiva.

Ambos Presidentes realizaron un amplio diálogo sobre la evolución de la situación de seguridad en Colombia y sus efectos en el Ecuador.

Los Presidentes del Ecuador y Colombia renovaron su compromiso en la lucha contra todas las expresiones de terrorismo, e invocaron de nuevo la necesidad de fortalecer la cooperación internacional con ese propósito. En este sentido, expresaron sus profundos sentimientos de condolencia, pesar y solidaridad a su Majestad Juan Carlos I, Rey de España, al Gobierno, a todo el pueblo español y muy particularmente a los familiares de las víctimas de los execrables actos terroristas ocurridos el 11 de marzo de 2004, entre las que se encontraban ciudadanos colombianos y ecuatorianos.

Resueltos a continuar profundizando el entendimiento y la cooperación entre los dos países, los Presidentes del Ecuador y Colombia suscribieron la siguiente

DECLARACION CONJUNTA

1. Los señores Presidentes ponen de relieve que el diálogo amistoso, franco e intenso que existe entre los dos países, en todos los niveles, tanto gubernamentales como privados y de la sociedad civil, continuará fortaleciendo las relaciones bilaterales.

2. Los Mandatarios examinaron el desarrollo que ha tenido en los últimos años el

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11. En este contexto, el Presidente de Colombia, teniendo en cuenta las circunstancias de seguridad interna que enfrenta el país, dio a conocer los esfuerzos adelantados y recursos destinados en el área de la frontera común. Al respecto mencionó que la Policía Nacional se encuentra readecuando y equipando su estación de Puerto Colón, en la jurisdicción del Municipio de San Miguel, con el propósito de brindar seguridad más eficiente; asimismo, puso en conocimiento que se instalará una base de Infantería de Marina sobre el río San Miguel; que se está fortaleciendo la presencia militar en el Puente Internacional San Miguel y que se continuará el programa de soldados campesinos en la frontera con Ecuador.

12. El Presidente del Ecuador manifestó que los temas de seguridad son muy sensibles para su Gobierno, especialmente en el área de frontera. En ese sentido, informó sobre los esfuerzos realizados y considerables recursos destinados por su Gobierno en materia de seguridad y desarrollo económico-social en la zona fronteriza.

13. Los Mandatarios de los dos países dispusieron que dentro de los treinta días siguientes a este encuentro se reúna la Comisión Binacional de Frontera – COMBIFRON- para analizar la situación de seguridad en la zona de frontera; actualizar la directiva para la organización y funcionamiento de la Comisión e incluir como anexos la cartilla de seguridad y el manual de procedimientos para las unidades fronterizas.

14. Los Jefes de Estado conocieron del trabajo que realizan las Comisiones Científico-Técnicas de los dos países sobre aspersiones e instruyeron la realización de una tercera reunión y las visitas conjuntas de inspección y evaluación científica a efectuarse a ambos lados de la frontera, en el mes de abril de 2004. Los Presidentes reiteraron la importancia de conocer las conclusiones de la Comisión a la mayor brevedad posible.

15. El Gobierno de Colombia ayudará con los mecanismos pertinentes para que el Ecuador identifique posibles áreas de cultivos ilícitos en su territorio.

16. El Gobierno de Colombia hará entrega al Gobierno del Ecuador de las explicaciones y soportes científicos que demuestran que la fumigación de los cultivos ilícitos no causa daño al ser humano ni al medio ambiente.

17. En el marco de las Comisiones Científico-Técnicas se estudiarán las denuncias ecuatorianas por supuestos perjuicios causados por efecto de las fumigaciones a cultivos ilícitos sobre las personas o el medio ambiente ecuatorianos.

18. El Gobierno colombiano compartirá con el Gobierno del Ecuador para su ilustración, sus experiencias en relación con denuncias sobre posibles efectos de la fumigación a cultivos ilícitos sobre personas o el medio ambiente colombianos.

19. Los Mandatarios analizaron la situación migratoria actual entre los dos países y reconocieron la importancia de mantener un flujo ordenado entre ambas naciones. Al respecto, el Presidente del Ecuador expresó su preocupación por los efectos de la migración colombiana hacia el Ecuador y la necesidad de mejorar los controles migratorios.

20. En tal sentido, coincidieron en la necesidad de proteger y garantizar la circulación de las personas a fin de que este proceso contribuya a la seguridad, la integración, la cooperación y al desarrollo bilaterales. Para tal fin, el Gobierno del Ecuador exigirá para el ingreso a su territorio a partir del 31 de diciembre de 2005, el Pasaporte Andino en cumplimiento de la Decisión 504 de la Comunidad Andina o en su defecto, el Pasaporte colombiano.

21. De igual manera y, con el propósito de fortalecer los controles migratorios, el Gobierno de Colombia facilitará los procedimientos de expedición del Pasado Judicial

Técnico será presentado a los Ministerios de Relaciones Exteriores y Medio Ambiente de ambos países con miras a avanzar en la ejecución del Plan.

40. Los Presidentes reiteraron que asignan la mayor importancia a la lucha contra la corrupción y, en ese marco, comprometieron sus esfuerzos para que el XXXIV Período Ordinario de Sesiones de la Asamblea General de la OEA constituya un aporte real y efectivo en esa materia.

41. Los Mandatarios reafirmaron su compromiso con el desarrollo sostenible y, en particular, con los objetivos del Plan de Implementación de la Agenda 21, adoptado durante la Cumbre Mundial sobre Desarrollo Sostenible. Reiteraron su empeño en la implementación efectiva de los derechos de los países de origen sobre sus propios recursos genéticos, así como la protección del conocimiento tradicional asociado. En ese contexto resaltaron la importancia para Ecuador y Colombia del fortalecimiento de las actividades del Grupo de Países Megadiversos Afines y la activa participación en las deliberaciones que sobre este tema se están llevando a cabo en el marco del Convenio sobre Diversidad Biológica.

42. Los Presidentes del Ecuador y de Colombia resaltaron la importancia creciente que ha adquirido la Cuenca del Pacífico en el desarrollo de sus países, por lo que concluyeron en la conveniencia de continuar la coordinación de las acciones necesarias para su más pronta incorporación a la Conferencia del Foro de Cooperación Económica del Asia Pacífico (APEC).

43. Con motivo de la designación de Quito como Capital Iberoamericana de la Cultura en el año 2004, los Mandatarios resolvieron impulsar el intercambio y la cooperación académica y cultural.

44. Los Presidentes del Ecuador y Colombia reiteraron la importancia de la reunión que deberá realizarse en Quito, a más tardar en el mes de junio, para tratar lo referente a homologación y convalidación de títulos universitarios e instruyeron a sus Ministros de Educación dar el seguimiento que requiere este importante asunto.

El Presidente Lucio Gutiérrez Borbúa agradeció los actos de gentileza y manifestaciones de amistad y aprecio que recibió, tanto él como su Comitiva, durante su Visita de Estado a Colombia y que no hacen más que reflejar las tradicionales relaciones de amistad y afecto de los Gobiernos y Pueblos de los dos países.

Suscrita en Bogotá, D.C., a los diecisiete (17) días del mes de marzo del año dos mil cuatro (2004)

LUCIO GUTIERREZ BORBUA
Presidente de la República del Ecuador

ALVARO URIBE VELEZ
Presidente de la República de Colombia

ANNEX 61

Diplomatic Note 20434/2003-GM, sent from the Ministry of Foreign Affairs of Ecuador to the Ministry of Foreign Affairs of Colombia (31 Mar. 2004)

[seal]

REPUBLIC OF ECUADOR
MINISTRY OF FOREIGN AFFAIRS

Note No. 20434 /2003-GM

Quito, 31 March 2004

Your Excellency Madame Minister,

Presidents Lucio Gutiérrez and Alvaro Uribe gave instructions, on the occasion of the State Visit paid by the former to Colombia on this 16-17 March, for the Scientific Technical Commissions to hold their third meeting and joint inspection and scientific evaluation visits on sprayings in the border area, during the month of April 2004.

Similarly, as is also declared in the Joint Declaration of last 17 March the Presidents reiterated the importance of learning the conclusions of the Commissions within the shortest time possible.

I would greatly appreciate your advising me of the day in the coming month of April on which the Colombian Commission plans to come to hold the third meeting and to visit the border area on the Ecuadorian side, in compliance with the instructions of both Presidents.

I am enclosing a copy of the letter dated this 18 March, addressed by Engineer Juan Carlos Palacios, President of the Ecuadorian Scientific Technical Commission, to Colonel Jaime Piñeiros, Director of the Antinarcotics Office of Colombia, outlining the commitments assumed by both Commissions during their second meeting, and requesting the establishment of a schedule of visits and the agendas to be addressed, based on the provisions of the Joint Presidential Declaration.

…1/2

ANNEX 61

To Her Excellency Madame
Ambassador Carolina Barco
Minister of Foreign Affairs
of the Republic of Colombia
Bogotá.-

The Minister of Foreign Affairs

...2/2

Furthermore, as was offered by President Alvaro Uribe during the State Visit, and as set forth also in the Joint Declaration, I would appreciate your arranging the sending of the information and the studies on the sprayings made in Colombia, particularly the environmental impact study.

Awaiting your response, I reiterate, Madame Minister, the assurances of my highest esteem and personal appreciation.

[signature]
Patricio Zuquilanda Duque
Minister of Foreign Affairs

REPÚBLICA DEL ECUADOR
MINISTERIO DE RELACIONES EXTERIORES

Nota No. 20434 /2003-GM

Quito, 31 de marzo de 2004

Excelentísima Señora Ministra,

Los Presidentes Lucio Gutiérrez y Alvaro Uribe instruyeron, con ocasión de la Visita de Estado que efectuó el primero a Colombia los días 16 y 17 de marzo en curso, la realización de la tercera reunión y visitas conjuntas de inspección y evaluación científica a efectuarse en la zona de frontera, por parte de las Comisiones Científico Técnicas sobre aspersiones, en el mes de abril de 2004.

Asimismo, tal como también consta en la Declaración Conjunta de 17 de marzo pasado, los dos Presidentes reiteraron la importancia de conocer las conclusiones de las Comisiones a la mayor brevedad posible.

Mucho agradeceré a usted se sirva darme a conocer la fecha en la que vendría la Comisión colombiana, durante el próximo mes de abril, a fin de mantener la tercera reunión y efectuar la visita a la zona de frontera en territorio ecuatoriano, en cumplimiento de la disposición de los dos Presidentes.

Acompaño copia de la comunicación, de 18 de marzo en curso, que ha dirigido el Ing. Juan Carlos Palacios, Presidente de la Comisión Científico Técnica Ecuatoriana, al señor Coronel Jaime Piñeiros, Director Encargado de la Oficina de Antinarcóticos de Colombia, en la que reseña los compromisos asumidos por las dos Comisiones durante su segunda reunión y solicita fijar el calendario de visitas y las agendas a tratarse, con base en lo dispuesto en la Declaración Presidencial Conjunta.

...1/2

A la Excelentísima Señora
Embajadora Carolina Barco
Ministra de Relaciones Exteriores
de la República de Colombia
Bogotá.-

El Ministro de Relaciones Exteriores

Asimismo, tal como ofreciera el Presidente Alvaro Uribe durante la Visita de Estado, y que quedó igualmente consignado en la Declaración Conjunta, estimaré se digne disponer el envío de información y de los estudios sobre las aspersiones efectuadas en Colombia, en particular el estudio de impacto ambiental.

En espera de su respuesta, le reitero señora Ministra las seguridades de mi más alta estima y aprecio personal.

Patricio Zuquilanda Duque
Ministro de Relaciones Exteriores

ANNEX 62

Note SARE-142, sent from the National Directorate of Narcotics of the Ministry of Interior and Justice of Colombia to the President of the Technical-Scientific Commission of Ecuador (Apr. 14 2004).

[seal] Ministry of the Interior and Justice

[seal] National Narcotics Directorate

Bogotá, D.C., 14 April 2004
SARE-142

Doctor
JUAN CARLOS PALACIOS BURNEO
President
ECUADORIAN TECHNICAL-SCIENTIFIC COMMISSION
Diego de Almagro No. 1550 y la Pradera
Edif. Posada de las Artes Kigman, Piso 4
Quito, Ecuador

Re: Official Letter No. CMFS-46-2004 Rad., DNE E-2004-19728DE 23/03/04

Dr. Palacios,

In view of to the referred communication, I allow myself to make the following considerations:

[…]

2. INFORMATION ON PAST SPRAYINGS

2.1 Background on sprayings in the border area with Ecuador.

DATE	MUNICIPALITY	SPRAYING (HAS)
January 2001 to 15 February 2002	San Miguel	3.900
	Puerto Asís	310
	Valle del Guamuez	627
TOTAL OPERATION		**4.837**
28 July to 30 December 2002	San Miguel	1.295
	Puerto Asís	17.534
	Valle del Guamuez	4.208

	Puerto Leguizamo	44
TOTAL OPERATION		**23.081**
5 May to 19 July 2003	San Miguel	2.728
	Puerto Asís	1.114
	Valle del Guamuez	2.206
TOTAL OPERATION		6.048

[…]

2.3 Route:

During the process of fumigations the operations are programmed by digital means under a system of satellite positioning named DELNORTE, which has been previously programmed by the cartography that records the area of operations, the field of coca that are the target of spraying, alert systems for special protection areas, as are the covers and different elements for coca crops: additionally, during the spraying, [data] is supplied, allowing the recording of paths and spray lines, allowing that the information can be cross-referenced with satellite images and thematic cartography. In this way, a detailed and technical registry of the sprayed fields is obtained.

[…]

Sincerely,

LUIS ALFONSO PLAZAS VEGA

Director

Ministerio del Interior y de Justicia
República de Colombia
Libertad y Orden

Dirección Nacional de Estupefacientes

Bogotá, D.C., abril 14 de 2004
SARE - 142

Doctor
JUAN CARLOS PALACIOS BURNEO
Presidente
COMISION CIENTIFICO TECNICA ECUATORIANA
Diego de Almagro No.1550 y la Pradera
Edf. Posada de las Artes Kigman, Piso 4
Quito, Ecuador

Ref. Oficio No. CMFS-46-2004 Rad. DNE E-2004-19728DE 23/03/04

Doctor Palacios:

En atención a la comunicación de la referencia, me permito hacer las siguientes consideraciones:

1. En Relación con el punto uno, me permito informar que la contraparte colombiana tiene previsto realizar una reunión de coordinación con los técnicos el día 5 de abril, momento en el cual se espera contar con la fecha tentativa para adelantar la visita conjunta.

   Es de anotar, que los aspectos logísticos y de seguridad estarán a cargo de cada país en su territorio. En el eventual caso de que en la parte ecuatoriana se deba realizar algún tipo de pruebas, éstas serán costeadas por la parte ecuatoriana.

2. **INFORMACIÓN SOBRE ASPERSIONES PASADAS:**

2.1 Antecedentes de aspersión en área de frontera con Ecuador:

FECHA	MUNICIPIO	ASPERSIÓN (Has)
Enero 01 a Febrero 15 de 2002.	San Miguel	3.900
	Puerto Asís	310
	Valle del Guamuez	627
TOTAL OPERACIÓN		**4.837**
Julio 28 a Diciembre 30 de 2002.	San Miguel	1.295
	Puerto Asís	17.534
	Valle del Guamuez	4.208
	Puerto Leguizamo	44
TOTAL OPERACIÓN		**23.081**
Mayo 05 a Julio 19 de 2003.	San Miguel	2.728
	Puerto Asís	1.114
	Valle del Guamuez	2.206
TOTAL OPERACIÓN		**6.048**

2.2. Metodología:

El Programa de Erradicación de Cultivos Ilícitos Mediante Aspersión Aérea con Glifosato (PECIG), cuenta con tres procesos que asegura que las operaciones sean técnicas y precisas; estos son:

- Detección:

Mediante este proceso se obtiene la ubicación y cuantificación exacta de áreas con cultivos ilícitos en todo el territorio nacional, se realiza mediante la interpretación de imágenes de satélite combinada con sobrevuelos e informes de inteligencia para la validación y actualización de la información.

- Aspersión:

Con este proceso se logra la aplicación técnica y controlada del herbicida Glifosato a los cultivos previamente detectados, se realiza bajo los parámetros técnicos establecidos en el Plan de Manejo Ambiental para el Programa de Erradicación de Cultivos Ilícitos Mediante Aspersión Aérea con Glifosato (PECIG), aprobado por el Ministerio de Ambiente, Vivienda y Desarrollo Territorial y avalado técnicamente por el Instituto Colombiano Agropecuario (ICA).

- Verificación:

Este proceso permite evaluar el cumplimiento de los parámetros técnicos aprobados por las entidades competentes, determinar el porcentaje de eficacia de las aplicaciones para el control de los cultivos ilícitos y tramitar las quejas que se presenten de acuerdo a la resolución 017 de 2002 del Consejo Nacional de Estupefacientes, por medio de la cual se establece el procedimiento para atender y compensar presuntos daños que se puedan derivar del programa de erradicación de Cultivos Ilícitos mediante Aspersión Aérea con Glifosato.

2.3 Ruta:

Durante el proceso de aspersión las operaciones se programan en medio digital bajo un sistema de posicionamiento satelital denominado DELNORTE, que previamente va programado por la cartografía que registra el área de operaciones, los lotes de coca objeto de aspersión, sistemas de alerta para áreas de protección especial, como son coberturas y elementos diferentes a cultivos de coca: , además se alimenta durante la aspersión, permitiendo grabar los recorridos y líneas de aspersión, permitiendo que se pueda cruzar la información con imágenes satelitales y cartografía temática. Así se obtiene un detallado y técnico registro de los lotes asperjados.

2.4. Factores Variables Considerados:

El Pan de Manejo Ambiental para el Programa de Erradicación de Cultivos Ilícitos Mediante Aspersión Aérea con Glifosato (PECIG), presenta los parámetros operacionales de aspersión, como son la altura de vuelo, temperatura ambiente, humedad relativa, nubosidad, precipitación, tipo de boquilla, tamaño de gota,

dosificación, entre otros; si alguno de estos parámetros no se cumple, se procede a cancelar la misión de aspersión.

3. MODELO MATEMATICO PARA DETERMINAR DERIVA:

El modelo matemático implementado por el Programa de Erradicación de Cultivos Ilícitos Mediante Aspersión Aérea con Glifosato (PECIG), que incluye las variables; Velocidad terminal (Aceleración de la gravedad-Diámetro de la gota-Densidad de la gota-Viscosidad del aire), altura de vuelo, velocidad de la aeronave y tamaño de gota; es la establecida para la determinación de deriva de cualquier operación de aspersión aérea, definida, así:

Calculo De La Velocidad Terminal:

Se aplica la Ley de Stokes: $Vt = \frac{G * D (2) * W}{18 A}$

Vt: Velocidad terminal (m/sg)
G: Aceleración de la gravedad (m / sg2)
D: Diámetro de la gota en micras
W: Densidad de la gota (Kg / m 3).
A: Viscosidad del aire en newton – segundo por metro cuadrado.
1 Ns/m2 = 10P (Poise) = 181 uP a 20°C

Concentraciones Empleadas para Aspersión de Cultivos de Coca:

Mezcla de Glifosato, agua y coadyuvante 23,65 lts/ha (10,4 lts de Glifosato/ha).

Aspersión de 1,04 ml por mt².

Concentración máxima de 480 mg/l.

Cada mt² asperjado recibe 0,499 ml de ingrediente activo.

Concentración por debajo de valores críticos y muy lejanos a DL-50 y CL-50.

Temperatura

La temperatura reinante al momento de la aplicación puede afectar considerablemente la calidad de la aspersión según SYNGENTA *.

Ver cuadro página siguiente

ANNEX

TAMAÑO DE LA GOTA	TEMP. 20 – 22 °C H.R. X 80%	Temp. 30 °C H.R. X 50%
50 µ	15 seg	3.5 seg
100 µ	50 seg	14 seg
200 µ	200 seg	56 seg
300 µ	300 seg	84 seg

*SYNGENTA Aplicaciones técnicas principios y fundamentos (arosemena Kmt 2/5 edificio Berlín) Guayaquil Ecuador.

Calculo Área Potencial por Efecto De Deriva:

Fórmula: D = H x U / Vt.

Donde:

D Deriva (metros)
H Altura de la emisión (metros)
U Velocidad horizontal del viento m/s
Vt Velocidad terminal de la gota m/s

Para Evaluación del riesgo potencial se considera:

H: Mayor altura de emisión (25 metros según parámetros técnicos)
U: Velocidad (4.8 Kms/Hr o 1.3 Mts/sg)
Vt: Gota promedio (650 micras según parámetros técnicos), para una gota de 650 micras, es de 270 cm/seg.

Deriva del PECIG:

Fórmula: Deriva = H*x U / Vt

Donde:

H: Mayor altura de emisión
U: Velocidad
Vt: Gota promedio

$$\text{Deriva} = \frac{25 \text{ Mts} \times 1.3 \text{mts/sg.}}{2.7 \text{ mts/sg.}}$$

- **Deriva máxima = 12 Metros**

4. En lo referente a temas de Salud, me permito adjuntar el informe de avance de la Ficha No. 7 del Plan de Manejo Ambiental del PECIG adelantado por el Instituto Nacional de Salud – INS, en el que da cuenta del proyecto *"Evaluación de los efectos del glifosato y otros plaguicidas en la salud en zonas de influencia objeto del PECIG"*, que constituye un piloto de lo que se podría desarrollar para delantar monitoreo en salud humana. Así mismo, se hará la recomendación en la reunión de

coordinación para que el INS se ponga en contacto con la contraparte Ecuatoriana y den inicio a un proceso sistemático de intercambio de información.

5. De otra parte, los análisis efectuados en Colombia sobre los posibles consecuencias en la salud humana de los herbicidas utilizados ya son de su conocimiento y ellos indican que no hay efectos. Para su conocimiento, adjunto documento *"El Espejismo de esas Hojas"* de la UNICEF, que evidencia que los efectos en salud y ambiente son ocasionados por el uso indiscriminado de químicos y agroquímicos en el cultivo y procesamiento de la droga por parte de narcocultivodores y narcoprocesadores.
6. Finalmente, adjuntamos los siguientes documentos:
   - Estudio de Toxicidad en Animales de Laboratorio. (Amapola). Inmunopharmos Ltda.-2002
   - Ficha Técnica del Coadyuvante Cosmoflux 411F utilizado en el PECIG, donde relaciona aspectos químicos, toxicológicos y características generales de este producto.
   - Guías de la EPA. Enviromental Protection Agency de los Estados Unidos de América.

Atentamente,

LUIS ALFONSO PLAZAS VEGA
Director

Anexo: lo anunciado

MEHF/ltb

ANNEX 63

Report of the Ecuadorian Delegation to the Third Meeting of the Joint Scientific and Technical Commission (26 May 2004)

REPORT OF THE ECUADORIAN DELEGATION THAT PARTICIPATED IN THE THIRD MEETING OF THE ECUADORIAN SCIENTIFIC COMMISSION

Lago Agrio, 26 May 2004

[…]

The Commissions held two previous meetings in which they expressed the need to conduct joint activities to obtain information on the reported problem. The information provided by the Colombian side during these meetings was not fully satisfactory for the Ecuadorian group, which is why the Ecuadorian Scientific-Technical Commission proposed an agenda for a Third Meeting, in which visits to different border areas and a Workshop in which it was tentatively expected that the Colombian Commission would present an objective report on the model used for the application (a mathematical model spraying pollutants emitted by mobile-aerial sources).

[…]

Conclusions:

1. The Commissions heard the affirmations made by the locals that planes applying glyphosate fly over the Ecuadorian region.

2. The two commissions have a positive attitude to reach a solution to the problem.

3. The Colombian Government will continue with the sprayings as a means of eradicating coca plantations, in which case this problem could persist.

Sincerely,

Dr. José Núñez
Chief of Cabinet of the Vice-Minister of Foreign Affairs

Dr. Luis Alberto Reinoso
Central University of Ecuador

ANNEX 63

Engineer Santiago Salazar
Undersecretariat for Environmental Quality
Ministry of the Environment of Ecuador
Coordinator of the Pichincha Core Of the Ecuadorian Scientific Community - CONCIEC

Dr. Ramiro Castro
Ecuadorian Atomic Energy Commission
Manager of the Ecotoxicology Laboratory

INFORME DE LA DELEGACIÓN ECUATORIANA QUE PARTICIPO EN LA III REUNION DE LA COMISION CIENTÍFICA ECUATORIANA

Lago Agrio, 26 de mayo de 2004

Antecedentes:

Debido a la ejecución del Plan Colombia en la frontera ecuatoriana – colombiana, se han causado graves problemas a los habitantes de ese lugar, básicamente por la aplicación de "glifosato" utilizado para erradicar las plantaciones de coca.

En este contexto, los Ministerios de Relaciones Exteriores tanto de Ecuador como de Colombia formaron Comisiones Científico – Técnicas, responsables de hacer una evaluación de las quejas de los pobladores de este sector.

Las Comisiones han realizado dos reuniones previas en las que se planteó la necesidad de realizar actividades conjuntas para recabar la información sobre la problemática presentada. En estas reuniones la información recibida por parte de Colombia no fue de total satisfacción para el grupo ecuatoriano, por lo que la Comisión Científico – Técnica Ecuatoriana propuso una agenda para una Tercera Reunión en la que se consideraba las visitas a las diferentes localidades fronterizas y la realización de un Taller en el que tentativamente esperaba que la Comisión Colombiana presente una información objetiva sobre el modelo utilizado en la aplicación (modelo matemático de dispersión de contaminantes emitidos por fuentes móviles – aéreas.

Informe de la tercera reunión

Con los antecedentes expuestos anteriormente la Comisión Científica - Técnica Ecuatoriana efectuó una visita a Lago Agrio con la finalidad de reunirse con los miembros de la Comisión Científico – Técnica Colombiana para cumplir con la Agenda Propuesta.
La comitiva ecuatoriana, llegamos a las 11h30 al puente internacional "San Miguel", La delegación colombiana llego a las 14h30. Este retraso hizo que no se pueda visitar las localidades inicialmente programadas en la Agenda.
Utilizando un helicóptero de la división de Aviación de la Fuerza – Terrestre, visitamos la localidad de Puerto Mestanza. En este lugar las dos Comisiones tuvimos la posibilidad de recabar la información relatada por los pobladores sobre los graves perjuicios causados por la aplicación del glifosato, relatos que iban desde problemas causados a la salud de las personas y a los diferentes cultivos del sector como son café, banano, maíz y cacao, entre otros.

La visita al sector de Mestanza concluyo a las 17h00, sin que hayamos tenido tiempo para visitar otras localidades de acuerdo a lo previsto inicialmente, luego de lo cual retornamos en el mismo helicóptero hasta Puerto Francisco de Orellana para tomar el vuelo de regreso a Quito.

ANNEX 63

Recomendaciones:

1. Las instituciones participantes deben delegar oficialmente a sus representantes y los mismos comprometerse a colaborar en el trabajo.

2. Para siguientes Comisiones se recomienda una planificación con mayor tiempo de anticipación a fin de evitar problemas de improvisación (ausencia de equipos como GPS) en la movilización, financiamiento y coordinación con los organismos competentes.

3. La Comisión Científico – Técnica Ecuatoriana debe elaborar una propuesta de atención básica en salud, en asistencia técnica agrícola y en remediación ambiental (suelo, agua, aire y biodiversidad) para que sea cumplida por cada una de las instituciones encargadas de estos temas

Conclusiones:

1. Se escucho por parte de las Comisiones la afirmación de los pobladores de que por el sector ecuatoriano pasan avionetas aplicando glifosato.

2. Las dos comisiones tienen una actitud positiva para llegar a la solución del problema.

3. El Gobierno Colombiano va a mantener las fumigaciones como forma de erradicación de las plantaciones de coca lo cual podría mantener subsistente este problema.

Atentamente

Dr. José Núñez
Jefe de Gabinete del Viceministro
de Relaciones Exteriores

Dr. Luis Alberto Reinoso
Universidad Central del
Ecuador

Ing. Santiago Salazar
Subsecretaria de Calidad Ambiental
del Ministerio del Ambiente del Ecuador
Coordinador del Núcleo de Pichincha de la
Comunidad Científica Ecuatoriana-CONCIEC

Dr. Ramiro Castro
Comision Ecuatoriana de Energia
Atomica Responsable del
Laboratorio de Ecotoxicologia

ANNEX 64

Minutes of the Fourth Meeting of the Joint Scientific and Technical Commission
(2 Aug. 2004)

MINUTES OF THE FOURTH MEETING OF THE ECUADOR – COLOMBIA SCIENTIFIC - TECHNICAL COMMISSION

The Scientific-Technical Commissions of Ecuador and Colombia, in the meeting of 2 August 2004, in Najas Palace, seat of the Ministry of Foreign Affairs of Ecuador, reviewed the progress made at previous meetings, exchanged information with regard to the works accomplished to this date, and agreed that:

1. In view of the information provided by the Colombian Delegation, to the effect that the sprayings ended last May, and that they would only resume next year, or earlier if deemed necessary, the Colombian party shall notify, by the fastest means, at the moment that such sprayings are being conducted along the border area, so that the Ecuadorian Commission may take samples and conduct the respective analyses, in a timely manner.
2. The Colombian Delegation, reiterating absolute respect for Ecuadorian sovereignty, declares that, should sprayings along the border continue, the technical conditions necessary to prevent the spray from reaching Ecuadorian territory shall be guaranteed.

[…]

[signature]
Engineer Santiago Salazar
Coordinator, Ecuadorian Commission

[signature]
Col (ret.) Luis Alfonso Plazas Vega
Coordinator, Colombian Commission

ACTA DE LA IV REUNION DE LA COMISION CIENTIFICO TECNICA ECUADOR - COLOMBIA

Las Comisiones Científico Técnicas del Ecuador y Colombia, reunidas el 2 de agosto de 2004, en el Palacio de Najas, sede del Ministerio de Relaciones Exteriores del Ecuador, pasaron revista de los avances alcanzados en las anteriores reuniones, intercambiaron información respecto de los trabajos llevados a cabo hasta la presente y acordaron que:

1. Frente a la información de la Delegación de Colombia en el sentido que las aspersiones terminaron en mayo pasado y que solamente se reanudarían el año entrante, o antes en caso de ser necesarias, la parte colombiana notificará, por la vía más rápida, en el momento en que se estén llevando a cabo tales aspersiones en la zona fronteriza, a fin de que la Comisión Ecuatoriana puedan tomar oportunamente las muestras y efectuar los respectivos análisis.
2. La Delegación Colombiana, al reiterar el respeto irrestricto a la soberanía ecuatoriana, manifiesta que, de continuar las aspersiones en zona de frontera, se garantizarán las condiciones técnicas que impidan que estas aplicaciones alcancen territorio ecuatoriano.
3. Las Delegaciones se comprometen a intercambiar información sobre las metodologías utilizadas, a fin de estandarizar los procedimientos de muestreo y de laboratorio, sobre los siguientes puntos:
   A) Toxicología - efectos en salud humana
   B) Medioambiente:
      Residualidad en suelos y en aguas
4. En la medida de las posibilidades técnicas y económicas, se trabajará sobre metodologías relacionadas con aspectos bióticos (flora y fauna) y aire.

Ing. Santiago Salazar
Coordinador de la Comisión Ecuatoriana

Crnl. (r) Luis Alfonso Plazas Vega
Coordinador de la Comisión Colombiana

ANNEX 65

Diplomatic Note DPM/CDR 65881, sent from the Ministry of Foreign Affairs of Colombia to the Embassy of Ecuador in Bogotá (4 Nov. 2004)

[seal]

REPUBLIC OF COLOMBIA
MINISTRY OF FOREIGN AFFAIRS

[initials]

DPM/CDR 65881

The Ministry of Foreign Affairs of the Republic of Colombia warmly greets the Honorable Embassy of the Republic of Ecuador and would like to inform you that the Anti-Narcotics Police has notified us of the renewed of aerial spraying with glyphosate in the border area, which shall last until the end of the month of December.

The Ministry of Foreign Affairs of the Republic of Colombia would like to take this opportunity to reiterate to the Honorable Embassy of the Republic of Ecuador assurances of its highest and most distinguished consideration.

[seal]

Bogota D.C., 4 November 2004

To the Honorable
Embassy of the Republic of Ecuador
Bogota

Embassy of Ecuador
Registered
Date: 08-11-04

[PAGE 2]

CONFIDENTIAL

FAX No. 12-1 16/04 MECUCOL **URGENT**

TO: **Edwin Johnson**
MINISTER OF FOREIGN AFFAIRS (E)
Fax: 00 9+(593) 2 299-3210 Quito

ANNEX 65

FROM: **Fernando Suárez Moreno**
CHARGE D'AFFAIRES A.I. OF ECUADOR IN COLOMBIA
Fax: 00 (571) 212-6536 Bogotá

DATE: **8 November 2004**

REF: **Your CE No. 128/VM-2004, 5 October 2004**

N° of pages: **2 (two including this page)**

RE: **RESUMPTION OF AERIAL SPRAYINGS**

Regarding your referenced email and pursuant to your instructions, I am enclosing URGENT verbal note No. 4-1-439/2004, dated today, which was sent to the Foreign Ministry at San Carlos, regarding the notice made of the resumption by Colombia of aerial sprayings with "glyphosate" in the border zone, placing emphasis on the need to take the technical instructions agreed to by the members of the Scientific-Technical Commissions of both countries to guarantee that the effects of sprayings do not reach Ecuadorian territory into account.

I am also informing you that I have requested a meeting to personally deliver the verbal note in reference to the Vice-Foreign Minister of Colombia, Ambassador Camilo Reyes Rodríguez, who at the moment is in a meeting with Foreign Minister Carolina Barco. However, I have been told that as soon as the meeting is over I will receive a response to my request.

I will be pleased to let you know as soon as I have a favorable response.

Sincerely yours,

[signature]

[PAGE 3]

URGENT

V.N. No. 4-2-439 /2004

THE EMBASSY OF ECUADOR presents its compliments to the honorable Ministry of Foreign Affairs of the Republic of Colombia, and concerning verbal note DPM/CDR 65881 of 4 November 2004, related to the resumption of aerial sprayings with "glyphosate" in the border zone, which would last until the end of this year, has the honor to request that, for the realization of such operations and pursuant to the agreement contained in the Presidential Declaration of Esmeraldas and in the Minutes of the IV Meeting of the Scientific-Technical Commissions of Ecuador and Colombia on sprayings, the technical instructions agreed by the members of the Commissions of both countries are taken into account in order to guarantee that the drift generated by the sprayings does not reach Ecuadorian territory.

THE EMBASSY OF ECUADOR avails itself of this opportunity to reiterate to the honorable Ministry of Foreign Affairs of the Republic of Colombia the assurances of its highest and distinguished consideration.

[signature]

Bogotá D.C., 8 November 2004

TO THE HONORABLE
MINISTRY OF FOREIGN AFFAIRS
REPUBLIC OF COLOMBIA
Palace of San Carlos

ANNEX 65

[PAGE 4]

[seal]

EMBASSY OF ECUADOR IN COLOMBIA

FAX 12-1-207/2004 MECUCOL **URGENT**

TO: **Jose Nuñez Tamayo**
Chief of Cabinet of the Vice-minister of Foreign Affairs
Fax: 00 (593) 2 299-3210 Quito

FROM: **Wilson Torres Zapata**
Ambassador of Ecuador in Colombia
Fax: 00 (571) 212-6536 Bogota

DATE: **22 December 2004**

REF: **Your CE N° 128/VM-2004 05 October 2004**
N.V. DPM/CDR 65881 04 November 2004
N.V. No. 4-2-439/2004 08 November 2004
My fax No. 12-1-16/04 MECUCOL
CONFIDENTIAL URGENT 8 November 2004

N° OF PAGES: **5 (five, including this page)**

RE: **BACKGROUND INFORMATION ON RESUMPTION OF SPRAYINGS IN COLOMBIA**

With reference to your phone query made at noon today concerning the news on the subject of "sprayings" published in today's issue of the newspaper "La Hora" of the city of Quito, I am appending hereto background information on this subject, as contained in the notes received and sent by this Embassy, which explain the official announcement made by the Foreign Ministry at San Carlos concerning the resumption of aerial operations for the spraying of illicit crops in the border zone, which would continue until December of this year.

I would also like to inform you that the Diplomatic Mission under my charge, in compliance with the instructions of the Vice-Minister contained in CE No. 128/VM-2004, dated 5 October 2004, sent URGENT verbal note No. 4-2-439/2004 to the Ministry of Foreign Affairs of Colombia,

requesting that the technical instructions on spraying agreed to by the members of the Scientific-Technical Commissions of Ecuador and Colombia are taken into account in order to guarantee that the drift generated by the sprayings does not reach Ecuadorian territory, actions that were communicated to that Cabinet in a timely fashion via my referenced confidential fax No. 12-1-16/04, a photocopy of which is also appended hereto.

Sincerely yours,

[signature]
[seal]

[PAGE 5]

[seal]

REPUBLIC OF ECUADOR
MINISTRY OF FOREIGN AFFAIRS

Note No. 43 /GV/04

The Ministry of Foreign Affairs of Ecuador summons the Members of the Scientific-Technical Commission of Ecuador to an urgent meeting today at 5 p.m. in the Rooms of the Palace of Najas, with the purpose of coordinating the trip of Commission members to the Province of Sucumbios, tomorrow, Thursday 22 December of the present year, to collect samples necessary to conduct an analysis of glyphosate residues both on the environment and on persons, and to assess the current situation in the border zone.

Accordingly, the Ministers of Government, Public Health, Agriculture and Livestock, and Environment, and the Director of the Ecuadorian Atomic Energy Commission are hereby asked to authorize the members of the Scientific-Technical Commission to make the aforementioned trip.

ANNEX 65

The Ministry of Foreign Affairs avails itself of this opportunity to reiterate the assurances of its highest and distinguished consideration.

Quito, 22 December 2004

[initials]

To the Members of the
Scientific-Technical Commission
of Ecuador
City.

DE : EMBAJADA DEL ECUADOR NO. DE FAX : 2579799 22 DIC. 2004 05:09PM P4

REPÚBLICA DE COLOMBIA
MINISTERIO DE RELACIONES EXTERIORES

DPM/CDR 65881

El Ministerio de Relaciones Exteriores de la República de Colombia, saluda muy atentamente a la Honorable Embajada de la República del Ecuador y se permite informar que la Policía Antinarcoticos nos ha comunicado sobre el reinicio de las aspersiones áreas con glifosato en la zona de frontera, las que se prolongaran hasta finales del mes de Diciembre.

El Ministerio de Relaciones Exteriores de la República de Colombia hace propicia la oportunidad para renovar a la Honorable Embajada de la República del Ecuador, las seguridades de su más alta y distinguida consideración.

REPÚBLICA DE COLOMBIA Ministerio de Relaciones Exteriores

Bogotá D.C. Noviembre 4 del 2004

A la Honorable
Embajada de la República del Ecuador
Bogotá

EMBAJADA DEL ECUADOR
Registrado
Fecha 08-11-04 Hora

ANNEX 65

RESERVADO

FAX No.12-1- 16 /04 MECUCOL

URGENTE

PARA: Edwin Johnson
MINISTRO DE RELACIONES EXTERIORES (E)
Fax: 00 9+(593)2 299-3210 Quito

DE: Fernando Suárez Moreno
ENCARGADO DE NEGOCIOS A.I. DEL ECUADOR EN COLOMBIA
Fax: 00 (571) 212-6536 Bogotá

FECHA: 8 de noviembre de 2004

REF: Su CE No.128/VM-2004 5-X-2004

No. de páginas: 2 (Dos incluyendo esta página)

ASUNTO: REINICIO DE ASPERSIONES AEREAS.

En atención a su correo electrónico de la referencia y conforme a sus instrucciones, me cumple remitir adjunto la nota verbal URGENTE No.4-1-439/2004, de fecha de hoy, la misma que se envió a la Cancillería de San Carlos en torno a la notificación que se hiciera sobre el reinicio por parte de Colombia de las aspersiones aéreas con "glifosato" en la zona de frontera, haciendo énfasis en la necesidad de que se tomen en cuenta las instrucciones técnicas acordadas por los miembros de las Comisiones Científico Técnicas de los dos países a fin de garantizar que sus efectos no alcancen territorio ecuatoriano.

Asimismo me cumple informarle que he solicitado hoy una cita para hacer la entrega personal de la nota verbal en referencia al Vicecanciller de Colombia, embajador Camilo Reyes Rodríguez, quien al momento se encuentra en una reunión con la Canciller Carolina Barco, sin embargo, he sido informado que apenas se libere de esa reunión podré recibir una respuesta a mi pedido.

Apenas tenga una respuesta favorable, me será grato dársela a conocer.

Muy atentamente,

pram

DE : EMBAJADA DEL ECUADOR NO. DE FAX : 2579799 22 DIC. 2004 05:08PM P3

URGENTE

N.V. No.4-2- 439 /2004

LA EMBAJADA DEL ECUADOR, saluda muy atentamente al honorable Ministerio de Relaciones Exteriores de la República de Colombia y en relación con la nota verbal DPM/CDR 65881, de 4 de noviembre de 2004, relacionada con el reinicio de las operaciones aéreas con "glifosato" en la zona de frontera, las mismas que se prolongarían hasta finales del año en curso, tiene a bien solicitar que para la realización de dichas operaciones y conforme lo acordado en la Declaración Presidencial de Esmeraldas y el Acta de la IV Reunión de las Comisiones Científico Técnicas de Ecuador y Colombia sobre aspersiones, se tomen en cuenta las instrucciones técnicas acordadas por los miembros de las Comisiones de los dos países a fin de garantizar que la deriva que se genere de las mismas no alcance territorio ecuatoriano.

LA EMBAJADA DEL ECUADOR se vale de la oportunidad para reiterar al honorable Ministerio de Relaciones Exteriores las seguridades de su más alta y distinguida consideración.

Bogotá D.C., 8 de noviembre de 2004

AL HONORABLE
MINISTERIO DE RELACIONES EXTERIORES
REPÚBLICA DE COLOMBIA
Palacio de San Carlos.-

ANNEX 65

EMBAJADA DEL ECUADOR EN COLOMBIA

FAX 12-1-207/2004 MECUCOL **URGENTE**

PARA: José Núñez Tamayo
Jefe de Gabinete del Viceministro de Relaciones Exteriores
Fax: 00 (593) 2 299-3210 Quito

DE: Wilson Torres Zapata
Embajador del Ecuador en Colombia
Fax: 00(571) 212-6536 Bogotá

FECHA: 22 de diciembre de 2004

REF: Su CE No.128/VM-2004 05-X-2004
N.V. DPM/CDR 65881 04-XI-2004
N.V.No. 4-2-439/2004 08-XI-2004
Mi Fax No.12-1-16/04 MECUCOL
RESERVADO URGENTE 8-XI-2004

No. DE PAGINAS: 5 (Cinco incluyendo esta página)

ASUNTO: REMITESE ANTECEDENTES SOBRE EL REINICIO DE ASPERSIONES EN COLOMBIA.

En atención a su consulta telefónica formulada al medio día de hoy, en relación con la noticia publicada en la edición de hoy del diario "La Hora " de la ciudad de Quito, acerca del tema "aspersiones", me cumple acompañar al presente los antecedentes sobre este asunto cuya explicación se desprende de las comunicaciones recibidas y enviadas por esta Embajada y que explican la notificación oficial hecha por la Cancillería de San Carlos acerca del reinicio de las operaciones aéreas para aspersión de cultivos ilícitos en la zona de frontera las cuales se prolongarían hasta el mes de diciembre en curso.

De igual forma tengo a bien informarle que la Misión Diplomática a mi cargo, en cumplimiento de las instrucciones del señor Viceministro y que están contenidas en el CE No.128//VM-2004, de 5 de octubre de 2004, envió la nota verbal URGENTE No.4-2-439/2004 al Ministerio de Relaciones Exteriores de Colombia, en la cual se solicita se tomen en cuenta las instrucciones técnicas acordadas por los miembros de las Comisiones Científico Técnicas de Ecuador y Colombia sobre aspersiones, a fin de garantizar que la deriva que se genere de las mismas no alcance territorio ecuatoriano, gestiones que se comunicaron oportunamente a ese Gabinete en mi fax reservado No.12-1-16/04 de la referencia cuya fotocopia también se anexa.

Muy atentamente,

REPUBLICA DEL ECUADOR
EMBAJADA EN COLOMBIA

REPUBLICA DEL ECUADOR
MINISTERIO DE RELACIONES EXTERIORES

Nota No. 43 /GV/04

El Ministerio de Relaciones Exteriores del Ecuador se permite convocar a los Miembros de la Comisión Científico Técnica de Ecuador, a una reunión, con el carácter de urgente, el día de hoy, a las 17h00, en los Salones del Palacio de Najas , con el fin de coordinar el desplazamiento de los miembros de la Comisión hacia la Provincia de Sucumbíos, el día de mañana, jueves 22 de diciembre del año en curso, con el objeto de recoger las muestras necesarias para la realización de los análisis de residuo de glifosato, tanto en el ambiente, cuanto en las personas y evaluar la situación existente en la zona de frontera.

Con este antecedente se solicita a los señores Ministros del Gobierno, Salud Pública, Agricultura y Ganadería, Ambiente, y al señor Director de la Comisión Ecuatoriana de Energía Atómica autorice el desplazamiento de los Miembros de la Comisión Científico Técnica al referido viaje.

El Ministerio de Relaciones Exteriores hace propicia la ocasión para reiterar a usted las seguridades de su distinguida consideración.

Quito, 22 de diciembre de 2004

Señores
Miembros de la Comisión Científico
Técnica Ecuatoriana
Ciudad.-

ANNEX 66

Diplomatic Note 4-2-439/2004, sent from the Embassy of Ecuador in Bogotá to the Ministry of Foreign Affairs of Colombia (8 Nov. 2004).

URGENT
N.V. No. 4-2- 439/2004

THE EMBASSY OF ECUADOR presents its compliments to the honorable Ministry of Foreign Affairs of the Republic of Colombia and, regarding verbal note DPM/CDR 65881 of 4 November 2004, related to the resumption of aerial operations with "glyphosate" in the border area, which would last until the end of this year, has the honor to request that the technical instructions be taken into account, as was agreed to by the members of the Commissions of both countries for the realization of these operations and in conformity with what was agreed in the Presidential Declaration of Esmeraldas and the Minutes of the IV Meeting of the Scientific-Technical Commissions of Ecuador and Colombia regarding the sprayings, in order to guarantee that the drift generated by the sprayings does not reach Ecuadorian territory.

THE EMBASSY OF ECUADOR avails itself of the opportunity to reiterate to the honorable Ministry of Foreign Affairs the assurances of its highest and distinguished consideration.

Bogotá D.C. 8 November 2004

[signed]

TO THE HONORABLE
MINISTRY OF FOREIGN AFFAIRS
REPUBLIC OF COLOMBIA
Palace of San Carlos.

DE : EMBAJADA DEL ECUADOR NO. DE FAX : 2579799 22 DIC. 2004 05:08PM P3

URGENTE

N.V. No.4-2- 439 /2004

LA EMBAJADA DEL ECUADOR, saluda muy atentamente al honorable Ministerio de Relaciones Exteriores de la República de Colombia y en relación con la nota verbal DPM/CDR 65881, de 4 de noviembre de 2004, relacionada con el reinicio de las operaciones aéreas con "glifosato" en la zona de frontera, las mismas que se prolongarían hasta finales del año en curso, tiene a bien solicitar que para la realización de dichas operaciones y conforme lo acordado en la Declaración Presidencial de Esmeraldas y el Acta de la IV Reunión de las Comisiones Científico Técnicas de Ecuador y Colombia sobre aspersiones, se tomen en cuenta las instrucciones técnicas acordadas por los miembros de las Comisiones de los dos países a fin de garantizar que la deriva que se genere de las mismas no alcance territorio ecuatoriano.

LA EMBAJADA DEL ECUADOR se vale de la oportunidad para reiterar al honorable Ministerio de Relaciones Exteriores las seguridades de su más alta y distinguida consideración.

Bogotá D.C., 8 de noviembre de 2004

AL HONORABLE
MINISTERIO DE RELACIONES EXTERIORES
REPÚBLICA DE COLOMBIA
Palacio de San Carlos.-

ANNEX 67

Diplomatic Note DAA/CAL 23927, sent from the Ministry of Foreign Affairs of Colombia to the Ministry of Foreign Affairs of Ecuador (6 May 2005).

[seal] **REPUBLIC OF COLOMBIA**
MINISTRY OF FOREIGN AFFAIRS

DAA/CAL No. 23927

Bogotá, D.C., 6 May 2005

Mister Ambassador:

I have the pleasure of addressing Your Excellency on the occasion of the submission, in magnetic media, of the CICAD report on *The Effects of Eradication of Illicit Crops by Aerial Spraying*, in conformity with what was agreed upon in Santiago de Chile.

In the spirit of promoting the traditionally friendly relations between our countries, within a framework of mutual understanding and benefit, please allow me to propose to Your Excellency the possibility of holding a bilateral meeting in Bogotá, with the date to be agreed upon by diplomatic channels.

I would like to take advantage of this opportunity to reaffirm to Your Excellency assurances of my highest and most distinguished consideration.

[signature]
CAROLINA BARCO
Ministry of Foreign Relations

To His Excellency
Mr. **ANTONIO PARRA GIL**
Minister of Foreign Affairs
Quito.

REPÚBLICA DE COLOMBIA
MINISTERIO DE RELACIONES EXTERIORES

DAA/CAL No.23927

Bogotá, D. C., 6 de mayo de 2005

Señor Embajador:

Tengo el agrado de dirigirme a Vuestra Excelencia en la oportunidad de remitir en medio magnético el informe de la CICAD sobre *Los Efectos de Erradicación de Cultivos Ilícitos mediante Aspersión Aérea*, de conformidad con lo acordado en Santiago de Chile.

Con el ánimo de impulsar las tradicionales relaciones de amistad entre nuestros países, en un marco de comprensión y mutuo beneficio, me permito plantear a Vuestra Excelencia la posibilidad de llevar a cabo un encuentro bilateral que podría darse en Bogotá, en fecha a acordar por la vía diplomática.

Aprovecho esta oportunidad para reiterar a Vuestra Excelencia las seguridades de mi más alta y distinguida consideración

Carolina Barco

CAROLINA BARCO
Ministra de Relaciones Exteriores

MINISTERIO DE RELACIONES EXTERIORES
DIRECCIÓN GENERAL DE DOCUMENTACIÓN Y ARCHIVO
PARA TRAMITE DE
INGRESO No. 20018
16 MAYO 2005
FECHA DE INGRESO
CON ANEXOS SI NO

A Su Excelencia
el señor **ANTONIO PARRA GIL**
Ministro de Relaciones Exteriores
Quito.

ANNEX 68

Address of President Alfredo Palacio to the
General Assembly of the United Nations, Sixtieth Session, 11th Plenary Meeting,
U.N. Doc. A/60/PV.11 (18 Sep. 2005)

United Nations A/60/PV.11

General Assembly
Sixtieth session

Official Records

11th plenary meeting
Sunday, 18 September 2005, 10 a.m.
New York

President: Mr. Eliasson . . . . . (Sweden)

The meeting was called to order at 10.05 a.m.

Address by Mr. Alfredo Palacio, President of the Republic of Ecuador

The President: The Assembly will now hear an address by the President of the Republic of Ecuador.

Mr. Alfredo Palacio, President of the Republic of Ecuador, was escorted into the General Assembly Hall.

The President: On behalf of the General Assembly, I have the honour to welcome to the United Nations His Excellency Mr. Alfredo Palacio, President of the Republic of Ecuador, and to invite him to address the General Assembly.

President Palacio (*spoke in Spanish*): The people of Ecuador wish to express their deepest condolences and fraternal solidarity to the South-East Asian nations affected by the tsunami, as well as to all our brothers and sisters living in the southern United States who were so severely affected by Hurricane Katrina.

Faced with the danger of natural disasters, Ecuador is committed to the implementation of the Hyogo Framework for Action and to support the International El Niño Research Centre, based in Guayaquil.

Today, the nations of the globe have come together to celebrate 60 years of human hopes, 60 years after the proclamation of the founding Charter of the Organization that represents every man, every woman, and every child. Six decades have passed since we inaugurated this institution and its essential objectives of human coexistence, peace and the international rule of law. After six decades we can rejoice with old Neruda, who lives on in our hearts, along with Stravinsky, Garcia Marquez and Mother Teresa. Let us celebrate, but let us also take stock of the dream yet to be fulfilled. Sleeplessly, we face threats and challenges that affect the survival of our species. When the second millennium ended — quite unlike the first — our world was not threatened by the terror-filled visions of the apocalypse and the seven trumpets that would transform a third of the world into blood, darkness, smoke and locusts. However, our new millennium faces the reality of increasing poverty in two thirds of the planet. Water is becoming scarce, there are holes in the ozone layer and, along with biodiversity, the Amazon is being destroyed. Entire nations are being disinherited and condemned to roam the earth, mortal illnesses hover over humanity and terrorism lurks in every corner.

I have come from the middle of the world to speak of faith in the renewal of the dream. Ecuador is a small nation in South America sharing an identity with almost 400 million human beings living in an area of 8 million square kilometres. We have more than one fourth of the fresh water of the world and immense energy, mineral and food resources; we boast the greatest tropical rain forest in the world and colossal mountains, deserts and prairies. Yet, our region remains a realm of social injustice.

This record contains the text of speeches delivered in English and of the interpretation of speeches delivered in the other languages. Corrections should be submitted to the original languages only. They should be incorporated in a copy of the record and sent under the signature of a member of the delegation concerned to the Chief of the Verbatim Reporting Service, room C-154A. Corrections will be issued after the end of the session in a consolidated corrigendum.

05-51226 (E)

The world order that governs us is not the one we want. It is unjust, inefficient and inhuman. We must therefore set in motion factors that were unimaginable in the middle of the twentieth century. The economy, international law and biology constitute a fundamental triangle from which the future of the human being can be projected. I set out for the Assembly the idea of building a new world order based on this trilogy.

First, with regard to international law, Ecuador reaffirms its commitment to the San Francisco Charter and the principles of non-intervention and the self-determination of peoples, the peaceful settlement of disputes, and the rejection of all forms of colonialism, discrimination or segregation. In accordance with these principles my country believes in the need to strengthen the Organization, transform it and democratize it. The United Nations must develop new mechanisms to protect the survival of our species and of all forms of life.

Secondly, the economy must eliminate marginalization and redress the unequal nature of opportunities, among both nations and individuals. This is the conflict. In 1945, the vital need to establish policies to promote a just and progressive distribution of surpluses was proclaimed. Nevertheless, 60 years later we see ever more regressive patterns of distribution and growing gaps at all levels, basically produced by the tragedy inherent in the accumulation of foreign debt, which represents such a heavy burden for developing nations. The burden of the debt has pauperized our peoples. It has put a brake on productive development and cancelled out the aspiration of all to have access to food, health, shelter, safety and education. The ethical mandate of our time demands a change in the collective conscience of social welfare. Heavily indebted middle-income countries must organize their efforts to arrive at joint agreements with the world's creditors.

Thirdly, the incorporation of biology into the new international order obliges the United Nations to transfer its focus from man to biology. The presence of this new factor — biology — brings with it the need to raise the level of ethics and international law to the highest degree of respect for biodiversity and the preservation of all forms of life. Ecuador attaches particular importance to this topic and is therefore concerned at the controversial spraying of glyphosate as a herbicide to eliminate illegal crops along border areas between Colombia and Ecuador. Studies on this substance suffer from technical and methodological shortcomings. Ecuador therefore calls upon the United Nations system to promote a comprehensive, reliable and credible study on the actual impact of this spraying. Ecuador considers that it is essential to apply the precautionary principle that has been recognized in many international agreements and other instruments, in particular the Rio Declaration on Environment and Development. Consequently, Ecuador has asked its neighbouring Government of Colombia to suspend aerial-spraying activities in a 10-kilometre strip north of our border.

As I said in my statement during the High-level Plenary Meeting (see A/60/PV.5), in my country's opinion the Millennium Development Goals constitute a well-honed and effective tool for this century to carve out a path towards a more just humankind. I am firmly convinced that ethical regulations to preserve the biological heritage of the planet constitute the paramount goal for this third millennium. With conviction and resolve, my country has adopted a date for its future: 2015. Copies of the reports on my Government endeavours to attain the Millennium Development Goals are available in the General Assembly Hall.

I should now like to talk about migrants. Globalization is creating urgent demands for the new century. One of these arises from the pain that is giving rise to a new exodus. Today the United Nations must take over the role of a new Moses. It must lead the people to their homeland and provide the bread to calm the hunger of the wretched of the world. More than 175 million human beings have been forced to leave their homeland in search of better days. Today migrants are treated worse than capital or commercial goods: we are always looking to provide freedom of transit for these. The mere existence of this fact forces us to recognize that for the hungry of the third world there is no liberty and even less the equality and fraternity symbolized two centuries ago by the French revolution. The link between the migrant issue and development is undeniable and must be handled in a transparent manner based on a vision of shared responsibility on the part of all nations involved.

On migration routes we must overcome the police stigmatization of the undocumented. Regularization requires that the rights of migrants be viewed as a fundamental human right and must be reflected in every State's population policy. The Government of

Ecuador calls upon this forum to address the problem of migrants in terms of equality for all nationals. We propose that this problem be addressed at the high-level dialogue on international migration and development, to be held in 2006.

We in the Government of Ecuador, aware of the need for migration and its consequences to be treated in an integral and responsible manner, have approved a law revising our criminal code to define crimes of the sexual exploitation of minors and the trafficking of persons. In addition, we have placed before our National Congress a new proposal to punish all forms of trafficking in human beings.

I should like to talk about indigenous peoples and peoples of African descent. The International Decades of the World's Indigenous People, proclaimed by the General Assembly, have been a valuable opportunity to increase awareness of the situation of our brothers and to promote respect for their identity and the chance to find viable solutions to their problems. The biology of the new world order requires recognition of their rights as protagonists of history and as leading actors in society. In the Ecuador of the last decade, indigenous peoples have been significant components of our social and political life. That is recognized in our Constitution and in International Labour Organization (ILO) Agreement 169.

In recent years, Ecuador has witnessed a serious deterioration in its democratic institutions. Faced with that situation, my Government has pledged to restore the rule of law by means of profound political reform legitimized through a referendum of the Ecuadorian people. We are determined to firmly fight the corruption that erodes democratic structures. Only three days ago, on 15 September, my Government deposited its instrument of ratification as the thirtieth State party to the United Nations Convention against Corruption, which made it possible for the Convention to enter into force.

The voice of my people, the people of Ecuador, echoes the deep-throated clamour of Latin America. We want to be part of a greater nation, South America, a human assembly that can make its voice heard and follow the path to genuine, just development accompanied by greater solidarity on behalf of the principles that we have recalled here.

The President: On behalf of the General Assembly, I wish to thank the President of the Republic of Ecuador for the statement he has just made.

Mr. Alfredo Palacio, President of the Republic of Ecuador, was escorted from the General Assembly Hall.

Address by The Honourable Ludwig Scotty, M. P., President of the Republic of Nauru

The President: The Assembly will now hear an address by the President of the Republic of Nauru.

The Honourable Ludwig Scotty, M. P., President of the Republic of Nauru, was escorted into the General Assembly Hall.

The President: On behalf of the General Assembly, I have the honour to welcome to the United Nations His Excellency The Honourable Ludwig Scotty, M. P., President of the Republic of Nauru, and to invite him to address the Assembly.

President Scotty: The outcome document adopted at the High-level Plenary Meeting (resolution 60/1) serves as a map by which we navigate in seeking to improve the lives of the many peoples of the world; it may be imperfect, but it is our task as leaders to provide a vision of a better world and to lead our peoples towards the achievement of that vision. The outcome document spells out this vision, and we should use it much as one uses a map when navigating the destiny of our respective nations.

In this respect, Nauru looks to the United Nations as the global leader in reaching this vision of a better world: a world in which human rights are collectively recognized and defended, terrorism in any form is eliminated, peace and security is promoted and maintained, and poverty is eradicated. We therefore applaud the effort to strengthen the work of the United Nations through management reform. This should improve the delivery of the global services that this Organization is expected to provide.

Equally important is the need to reform the Security Council, to recognize that international developments since the establishment of that body many decades ago now demand a more democratic representation of the global family in an expanded Security Council. The earlier these reforms are implemented, the earlier the work of the United

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Diplomatic Note 4-2-108/2005, sent from the Permanent Mission of Ecuador to the U.N. to the General Secretariat of the U.N. (19 Sep. 2005)

ANNEX 69

PERMANENT DELEGATION OF ECUADOR
TO THE UNITED NATIONS
666 UNITED NATIONS PLAZA SUITE 518
NEW YORK, N.Y. 10017

Note No. 4-2-108/2005

The Permanent Delegation of Ecuador to the United Nations offers its warmest greetings to the Secretary-General of the United Nations, and has the honor of communicating the concerns of the Government of Ecuador regarding the spraying of glyphosate as an herbicide to eliminate illicit crops in the vicinity of the Ecuadorian-Colombian border. In view of the fact that the existing studies on the use of glyphosate are riddled with technical and methodological deficiencies, on the express instruction of its Government, the Permanent Delegation of Ecuador requests that the United Nations System undertake a comprehensive and reliable analysis to determine the real impact of said fumigations.

The Permanent Delegation of Ecuador to the United Nations is willing to collaborate with the Secretary-General to coordinate the studies that the Ecuadorian government requests.

The Permanent Delegation of Ecuador to the United Nations would like to take this opportunity to offer to the Secretary-General the assurances of its highest and most distinguished consideration.

New York, 19 September 2005

[intials][stamp]

To the Secretary-General of the United Nations
New York.-

ANNEX 69

MISION PERMANENTE DEL ECUADOR
ANTE LAS NACIONES UNIDAS
866 UNITED NATIONS PLAZA SUITE 516
NEW YORK, N.Y. 10017

Nota No. 4-2- 108/2005

La Misión Permanente del Ecuador ante las Naciones Unidas saluda muy atentamente a la Secretaría General de las Naciones Unidas y tiene a honra transmitir la preocupación del Gobierno del Ecuador por la aspersión de glifosato como herbicida para eliminar cultivos ilícitos en las cercanías de la frontera ecuatoriano – colombiana. En vista de que los estudios existentes sobre la utilización del glifosato adolecen de deficiencias técnicas y metodológicas, por instrucción expresa de su Gobierno, la Misión Permanente del Ecuador solicita al Sistema de las Naciones Unidas promover un análisis integral y fidedigno que determine el impacto real de dicha aspersión.

La Misión Permanente del Ecuador ante las Naciones Unidas está dispuesta a colaborar con la Secretaría General para coordinar los estudios que el Gobierno ecuatoriano solicita.

La Misión Permanente del Ecuador ante las Naciones Unidas hace propicia esta ocasión para reiterar a la Secretaría General de las Naciones Unidas las seguridades de su más alta y distinguida consideración.

REPUBLICA DEL ECUADOR
DELEGACION ANTE LAS NACIONES UNIDAS

Nueva York, 19 de septiembre de 2005

A la Secretaría General de las Naciones Unidas
Nueva York.-

ANNEX 70

Colombian President Alvaro Uribe,
Remarks at the Summit of Antinarcotics Chiefs of Latin American and the Caribbean, Casa de Nariño,
Secretaría de Prensa (17 Oct. 2005)

President Uribe's Words at the XV Summit of Latin American and Caribbean Anti-Narcotics Chiefs

[…]

"…What we need to be able to say to the world is: for Colombia to be a country free of drugs, we have to strengthen fumigation and eradication efforts…How important it is, that we can everyday strengthen, further and further, the manual eradication program, and continue strengthening the fumigation program!"



PALABRAS DEL PRESIDENTE URIBE EN XV CUMBRE DE EFES ANTINARCÓTICOS DE AM RICA LATINA Y EL CARIBE

Santa Marta, 1 oct. SNE . *Las siguientes son las palabras del presidente lvaro ribe lez en la instalaci n de la Cumbre de efes Antinarc ticos de Am rica Latina y el Caribe*

"Quiero darles la bienvenida a Colombia y agradecer que hayan escogido esta bella e histórica cuidad de Santa Marta para una reunión tan importante como la que empieza a realizarse, en un país tan azotado por la droga, pero tan resuelto a derrotarla.

Hemos sufrido en Colombia todas sus etapas y nos hemos engañado con nuestros propios juicios, que deben servir bien a otras naciones para no repetir errores.

Cuando en este país se asomaba el trafico de droga a alguna dimensión, decíamos se escuchaba decir: "bueno pero es que aquí no somos productores, ni somos consumidores. Aquí simplemente se esta haciendo un tráfico". No lo combatimos con rigor oportunamente.

Posteriormente empezamos a ver que crecían los cultivos, eso va ser intrascendente, nunca tendrás cifras preocupantes y nos equivocamos.

En el año 2000 cuando empezó el Plan Colombia, nuestro pías tenía más de 160 mil hectáreas de drogas ilícitas. Ya en esa etapa y muy anterior al 2000, habíamos reunido la doble condición de tener problemas de trafico y problemas de producción.

Y siempre se ha oído decir: "bueno pero es que no somos consumidores". Mentiras hoy tenemos un problema de consumo que afecta a más de un millón de jóvenes de Colombia.

Esto para que lo tengan en cuenta países especialmente del vecindario para que no vayan a repetir este perverso periplo que Colombia ha vivido y que ahora queremos definitivamente desmontar.

El tema de la legalización. Es un tema que cautiva a muchas personas que teorizan sobre estos asuntos y sospecho que hay muchísimas personas amigas de la legalización que están en silencio, agazapadas, esperando que no triunfen nuestras políticas de erradicación, para decir: "se ha perdido la guerra contra la droga, hay que legalizarla".

Yo veo con mucho pesimismo el tema de la legalización. Por supuesto lo miro más como padre de familia, que como Presidente Tengo alguna inclinación más de sentimiento de padre de familia, que de raciocinio frío, pero déjenme expresar dos o tres argumentos para sustentar mi preocupación contra la legalización:

Primero: la circunstancia de que al dejar de criminalizar el negocio se reduzcan los precios, es una circunstancia que no va asegurar que por esa vía se reduzca la oferta.

Hemos visto que a pesar de estar criminalizado el negocio hay una gran oferta, que ha reducido sustancialmente los precios internacionales y sin embargo no se ha disminuido su oferta.

Segundo: por más que llegasen a reducirse los precios, yo no creo que deje de producirse. Si la agricultura lícita se produce a pesar de largos periodos de crisis, de pérdidas, de precios bajos, de insumos altos, en esta agricultura ilícita de un producto que infortunadamente da con tanta exhuberancia en tantas partes del continente y especialmente en nuestro país, cualquiera sea e precio, me parece que es una equivocación anticipar que se va disminuir el área sembrada.

Tercero: El daño ecológico. Cuando entro en discusiones para proponer mis tesis contra la legalización, en frente de los muchachos de las universidades, de muchos profesores, el gran argumento para poderlos situar en una reflexión contra la legalización, es el ecológico.

Usted lo decía señor Calvani y acaba de referirlo el señor Fiscal General de la Nación, frente a dos áreas geográficas: la Amazonia y Colombia es inserción amazónica, y la Sierra Nevada de Santa Marta, este bellísimo macizo de 12 mil kilómetros cuadrados que se empina aquí no mas de espaldas a esta gran cuidad.

Colombia ha perdido millón 700 mil hectáreas de selva tropical, por cuenta de los cultivos de droga. El futuro de Colombia en muy buena parte depende de la biodiversidad que se almacena en esa selva tropical y tememos que los cultivos de droga pueden constituirse en el gran enemigo de esa biodiversidad.

Hace mas de un año, hablando con un campesino del Putumayo, me decía: "Presidente yo llegue hace 35 años, a montar una

finca en una isla del Putumayo. Allí había cualquier cantidad y variedad de pescado, pero hemos visto que escasea la cantidad y han desaparecido ya, especies piscícolas.

Por qué Por que llego la droga".

Empezaron a vertir los precursores químicos a las aguas afluentes del río Putumayo, empezaron a envenenar las aguas y acabar con especies de pescado. Eso es bien importante para decirle al mundo. Muchos de los que se oponen a la fumigación, de los que se oponen a la lucha contra el narcotráfico, se oponen con banderas ecológicas.

Es mucho mas grave el daño de producir y procesar, que el daño de combatir y erradicar. Y eso hay que hacérselo ver al mundo porque necesitamos la solidaridad de todos para triunfar en el noble propósito de que nuestros países queden libres de droga.

La verdad es que el daño que ha hecho el narcotráfico en los ríos, el daño que ha hecho en la destrucción de selva tropical en Colombia, pone de presente que es el gran enemigo de la ecología.

Y temo que la legalización lo que haga, el resultado que logre sea acelerar esa destrucción geológica, para sembrar drogas ilícitas.

Y finalmente, en este punto, la relación entre las políticas de prevención y rehabilitación con una eventual legalización. Expertos en la materia, científicos de la prevención y de la rehabilitación demuestran que su tarea es más eficaz si está acompañada de la criminalización.

La verdad es que la legalización llevaría a un aflojamiento de los resortes, que puede poner en muy serias dificultades los efectos positivos de las políticas de prevención y los esfuerzos en materia de rehabilitación.

Que tenemos que hacer mayores esfuerzos en educación, en prevención, en rehabilitación, por supuesto. Pero esos esfuerzos, serán esfuerzos inocuos, de no estar acompañados por políticas de criminalización.

Nuestra tarea: hemos avanzado pero no lo suficiente en la destrucción de la droga que se produce en Colombia. Este año, las fumigaciones han crecido en un 30 por ciento, en relación con el mismo período del año pasado y sumamos ya casi 23 mil hectáreas de erradicación manual.

El tema de las fumigaciones. A mí me parece muy preocupante la prevención que existe frente a las fumigaciones. Cuando fumigamos con productos de uso masivo en el sector de la agroindustria, yo no entiendo cómo se protesta porque se usan esos productos para fumigar droga y los mismos que protestan, dan licencias en sus países para que se utilicen masivamente en la agricultura comercial. Eso hay que hacérselo saber al mundo entero, repetirlo en todas partes porque finalmente, detrás de gente que de buena fe están en contra de la fumigación, hay aquellos que simplemente quieren que siga creciendo el imperio diabólico de la droga para poder alimentar el terrorismo y sus protervos fines destructores.

Esa es la pregunta. Por qué si se tiene temor a los productos con los cuales estamos fumigando la droga, se permite que esos mismos productos se usen masivamente en agricultura comercial

El tema de la erradicación manual. Hoy yo veo una necesidad y los resultados nos están convenciendo de su factibilidad. Creo que hace un año en Colombia no había entusiasmo por la erradicación manual. Hoy, los resultados nos demuestran que es factible. Personalmente siento un gran entusiasmo por la posibilidad de la erradicación manual. Sus costos, infinitamente menores. Sus recursos llegan a la gente, es muy importante buscar que los recursos en lugar de quedarse en las pocas manos de fabricantes de aviones o de fabricantes de agroquímicos, los recursos de la destrucción de la droga, en mayor cantidad se irriguen entre la gente porque eso produce un fenómeno de adhesión popular a la tesis de erradicar.

Tanto la fumigación como la erradicación manual exigen mucho sacrificio: la Fuerza Pública de Colombia, los técnicos, los pilotos de los programas de fumigación han pagado un gran sacrificio arriesgando su vida, muchos perdiendo su vida, arriesgando su seguridad y arriesgando su tranquilidad.

Y en el programa de erradicación manual ya hemos tenido varios ataques de los grupos guerrilleros contra los grupos de erradicadores colombianos. Esta semana, en El Bordo, Cauca, sufrimos el último ataque.

A todos ellos, a los que participan en la fumigación y en la erradicación, rendimos nuestro homenaje. Es muy importante que el mundo nos ayude a sostener en incremento los programas de fumigación y a crecer los programas de erradicación.

Miren, veníamos descendiendo el área sembrada en droga más velozmente. El año pasado, el estudio que terminó en julio, nos demostró que no hubo descenso. Y el estudio que terminó en diciembre Naciones Unidas, nos mostró un descenso de 7 por ciento. Es poco. Sí, venimos de 160 o 180 mil hectáreas de droga pero el año pasado terminamos con una barbaridad, con 80 mil.

Lo que necesitamos es decirle al mundo: Colombia país libre de droga y para eso hay que fortalecer los esfuerzos en fumigación

y los esfuerzos en erradicación. En la medida que el narcotráfico se va acomodando, que desaparecen grandes extensiones en zonas relativamente planas, donde se facilita la fumigación, que se apela más a las laderas, que los cultivos ilícitos se mimetizan en el bosque, en los cultivos de café, que están más esparcidos en áreas pequeñas, se hace más necesaria la erradicación manual.

Los Estados Unidos nos han dado un gran apoyo a través del Plan Colombia. Nosotros somos aliados de los Estados Unidos en esta tarea y somos aliados con mucho orgullo. Qué importante que podamos fortalecer todos los días, más y más, el programa de erradicación manual y seguir fortaleciendo el programa de fumigaciones

Debemos completar este año la meta de erradicar 30 mil hectáreas manualmente y si lo logramos, nos podemos proponer para el año entrante, más de 40 mil hectáreas. Cada atentado de los grupos violentos contra la erradicación manual, tiene que hacer un acicate que estimule nuestra voluntad de acabar con la droga en Colombia. No podemos bajar la guardia.

El tema de los cultivos alternativos. Yo diría que hay que trabajar allí en dos grandes áreas: La protección del bosque y la producción de alimentos y de otros productos del agro que sustituyan la droga.

Colombia todavía tiene, por fortuna, el 50 por ciento o más de su extensión en bosque. Las cifras indican que Colombia cuenta con 578 mil kilómetros cuadrados en bosque o sea, una suma, un área superior a la total de Francia, que todavía preservamos en bosque.

Nosotros tenemos todas las posibilidades derivadas del bosque de protección y del bosque comercial. Por eso este Gobierno para defender el bosque, emprendió la tarea de vincular Familias Guardabosques, familias que en el pasado estaban vinculadas a las drogas y que hoy están vinculadas al Programa de Guardabosques. Familias que han asumido la obligación de mantener el área libre de droga y de cuidar la recuperación del bosque, que están siendo supervisadas por Naciones Unidas cuyo certificado es necesario para que el Gobierno proceda a efectuar los pagos.

Tenemos que seguir con ese programa: es costoso. Las 33 mil familias guardabosques en promedio nos cuestan dos mil dólares por familia al año y esto es costoso para las finanzas colombianas pero es un gran programa.

Hace poco, hablando con directivos de agencias de Naciones Unidas y contándoles en Nueva York el programa de Familias Guardabosques, me decían que debe ser el programa que se ponga en marcha en toda la Amazonía para evitar su destrucción, que en lugar de la tala de madera, que en el lugar de la sustitución de bosque para grandes plantaciones de soya o para producir pastos para el ganado, los campesinos y los hombres del campo puedan derivar su sustento del cuidado del bosque.

Las Familias Guardabosques constituyen un programa necesario en los países productores de droga para que esas familias en lugar de vivir de la droga, vivan de cuidar el bosque. Eso se constituye en un programa necesario para preservar la selva amazónica. Que los países amazónicos adoptaran este programa, veríamos una disminución sustancial de la tala del bosque amazónico. Lo vemos en los documentales y lo observamos desde los aviones. Cómo se tala la selva amazónica para sustituirla por pastos y para sustituirla por cultivos que en esos suelos tienen muy poca sostenibilidad.

Los invito a reflexionar sobre nuestro programa de Familias Guardabosques. Cuando inicialmente lo presentaba a autoridades de los Estados Unidos y de Europa, me decía es que no es sostenible. Qué más sostenible para el mundo de hoy que preservar la selva tropical húmeda, la selva amazónica o macizos que conservan buena parte en selva como este macizo de la Sierra Nevada de Santa Marta.

El otro tema es el de cultivos comerciales que le sustituyan a los campesinos los ingresos. Estamos trabajando con el tema de palma africana, con el tema de caucho, con el tema de madera, para todo ello, hemos introducido estímulos fiscales y hemos introducido estímulos tributarios y estímulos fiscales. Los cultivos de tardío rendimiento están hoy en Colombia exentos de impuestos y las agrupaciones campesinas, como aquellas que veíamos ayer en una reunión en la ciudad de Barrancabermeja, tienen preferencialmente un aporte del Estado que se llama incentivo de capitalización rural que paga hasta el 40 por ciento del valor de la nueva plantación.

Además este país tiene un gran futuro en producción de madera, grandes países exportadores de madera como Finlandia, producen por hectárea entre uno y tres metros cúbicos al año, de las mismas especies Colombia produce 25, Chile 12, 13 metros cúbicos, y aquí estamos muy bien situados en este Caribe. Aquí tenesmo apenas 170 mil hectáreas de bosque comercial, tenemos todas las posibilidades para plantar madera.

Este país entre este mes de octubre y el mes de enero, empezará a producir en cinco plantas un millón de litros diarios de alcohol carburante, eso será muy útil como alternativo energético, como medio de protección del medio ambiente y como factor de generación de empleo y rápidamente empezaremos a producir biodiesel de palma africana, yo diría que la perspectiva del biodiesel, a partir de palma africana se constituye en un gran horizonte de cultivos sustitutivos a las drogas ilícitas.

Este país tiene excelentes condiciones para la producción de caucho natural, y en el mundo de hoy, signado por un pánico bien fundado a la crisis energética que puede producir dos factores, estancar el progreso de la economía mundial y obligar a los países que no tienen energéticos a dedicar los recursos que deberían destinar a cumplir las metas sociales del milenio a desviar esos recursos para pagar los insumos energéticos.

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Cultivos como el caucho natural, se convierten en cultivos alternativos que nos pueden ayudar muchísimo a suplir deficiencias derivadas de la crisis energética. En todo eso estamos trabajando, pero falta muchísimo más.

Por supuesto Colombia tiene terrorismo porque tiene narcotráfico. Yo recuerdo en mis años jóvenes, en mi universidad en la ciudad de Medellín, era imposible anticipar que la guerrilla en aquella época ideológica, hoy terrorista y mercenaria, fuera a juntarse 30, 35 años después con el narcotráfico, parecían polos excluyentes, los unos parecían ideólogos puros, idealistas incontaminados, dedicados a estudiar a Mao Tsetung, a Fidel Castro, a Rusia, otros experimentos socialistas en el mundo, con la intención y la aspiración ideal de transplantar esas experiencias a Colombia.

Y los otros parecían unos criminales ordinarios a los que todavía no se les asignaba mucha importancia, pero en el polo opuesto de las guerrillas. Quién iba a pensar que no muchos años después los hemos visto fusionados No hay guerrilla que no se esté surtiendo del narcotráfico.

El ELN se jacta de decir que no participa en el narcotráfico, y basta visitar la serranía de San Lucas en el sur del departamento de Bolívar, para ver los cultivos de droga del ELN, o cómo se ha lucrado el ELN de droga en el Catatumbo Y posteriormente qué apareció aparecieron los paramilitares, un país abandonado por el Estado en la lucha contra el terrorismo, ve aparecer soluciones a la postre perversas como el paramilitarismo, también financiado básicamente por la droga.

Es necesario seguir combatiendo esta droga para acabar el fenómeno terrorista en Colombia.

Ayer veía en Barrancabermeja esto: Barrancabermeja estuvo 25 años en poder del ELN, no se le combatió, se le dejó crecer, y cómo se le toleraba, cómo se le legitimaba, cómo se le aplaudía ideológicamente, y después apareció el paramilitarismo. El Estado no enfrentó el problema y vino ese derramamiento de sangre cuando acudió el paramilitarismo a desplazar al ELN.

Apenas estamos recuperando Barrancabermeja y falta muchísimo. Ayer encontré una ciudadanía más optimista, unas cifras de seguridad que han mejorado notablemente y me hacia esta composición de lugar. En esos 30 años de violencia de Barrancabermeja, casi se nos acaba la industria petrolera, eso fue lo que nos dejaron los muchachitos del ELN, casi se nos chatarriza la refinería, que es el corazón económico de este país, casi se nos acaba la pesca en el río Magdalena y se acabó toda la agricultura. Esos señores del ELN no dejaron que prosperara la ganadería, ni la palma africana, ni el caucho, ni el cacao en las laderas, la única agricultura que nos dejaron fue la agricultura del narcotráfico.

Eso es lo que finalmente nos han dejado guerrillas y paramilitares en Colombia, por eso hay que acabarlos y hay que acabarlos con toda la convicción, con palabras sencillas, pero con toda la eficacia.

Ojalá, ojalá podamos decirle al mundo rápidamente que Colombia es un país libre de drogas.

A mi no me gusta excusar nuestras políticas en las circunstancia de que esto tiene que ser un fenómeno que combatan los países consumidores, consumidores hoy somos todos, esa división entre consumidores y productores, es una división que se ha superado por sustracción de materia, porque aquí tenemos más de un millón de consumidores y eso nos quita la razón para decir, el problema no es nuestro sino de los industrializados que consumen, nosotros tenemos un problema de consumo muy grande. Entonces reconociendo que el problema es de todos, que nosotros no podemos excusar responsabilidades, todos tenemos que hacer un mayor esfuerzo.

A mi me preocupa que reinstalamos en Colombia la interdicción aérea, pero siguen saliendo grandes cantidades de droga, hay que hacer un mayor esfuerzo con nuestros vecinos en el Pacífico y en el Caribe y hay que hacer un mayor esfuerzo no solamente en el espacio aéreo de Colombia en donde lo estamos haciendo, en buena medida gracias a la interdicción aérea que se ha reestablecido con los Estados Unidos, sino en el espacio aéreo de todos los países vecinos. Hay que doblar ese esfuerzo, apreciados amigos asistentes.

La extradición. En este mundo globalizado en donde también se ha globalizado la justicia, la extradición tiene que desmitificarse, un país como Colombia que es afiliado a la Corte Penal Internacional, no puede ponerse en la tarea de negar la extradición. Instituciones multilaterales de justicia, necesitan para funcionar instituciones globales de procedimiento y una de ellas es la extradición, tenemos que seguir en esa tarea.

Les deseo muchos éxitos en estas deliberaciones y eso que todos los días, podamos mostrar más eficacia contra este flagelo, la verdad es que la mayor tristeza de un padre de familia o de una mamá en nuestra época, es ver a un hijo consumidor de droga o involucrado en el narcotráfico, si queremos que las nuevas generaciones de nuestros pueblos vivan felices, tenemos que derrotar este fenómeno de la droga. Muchas gracias por los esfuerzos que todos ustedes hacen".

(Fin)

SECRETARÍA DE PRENSA
PRESIDENCIA DE LA REPÚBLICA

ANNEX 71

Note from the Department of Political Affairs of the U.N. to the Permanent Mission of Ecuador to the U.N. (29 Nov. 2005)

UNITED NATIONS [SEAL] NATIONS UNIES

POSTAL ADDRESS –ADRESSE POSTALE: UNITED NATONS, N.Y. 10017
CABLE ADDRESS – ADRESSE TELEGRAPHIQUE: UNATIONS NEW YORK

REFERENCE:

The Department of Political Affairs of the United Nations offers its warmest greetings to the Permanent Delegation of Ecuador to the United Nations, and has the honor of making reference to its note No. 4-2-108/2005 of 19 September of this year, which requested that the United Nations System undertake an analysis of the impact of the sprayings of glyphosate as a herbicide to eliminate illicit crops in the vicinity of the Ecuadorian-Colombian border.

Regarding this issue, and with the objective of being able to respond to the request of the Government of Ecuador, the Department of Political Affairs would like to inform you that it has made the pertinent contacts with some of the specialized agencies of the United Nations and with the Office of the Resident Coordinator of the United Nations in Ecuador.

As a result of said consultations, it has been agreed that a technical mission of a preliminary nature will be sent from the United Nations System to Ecuador, which shall be composed principally of officials from PAHO/WHO and the FAO, which shall have the support of the UNODC. Said preliminary mission shall have as its objective an exploration of the viability of the requested study (or the possible types of studies). Said activity shall be framed within the scope of work that the United Nations System has been developing on the northern border of Ecuador. In the upcoming days, the Office of the Resident Coordinator in Ecuador will propose dates for the preliminary mission to the Ministry of Foreign Relations.

The Department of Political Affairs of the United Nations would like to take this opportunity to offer the Permanent Mission of Ecuador assurances of its highest and most distinguished consideration.

[initials]
New York, 29 November 2005

Permanent Delegation of Ecuador
To the United Nations
New York

UNITED NATIONS NATIONS UNIES

POSTAL ADDRESS-ADRESSE POSTALE: UNITED NATIONS, N.Y. 10017
CABLE ADDRESS -ADRESSE TELEGRAPHIQUE: UNATIONS NEWYORK

REFERENCE:

El Departamento de Asuntos Políticos de las Naciones Unidas saluda muy atentamente a la Misión Permanente del Ecuador ante las Naciones Unidas y tiene el honor de hacer referencia a su nota No 4-2-108/2005 de fecha 19 de septiembre del año en curso, mediante la cual solicita que el Sistema de Naciones Unidas promueva un análisis sobre el impacto de la aspersiones de glifosato como herbicida para eliminar cultivos ilícitos en las cercanías de la frontera ecuatoriano-colombiana.

Sobre este particular, y con el objetivo de poder dar respuesta a la solicitud del Gobierno del Ecuador, el Departamento de Asuntos Políticos se permite informar que ha realizado los contactos pertinentes con algunas de las agencias especializadas de las Naciones Unidas y con la Oficina del Coordinador Residente de las Naciones Unidas en Ecuador.

Como resultado de las citadas consultas, se ha acordado enviar al Ecuador una misión técnica del Sistema de las Naciones Unidas de carácter preliminar, la cual estará compuesta principalmente por oficiales de la OPS/OMS y de la FAO, los cuales contarán con el apoyo de la ONUDD. Dicha misión preliminar tendrá como objetivo explorar la viabilidad del estudio requerido (o de los tipos de estudios posibles). Dicha actividad estará enmarcada dentro del trabajo que el Sistema de las Naciones Unidas ha venido desarrollando en la frontera norte del Ecuador. En los próximos días, la Oficina del Coordinador Residente en Ecuador estará proponiendo al Ministerio de Relaciones Exteriores las fechas en que se podría llevar a cabo esta misión preliminar.

El Departamento de Asuntos Políticos de Naciones Unidas aprovecha la oportunidad para reiterar a la Misión Permanente del Ecuador las muestras de su más alta y distinguida consideración.

Nueva York, 29 de noviembre de 2005

Misión Permanente del Ecuador
ante las Naciones Unidas
Nueva York

ANNEX 72

Joint Declaration of the Ministers of Foreign Affairs of Ecuador and Colombia
(7 Dec. 2005)

MEETING OF FOREIGN AFFAIRS MINISTERS
ECUADOR - COLOMBIA
Quito, 7 December 2005

The Foreign Affairs Minister of the Republic of Colombia, Carolina Barco, accepting the invitation extended by the Foreign Affairs Minister of the Republic of Ecuador, Francisco Carrión Mena, visited Ecuador on 7 December 2005, to review the main issues on the bilateral agenda.

The Chancellors ratified their intention to continue to work constructively on the bilateral relationship to strengthen the traditional friendship and good neighbor links between both countries.

The Ministers reaffirmed the highest priority objective of both Governments to foster development and strengthen security in their respective border areas, for which purpose they pledged to take measures to move forward in an immediate and sustained manner in these areas.

Within this context, they agreed to sign the following

JOINT COMMUNIQUÉ

[…]
[PAGE 4]
[…]

AERIAL SPRAYING

18. The Ecuadorian Chancellor reiterated his country's request to the Colombian Government that aerial spraying be suspended along a 10-kilometer band from the common border, and that manual eradication mechanisms be used instead.

19. The Colombian Chancellor confirmed that, in response to the issues raised by the Ecuadorian Government, and having reviewed its aerial spraying schedule, her country has decided to temporarily suspend spraying in the area of the border with Ecuador, starting in January 2006.

    She further reported that, with a view to progressing in the eradication of unlawful crops, her Government had increased the number of Mobile Manual Eradication Groups (GME), each consisting of 31

persons, from 4 to 14, a threefold increase in the number of units and persons devoted to this work in the border area of the Departments of Putumayo and Nariño. Said manual eradication is done with the support of the Colombian police and army, which are in charge of security. The Colombian Government has allocated new and considerable financial and logistic resources to this eradication program.

20. Bearing in mind that both Governments have not reached an agreement on the innocuousness of the herbicide glyphosate and its coadyuvant on health and the environment, the Colombian Government has duly noted the request made by the Ecuadorian Government to the United Nations for a prospective study on this issue and has agreed to participate in the definition of the terms of reference of the study. Colombia further agreed to review the results of the study and to evaluate the adoption of the relevant measures.

[…]
[PAGE 6]
[…]

The Colombian Minister of Foreign Affairs thanked the Ecuadorian Minister of Foreign
Affairs for the kind hospitality received during her stay in Ecuador.

Signed in Quito, on the seventh day of December, two thousand and five.

[signature]	[signature]
CAROLINA BARCO Minister of Foreign Affairs of the Republic of Colombia	FRANCISCO CARRIÓN MENA Minister of Foreign Affairs of the Republic of Ecuador

REUNIÓN DE MINISTROS DE RELACIONES EXTERIORES
ECUADOR – COLOMBIA
Quito, 7 de diciembre de 2005

La Ministra de Relaciones Exteriores de la República de Colombia, Carolina Barco, atendiendo la invitación realizada por el Ministro de Relaciones Exteriores de la República del Ecuador, Francisco Carrión Mena, visitó el Ecuador el 7 de diciembre de 2005, con el objeto de analizar los principales temas de la agenda bilateral.

Los Cancilleres ratificaron su voluntad de continuar trabajando de manera constructiva en la relación bilateral, a fin de fortalecer los tradicionales vínculos de amistad y buena vecindad existentes entre los dos países.

Los Ministros reiteraron el objetivo prioritario de los dos Gobiernos de fomentar el desarrollo y fortalecer la seguridad en sus correspondientes áreas fronterizas, para lo cual se comprometieron a adoptar las medidas que permitan avanzar de manera inmediata y sostenida en estos campos.

En este contexto, acordaron suscribir el siguiente:

COMUNICADO CONJUNTO

DESARROLLO FRONTERIZO - PLAN BINACIONAL

1. Los Cancilleres reafirmaron que la Comisión de Vecindad es la instancia apropiada para atender los problemas más importantes que se derivan de la relación fronteriza, así como una herramienta efectiva para la promoción del desarrollo social y económico de las regiones de frontera. En consecuencia, la Ministra de Relaciones Exteriores de Colombia aceptó la invitación del Gobierno ecuatoriano para realizar en marzo de 2006 en la ciudad de Quito, la XV Reunión Plenaria de esta Comisión, cuya última reunión se realizó en febrero de 2004.

2. Los Ministros de Relaciones Exteriores se comprometieron a impulsar los trabajos para la estructuración del Plan Binacional de Desarrollo para la Zona de Integración Fronteriza, y en este sentido convinieron realizar durante la última semana de febrero de 2006, en la ciudad de Pasto, una reunión del Grupo Técnico Binacional de Alto Nivel, durante la cual las Partes presentarán y acordarán los planes, programas o proyectos que conformarán dicho Plan.

3. Los Cancilleres, conscientes de la necesidad de adoptar los mecanismos más idóneos para mejorar las condiciones de salud en las poblaciones fronterizas de los dos países, acordaron continuar y culminar el proceso adelantado en las reuniones de la Comisión Técnica Binacional de Salud, en el marco del Convenio de Cooperación en Salud entre Colombia, Ecuador y el Organismo Andino de Salud.

ANNEX 72

PROBLEMA MUNDIAL DE LAS DROGAS

17. Los Cancilleres ratificaron el compromiso de ambos países en la lucha contra el Problema Mundial de las Drogas y los Delitos Relacionados. En ese sentido y con el objeto de incrementar la eficiencia de la cooperación binacional en la materia, acordaron llevar a cabo en Bogotá, la Primera Reunión de la Comisión Mixta en materia de drogas, la cual se reunirá en el mes de febrero de 2006, con el objeto de reforzar las acciones en la lucha contra este flagelo.

ASPERSIONES AÉREAS

18. El Canciller ecuatoriano reiteró la solicitud de su país al Gobierno de Colombia de suspender las aspersiones aéreas en una franja de 10 kilómetros a partir de la frontera común y que se utilicen mecanismos de erradicación manual.

19. La Canciller de Colombia confirmó que en atención a los planteamientos del Gobierno ecuatoriano, y una vez revisado el cronograma de aspersiones aéreas, su país ha decidido suspender temporalmente las labores de aspersión en la zona de frontera con el Ecuador, a partir del mes de enero de 2006.

    Adicionalmente informó que su Gobierno, para avanzar en la erradicación de cultivos ilícitos, ha incrementado de 4 a 14 los Grupos Móviles de Erradicación Manual (GME), conformados por 31 personas cada uno, con lo que se ha triplicado el número de efectivos dedicados a estas tareas en la zona de frontera de los Departamentos de Putumayo y Nariño. Dicha erradicación manual se realiza con el apoyo de la policía nacional y del ejército de Colombia que se encargan de la seguridad. Para este programa de erradicación el Gobierno de Colombia ha destinado nuevos e importantes recursos financieros y logísticos.

20. Teniendo en cuenta que los dos Gobiernos no han alcanzado un acuerdo en torno a la inocuidad de los efectos del herbicida glifosato y su coadyuvante en la salud y el medio ambiente, el Gobierno de Colombia ha tomado debida nota del pedido que el Gobierno del Ecuador ha cursado a las Naciones Unidas para llevar a cabo un estudio prospectivo sobre el tema y acordó participar en la definición de los términos de referencia del mismo. Colombia acordó igualmente analizar los resultados del estudio y evaluar la adopción de las medidas pertinentes.

ASUNTOS MIGRATORIOS

21. Los Cancilleres de los dos países coincidieron en reconocer la complejidad del tema migratorio y sus implicaciones en su relación bilateral. A fin de analizar esta problemática, convinieron en convocar a una reunión de autoridades de migración, dentro del primer trimestre del 2006, en la cual también se evaluarán los resultados del proceso de regularización que se llevó a cabo en el Ecuador y se intercambiará información sobre las características de seguridad de los documentos nacionales de identificación, pasado judicial y pasaportes de cada país.

REFUGIADOS

29. La Ministra de Relaciones Exteriores de Colombia, hizo un expreso reconocimiento de la política internacional humanitaria que lleva a cabo el Ecuador. En ese sentido, agradeció el esfuerzo que realiza el Gobierno ecuatoriano a fin de acoger a los ciudadanos de nacionalidad colombiana que han solicitado refugio en el Ecuador.

30. Los Ministros de Relaciones Exteriores de los dos países acordaron la convocatoria del mecanismo tripartito, a nivel de Viceministros, integrado por ambos países y el ACNUR durante el primer trimestre de 2006, con el objeto de evaluar su labor y solicitar a los organismos internacionales un incremento de la asistencia al Ecuador para la atención de refugiados colombianos.

ASUNTOS COMERCIALES

31. Los Ministros de Relaciones Exteriores de ambos países examinaron las características del intercambio comercial bilateral y ante la situación del desequilibrio favorable a Colombia, observado en los últimos siete años, se comprometieron a continuar los esfuerzos para equilibrarlo.

32. Los Ministros de Relaciones Exteriores de Ecuador y Colombia reiteraron su rechazo a las decisiones de la Comisión Europea de establecer un arancel de 176 euros por tonelada para el banano de América Latina y un contingente de 775 mil toneladas a cero arancel para los países ACP, lo cual no cumple con los compromisos de la OMC. En este sentido señalaron que se reservan el derecho para hacer uso de todos los instrumentos legales disponibles dentro de la OMC en defensa de sus intereses. No obstante, esperan que la Unión Europea esté dispuesta a iniciar negociaciones lo más pronto posible para alcanzar una solución mutuamente satisfactoria.

La Ministra de Relaciones Exteriores de Colombia agradeció al Ministro de Relaciones Exteriores del Ecuador por las amables atenciones recibidas durante su permanencia en el Ecuador.

Suscrito en la ciudad de Quito, a los siete días del mes de diciembre del año dos mil cinco.

CAROLINA BARCO
Ministra de Relaciones Exteriores de la República de Colombia

FRANCISCO CARRIÓN MENA
Ministro de Relaciones Exteriores de la República del Ecuador

ANNEX 73

Diplomatic Note 2854/06/SSNDF/DGRFC, sent from the Ministry of Foreign Affairs of Ecuador to the Embassy of Colombia in Quito (20 Jan. 2006)

[seal]

REPUBLIC OF ECUADOR
MINISTRY OF FOREIGN AFFAIRS

Note No. 2854/06/SSNDF/DGRFC

The Ministry of Foreign Affairs – Under-Secretariat for National Sovereignty and Border Development – presents its compliments to the Honorable Embassy of Colombia and is honored to inform you, to the ends established in paragraph 20 of the Joint Communiqué of the Ministers of Foreign Affairs of Ecuador and Colombia of 7 December 2005, that the office of the Representative of the United Nations Development Programme in Ecuador has notified this Foreign Ministry that a UN Mission will visit the country from 13 February to begin working on a prospective study of the effects of aerial sprayings with glyphosate and its adjuvants on the northern border of Ecuador.

The Ministry of Foreign Affairs – Under-Secretariat for National Sovereignty and Border Development – avails itself of the opportunity to reiterate to the honorable Embassy of Colombia the assurances of its highest and distinguished consideration.

Quito, 20 January 2006

[signature]

To the Honorable
EMBASSY OF COLOMBIA
City.-

ANNEX 73

REPUBLICA DEL ECUADOR
MINISTERIO DE RELACIONES EXTERIORES

Nota No. 2854/06/SSNDF/DGRFC

El Ministerio de Relaciones Exteriores – Subsecretaría de Soberanía Nacional y Desarrollo Fronterizo- saluda muy atentamente a la Honorable Embajada de Colombia y tiene a honra informarle para los fines establecidos en el numeral 20 del Comunicado Conjunto de los Ministros de Relaciones Exteriores del Ecuador y Colombia, de 7 de diciembre de 2005, que la Representación de las Naciones Unidas para el Desarrollo en el Ecuador, ha notificado a esta Cancillería que una Misión de la ONU visitará el país a partir del 13 de febrero, para iniciar sus trabajos con miras al estudio prospectivo sobre el efecto de las aspersiones aéreas con glifosato y sus coadyuvantes en la frontera norte ecuatoriana.

El Ministerio de Relaciones Exteriores – Subsecretaría de Soberanía Nacional y Desarrollo Fronterizo- hace propicia la ocasión para reiterar a la Honorable Embajada de Colombia, las seguridades de su más alta y distinguida consideración.

Quito, 20 de enero de 2006

A la Honorable
EMBAJADA DE COLOMBIA
Ciudad.-

ANNEX 74

Diplomatic Note 17533/GM, sent from the Ministry of Foreign Affairs of Ecuador to the Ministry of Foreign Affairs of Colombia (2 May 2006)

ANNEX 74

[Stamp: WITH ANNEXES]

No 17533/GM

Quito, 2 May 2006

Her Excellency
Carolina Barco
Minister of Foreign Affairs of Colombia
Bogotá.-

Distinguished Minister:

I have the high honor to write to you in order to fulfill what was agreed to in point 20 of the Joint Declaration of Foreign Ministers of Ecuador and Colombia of 7 December 2005, whereby the Illustrious Government of Your Excellency agreed to participate in the drafting of the terms of reference for the studies that the UN Technical Mission will carry out on the northern border of Ecuador regarding the effects of aerial sprayings with glyphosate and its chemical coadjuvants.

In this sense, I wish to inform you that in an official letter dated 21 April, a copy of which is appended hereto, the Office of the Under-Secretary General for Political Affairs transmitted to the Permanent Representation of Ecuador to the United Nations the text of the "Report of the United Nations Preliminary Technical Mission proposing to conduct studies on the impact of aerial sprayings and complementary actions in the northern border of Ecuador," heeding the request made by the President of the Republic of Ecuador, Doctor Alfredo Palacio, during the Sixtieth Session of the General Assembly.

In the referred letter, the high United Nations has emphasized the positive nature of the decision of the Government of Colombia to temporarily suspend the aerial sprayings, as this measure has contributed to the development of the "positive agenda" shared between our two countries, an opinion which is shared by the Government of Ecuador, in the hope that this measure will be enforced in a conclusive way, under the principle of

precaution, in the area neighboring the border with Ecuador, as requested by the border populations of Ecuador with the support of my Government.

[seal]

[Stamp: RECEIVED 02 MAY 2006]

[PAGE 2]

The Office of the Under-Secretary General for Political Affairs has also expressed the deep satisfaction of the United Nations with the agreements reached in our meeting held on 7 December 2005, whereby Your Excellency's Government agreed to participate in the drafting of the terms of reference of the study on the impact of sprayings that will be proposed by the United Nations.

The United Nations has also explained in the referred letter that the recommendations contained in the report have been made in a constructive spirit, with the purpose of strengthening binational understanding and commitment between Ecuador and Colombia in the joint search for solutions to development and health problems in the northern border.

The Report of the UN Technical Mission presents the options of five studies to scientifically clarify the content of the impact of aerial sprayings with glyphosate and its mixtures on health, the environment, and agricultural production, and it advises that it will be necessary to draw the terms of reference for each of the studies proposed.

Finally, I wish to inform you that the content of this Report will be submitted for analysis and consideration by technical and scientific entities of Ecuador, in order to give to the UN Technical Mission all the support required for the immediate drafting of the relevant terms of reference and the execution of the studies proposed by the Preliminary Technical Mission within the shortest time possible.

In this sense, I pray that Your Excellency's Government will similarly join this effort that, as I have said, was recorded in the commitment we assumed in our meeting of 7 December 2005, with the goal of giving all the facilities required for the beginning and completion of the studies proposed by the UN Preliminary Mission.

I avail myself of this occasion to reiterate to you the feelings of my highest consideration and personal esteem.

[signature]
Francisco Carrion Mena,
Minister of Foreign Affairs

CON ANEXOS

No 17533/GM

Quito, 2 de Mayo del 2006

Excelentísima señora
Carolina Barco
Ministro de Relaciones Exteriores de Colombia
Bogotá.-

Distinguida Ministro:

Tengo el alto honor de dirigirme a usted con el objeto de dar cumplimiento a lo acordado en el punto 20 de la Declaración Conjunta de Cancilleres del Ecuador y Colombia de 7 diciembre de 2005, en el sentido de que el Ilustrado Gobierno de Vuestra Excelencia acordó participar en la elaboración de los términos de referencia para los estudios que sobre los efectos de las aspersiones aéreas con glifosato y sus coadyuvantes químicos llevará a cabo la Misión Técnica de la ONU en la frontera norte del Ecuador.

Al respecto, deseo informarle que la Subsecretaria General para Asuntos Políticos, con oficio de 21 de abril en curso, cuya copia acompaño, hizo llegar a la Representación Permanente del Ecuador ante las Naciones Unidas, el texto del "Informe de la Misión Técnica Preliminar de Naciones Unidas en el cual propone realizar estudios sobre el impacto de las aspersiones aéreas y acciones complementarias en la frontera norte del Ecuador", en atención a la solicitud presentada por el señor Presidente de la República del Ecuador, doctor Alfredo Palacio, durante el Sexagésimo Período de Sesiones de la Asamblea General.

En la comunicación referida, la alta funcionaria de las Naciones Unidas ha destacado como positiva la decisión del Gobierno de Colombia de suspender temporalmente las fumigaciones aéreas, medida a la cual atribuye el haber contribuido al desarrollo de la "agenda positiva" que comparten nuestros países, criterio que es compartido por el Gobierno del Ecuador, con la esperanza de que dicha medida pueda ser adoptada de manera definitiva, en virtud del principio de precaución, en el área vecina a la frontera con el Ecuador, como lo vienen solicitando las poblaciones fronterizas del Ecuador, con el respaldo de mi Gobierno.

MINISTERIO DE RELACIONES EXTERIORES COMERCIO E INTEGRACIÓN

RECIBIDO 0 2 MAYO 2006

ANNEX 74

Ha expresado igualmente la Subsecretaria General para Asuntos Políticos el profundo agrado de las Naciones Unidas por los acuerdos alcanzados en nuestra reunión del pasado 7 de diciembre de 2005, ocasión en la cual el Gobierno de Vuestra Excelencia aceptó participar en la elaboración de los términos de referencia del estudio sobre el impacto de las fumigaciones que será propuesto por las Naciones Unidas.

Las Naciones Unidas ha explicado de la misma manera y en la referida comunicación, que las recomendaciones que contiene el informe han sido presentadas en un espíritu constructivo, con el ánimo de fortalecer el entendimiento y compromiso binacional entre Ecuador y Colombia para la búsqueda conjunta de soluciones a los problemas de desarrollo y salud en la frontera norte.

El Informe de la Misión Técnica de la ONU presenta las opciones sobre cinco estudios para clarificar científicamente el escenario del impacto de las aspersiones aéreas con glifosato y sus mezclas en la salud, ambiente y producción agropecuaria y advierte que será necesario proceder a la elaboración de los términos de referencia para cada uno de los estudios propuestos.

Finalmente, quiero informar a usted que el contenido de este Informe será sometido a estudio y consideración de los organismos técnicos y científicos del Ecuador, con miras a brindar a la Misión Técnica de la ONU todo el apoyo que sea necesario para la inmediata elaboración de los respectivos términos de referencia y la más pronta realización de los estudios propuestos por la Misión Técnica Preliminar.

En este sentido, formulo votos porque el Gobierno de Vuestra Excelencia pueda igualmente sumarse en este propósito que, como lo he manifestado, quedó inscrito en el compromiso que asumimos en nuestra reunión de 7 de diciembre de 2005, con miras a dar todas las facilidades que sean necesarias para la iniciación y culminación de los estudios propuestos por la Misión Preliminar de la ONU.

Hago propicia la ocasión para reiterarle los sentimientos de mi más alta consideración y estima personal.

Francisco Carrión Mena,
Ministro de Relaciones Exteriores

ANNEX 75

Official email C.E.No. /2006-MECUCOL, from the Embassy of Ecuador in Bogotá to the Ministry of Foreign Affairs of Ecuador (11 Dec. 2006)

Under-Secretariat for National Sovereignty

From:	Embassy of Ecuador COLOMBIA
Sent on:	Monday, 11 December 2006 17:51
To:	Cabinet of the Minister; Cabinet of the Vice-Minister
CC:	Under-Secretariat for National Sovereignty; Under-Secretariat for Bilateral Relations; Copy to Foreign Affairs Ministry's Central Files; General Directorate of Border Relations with Colombia
Subject:	C.E./2006-MecuCol. Resumption of sprayings with glyphosate in border area
Priority:	High

C.E. No. /2006-MECUCOL

To: Francisco Carrión Mena
Minister of Foreign Affairs

Diego Ribadeneira Espinosa
Vice-Minister of Foreign Affairs

Susana Alvear Cruz
Undersecretary for Bilateral Relations

Diego Stacey Moreno
Undersecretary for National Sovereignty and Border Development

From: Helena Yánez Loza
Chargé d'Affaires in Colombia

Date: 11 December 2006

ANNEX 75

SUBJECT: RESUMPTION OF SPRAYINGS WITH GLYPHOSATE IN BORDER AREA

According to information provided today by Colonel Henry Gamboa, Head of Eradication at the National Anti-Narcotics Directorate, to a Police Attaché of this Diplomatic Delegation, the Government of Colombia has resumed, on this day, the sprayings with glyphosate in the border area of the Putumayo Region, a place where Front 48 of the FARC operates.

2. The Webpage of the Colombian Ministry of National Defense contains the news, which has been attached hereto. The attachment will serve to illustrate that, as the basis for this decision, the Colombian government points to the increase of coca cultivation in the border zone and the support for the use of glyphosate that it would have in the CICAD-OAS study.

3. Nothing is said about the Colombian commitment of 7 December 2005, to participate in the drafting of the terms of reference for the study requested of the UN by Ecuador. On this date, I learned, officially, that the FAO office in Bogotá wrote to the Colombian Ministry of Foreign Affairs to remind them of this commitment, without receiving any response. According to what I have been told, the FAO is the organization that should be participating directly in the drafting of the terms of reference and studies, by direct order from the former UN Secretary-General, Kofi Annan. However, without the support of the Colombian Government, it finds itself unable to act.

4. Tomorrow, Lt. Col. Fabián Solana de la Sala, Police Attaché of this Diplomatic Delegation, will meet with Col. Gamboa. I have asked him to obtain further details on the decision to spray, especially taking into account that, less than a month ago, the press reported that Colombia was the most successful country in the world in terms of manual eradication, using as an example the work carried out in the Nariño Region.

5. I will keep you informed.

Very sincerely,

Mecucol.Can.Ce

* * * * * * * * *

The National Police began spraying illicit coca crops in the Nariño and Putumayo regions.

ANNP. 11 December 2006. Villa Garzón – Putumayo. The Colombian National Police through the Anti-Narcotics Directorate begins today the spraying of illicit coca crops in the Nariño and Putumayo regions.

The operation is part of the timeline prepared by the Anti-Narcotics Directorate to concentrate operations on these two regions of the country, where the crops have been the object of replanting.

According to the Illicit Crop Monitoring System of the United Nations (SIMICI), there are 22,838 hectares of coca crops in Nariño and Putumayo, which represents a valuable average production for narco-traffickers, making the eradication of these crops a priority.

Likewise, the Anti-Narcotics Units will develop, in accordance with the decision made by the National Government, activities for the eradication of illicit coca crops along the border with Ecuador.

As it will be recalled, during the month of January 2006, the Government of Colombia decided to temporarily suspend the tasks of aerial eradication in the border area. This suspension of the spraying operations resulted in an increase of cultivated hectares in this strip, from 2,500 hectares in December 2005 to 3,450 in September 2006 in the Nariño Region and, in the Putumayo Region from 3,496 to 6,750 hectares during the same period.

“The temporary suspension of the sprayings entails leaving at the disposal of illegal armed groups and narco-traffickers an area of approximately 5,860

square kilometers, that is 586 thousand hectares of land suitable for coca crops and an increase in crimes related to narco-trafficking," pointed out General Jorge Barón, Director of the Anti-Narcotics Police.

The aerial spraying conducted by the Colombian National Police is done under the strictest environmental and safety controls. We rely on a comprehensive Environmental Management Plan and on a contingency plan.

General Jorge Barón also said that "the preparation of the spraying operations is thorough and we rely on human and technological resources to guarantee the country an effective reduction of the cultivated areas and protection of the communities and biodiversity in the areas affected by narco-trafficking".

The Colombian National Police notes that the operations will take place with the utmost respect for the sovereignty of Republic of Ecuador, and, moreover, that the study conducted by the Inter-American Drug Abuse Control Commission – CICAD – of the Organization of American States – OAS – entitled "Study of the effects of the Illicit Crop Eradication Program using aerial spraying with the herbicide Glyphosate (PECIG) and of illicit crops on human health and the environment," concluded that Glyphosate and Cosmo Flux, as used in the eradication program in Colombia, do not present a significant risk to human health and the environment.

Subsecretaria de Soberania Nacional

De: Embajada del Ecuador COLOMBIA
Enviado el: Lunes, 11 de Diciembre de 2006 17:51
Para: Gabinete de Ministro; Gabinete de Viceministro
CC: Subsecretaria de Soberania Nacional; Subsecretaria de Relaciones Bilaterales; Copia Exterior; Direccion General de Relac Fronterizas con Colombia
Asunto: C.E. /2006-Mecucol. Reanudación de fumigaciones con glifosato en la zona de frontera
Importancia: Alta

C.E. No. /2006-MECUCOL

Para: Francisco Carrión Mena
Ministro de Relaciones Exteriores

Diego Ribadeneira Espinosa
Vicerministro de Relaciones Exteriores

Susana Alvear Cruz
Subsecretaria de Relaciones Bilaterales

Diego Stacey Moreno
Subsecretario de Soberanía Nacional y Desarrollo Fronterizo

De: Helena Yánez Loza
Encargada de Negocios a.. en Colombia

Fecha: Diciembre 11, 2006

ASUNTO: REANUDACION DE FUMIGACIONES CON GLIFOSATO EN LA ZONA DE FRONTERA

Según información proporcionada, el dia de hoy, al Agregado de Policia de esta Misiòn Diplomàtica, por parte del señor Crnl. Henry Gamboa, Jefe de Erradicación de la Dirección Nacional Antinarcóticos, el dia de hoy l Gobierno de Colombia ha reanudado las fumigaciones con glifosato en la zona fronteriza del Departamento del Putumayo, lugar donde opera el frente 48 de las FARC.

2. La página web del Ministerio de Defensa Nacional de Colombia recoge la noticia, tal como se servirá encontrar adjunta. Como se servirà apreciar, como fundamento de esta decisión se señala el incremento del cultivo de la coca en la zona fronteriza y el respaldo que, para el uso del glifosato, tendrìa el Gobierno colombiano en el estudio CICAD-OEA.

3. Nada se dicie sobre el compromiso colombiano del 7 de diciembre de 2005, de participar en la elaboración de los términos de referencia del estudio solicitado por el Ecuador a la ONU. En esta fecha conoci,oficiosamente, que la oficina de la FAO en Bogotá, se dirigió a la Cancilleria colombiana recordándole este compromiso, sin haber recibido respuesta. Según se me ha dicho, la FAO es el organismo que, directamente deberìa participar en la elaboración de los términos de referencia y de los estudios, por encargo directo del anterior Secretario General de la ONU, Kofi Annan. Sin embargo, al no tener la aquiescencia del Gobierno colombiano se encuentra impedida de actuar.

4. El dìa de mañana, el Tnte. Conel. Fabián Solano de la Sala, Agregado Policial a esta Misión Diplomàtica, tendrá una reuniòn con el Crnl. Gamboa, Le he solicitado obtener mayores precisiones sobre la decisiòn de

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fumigar, especialmente tomando en cuenta que hace menos de un mes, la prensa recogió la informaciòn de que Colombia era el paìs màs exitoso en el mundo en erradicación manual y se ponìa como ejemplo el trabajo realizado en el Departamento de Nariño.

5. Mantendré a ustedes informado.

Muy atentamente,

Mecucol.Can.Ce.

.....

Policía Nacional inicia aspersión de cultivos ilícitos de coca en los departamentos de Nariño y Putumayo

ANNP. Diciembre 11 de 2006. Villa Garzón - Putumayo. La Policía Nacional de Colombia a través de la Dirección Antinarcóticos inicia el día de hoy la aspersión de cultivos ilícitos de coca en los departamentos de Nariño y Putumayo.

La operación hace parte del cronograma dispuesto por la Dirección Antinarcóticos para concentrar las operaciones en estas dos regiones del país, donde los cultivos han sido objeto de resiembra.

Según el Sistema de Monitoreo de Cultivos Ilícitos (SIMCI) de las Naciones Unidas, en Nariño y Putumayo existen 22.838 hectáreas de cultivos de coca que implica un promedio de producción valioso para los narcotraficantes, por lo cual es prioritario la erradicación de estos cultivos.

Así mismo las Unidades Antinarcóticos desarrollarán, de acuerdo a la decisión tomada por el Gobierno Nacional, actividades de erradicación de cultivos ilícitos de coca en la frontera con el Ecuador.

Como se recordará durante el mes de enero de 2006, el Gobierno de Colombia decidió suspender temporalmente las labores de erradicación aérea en la zona de frontera. Esta suspensión de las operaciones de aspersión fomentó el aumento de las hectáreas cultivadas en esta franja pasando de 2.500 hectáreas en diciembre de 2005 a 3.450 en septiembre de 2006 en el Departamento de Nariño y en el Departamento de Putumayo de 3.496 a 6.750 hectáreas en el mismo lapso.

"La suspensión temporal de los trabajos de aspersión implica dejar a disposición de los grupos armados ilegales y narcotraficantes un área aproximada de 5.860 kilómetros cuadrados, es decir 586 mil hectáreas de tierras aptas para el cultivo de coca y el desarrollo de delitos afines al narcotráfico." Señalo el General Jorge Barón, director de la policía antinarcóticos.

La aspersión aérea que realiza la Policía Nacional de Colombia, se desarrolla con los más rigurosos controles ambientales y de seguridad. Contamos con un Plan de Manejo Ambiental integral y con un plan de contingencia.

El General Jorge Barón dijo también que "la preparación de las operaciones de aspersión es minuciosa y contamos con los recursos humanos y tecnológicos para garantizarle al país la reducción efectiva de las áreas cultivadas y la protección de las comunidades y la biodiversidad de las zonas afectadas por el narcotráfico."

La Policía Nacional de Colombia recuerda que las operaciones se desarrollarán con el mayor respeto de la soberanía de la República del Ecuador y además que el estudio realizado por la Comisión Interamericana para el Control y Abuso de las Drogas –CICAD- de la Organización de Estados Americanos –OEA – denominado "Estudio de los efectos del Programa de Erradicación de Cultivos Ilícitos mediante la aspersión aérea con el herbicida Glifosato (PECIG) y de los cultivos ilícitos en la salud humana y en el medio ambiente", concluyó que el Glifosato y el Cosmoflux tal y como se usan en el programa de erradicación en Colombia no presenta un riesgo significativo para la salud humana y el medio ambiente.

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Diplomatic Note 52025-GM/SSNDF/DGSN, sent from the Ministry of Foreign Affairs of Ecuador to the Embassy of Colombia in Quito (14 Dec. 2006)

[seal]

REPUBLIC OF ECUADOR
MINISTRY OF FOREIGN AFFAIRS

Note No. 52025-GM/SSNDF/DGSN

THE MINISTRY OF FOREIGN AFFAIRS presents its cordial greetings to the Honorable Embassy of the Republic of Colombia and refers to the decision of the Government of that country to resume aerial sprayings with a reinforced formula of the herbicide "glyphosate" and its coadjuvants, at a distance of 100 metres from the international political boundary that divides both countries onthe border, in order to eradicate illicit crops.

As that Honorable Diplomatic Mission is aware since 2001, Ecuador has asked Colombia to abstain from conducting sprayings in an area of 10 kilometres from the borderline between both countries inwards Colombian territory, with the purpose of preventing damages to human health, to the environment and to the flora and fauna of the border zone of Ecuador.

With the purpose of having a definitive study on the effects of sprayings, at the request of Ecuador, the Secretary General of the United Nations, Mr. Kofi Annan, has agreed to have a technical and scientific mission of that body conduct an "in situ" investigation of the serious effects observed in the inhabitants, the environment and the productive processes in that zone.

The Joint Communiqué signed in Quito on 7 December 2005, in the framework of the official visit of the Minister of Foreign Affairs of Colombia to Ecuador, gathers the commitment of that country to suspend temporarily aerial sprayings and to allow manual eradication operations. At the same time, taking into account that both Governments failed to agree on the effects of the sprayings, Colombia agreed in the same document to participate in the definition of the terms of reference, as well as to analyze the results of the study requested of the United Nations, and to evaluate the relevant measures.

On 21 April 2006, the Office of the Under-secretary General for Political Affairs of the UN delivered to Ecuador the report of the investigation conducted in February 2006 by the technical mission of that world organization. After visiting the area, the report "determines the need

to conduct five additional studies to scientifically determine the impact of aerial sprayings with glyphosate and its mixtures on health, the environment and on agricultural production."

TO THE HONORABLE
EMBASSY OF COLOMBIA
CITY.

[PAGE 2]

[seal]

REPUBLIC OF ECUADOR
MINISTRY OF FOREIGN AFFAIRS

In May 2006, Ecuador sent a copy of the above-mentioned preliminary study of the UN to the Foreign Minister of Colombia, and invited the Colombian Government, as agreed in the Communiqué of December 2005, to draft jointly the terms of reference for the conduction of the scientific studies recommended by the United Nations. However, to this date the Ecuadorian Government has not received a response.

The report of the CICAD/OAS, on which the Government of Colombia bases the innocuousness of the chemical elements used in the aerial sprayings, has been seriously challenged by the Ecuadorian Technical and Scientific Commission, by academic entities and non-governmental environmental organizations of Ecuador, by agencies of other countries, as well as by the National University of Colombia, because of the lack of scientific rigor and the methodology used in that research, which failed to include the prospective factor.

Based on the foregoing, **THE MINISTRY OF FOREIGN AFFAIRS** expressrd its strongest protest to the Government of Colombia for its decision to resume aerial sprayings near the border area with Ecuador, dismissing all the requests made by Ecuador to maintain their suspension, at a time when it is essential to have clear and unequivocal signs of the political will of the Colombian Government to advance along the path of constructive dialogue in order to overcome any difficulties that both countries may face in their common border.

Likewise, it requests the immediate deferment of this decision, which constitutes an unfriendly act and an element that alters the relations of friendship and cooperation existing between both countries, at it holds Colombia liable for any damages that may be caused to the population and the environment of Ecuador.

THE MINISTRY OF FOREIGN AFFAIRS avails itself of this opportunity to renew to the Honorable Embassy of the Republic of Colombia the feelings of its highest and distinguished consideration.

[signature]

Quito, 14 December 2006

REPÚBLICA DEL ECUADOR
MINISTERIO DE RELACIONES EXTERIORES

Nota No. 52025-GM/SSNDF/DGSN

EL MINISTERIO DE RELACIONES EXTERIORES saluda muy atentamente a la Honorable Embajada de la República de Colombia y se refiere a la decisión del Gobierno de ese país de reiniciar las fumigaciones aéreas con una fórmula reforzada del herbicida "glifosato" y sus coadyuvantes, a una distancia de 100 metros del límite político internacional que divide a los dos países en la frontera terrestre, a fin de erradicar los cultivos ilícitos.

Como es de conocimiento de esa Honorable Misión Diplomática, desde el año 2001 el Ecuador ha solicitado que Colombia se abstenga de realizar aspersiones en un aérea de 10 kilómetros contados a partir de la línea de frontera entre los dos países y hacia el interior del territorio colombiano, con el propósito de prevenir los daños a la salud humana, al ambiente y a la flora y fauna del área fronteriza del Ecuador.

Con el objeto de contar con un estudio concluyente sobre los efectos de las fumigaciones, a solicitud del Ecuador el Secretario General de las Naciones Unidas, Señor Koffy Annan aceptó que una misión técnico – científica de ese Organismo realice una investigación "in situ", sobre los graves efectos que se observan en los habitantes, en el medio ambiente y en los procesos productivos en la zona.

El Comunicado Conjunto suscrito en Quito, el 7 de diciembre de 2005, en el marco de la visita oficial de la Ministra de Relaciones Exteriores de Colombia al Ecuador, recoge el compromiso de ese país de suspender temporalmente las fumigaciones aéreas y dar paso a operaciones de erradicación manual. Al propio tiempo, teniendo en cuenta que los dos Gobiernos no alcanzaron coincidencias sobre los efectos de las fumigaciones, Colombia acordó, en el mismo documento, participar en la definición de los términos de referencia y también analizar los resultados del estudio solicitado a las Naciones Unidas y evaluar las medidas correspondientes.

Como resultado de la investigación realizada en febrero de 2006 por la misión técnica de las Naciones Unidas, la Subsecretaría General para Asuntos Políticos de la Organización Mundial entregó al Ecuador el 21 de abril de 2006, el informe respectivo, en el cual, después de la visita al lugar, se "determina la necesidad de realizar cinco estudios adicionales para determinar científicamente el impacto de las aspersiones aéreas con glifosato y sus mezclas, en la salud, el ambiente y en la producción agropecuaria".

A LA HONORABLE
EMBAJADA DE COLOMBIA
CIUDAD.

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REPÚBLICA DEL ECUADOR
MINISTERIO DE RELACIONES EXTERIORES

En mayo de 2006 el Ecuador remitió a la Canciller de Colombia una copia del referido estudio preliminar de la ONU e invitó al Gobierno colombiano, conforme lo acordado en el Comunicado de Diciembre de 2005, a elaborar conjuntamente los términos de referencia para la realización de los estudios científicos recomendados por las Naciones Unidas, sin que el Gobierno ecuatoriano haya recibido una respuesta hasta la presente fecha.

El Informe de la CICAD/OEA, en el cual el Gobierno de Colombia fundamenta la inocuidad de los elementos químicos utilizados en las aspersiones aéreas ha sido seriamente cuestionado por la Comisión Técnico – Científica Ecuatoriana, entidades académicas y organizaciones ambientalistas no gubernamentales del Ecuador, Organismos de otros países, así como por la Universidad Nacional de Colombia, por la falta de rigor científico y la metodología utilizada para dicha investigación en la cual no se contemplaba el factor prospectivo.

EL MINISTERIO DE RELACIONES EXTERIORES con estos antecedentes, expresa la más enérgica protesta ante el Gobierno de Colombia, por su decisión de reiniciar las fumigaciones aéreas en las proximidades de las zonas fronterizas con el Ecuador, desatendiendo todas las peticiones formuladas por el Ecuador para que se mantengan suspendidas, en momentos en los que es fundamental contar con muestras claras e inequívocas de la voluntad política del Gobierno de Colombia de avanzar en el camino del diálogo constructivo para superar cualquier dificultad que ambos países enfrenten en su frontera común.

Asimismo, solicita se suspenda de inmediato la mencionada decisión, la cual constituye un acto inamistoso y un elemento que perturba las relaciones de amistad y cooperación existentes entre los dos países, al tiempo que le responsabiliza por los daños que se puedan estar provocando a la población y el ambiente del Ecuador.

EL MINISTERIO DE RELACIONES EXTERIORES hace propicia la oportunidad para renovar a la Honorable Embajada de la República de Colombia, los sentimientos de su consideración más alta y distinguida.

Quito, a 14 de Diciembre de 2006

REPÚBLICA DEL ECUADOR
GABINETE DEL MINISTRO
MINISTERIO DE RELACIONES EXTERIORES

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Diplomatic Note 52284/06/-GM, sent from the Ministry of Foreign Affairs of Ecuador to the Secretary General of the Organization of American States (15 Dec. 2006)

[seal]
REPUBLIC OF ECUADOR
MINISTRY OF FOREIGN AFFAIRS

Note No. 52284 /06 – GM
Quito, 15 December 2006

His Excellency
José Miguel Insulza
Secretary-General of the Organization of American States
Washington, DC

Mr. Secretary-General:

On behalf of the government of Ecuador, I write to you in order to bring to your attention an issue which has escalated in recent years and has disturbed relations between my country and Colombia, which have traditionally enjoyed an environment of cordial friendship.

The government of Colombia, in its plan to destroy illicit crops, authorizes the flights of aerial apparatus which disperse, over the territory of the border area near Ecuador, chemical substances known as glyphosate (RoundUp), along with other surfactants in strengthened formulas, with the aim of implementing the said plan.

It is evident that the spraying of said chemical and toxic substances, spread over large areas, which cross the border of Colombia to reach and affect Ecuador. This is an area of the Ecuadorian territory with extremely fragile ecosystems belonging to the Amazonian tropical rainforest. Bodies of water, natural food products, agricultural crops and, in general, the health and quality of life of the population which inhabits this environment, have been severely affected.

Various administrations of Ecuador have requested that the government of Colombia abstain from authorizing fumigation and aerial spraying in an area at least ten kilometers within its own territory, measured from the border line between the two countries, with the aim of preventing harm to human health, flora, fauna, and the environment of Ecuador.

The Ecuadorian request was addressed in December of 2005, as expressed in a Joint Communiqué signed by Ms. Carolina Barco, then in charge of the Ministry of Foreign Affairs of her country. In this document,

Colombia announced the temporary suspension of fumigating in the area bordering Ecuador, starting from January 2006.

The text of said Communiqué also said that, "Taking into account the fact that the two Governments have not reached an agreement regarding the innocuousness of the effects of the herbicide glyphosate and its co-adjuvant on health and the environment, the Government of Colombia has duly taken note of the request that the Government of Ecuador submitted to the United Nations to execute a prospective study on the issue, and agreed to participate in the definition of the terms of reference for the same. Colombia also agreed to analyze the results of the study and to evaluate the adoption of pertinent measures."

On 21 April 2006, after a preliminary expedition conducted "in situ" in February 2006, the United Nations, through its Undersecretary-General for Political Affairs "determined the need to undertake five additional studies to scientifically ascertain the impact of the aerial fumigations with glyphosate and its mixtures, on health, the environment, and agricultural production". A copy of said communication was submitted to the authorities in the Colombia government, with an invitation to work with Ecuador on developing the terms of reference for the execution of the recommended scientific studies, and pursuant to the agreement in the cited Joint Communiqué signed by the two countries on 7 December 2005.

On 11 December 2006, the government of Colombia, on, despite the insistence of Ecuadorian authorities that they agree to the terms of reference to undertake studies which will allow the uncertainties regarding the consequences of said spraying to be resolved, Colombia re-initiated the aerial fumigations in the border area near Ecuador. This has provoked distress and worry within the populations and human settlements of the Ecuadorian border region and, consequently on the national government, due to the aforementioned effects to the health of the population, and the destruction of biodiversity and of crops which sustain the diet of the inhabitants of this Ecuadorian region. The fumigations have also resulted in an increase in the migration of undocumented Colombians into Ecuador, as well as the displacement of Ecuadorians from this area towards the interior of the country.

I must point out that a report by the CICAD/OAS, in which the government of Colombia continues to assert the benign characters of the chemical elements used in the aerial spraying, has been discredited by academic institutions, scientific research centers, and non-governmental

organizations working on human and environmental rights, among others, from Colombia and Ecuador, for its lack of scientific rigor. In addition, the methodology employed in said study has been severely questioned.

Based on these precedents, the government of Ecuador requests the attention of the OAS regarding this issue which threatens to affect the security, development, and cordial relations between two neighboring States, through the submission of this issue to the Permanent Council, and other actions which you deem pertinent, in accordance with the powers conferred by the Charter of the Organization.

I would like to take this opportunity to reiterate to you, Mr. Secretary-General, assurances of my highest and most distinguished consideration.

[signature]
Francisco Carríon Mena
Minister of Foreign Affairs

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REPUBLICA DEL ECUADOR
MINISTERIO DE RELACIONES EXTERIORES

Nota No. 52284 /06 – GM

Quito, a 15 de diciembre de 2006

Excelentísimo Señor Don
José Miguel Insulza
Secretario General de la Organización de los Estados Americanos
Washington D.C.

Señor Secretario General:

A nombre del gobierno del Ecuador, me dirijo a usted para elevar a su atención un asunto que en los últimos años, de forma cada más persistente, perturba las relaciones entre mi país y Colombia, las que tradicionalmente se han desenvuelto en un ambiente de cordial amistad.

El gobierno de Colombia en su plan de destrucción de cultivos ilícitos autoriza vuelos de aparatos aéreos que esparcen sobre el territorio de la zona de frontera vecina al Ecuador, sustancias químicas conocidas bajo el nombre de glifosato (round up) junto a otros elementos coadyuvantes, con fórmulas reforzadas, con el propósito de dar cumplimiento al señalado plan.

Como es fácil advertir, la aspersión de las indicadas sustancias, químicas y tóxicas, alcanzan extensas zonas que traspasan los límites de la frontera de Colombia, las cuales llegan y afectan al Ecuador, que en esa zona de su territorio tiene un medio ambiente con ecosistemas extremadamente frágiles, pertenecientes a su región húmeda tropical amazónica. Los cauces de agua, los productos alimenticios naturales, los cultivos agrícolas y, en general, la salud y la calidad de vida de la población que habita ese entorno, se han visto severamente afectados.

Diferentes administraciones del Ecuador han solicitado al gobierno de Colombia se abstenga de autorizar la fumigación y aspersión aérea en una franja de al menos diez kilómetros dentro de su territorio, contados a partir de la línea de frontera entre los dos países, a fin de prevenir daños a la salud humana, flora, fauna y ambiente del Ecuador.

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El requerimiento ecuatoriano fue atendido en diciembre del 2005, de lo cual se dejó constancia en un Comunicado Conjunto que lo suscribí con la señora Carolina Barco, entonces a cargo del Ministerio de Relaciones Exteriores de su país. En ese documento, Colombia informó la suspensión temporal de las labores de aspersión en la zona de frontera con el Ecuador, a partir del mes de enero del 2006.

El texto del referido Comunicado también dice que "Teniendo en cuenta que los dos Gobiernos no han alcanzado un acuerdo en torno a la inocuidad de los efectos del herbicida glifosato y su coadyuvante en la salud y el medio ambiente, el Gobierno de Colombia ha tomado debida nota del pedido que el Gobierno del Ecuador ha cursado a las Naciones Unidas para llevar a cabo un estudio prospectivo sobre el tema y acordó participar en la definición de los términos de referencia del mismo. Colombia acordó igualmente analizar los resultados del estudio y evaluar la adopción de las medidas pertinentes."

Naciones Unidas luego de una exploración preliminar efectuada "in situ" en febrero del 2006, a través de su Subsecretaría General para Asuntos Políticos, el 21 de abril del 2006, "determina la necesidad de realizar cinco estudios adicionales para determinar científicamente el impacto de las aspersiones aéreas con glifosato y sus mezclas, en la salud, el ambiente y en la producción agropecuaria". Copia de dicha comunicación fue entregada a las autoridades de Colombia, con una invitación a su gobierno a elaborar conjuntamente con el Ecuador los términos de referencia para la realización de los estudios científicos recomendados, y conforme fue acordado en el citado Comunicado Conjunto firmado por los dos países el 7 de diciembre del 2005.

El gobierno de Colombia, el 11 de diciembre del 2006, a pesar de la insistencia de las autoridades ecuatorianas de acordar los términos de referencia para realizar estudios que permitan despejar todas las incógnitas sobre las consecuencias de las referidas aspersiones, reinició las fumigaciones aéreas en la franja de la frontera vecina al Ecuador, lo que ha provocado angustia y preocupación en las poblaciones y asentamientos humanos de la región fronteriza ecuatoriana y, en consecuencia, en el gobierno nacional, debido a los mencionados efectos en la salud de la población, en la destrucción de la biodiversidad y en cultivos que sustentan la alimentación de los pobladores que habitan esa región ecuatoriana. Adicionalmente, provocan un incremento de la migración colombiana indocumentada hacia el Ecuador, así como el desplazamiento de ecuatorianos desde esa zona hacia el interior del país.

Debo señalar que un Informe de la CICAD/OEA, en el cual el gobierno de Colombia sustenta su afirmación sobre la inocuidad de los elementos químicos utilizados en las aspersiones aéreas, ha sido descalificado por instituciones académicas, centros de investigación científica y organizaciones no gubernamentales en derechos humanos y ambientales de, entre otros, Colombia y Ecuador, por su falta de rigor científico además de un severo cuestionamiento a la metodología utilizada en dicha investigación.

REPUBLICA DEL ECUADOR
MINISTERIO DE RELACIONES EXTERIORES

Con estos antecedentes, el gobierno del Ecuador solicita la atención de la OEA sobre este asunto que amenaza con afectar la seguridad, el desarrollo y las cordiales relaciones entre dos Estados vecinos, por medio del sometimiento de este tema al Consejo Permanente, y otras acciones que usted estime pertinente, conforme las atribuciones que le confiere la Carta de la Organización.

Aprovecho la ocasión para renovar a usted, señor Secretario General, las seguridades de mi más alta y distinguida consideración.

Francisco Carrión Mena
Ministro de Relaciones Exteriores

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Speech of Ecuadorian Minister of Foreign Affairs
at the OAS Permanent Council Meeting (9 Jan. 2007)

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PERMANENT COUNCIL

OEA/Ser.G
CP/INF.5433/07
10 January 2007
Original: Spanish

STATEMENT BY THE MINISTER OF FOREIGN AFFAIRS OF ECUADOR AT THE PERMANENT COUNCIL MEETING OF JANUARY 9, 2007

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PERMANENT MISSION OF ECUADOR
TO THE
ORGANIZATION OF AMERICAN STATES

STATEMENT BY THE MINISTER OF FOREIGN AFFAIRS OF ECUADOR, FRANCISCO CARRION MENA, TO THE OAS PERMANENT COUNCIL

Madam Chair of the Permanent Council,
Mr. Secretary General,
Mr. Assistant Secretary General,
Distinguished permanent representatives,
Ladies and gentlemen:

It is a great honor for the Foreign Minister of Ecuador once again to visit this Permanent Council of our Organization, the highest political forum of the Hemisphere, to raise an issue of profound concern to my country, one that has repercussions on its traditionally good relations with Colombia.

First, I wish to reaffirm to everyone here, the distinguished representatives of the countries of the American Hemisphere, that the Government of Ecuador is fully committed to fighting drug trafficking, in the context of existing international conventions and international law, an area in which my country, owing to its own convictions, not to any imposition from without, has clearly demonstrated its unwavering readiness to fight and repudiate this scourge. Its undeniable successes, despite the scarce economic resources it has for this purpose, are a testament to that commitment. Ecuador has seized massive volumes of narcotics and broken up important drug trafficking networks in recent years.

Ecuador also firmly adheres to the principle of nonintervention in the internal affairs of other states and effectively defends its national sovereignty; consequently, it will not involve itself in actions by the Government of its neighbor country nor engage in combined, joint, or coordinated military actions or exercises with the Armed Forces of Colombia.

I wish to reaffirm emphatically, on the question of the Colombian internal conflict, that Ecuador has not assumed a position of neutrality and that it considers the Government of Colombia to be its only legitimate interlocutor. What better proof of this than Ecuador's ongoing, effective fight against drug traffic and, in the spirit of solidarity, its generous acceptance of over 500 thousand citizens displaced by the internal conflict in Colombia who now live in Ecuadorian territory?

Ecuador has maintained an unwavering position, as a policy of state, of promoting socioeconomic growth in the area bordering Colombia, through binational integration and development projects, and of making exhaustive efforts to maintain an effective presence by

Ecuadorian state security forces at the common border, so as to safeguard national sovereignty, security, and territorial integrity.

Ecuador, true to the guiding principles of peaceful coexistence embraced by international law, has made every effort, through ongoing dialogue and promotion of a positive agenda, to resolve with Colombia matters which, in recent years, have affected its border relations. One of these relates to aerial spraying of glyphosate in our shared border area, which for approximately the past five years has affected the population, flora, fauna, and environment of the Ecuadorian border region.

Ecuador has been obliged to visit the OAS Permanent Council today to present to this high regional political and diplomatic forum this problem, which, since mid-December, is again disturbing the traditionally friendly and cooperative relations between Ecuador and Colombia.

The spraying of glyphosate and auxiliary substances, which the Government of Colombia carries out in the area bordering Ecuador, is in disregard and noncompliance with the agreements reached by the two countries in the joint communiqué signed by the foreign ministers of Ecuador and Colombia on December 7, 2005.

In that instrument, Colombia essentially agreed to:

1. The temporary suspension of aerial fumigation with glyphosate;
2. Increasing its manual eradication brigades in the area as an alternative means of eliminating unlawful crops; and
3. Working with Ecuador to develop terms of reference for UN-recommended scientific studies to determine the effects of glyphosate and its auxiliary substances on human health, the environment, biodiversity, and productive activities in the region.

The agreements into which we entered with Colombia on December 7, 2005, made possible the reactivation of important aspects of our rich bilateral relations. After two years of inactivity, we were able to hold the 15th Meeting of the Commission on Neighbor Relations and Integration, in April 2006, in Quito, in which distinguished delegates from public and private institutions of the two countries participated. The meeting generated significant progress in terms of development and integration for the border integration zone of Ecuador and Colombia.

Regrettably, this reactivated border integration process has now been stopped short by the resumption of glyphosate spraying by the Government of Colombia.

These processes, which made it possible to implement significant binational projects to improve living conditions for the border-area population in both countries, led to possibilities of international cooperation in terms of funding.

In its report on the Preliminary Technical Mission of the United Nations proposing that studies be conducted on the impact of aerial spraying and complementary actions on the northern border, the United Nations called the Colombian Government's decision to temporarily suspend spraying a positive step contributing to the development of a harmonious agenda shared by the two countries, including the Binational Plan for Development of the Border Integration Zone to be adopted by the Governments of Ecuador and Colombia.

The world organization also expressed its profound satisfaction at the agreements reached by the Foreign Ministers of Ecuador and Colombia at their meeting of December 7, 2005, including the Government of Colombia's willingness to take part in the drafting of the terms of reference for the study on the impact of sprayings to be proposed by the United Nations, and the Government of Ecuador's decision to share the Report of the Technical Mission of the United Nations with the Government of Colombia.

I want to emphasize that the Government of Ecuador, as soon as it received that report, sent it to the Colombian foreign ministry, on May 2, 2006, as had been agreed in the joint communiqué of December 7, 2005. At that time, the Colombian Government was invited, as had been agreed, to join in the effort to prepare terms of reference for the studies proposed by the UN technical mission and to provide all the necessary facilities for the initiation and completion of those studies. In the absence of a timely response, this position was expressed again to the Colombian foreign ministry, on October 10, 2006.

Regrettably, only when aerial glyphosate spraying had resumed, in reaction to the protest presented by the Ministry of Foreign Affairs of Ecuador to the Ambassador of Colombia in Quito, did the foreign ministry of that country, on December 20, 2006, propose "the holding, as soon as possible, of a meeting between the Governments of Ecuador and Colombia, with the United Nations, to clarify these concerns of the Government of Colombia, so that the agreement in that regard in the joint communiqué of December 7, 2005, may be implemented."

In response to Ecuador's constant claims as to the effects of glyphosate, Colombia has always tried to justify its actions on the basis of the "Study of the Impact on Human Health and the Environment of the Program for the Eradication of Illicit Crops by Aerial Spraying of Glyphosate (PECIG) and of Illicit Crops," conducted in 2005 at the request of the Inter-American Drug Abuse Control Commission (CICAD), under the auspices of the Governments of the United States, the United Kingdom, and Colombia, the sole objective of which was to prove the supposed harmlessness of glyphosate.

That study has been widely challenged by prestigious scientists and researchers, and by universities and academic institutions in Ecuador and other countries, for lack of sound scientific research methods. This includes an extensive and detailed study by the Institute of Environmental Studies of the National University of Colombia.

I'd just like to point out five aspects of the latter study that challenge the scientific validity of CICAD's analysis in that:

1. It reaches conclusions that are not supported by the data given.
2. It disregards studies critical of glyphosate that would have altered the conclusions.
3. It examines effects on ecosystems almost entirely unaffected but does nothing to assess biodiversity destruction, crop elimination, and soil erosion.
4. It does not examine the impact on the population.
5. It disregards more than 8,000 complaints submitted by rural people from both countries on damage to lawful crops, loss of animals, and harm to human health.

Moreover, while the CICAD study "estimated" (did not decisively state) that the drift, that is, the deviation caused by wind, did not exceed 1%, a study by United States scientists confirmed (did not estimate) that for each two hectares of coca fumigated, one hectare of lawful crops or of forest was destroyed. Consequently, even the American Medical Association (AMA), with over six million U.S. health professionals, asked for an end to aerial spraying in Colombia.

In its instructions for the use of glyphosate, which it markets as Roundup, the manufacturer Monsanto says that aerial applications should be avoided if there is a danger that the chemical could contact desirable species. It says minimal amounts of this herbicide can cause severe damage to or destruction of crops and plants not targeted in the treatment. It says the risk of damage by Roundup (glyphosate) is greater when wind speed exceeds 8 km. per hour. It also says that contamination of seeds and foods for human or animal consumption should be avoided.

Therefore, the Government of Ecuador cannot take the widely-challenged CICAD study as sufficient evidence of the harmlessness of glyphosate and its chemical components in the aerial spraying by the Government of Colombia along the border with Ecuador. There is no certainty as to the chemical mixes and levels of concentration used. Moreover, there are discrepancies between various statements by high authorities in Colombia, as the Colombian press points out, as to the true composition and mix of the product and its auxiliary substances.

Therefore, when Colombia and CICAD invited Ecuador to participate, as an observer, in the second phase of this study, my country indicated it was awaiting the Colombian Government's reply for the joint preparation of terms of reference for the five types of studies proposed by the UN Technical Mission, as agreed in the joint communiqué of December 7, 2005.

Also very telling is the clear reference by the United Nations Rapporteur on the Rights and Freedoms of Indigenous Peoples, Mr. Rodolfo Stavenhagen, in certain paragraphs of his report on his visit to Ecuador, from April 25 to May 4, 2006, in which he establishes that aerial spraying with glyphosate mixed with other products on illicit plantations in Colombia, in the area bordering Ecuador, has had harmful effects on environmental resources and on human and animal health. Among the major effects noted by Mr. Stavenhagen in his report are skin and other diseases, contamination of rivers and ground water, and the disappearance of various short-cycle crops less than 15 days after the beginning of spraying. The report also notes the existence of a high percentage of residue of the chemical product used in the spraying on Colombian territory on the River Mira, bordering Ecuador, in the provinces of Esmeraldas and Carchi, with grave consequences for the Ecuadorian indigenous communities settled along the shore of that river.

Since there is a clear disparity of views between the Governments of Ecuador and Colombia as to the validity and sufficiency of existing studies on the effects of aerial spraying with glyphosate and its chemical compounds on human health, the environment, and productive activities in the affected areas, it is clear that we are faced with a profound divergence between the two countries. Ecuador maintains that there is sufficient evidence that aerial spraying with glyphosate is indeed harmful to human health and the environment, while Colombia affirms that there is not.

As civilized states, respectful of human rights and concerned for the environment and biodiversity of the areas along our shared border, we are obligated to conduct a study such as the one proposed by the United Nations, in which the Government of Colombia has recently indicated its

wish to participate, thereby honoring the commitment it assumed in the joint communiqué of December 7, 2005.

That study would also need to take account of the findings of many others conducted on the efforts of glyphosate, not only, as the Ministry of Foreign Affairs of Colombia maintains in its note of December 20, 2006, of the findings of the study commissioned by CICAD.

It should also be made clear that the studies on the toxicity of glyphosate to human health and the environment are not recent; they were conducted years ago in countries such as the United States, France, Sweden, Canada, and Argentina, as indicated by the Ecuadorian scientist Dr. Luís Romo Saltos in his paper "Aerial fumigation of illicit plantations."

It is also useful to note that Denmark, on September 15, 2003, banned the spraying of glyphosate in response to scientific proof of the herbicide's presence in the underground water from which that country derives most of its drinking water.

Worth citing, too, is the study by the Colombian researcher, Elsa Nivia, Executive Director of the Colombian branch of the Pesticide Action Network, who writes in her paper entitled "Aerial Spraying of Illicit Crops is Indeed Dangerous" that "when wide spectrum herbicides are used to spray illicit crops, they also spray food crops near to or between the illicit crops, water sources, cattle and domestic animals, schools, homes, workers, men, women, and children, and species of flora and fauna in nearby jungle areas." She adds that no pilot, no matter how experienced, can prevent indiscriminate fumigation when applying insecticides, from an airplane, to crops, forests, and populated areas.

As for the difference between the use of glyphosate for farming or commercial purposes and its use in aerial spraying to destroy illicit crops in Colombia, this Colombian professional notes that they are quite different from the agricultural use recommended in the United States, since the effective discharge of 23.4 L/ha of Roundup Ultra is equivalent to a concentration 26 times higher than that recommended and the mix with the surfactant Cosmoflux 411F can increase by a factor of up to four the biological effect of the herbicide, suggesting relative levels of exposure 104 times higher than the dose recommended for normal agricultural applications in the United States, a dose which, according to studies, is capable of killing even ruminants, even more so if one considers the various passes crop-duster aircraft make over the same areas.

Therefore, the Government of Colombia cannot intend to compare, much less justify, its aerial spraying with glyphosate to destroy illicit plantations–spraying which has an indiscriminate harmful effect–with the localized, systematic use of such herbicide in agriculture.

I ask myself whether the innumerable studies conducted in a number of countries and the aforementioned research by Elsa Nivia, demonstrating that aerial spraying with glyphosate does indeed pose a grave risk to human and animal health, together with the 8,000 complaints filed with the Colombian Ombudsman's Office and the National Narcotics Directorate regarding the harmful effects of spraying on the local population, were taken into consideration by CICAD's research team in demonstrating the alleged "harmlessness" of glyphosate, which Colombia uses to justify its actions. Not to mention the report, presented a few months ago by the Departmental Health Institute

of Nariño, Colombia, which mentions children who have died and dozens of Colombians harmed by glyphosate.

Through the OAS General Secretariat, I am placing this study, along with others conducted in Ecuador and in other countries, at the disposal of the Permanent Council.

Madam Chair, delegates:

The Precautionary Principle, established in international agreements and instruments, is also reflected in several of the 27 principles underlying Colombia's environmental policy, as set forth in Law 99 of 1993. More specifically, Principle 15 of that law states: "In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation."

On the basis of that principle, which is also enshrined in the laws of my country, the Ecuadorian State has had to address complaints by Ecuadorian inhabitants of the border area who are victims of the effects of aerial spraying of glyphosate by Colombia in its territory near the boarder. This led to a ruling by the Constitutional Court, which requires that Ecuadorian state agencies take steps to rehabilitate those affected and avoid further harm. Specifically, it requires the Ministry of Foreign Affairs of Ecuador to enter into talks with the Government of Colombia, with a view to putting an end to any form of aerial spraying that penetrates Ecuadorian territory.

Likewise, the Office of the Ombudsman of Ecuador has recommended reaching an appropriate solution with Colombia and has forwarded its resolution on the subject of aerial spraying of glyphosate to the Inter-American Commission on Human Rights and the Office of the United Nations High Commissioner for Human Rights, so that these bodies are informed and can adopted the necessary and pertinent measures needed to safeguard the health, safety, and wellbeing of the currently affected populations.

I should like to take this opportunity to inform the Permanent Council that the Inter-American Commission on Human Rights has just transmitted a complaint against the State of Ecuador for alleged liability for glyphosate spraying on the border area. It is ironical that the Ecuadorian state, which has spared no effort to have spraying with glyphosate suspended, should have a suit brought against it before the Inter-American Commission on Human Rights and may have to pay compensation for damage caused by this substance.

At this point, I should like to point out that Ecuador is open to and interested in receiving an on-site observation visit by the Inter-American Commission on Human Rights that will enable it to determine at first hand the consequences of these sprayings for the inhabitants and the environment in the border area.

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Furthermore, on Ecuador's behalf, I hereby reiterate our request that, in accordance with its control and surveillance responsibilities on its side of the border, Colombia establish a greater military, police, and civilian authorities presence in the area, rather than the current sporadic and insufficient presence of these forces. This will enable it to comply with its offer to use manual methods as an alternative way of eradicating the illicit coca crops in the border zone: a commitment it undertook in the Joint Communiqué of December 7, 2005.

Consequently, I invite the Government of Colombia to initiate immediately, with the next 30 days, a joint action to appoint a binational scientific commission to begin working out terms of reference for the five studies proposed by the United Nations in order to ascertain the effects of aerial spraying with glyphosate and the chemicals used with it on human health, the environment, biological biodiversity, and the means of production along the shared border and, subsequently, to determine the liabilities and payment of such compensation and damages obligations as Colombia may incur, in accordance with international laws.

Here, I feel I should comment on the Colombian Government's assertion that following the suspension of aerial spraying with glyphosate and its chemical components in the border zone, agreed upon with Ecuador in 2005, illicit coca crops in that area have increased to 10,000 hectares. The Government of Ecuador does not agree with this assertion particularly since, in fact, as already pointed out, the reason for the aforementioned increase in coca plantations for the production and sale of cocaine in that region is the lack of an effective presence and permanent control by Colombia's armed forces, police, and civilian authorities in the border region. That increase is, moreover, palpable proof that the policy of aerial spraying with glyphosate has not produced the desired results.

Ecuador rejects any attempt to involve it in the so-called "Colombia Plan," with actions such as that of that country's Director of Police, who suddenly denounced in the media that he had observed from Colombian territory the (alleged) existence of coca plantations in Ecuadorian territory close to the Putumayo River and even went so far as to provide the geographic coordinates needed to locate the alleged illicit crops.

In that regard, I should like to inform you that the Minister of National Defense of Ecuador and national anti-drug police commandos, accompanied by members of the national and international press corps, verified on site the inaccuracy of the denunciation and, using the geographical coordinates provided by Colombia, found a cattle farm, fruit plantations, and wild plants.

The historic ties of friendship and brotherhood that have traditionally characterized relations between Ecuador and Colombia should not be altered by these disagreements and those of us who hold public office must be accountable to our peoples for maintaining such ties.

I wish to underscore Ecuador's solidarity with regard to the conflict in Colombia. As has already been pointed out, this solidarity is evidenced by the fact that over 500,000 Colombian citizens have been generously received by my country. They include – mostly illegal – migrants, displaced persons, and refugees, on such a scale that Ecuador has become the Latin American country with the highest number of refugees.

Ecuador and Colombia must not forget where our real enemy lies. Ecuador makes no mistake about it. Our common enemy is poverty, drug trafficking, illiteracy, unhealthiness, crime, and

environmental degradation. It is this multi-faceted enemy that we need to fight to the best of our ability.

On this occasion, Ecuador formally reiterates its fraternal petition that Colombia first cease aerial spraying with glyphosate and its associated chemicals within an area of 10 kilometers on the Colombian side of our common border, a position that Ecuador has consistently put to Colombia since 2001. I also urge Colombia to observe the Precautionary Principle, which is embodied in its own laws and which requires that, faced with doubts regarding the effects on the environment of the use of a chemical substance, such use must be suspended while analyses and studies are carried out to prove that it is "harmless" for ecosystems and human beings.

Finally, I believe it is important to state that, although this presentation has addressed problems that have arisen between Ecuador and Colombia because of Colombia's aerial spraying in the area of the border between the two countries, in no way should the harmful effects of those unilateral actions be regarded as the exclusive concern of two states, because Colombia also has borders with several other countries and, in addition, the Amazon forests are part of the "lungs" of the world. What is more, respect for human rights must transcend national differences. Likewise, adequate protection of the environment must be a global, as well as American, concern, because of its impact on future generations.

Madam Chair of the Council, Mr. Secretary General, and Permanent Representatives: thank you very much.

Washington, D.C., January 9, 2007

ANNEX 79

Speech of Colombian Vice Minister of Foreign Affairs at the
OAS Permanent Council Meeting (9 Jan. 2007)

ANNEX 79

PERMANENT COUNCIL

OEA/Ser.G
CP/INF.5432/07
10 January 2007
Original: Spanish

SPEECH BY THE VICE MINISTER OF FOREIGN AFFAIRS OF COLOMBIA AT THE PERMANENT COUNCIL MEETING OF JANUARY 9, 2007

ANNEX 79

SPEECH BY THE VICE MINISTER OF FOREIGN AFFAIRS OF COLOMBIA
AT THE PERMANENT COUNCIL MEETING OF JANUARY 9, 2007

It is my pleasure this morning to address the Secretary General, Mr. José Miguel Insulza, the distinguished members of the Permanent Council, ambassadors, alternate representatives, and other participants; and, in particular, the Minister of Foreign Affairs of the Republic of Ecuador, Mr. Francisco Carrión.

After listening to his presentation, I should like to make the following comments in my capacity as Vice Minister of Foreign Affairs and on behalf of my Government:

The subject brought, on this occasion, by the Government of Ecuador to the attention of the Permanent Council, regarding the Colombian Government's decision to resume airborne spraying in **Colombian territory**, in a 10-kilometer-wide strip along the common border, has to do with the **inescapable need to eradicate illicit crops in my country as an indispensable component of the fight against the global drug problem**, a scourge that wreaks devastation in both the region and the world as a whole.

This is a **sovereign decision of the Government of Colombia**, and, therefore, an internal affair of Colombia, which this Forum is not competent to discuss.

For Colombia, this is, moreover, **a national security issue**, since it pertains to our struggle against the global drug problem and the financing of terrorism.

Thus, with actions such as those brought to the Permanent Council's attention today, which lead to a reduction in the supply of illicit drugs, Colombia is, in addition, complying with the commitments derived from global, regional, and subregional international instruments on the subject.

At the same time, it should be pointed out that, in December 2005, in response to a request from the Government of Ecuador to suspend airborne spraying in a 10-kilometer-wide strip along the common border, the Government of Colombia **chose, unilaterally, to suspend spraying operations on a temporary basis** on the Colombian side of the border with Ecuador.

However, the result of the one-year suspension of spraying was a substantial increase in coca crops, over an estimated 13,200 hectares. That being so, in order to defend the interests of the Colombian people and honor international commitments to combat the production of and trafficking in narcotic drugs, the Colombian Government had no option but to resume the spraying it had traditionally carried out on the Colombian side of the border.

It is necessary to stress that Colombia has scientific and technical proof regarding the harmless effects on human health and the environment of the mixture used by the Program to Eradicate Illicit Crops by means of Airborne Spraying with Glyphosate (PECIG), which has been implemented in different parts of the country, including the zone adjacent to the border with Ecuador, and that such spraying is conducted according to strict technical standards, whereby the drops containing the mixture fall vertically, i.e. straight down with no possibility of drifting. In other words, the mixture cannot fall on the other side of the border.

PECIG was designed as a program to be executed solely and exclusively within the national territory, precluding from the outset any possibility of transborder spraying.

The Spraying Program (PECIG) established technical parameters for airborne spraying that have to be strictly applied to each and every sprayed crop, because this procedure ensures over 90 percent effect destruction in the case of coca crops.

Despite absolute certainty that the PECIG poses no threat to human, animal, or environmental health, the National Government has put in place institutional mechanisms for strict monitoring, verification, and oversight of each phase of the Program, in order to guarantee adequate and correct execution.

Eradication from the air is conducted using rigorous, modern techniques that include the use of satellite technology and make it possible to verify where and when spraying took place. In addition, the protocols governing spraying determine the minimum climatic conditions that must pertain for spraying to take place. It cannot be carried out at altitudes exceeding 25 meters, nor when winds exceed 5km/hour, the temperature is above 25º Centigrade, or relative humidity exceeds 80 percent. Moreover, although it is true that the concentration of liquid is greater than that used for commercial crops, the percentage of the mix hitting each plant is less than that affecting legal crops, because of the very nature of the operation.

The *drift*, that is to say the distance the wind can carry the mixture away from its target, is minimal and **does not exceed 12.3 meters**. The physical and chemical properties of glyphosate preclude it being driven by the wind far enough to cross the Colombian/Ecuador border.

The scientific and technical arguments are supported by numerous national and international studies, and, in particular, in the study published by the Inter-American Drug Abuse Control Commission (CICAD) of the OAS. That study entered its second phase in November 2006.

The CICAD/OAS study, entitled “Study of the Effects of the Program to Eradicate Illicit Crops by means of Airborne Spraying with Glyphosate (PECIG) and of the Illicit Crops on Human Health and the Environment,” was conducted by eminent, internationally renowned scientists from Canada, Spain, Brazil, Mexico, and the United Kingdom, under the direction of Professor Keith R. Solomon of the Centre for Toxicology of the Department of Environmental Biology at the University of Guelph, in Canada.

My Government would agree to the establishment by CICAD/OAS of a Verification Committee to ascertain, in connection with the aforementioned study, that in fact there is no drift.

It should also be pointed out that glyphosate is used in legal crops all over the world, including Ecuador, in, for instance, banana and coffee plantations. In Colombia only 15 percent is used to eradicate illicit crops. As is well known in farming and trade circles, today latest generation glyphosate is used for direct sowing, that is to say, as a means of cleaning the soil, without having to plough or scrape.

Today our delegation is distributing to the permanent representatives a copy of the CICAD/OAS "Study of the Effects of the Program to Eradicate Illicit Crops by means of Airborne Spraying with Glyphosate (PECIG) and of the Illicit Crops on Human Health and the Environment," which has been available to the international community on the CICAD website, along with a number of other public documents on the use of glyphosate in Ecuador.

Madam Chair, the Colombian Government wishes to assert to this body that what truly contaminates is the illicit cultivation of coca leaf, which illegally employs chemical inputs, herbicides, insecticides, and fertilizers that do indeed pose a threat to human health and the environment. Let us remember that three hectares of woodland are destroyed for each hectare sown with coca.

Colombia has made huge efforts to put a stop to such crops, including manual eradication. Last year alone, those operations cost the lives of 41 Colombians killed by the anti-personnel landmines and explosive devices used by terrorist groups bent on preventing eradication. We should not forget, either, that those terrorist groups use the resources derived from drug trafficking to strengthen their capacity for violence. Despite that, 43,000 hectares were eradicated by hand in 2006 and over the past few years more than 160,000 hectares have been sprayed.

For its part, Colombia has complied with the provisions of the joint communiqué of December 7, 2006, namely temporary suspension of spraying and a stepped-up military presence in the area. As for the agreement on terms of reference, Ecuador applied unilaterally to the United Nations, curiously bypassing the United Nations agency responsible for combating the global drug problem and omitting to point out precisely that what is wanted is a forward-looking study of the effects of glyphosate on human health and the environment.

What Colombia expects of the international community is unstinting support for its efforts to combat the cultivation and trafficking of illicit drugs and for implementation of the now universally accepted principle of shared responsibility.

Finally, it should be noted that historically relations between Colombia and Ecuador have been handled through frank and constructive dialogue, as well through mutual readiness to seek **bilateral solutions** to any disagreement that might arise.

The Government of Colombia reaffirms its irrevocable willingness to pursue the quest for consensus in this and any other matter that might arise with the sister Republic of Ecuador.

I would like to thank the Permanent Council for listening to these remarks.

ANNEX 80

Minutes of the First Meeting of the Bi-National Scientific-Technical Commission
(10 Apr. 2007)

MINUTES OF THE FIRST MEETING OF THE ECUADOR-COLOMBIA BINATIONAL SCIENTIFIC-TECHNICAL COMMISSION

In the city of Quito on the tenth day of the month of April of 2007, the First Meeting of the Ecuador-Colombia Binational Scientific-Technical Commission took place, with the Commission formally inaugurated by the Ecuadorian Vice-Minister of Foreign Relations, Trade and Integration, Ambassador Rafael Paredes Proaño.

After words of welcome and the inauguration of the binational meeting on the part of the Ecuadorian Vice-Minister, the meeting began, presided over by Dr. Elizabeth Bravo, President of the Ecuadorian Scientific-Technical Commission. The list of delegates is included as Appendix 1.

Dr. Alberto Gómez Mejía, President of the Scientific-Technical Commission of Colombia then offered his greetings.

The meeting was carried out according to the agenda proposed by the Ecuadorian delegation, which is included as Appendix 2.

The Ecuadorian delegation made a presentation on its scientific-technical position, emphasizing the methodological criteria of the centrality of human beings, the multidimensionality of the problem, and the precaution principle. This presentation was heard by the Colombian delegation, which made the comments and observations that it deemed pertinent, especially that it respected but did not agree with the content of the presentation. The Commission also commented that it would not discuss aspects apart from the drifting of spray. In its turn, the Ecuadorian Delegation stated that the work of the Commission should not center exclusively on the issue of aerial spraying drift.

The Commissions reached the following understandings:

- To exchange, before 27 April 2007, by diplomatic channels, documents with the respective scientific-technical substantiations to defend their positions.
- To hold the next meeting of the Binational Commission in Bogotá on 9 May 2007. In that meeting, the delegations will present their respective supporting arguments and continue with the advancement of issues regarding the work timeline and methodology.

- The Ecuadorian delegation will send to its counterpart an explanatory document regarding the content and the scope of the aforementioned methodological criteria which it proposed in the meeting.

In witness thereof, these minutes are signed by the presidents of the delegations of Ecuador and Colombia, in agreement and with equal validity, on the tenth day of the month of April of 2007.

FOR ECUADOR

[signature]
Dr. Elizabeth Bravo

FOR COLOMBIA

[signature]
Dr. Alberto Gómez Mejía

ACTA PRIMERA REUNION DE LA COMISION CIENTIFICO-TECNICA BINACIONAL ECUADOR-COLOMBIA

En la ciudad de Quito, a los diez días del mes de abril de 2007 tuvo lugar la I Reunión de la Comisión Científico - Técnica Binacional Ecuador Colombia, la misma que fue formalmente inaugurada por el Viceministro de Relaciones Exteriores, Comercio e Integración del Ecuador, Embajador Rafael Paredes Proaño.

Luego de las palabras de bienvenida e inauguración de la reunión binacional por parte del Vicecanciller ecuatoriano se inició la reunión, que fue presidida por la Dra. Elizabeth Bravo, Presidenta de la Comisión Científico - Técnica Ecuatoriana. La nómina de las delegaciones se incluye como Anexo 1.

Seguidamente expresó su saludo el Dr. Alberto Gómez Mejía, Presidente de la Comisión Científico –Técnica Colombiana.

La Reunión se desarrolló siguiendo la agenda propuesta por la delegación ecuatoriana, la cual se incluye como Anexo 2.

La Delegación ecuatoriana hizo una presentación sobre su posición científico – técnica, enfatizando en los criterios metodológicos de centralidad del ser humano, multidimensionalidad de la problemática y principio de precaución. Esta presentación fue escuchada por la Delegación colombiana que hizo los comentarios y observaciones que consideró pertinentes, especialmente que respetaba pero no compartía el contenido de la presentación, ni que la Comisión discutiera aspectos diferentes a la deriva de las aspersiones. A su vez, la Delegación Ecuatoriana expresó que el trabajo de la Comisión no debe centrarse exclusivamente en el tema de la deriva de las aspersiones aéreas.

Las Comisiones llegaron a los siguientes entendimientos:

- Intercambiar antes del 27 de abril de 2007, por vía diplomática, documentos con las respectivas sustentaciones científico- técnicas que respaldan sus posiciones.
- Realizar la próxima reunión de la Comisión Binacional en Bogotá el día 9 de mayo de 2007. En la misma, las delegaciones harán una exposición de sus respectivas sustentaciones y continuarán avanzando en los temas de cronograma de trabajo y la metodología.
- La Delegación ecuatoriana enviará a su contraparte un documento explicativo sobre el contenido y los alcances de los criterios metodológicos que ha propuesto en la presente reunión arriba mencionados.

En fe de lo cual, se firma la presente acta por los presidentes de las delegaciones del Ecuador y de Colombia, en dos ejemplares del mismo tenor e igual validez, a los diez días del mes de abril de 2007.

POR EL ECUADOR

Dra. Elizabeth Bravo

POR COLOMBIA

Dr. Alberto Gómez Mejía

ANNEX 81

Ecuadorian Scientific-Technical Commission,
Aide Memoire on the First Meeting (11 Apr. 2007)

AIDE-MÉMOIRE

On Tuesday, 10 April 2007, the First Meeting of the Binational Scientific-Technical Commission was held to deal with the issue of the aerial glyphosate sprayings being carried out by Colombia in its own territory, near the border with our country. Said meeting was inaugurated by the Vice-Minister of Foreign Relations, Commerce and Integration, Ambassador Rafael Paredes, who stated that the Ecuadorian government gives special attention to the work of the Commission, as it coincides with the well-being of the Ecuadorian border population and the environment. He further noted the necessity of concluding the proceedings with all possible haste, with the aim of putting an end to the harms being suffered by an important sector of Ecuador, and to be able to start a new cycle in the relations between the two countries.

The Ecuadorian delegation was headed by Doctor Elizabeth Bravo, and Colombia's by Doctor Alberto Gómez. Doctor Jaime Breilh, representing Ecuador, made a presentation on the scientific-technical position on the effects caused within Ecuadorian territory by the spraying being carried out by the Colombian Government, and he proposed, as a part of the methodology, adopting as criteria the need to consider the centrality of human beings, the multidimensionality of the problem, and the precautionary principle.

The Colombian delegation expressed that its presence was in compliance with the decision of the two governments to deal with the issue, and that it was directed to comply with the agreements made by the Foreign Ministries regarding the criteria for establishing the authority and the functioning of the Binational Scientific-Technical Commission, which indicated that in the first meeting a work timeline would be established and that issues related to methodology would be dealt with in the future. In addition, the Colombian representatives stated that they only had the authorization of the Colombian government to listen to the Ecuadorian position.

Moreover, Colombia stated that the problem with Ecuador should be addressed based on the technical-scientific discussion of the drifting of spray, a method to which the Ecuadorian side objected, believing that the

discussion could not solely be focused on the issue of drift, and that it must be studied from different points of view.

In this regard, Colombia proposed that in the next meeting, to be held in the city of Bogotá on 9 May, they be permitted to make a presentation on the technical-scientific aspects of the drift, and in which Ecuador could present its position before all the members of the Colombian Delegation.

On the other side, Ecuador stated the need, as part of the methodology, to carry out field visits to San Francisco I and II, Santa Marianita, Puerto Meztanza and Lago Agrio, which was not accepted by Colombia, as they believed that this would be to accept that glyphosate falls into Ecuadorian territory, which would contradict the official position that they were maintaining, and they included that, as Ecuador had threatened to sue Colombia for the spraying, this could constitute a pre-trial process.

Two other important issues considered in the meeting were related to the chemical composition used for the eradication of illicit crops and the precautionary principle. In the first case, Colombia expressed that this was a decision of its government that was not to be discussed at that table, and that it considered it an intervention into the internal affairs of Colombia; and, regarding the precautionary principle, they believed that it must first be proved that glyphosate passes into Ecuador to be able to enter into another type of consideration and to make a claim for the purposes of eventual reparations.

The Colombian Delegation also stated that the Ministry of the Environment carried out an environmental impact study and that aerial sprayings with glyphosate and its co-adjuvants have the respective licenses for usage, such that it could not be argued that Colombia was not respecting, in the sprayings carried out within its own territory, the precautionary principle.

The documents mentioned in the previous paragraph were requested by the members of the Ecuadorian Delegation from the Colombian representatives, who offered to make the necessary efforts to obtain them from the pertinent institutions and to send them in a timely fashion, so long as they were not classified. In addition, it was agreed that the Commission would exchange supporting scientific-technical substantiations to support their positions through diplomatic channels before 27 April 2007.

Finally, Ecuador offered to send its counterpart an explanatory document on the content and scope of the proposed methodological criteria, which are the centrality of human beings, the multidimensionality of the problem, and the precautionary principle.

In the afternoon and in an official manner, the President of the Colombian Commission expressed that he had been notified of the declarations of the President of the Republic of Ecuador, made on national radio the same day as the meeting, that he was tired of all of the diplomatic requests from Colombia, and that he questioned, therefore, the value of the Binational Scientific-Commission. Regarding this, it was explained that the Ecuadorian Head of State was referring to the incidents which had recently occurred on the border, to which Colombia had not responded, but that the Foreign Ministry believed that the function of this Binational Commission was of a clearly scientific-technical nature, and not of a diplomatic one, such that there was no reason for its operations to be affected.

Quito, on 11 April 2007

AYUDA MEMORIA

El día martes 10 de abril de 2007 se llevó a cabo la Primera Reunión de la Comisión Científico Técnica Binacional para tratar el tema de las aspersiones aéreas con glifosato que realiza Colombia en su territorio, cerca de la frontera con nuestro país. Dicha reunión fue inaugurada por el Viceministro de Relaciones Exteriores, Comercio e Integración, Embajador Rafael Paredes, quien expresó que el Gobierno ecuatoriano otorga especial atención a los trabajos de esta Comisión, los mismos que incidirán en el bienestar de la población fronteriza ecuatoriana y en el medio ambiente. Destacó además la necesidad de concluir sus trabajos a la brevedad posible a fin de suspender los daños que padece un sector importante del Ecuador y poder iniciar un nuevo ciclo en las relaciones entre los dos países.

La Delegación ecuatoriana estuvo presidida por la Doctora Elizabeth Bravo y la de Colombia por el Doctor Alberto Gómez. El Doctor Jaime Breilh, en representación de la Parte ecuatoriana hizo una presentación sobre la posición científico – técnica respecto a los efectos que en territorio ecuatoriano causan las aspersiones que realiza el Gobierno colombiano y planteó, dentro de la metodología, adoptar la necesidad de que se consideren los criterios de centralidad del ser humano, multidimensionalidad del problema y el principio de precaución.

La Delegación colombiana expresó que su presencia obedece a la decisión de los dos Gobiernos para tratar el tema y, que estaba dirigida a cumplir con lo acordado por las Cancillerías en cuanto a los criterios para establecer la competencia y funcionamiento de la Comisión Científico – Técnica Binacional que señala que en la primera reunión se establecerá un cronograma de trabajo y abordará los temas relacionados con la metodología. Además, los representantes colombianos manifestaron que tenían autorización del gobierno colombiano únicamente para escuchar la posición ecuatoriana.

Asimismo, Colombia manifestó que el problema con el Ecuador se debe centrar en la discusión técnica – científica sobre la deriva de las aspersiones, formulación que fue objetada por la Parte ecuatoriana, la que considera que no se puede enfocar la discusión solamente en el tema de la deriva y que hay que estudiarlo desde diferentes puntos de vista.

En este sentido, Colombia propuso que en la próxima reunión a realizarse en la ciudad de Bogotá, el 9 de mayo, se les permita hacer una presentación sobre los aspectos técnicos – científicos de la deriva y que en la misma, Ecuador vuelva a presentar su posición ante todos los miembros de la Delegación Colombiana.

Por otro lado, Ecuador planteó la necesidad de que, como parte de la metodología se realicen visitas de campo a San Francisco I y II, Santa Marianita, Puerto Meztanza y Lago Agrio, tema que no fue aceptado por Colombia, por considerar que eso sería aceptar que el glifosato cae en territorio ecuatoriano y que iría en contra de la posición oficial que ellos mantienen, incluso que como el Ecuador ha amenazado que demandaría a Colombia por las aspersiones, esto podría constituirse dentro de un proceso como una pre – prueba.

ANNEX 81

Otros dos temas importantes tratados en la reunión son los relacionados con la composición química utilizada para la erradicación de cultivos ilícitos y el principio de precaución. En el primer caso, Colombia manifiesta que esa es una decisión de su gobierno que no debe ser discutida en esa mesa y que lo considera una intervención en los asuntos internos de Colombia; y, en cuanto al principio de precaución, considera que primero se debe probar que el glifosato pasa al Ecuador para poder entrar en otro tipo de consideración y reclamar para efectos de eventuales reparaciones.

La Delegación colombiana manifestó también que el Ministerio del Ambiente realizó un estudio de impacto ambiental y que las aspersiones aéreas con glifosato y sus coadyuvantes tienen la licencia respectiva para su uso, por lo que no cabe argumentar que en Colombia no se respeta, en las fumigaciones que realiza en su territorio, el principio de precaución.

Los documentos mencionados en el párrafo anterior fueron solicitados por los miembros de la Delegación ecuatoriana a los representantes colombianos quienes ofrecieron hacer los esfuerzos necesarios antes las instituciones pertinentes para conseguirlos y remitirlos oportunamente siempre y cuando no sean clasificados como reservados. Asimismo, se acordó que por vía diplomática, la Comisión intercambiará las sustentaciones científico – técnicas que respaldan sus posiciones hasta antes del 27 de abril de 2007.

Finalmente, Ecuador ofreció enviar a su contraparte un documento explicativo sobre el contenido y los alcances de los criterios metodológicos propuestos, esto es, centralidad del ser humano, multidimensionalidad de la problemática y principio de precaución.

En horas de la tarde y de manera oficiosa, el Presidente de la Comisión colombiana expresó que le ha llamado la atención las declaraciones del señor Presidente de la República del Ecuador, formuladas ese mismo día de la reunión a una emisora nacional, en el sentido de que consideraba agotadas con Colombia todas las instancias diplomáticas y se preguntó por tanto qué valor tenía entonces la reunión de la Comisión Científica Binacional, a lo cual se le explicó que el Jefe de Estado ecuatoriano se refería a los incidentes que han ocurrido últimamente en la frontera y sobre los cuales Colombia no ha respondido, pero que la Cancillería estima que el funcionamiento de esta Comisión Binacional está fuera de este criterio por cuanto es de carácter netamente científico – técnico y no diplomático y que, por tanto, no tendría por qué afectar su funcionamiento.

Quito, a 11 de abril de 2007.

ANNEX 82

Minutes of Ecuador's and Colombia's Foreign Ministers Meeting
(28 May 2007)

REPORT
COLOMBIA-ECUADOR FOREIGN MINISTERS' MEETING
(QUITO 28.05.07).

[…]

Making it clear that the Colombia's fumigations does not involve joint military operations, the additional statements of Minister Araujo carried the following complementary message: "Aerial spraying are equal to security, but security is not equal to the other types of considerations which could impede the practice of the eradication of illicit crops when circumstances make its use necessary".

On the other hand, according to the Colombian Foreign Minister, there are no difficult issues in bilateral relations, if they are dealt with understanding and goodwill. "The difficulty is not the problem itself, but the methodology with which we approach it," added Araujo.

[…]
[PAGE 2]

The [Ecuadorian] Minister refers to the fact that it could be argued that there is an element of uncertainty related to the harmful effects of the broad-spectrum herbicide package used by Colombia, but emphasized that it is precisely that uncertainty which constitutes the same essence, and sufficient cause for that country to put the "Precautionary Principle" into immediate effect.

[…]

Colombia.- In his response, the Colombian Minister reiterated the concepts initially laid out; however, he expressed the fact that within these objectives of the dialogue, the need to reassume a positive agenda was necessarily included. He noted, in this context, that Colombia was at fault for not having met the 27 April deadline for the exchange of the Commissions' reports, while indicating that this report would be ready no later than 8 June, including all of the necessary information to clear the way for the second meeting of the two national commissions.

He later emphasized that the fact that Colombia has substantially increased manual eradication, a practice which has been carried out recently in more than 1,600 hectares of coca crops in the 10 km. band of

the territories bordering Ecuador, should be recorded as a very positive sign. He also added that in 2005, a total of 35,000 hectares throughout the Colombian territory were manually eradicated, 40,000 in 2006 and 50,000 in 2007, explaining that the Colombian goal was to reach 100,000 soon. He stated, in complement, that in this context one must not lose sight of the fact that the method in question includes high levels of insecurity for those who carry out the work, adding, however, that Colombia believes the aerial spraying does not reach Ecuador, and that in any case the effects are not grave. All of this was framed in an emphatic declaration in which he stated that there is no room for too much caution before the "Demon of Drug Trafficking".

In a brief reference to the visit of the United Nations' Special Rapporteur on the right to health, Professor Paul Hunt (12-19.05.2007), the Foreign Minister clarified that the indicated report was not binding for Colombia. He stated that it was treated as input that Ecuador could make good use of, and that said report had no more scope than that. Regarding this issue, the America's Director at the Colombian Foreign Ministry added that Professor Hunt only ventured to establish criteria, in addition to which he went so far as to make statements regarding issues on which Colombia and Ecuador had already reached resolutions (without detailing them).

[…]
[PAGE 3]
[…]

Colombia.- In the final speech on the issue, the Colombian Foreign Minister reiterated the conceptualization that was formulated at the beginning of the declarations, to later note that at the current time they were not confronted with the problem of aerial spraying since it had been suspended, an affirmation which served to establish the continuance of the meeting, taking on issues of a positive nature. He added, however, that Colombia was not in the position to make a commitment regarding the fumigation question, nor could it predict what decisions would be made in the future regarding this issue.

[…]
[PAGE 7]
[…]

II. ISSUES WHICH MUST BE FOLLOWED-UP ON

1. **Aerial Spraying:**
   - Bear in mind that the official position of the Colombian government remains unchanged, with no sign of an effective desire to reconcile itself with the Ecuadorian position, nor with the various requests formulated with respect to adopting corrective steps, at least partially, to the harmful practices of eradication of illicit crops being used by the neighboring country.
   - In this framework, the route of the Scientific Commissions is the only one which remains open.
   - In the eventuality that the Commission does not complete its report, the appropriateness of continuing with the "positive agenda" must be evaluated. As an additional element to this possible scenario, the appropriateness of moving to the court in The Hague must be introduced into said evaluation. I would appreciate receiving their valuable opinions and thoughts regarding these details.

[…]
[PAGE 8]
[…]

   - Maintain attention to the compliance with the 8 June deadline, which was self-imposed by Colombia for the submission of the scientific report of its commission, bearing in mind that at least 8 days should pass, starting from the effective date of the submission of the report, before the meeting can be held. It is anticipated that the Ecuadorian commissioners, maintaining the assumption that the report in question is submitted, will only be able to attend the meeting between the 2nd and 7th of July, due to their personal agendas. Colombia will be informed of this situation once the simultaneous exchange, by

diplomatic channels, of the respective scientific reports has occurred.

- It will be important to determine, exactly and before the II Meeting of the commissioners, whether Colombia has incorporated members who do not meet the strict nature of scientists into its group. It should be noted, in this respect, that the Ecuadorian commissioners have expressly indicated that, if this is the case, they will not attend or will leave the meeting.
- It must also be borne in mind that the national commissioners have expressed their decided desire to be provided with appropriate security measures upon their arrival in Bogota and as they move throughout the city. The accusations against Doctor Paz y Miño, which appeared referentially in an article in El Espectador, led them to this request.
- Attention should be paid to following the possibility of official declarations regarding the initial statements of Special Rapporteur Paul Hunt.

[…]

RELATORIA
REUNIÓN CANCILLERES ECUADOR COLOMBIA (QUITO 28.05.07).

Como previamente se había acordado, los Ministros de Relaciones Exteriores de Ecuador, María Fernanda Espinosa, y de Colombia, Fernando Araújo Perdomo, mantuvieron, el 28 de los corrientes, en la sede de la Cancillería ecuatoriana, un diálogo abierto y franco en el que abordaron la agenda positiva bilateral e igualmente los asuntos conflictivos de la relación de vecindad.

No se llevaron a cabo negociaciones, sino únicamente una revisión general de temas, frente a los que los Cancilleres definieron claramente sus posiciones en los términos que seguidamente se registran:

1. Aspersiones Aéreas.

Colombia.- De los pronunciamientos del Canciller Araújo se desprendió, una vez más, que la posición oficial de su Gobierno se sustenta en el concepto matriz de una "Colombia Segura", considerada como factor fundamental para la estabilidad regional. La seguridad regional se estima fundamental para la de América del Sur y la del continente entero, y en consecuencia, la seguridad de Colombia se concibe, desde la perspectiva oficial de ese país, como un asunto que interesa a todos y respecto al que todos deben cooperar.

Dejando en claro que la aspiración colombiana no involucra operaciones militares conjuntas, los adicionales pronunciamientos del Canciller Araújo transmitieron el siguiente mensaje complementario: "Las aspersiones aéreas son igual a seguridad, pero la seguridad no es igual a otro tipo de consideraciones que pudieran impedir esa práctica de erradicación de cultivos ilícitos, cuando las circunstancias determinaren que su utilización fuere necesaria".

De otra parte, según el Canciller Colombiano no existen temas difíciles en la relación bilateral, si se los aborda con comprensión y buena voluntad. "La dificultad no es el problema en sí mismo, sino la metodología con la que se lo aborde", añadió Araújo.

Ecuador.- La Canciller María Fernanda Espinosa Garcés, inició su intervención aclarando que el marco del diálogo mantenido el día de ayer era "la voluntad ecuatoriana de profundizar, en positivo, las relaciones con Colombia", partiendo de un sentimiento de afecto sentido y verdadero. Señaló que en ese marco tenían que también tratarse los temas difíciles, con responsabilidad y sin perder de vista a la opinión pública, ahora muy bien informada respecto al asunto de las aspersiones aéreas y sus implicaciones. Con esta introducción, la Ministra demandó la intensificación sustantiva del método de erradicación manual, al tiempo que expresó que sería de gran aliento escuchar un pronunciamiento positivo por parte de Colombia en tal sentido. Manifestó, además, que la intensificación de la erradicación manual tendría que ponerse en práctica, esencialmente, en la franja de territorios que bordean el cordón fronterizo con Ecuador.

La Ministra se refirió a que podría argumentarse que existe un componente de incertezas en lo que se refiere a los efectos dañinos del paquete herbicida de amplio espectro utilizado por Colombia, pero enfatizó que son precisamente esas incertezas las que constituyen la esencia misma y razón de ser suficientes para que ese país ponga en inmediata práctica el "Principio de Precaución".
A partir de esta declaración, la Canciller concluyó en que era evidente e indispensable la necesidad de que avancen los trabajos de las Comisiones Científicas Técnicas Ecuatoriana y Colombiana, razón por lo que solicitó que el Gobierno Colombiano empeñe esfuerzos para que se lleve a cabo, lo más pronto posible, la Segunda Reunión conjunta de dichas comisiones, sobre la base de las evidencias existentes y con el objetivo de llegar a conclusiones, a lo que añadió, a título de postura nacional definitiva, que ya no cabían, ni eran necesarios más informes, ni nuevas investigaciones.

El Viceministro de Relaciones Exteriores Ecuatoriano agregó que Ecuador no discrepa con el concepto colombiano de seguridad, pero en cambio precisó que era ineludible que Colombia tenga paralelamente presente el concepto que inspira al Ecuador, que no es otro que el de la "Seguridad Humana".

Colombia.- En su réplica, el Ministro Colombiano reiteró los conceptos inicialmente vertidos; sin embargo de lo cual expresó que entre los objetivos del diálogo necesariamente estaba inscrita la necesidad de retomar la agenda positiva. Registró, en ese contexto, que Colombia se disculpaba por haber incumplido el plazo del 27 de abril para el intercambio de los informes de las Comisiones, a la vez que señaló que el mismo estaría listo para el 8 de junio, a mas tardar, con lo cual quedaría expedito el camino para el segundo encuentro de las dos comisiones nacionales.

Luego enfatizó que debía registrarse como un señal muy positiva, el hecho de que Colombia había incrementado sustancialmente la erradicación manual, practica que recientemente se había ejecutado sobre más de 1.600 hectáreas de cultivos de coca en la franja de los 10 Km. de los territorios colindantes con Ecuador. Añadió también que en el año 2005 se erradicaron manualmente un total de 35.000 hectáreas en todo el territorio colombiano, 40.000 en el 2006 y 50.000 en el 2007, explicando que la aspiración colombiana era llegar pronto a 100.000. Dijo, complementariamente, que en este contexto no podía perderse de vista que el método en cuestión incluye altos índices de inseguridad para quienes realizan el trabajo, para añadir, sin embargo, que Colombia cree que las aspersiones aéreas no llegan al Ecuador, y que en cualquier caso los efectos no son graves, todo esto en el marco de una enfática frase con la que sentenció que frente al "Demonio del narcotráfico" no hay espacio demasiadas prudencias.

En una breve referencia a la visita del Relator Especial de Naciones Unidas para el derecho a la salud, Profesor Paul Hunt (12-19.05.2007), el Canciller puso en claro que el indicado reporte no era vinculante para Colombia. Manifestó que se trataba de un insumo del que Ecuador haría el uso que a bien tuviera, y que tal reporte no tenía más trascendencia que eso. Respecto a este tema, el Director de América de la Cancillería Colombiana añadió, que el Profesor Hunt sólo aventuraba criterios, además de que se había atrevido a opinar sobre asuntos respecto a los cuales Colombia y Ecuador ya habían llegado a definiciones (sin precisarlas).

Ecuador.- La Ministra de Relaciones Exteriores registró su beneplácito por la noticia de que la Comisión colombiana estaría por entregar el respectivo informe,

concordando con su homólogo en que el particular viabilizaría el encuentro que se halla pendiente desde el pasado 9 de mayo.

En respuesta a los otros cometarios colombianos, la Canciller Ecuatoriana destacó el hecho de que los dos países no habían logrado ponerse de acuerdo en temas proclamados como fundamentales por Colombia, como el del informe de la CICAD, en vista de que ese organismo representa una instancia de lucha contra el narcotráfico, y por lo mismo, actúa como parte interesada. Dijo que es ilustrativo el hecho de que Colombia fuera el único país que pone en práctica las aspersiones aéreas, mientras que, por ejemplo, Afganistán se había negado rotundamente a la utilización de tal práctica arguyendo efectos dañinos sobre la salud, añadiendo que son estas circunstancias, entre otras, las que sustentaron la invitación que el Ecuador formuló al Relator Especial.

Frente a las acotaciones hechas en contra del informe provisional del Relator, la Ministra fue enfática en señalar que el Profesor Hunt había venido extremadamente bien informado y que contaba con un equipo calificado de colaboradores. Añadió que sus pronunciamientos estaban basados, tanto en testimonios científicos, como en constataciones oculares y testimonios humanos directamente recogidos en entrevistas con los afectados, llevadas a cabo en las localidades donde los hechos tuvieron lugar. La Canciller manifestó además que en nuestro país los pobladores de la región pueden hablar libremente. Finalizó reiterando, una vez más, que en cualquier caso en el que hayan incertezas de por medio, habrá espacio justificado para la aplicación del "Principio de Precaución", como coincidentemente apuntó el Profesor.

Colombia.- En la intervención final sobre el tema, el Canciller colombiano reiteró la conceptualización que formuló al inicio de sus declaraciones, para luego acotar que en el momento actual no se enfrentaba el problema de las aspersiones aéreas en cuanto que se hallaban suspendidas, afirmación de la que se sirvió para plantear el proseguimiento de la reunión abordando los temas de carácter positivo. Añadió, sin embargo, que Colombia no está en condiciones de hacer compromisos respecto a la cuestión de las fumigaciones, y que tampoco podía prever qué decisión tomará en el futuro a este respecto.

2. Fosas Comunes.

Ecuador.- La Canciller Ecuatoriana se refirió al tema calificándolo de "doloroso", y respecto al cual el Ecuador deseaba ver señales positivas que apuntaran a concretar facilidades para que los representantes nacionales (procuradores judiciales, familiares, funcionarios diplomáticos) puedan participar y actuar en los procedimientos legales que las autoridades colombianas están ejecutando para la verificación de identidades, causas de los decesos, y determinación de los responsables de los mismos. Enfatizó en la preocupación que ha generado el señalamiento inicial de que se habrían identificado ya 8 cadáveres de connacionales, subrayando que el esclarecimiento sobre este particular constituía una urgente prioridad para el Ecuador.

Colombia.- El Ministro Colombiano empezó por precisar que no eran 8, sino 3 los cadáveres ya identificados como ecuatorianos, para luego registrar que existe la mayor disposición por parte de su Gobierno respecto a prestar la más amplia colaboración en el tema, sin embargo de lo cual precisó que era un obstáculo la inexistencia de un convenio binacional en materia jurídica y procesal, razón por la que

sería resuelta el próximo 21 de junio, a partir del levantamiento del régimen de licencias previas para la importación.

Especial relevancia tuvo la manifiesta reiteración que hizo el Canciller colombiano, respecto del apoyo que su país y Gobierno prestan a la aspiración ecuatoriana de ser sede de la UNASUR, e igualmente, a que el ex Presidente Rodrigo Borja sea elegido como Primer Secretario General del organismo.

9. APEC:

Los dos Cancilleres expresaron su coincidencia en la necesidad de apoyar la conformación de un mecanismo, no institucionalizado, que reúna a los países sudamericanos ribereños del Pacífico, en la perspectiva de concertar políticas de acción y cooperación para conformar un frente común que tuviera entre sus objetivos, el de fortalecer las aspiraciones de Ecuador y Colombia respecto a lograr su incorporación en el APEC, y a participar de manera más activa, beneficiosa y determinante en el esquema Asia-Pacífico en general.

10. Temas consulares:

En cuanto a estos temas la contraparte colombiana registró varias inquietudes, entre las que destacan la aspiración de ese país en el sentido de que la migración colombiana sea vista y gestionada desde la perspectiva de los Derechos Humanos, perspectiva en la que mencionó sería deseable se arribe a un Convenio Binacional de Regularización Migratoria. También mencionó su aspiración de lograr un Convenio que aborde el tema de los migrantes temporales, así como la facilitación de las "visas de amparo" y exoneración de visas en determinados casos particulares.

La contraparte ecuatoriana expresó que estos asuntos deberían merecer especial tratamiento en el marco de la Comisión de Vecindad.

II. TEMAS SOBRE LOS DEBE HACERSE SEGUIMIENTO.

1. Aspersiones Aéreas:

- Tener presente que la postura oficial colombiana se mantiene invariable, sin que tampoco se pueda registrar signo alguno respecto a una efectiva voluntad conciliadora, ni con la posición ecuatoriana en su conjunto, ni con los diversos pedidos formulados respecto a adoptar correctivos, al menos parciales, en las dañosas prácticas de erradicación de cultivos ilícitos utilizados por el vecino país.
- En este marco, la vía de las Comisiones Científicas es la única que restaría abierta.
- En la eventualidad de que la Comisión no llegue a un informe, debe evaluarse la pertinencia de continuar con el tratamiento de la denominada "agenda positiva". Como elemento adicional de este posible escenario, habrá que introducir en la referida evaluación, la pertinencia de pasar a la instancia de La Haya, particulares sobre las que apreciaré recibir sus valiosas opiniones y reflexiones.

- Mantener atención respecto al cumplimiento del plazo del 8 de junio, que se ha auto impuesto Colombia para la entrega del informe científico de su comisión, teniendo presente que deberán transcurrir por lo menos 8 días a partir de fecha efectiva de la entrega antes que se pueda producir la reunión. Cabe anticipar, en este plano, que los comisionados ecuatorianos, aún en el supuesto que la entrega en cuestión se produzca, sólo podrán concurrir a la reunión entre el 2 y el 7 de julio, en razón de sus agendas personales. De esta situación será informada Colombia una vez que se ha ya producido el intercambio simultaneo, por vía diplomatica, de los respectivos informes científicos.
- Sería importante determinar, con exactitud y anticipadamente a la celebración de la II Reunión de las comisiones, si efectivamente Colombia ha incorporado en la suya, miembros que no tengan el estricto carácter de científicos. Cabe recordar, a este respecto, que los comisionados ecuatorianos han sido expresos en señalar que, si ese fuera el caso, ellos no concurrirán o se retirarán del encuentro.
- Debe también tenerse presente, que los comisionados nacionales han expresado su decidida aspiración a que se les provea de las pertinentes medidas de seguridad a su llegada a Bogotá, y durante sus desplazamientos en esa ciudad. Las acusaciones contra el doctor Paz y Miño, aparecidas referencialmente en un artículo de El Espectador, les ha conducido a tal planteamiento.
- Conviene mantener atento seguimiento al eventual hecho de que hubieran declaraciones oficiales respecto a los pronunciamientos iniciales del Relator Especial Paul Hunt.

2. **Fosas Comunes:**

- Es necesario emprender en los contactos y reuniones necesarias para establecer con precisión las vías de la posible participación ecuatoriana en los procesos de identificación de los restos sepultados en las fosas comunes, dedicando especial atención a lo que Colombia ha calificado como la modalidad de "cooperación técnica".
- Habrá que definir claramente el procedimiento y requisitos que deberán llenar y cumplir los interesados ecuatorianos para poderse "constituir en parte civil", e igualmente establecer un acuerdo operativo para que el tema sea debidamente canalizado por intermedio de las respectivas cancillerías y embajadas .

3. **Indemnizaciones por incidentes fronterizos:**

- Se requiere establecer con precisión cuales serían las ventajas del "Procedimientos de Conciliación" propuesto por Colombia, frente a los normales procedimientos y causas judiciales. Así mismo, habrá que definir los casos tipo que pueden someterse a tal procedimiento, junto a los requisitos y trámites que deben llevar a cabo los interesados para poder acogerse a este supuesto beneficio.

- Habría que adelantar contactos para viabilizar un eventual encuentro entre los interesados ecuatorianos y los pertinentes funcionarios de la Procuraduría colombiana.
- Respecto al caso de "Pueblo Nuevo", es necesario establecer si sería más ventajoso acogerse al "Procedimientos de Conciliación", o mantenerse en la ya iniciada vía legal.

4. Comisión de Vecindad y Proyectos de Desarrollo Fronterizo.

- De cara a las definiciones relacionadas con este asunto, necesariamente se debe estar a la expectativa de cómo se concreten los temas relacionados con la Comisión Científico Técnica, pero bien se puede adelantar el criterio ecuatoriano en tres cuestiones:
  - La XVI Reunión de la Comisión de Vecindad debe realizarse en los últimos días del mes de julio;
  - Amén de que se incluyan muy contados nuevos temas en la agenda, la reunión debe tener, fundamentalmente el carácter de una reunión de seguimiento, a efectos de impulsar un efectivo avance en el tratamiento de los asuntos prioritarios.
  - Debería tenerse como asunto central de la reunión, la adopción de una metodología de trabajo concertada, que incluya la adopción de una matriz y una ficha modelo para la calificación y presentación de los proyectos de desarrollo. El Ecuador correría con la responsabilidad de presentar las respectivas propuestas.

MEMORIAL OF ECUADOR

ANNEX 83

Ecuadorian Scientific-Technical Commissions, *Report on the Second Meeting*
(9 July 2007)

BINATIONAL MEETING II OF THE COLOMBIA- ECUADOR SCIENTIFIC COMMISSIONS
Bogota, 9 July 2007

Report

Participants.-

Ecuadorian Scientific Commission (CCE):

Elizabeth Bravo (president)
Ramiro Avila
Jaime Breilh
Arturo Campaña
César Paz y Miño
Luis Peñaherrera
Mario Guerrero
Jaime Barberis

Colombian Scientific Commission (CCC):

AIberto Gómez (President)
Elizabeth Hodson
Carolina Sofrony
Gonzalo Andrade
Ricardo Montenegro
Antonio Tunjano

The Ambassador of Colombia to Ecuador and several officials of the Colombian Foreign Ministry also attended the meeting.

Accomplished Agenda Items.-

1. **Reading** of documents drafted by each one of the respective commissions concerning the scientific documents of their counterparts. The position document of the CCE is appended hereto.

2. Presentation of **positions** on how to continue the scientific dialogue.

   - COLOMBIA: proposed to agree on a methodology to carry out risk assessment studies to quantify the drift and the persistence of glyphosate and to evaluate the acute, sub-acute and chronic toxicity of glyphosate. Suggests the possibility of a fact-finding trip to the same area visited by the U.N. Special Rapporteur on the right to health (Mr. Paul Hunt), and to some location in Colombia where sprayings are carried out in order to understand the process. And they declared that they lacked the competence to recommend to their government that the fumigations be suspended, given that they considered this issue to be a political one, and for that reason to be outside of their scientific-technical character.

- **ECUADOR:** Ratifies the report and in the additional statement presented, which establishes a solid collection of arguments that justify the immediate application of the precautionary principle, as it is based in the presented, by basing it on sufficient scientific literature, field studies and systematic observations, verifications, and testimonies, many of which where collected and carried out by the commissioners themselves.

The CCE's proposal, for any scientific dialogue, was to start from the following premises:

- Glyphosate is not harmless to health and to the environment;
- The problem is not limited to glyphosate and drift;
- The precautionary principle must be applied, as there are well-sustained scientific doubts and technical disagreements;
- While the scientific dialogue is underway, aerial sprayings should be suspended within a 10-km strip from the border line;
- If joint studies are carried out, their purpose should be to assess the damage and establish compensation measures.

3. Identification of several **scientific disagreements** that reflect different approaches to and conceptualizations of the issue.

a) The CCE argues that the logic with which the sprayings have been carried forward a military logic with high impact; the CCC argues that it is a logic of fighting drugs, with low risks.

b) The CCC argues that scientific tasks cannot be limited to a so-called "risk assessment", not least because the purpose of that analysis is to allow a permissive management of risks, a view that opposes that of the CCE, which argues that the issue cannot be reduced to risk management, but must involve putting an end to the impacts caused by sprayings and providing comprehensive reparations.

c) The CCE does not share the view that the only valid scientific school of thought is the one that is solely based on factual evidence, of the cause and effect type, or on an unilateral view of bio-ecology, because this is a reductionist approach that fails to take into account the complexity of how processes are determined, the dynamism of which is not reduced to immediate effects, but also includes cumulative, synergic effects in the medium- and long- term.

d) This complexity demands that the issue is addressed from an interdisciplinary point of view: social, biological, environmental, economic, health (physical and mental), issues that are absolutely rejected by the Colombian Commission. The CCE believes that the interpretative paradigm of 21st century science has overcome the linear or positivist perspective that the CCC tries to impose.

e) The CCE disagrees with several technical criteria of the CCC regarding the evaluation of the environmental dynamics of the herbicide package.
f) The CCE disagrees with the methodological criteria followed by Colombia regarding basic matters such as sample design and on the appreciation of the objective value of the testimonies of affected communities which form part of the basis of analysis for conflicts regarding the evaluation of environmental impacts.
g) Although the UN report specifies that there are health, social and other problems caused by the neglect of the border regions by the State, an argument used by the CCC to disconnect the area's problems from the PECIG, the analyses and evidence supplied by the CCE show that the trends and gradients found as a function of distance, and the nature of the impacts that have been evaluated do not warrant this alleged secondary association advanced by the CCC to exempt Colombia from any responsibility. We believe that, although there exists a basic vulnerability caused by problems inherited from previous times, against which the country has launched a concrete action plan. The line of reasoning used by the CCC is aimed at a known strategy of blaming victims and poverty.

Based on the previous arguments, the CCE reaffirmed that there are sufficient elements to demand the immediate application of the **precautionary principle,** which must be enforced, according to international norms (Rio Declaration, Principle XV) when:

a) There are threats of damage, and according to scientific information, reports of UN Rapporteurs and field studies, such damage is indeed occurring in border communities.
b) There is lack of full scientific certainty. The debate and disagreement between the two commissions is evidence of this fact.
c) There is a legitimate purpose, which is to protect health and the environment.
d) There are adequate and effective means, which, in this case, are the suspension of sprayings that may continue causing severe and/or irreversible damage, and the evaluation of damages caused to the population in Ecuadorian territory.
e) There is a legal duty to enforce it, when the other elements are present. This duty is reinforced by the existence, in Ecuador, of a constitutional legal norm (the Political Constitution of Ecuador, Art. 91) and a resolution of the Constitutional Tribunal.

4. Discussion of **conclusions**:

The COLOMBIA Scientific Commission argued that accepting the Ecuadorian premises was not a scientific but a political proposition, and they were not authorized to accept them. They proposed signing a minute that contained a supposed willingness to continue talks as well as field studies.

The ECUADOR Scientific Commission argued that it could only continue the dialogue based on the recognition of the scientific reports of the damages and a comprehensive approach that warrant the immediate application of the precautionary principle. The CCE proposed signing a minute stating the

disagreement, the proposals and the conclusions. Colombia, arguing necessity of not revealing the disagreement, adamantly refused to sign it, although emphasis was placed on the fact that the minute should contain facts, not political assessments. The CCE also refused to sign the minutes as proposed.

Each commission was entrusted with reporting the results of the meeting to their respective Foreign Ministries.

As a result of the aforementioned, our conclusions are:

1. - The CCE recognizes that a dialogue between both commissions is impossible.

2. - The reports presented by the CCC (Colombian Scientific Commission) are neither scientific nor independent studies, nor do they seek to understand whether or not there are health problems associated with the PECIG. Instead they seek to justify their use as "the lesser evil." Furthermore, the CCC cannot come to a consensus unless it has been previously accepted by the political authorities in that country.

3. - It is our understanding that given these circumstances, the Bi-national Scientific Commission, created to solve the border issues, will never come to a scientific agreement where the independence of both parties is absolutely necessary.

4. - Because of all this and facing the impossibility of a dialogue, we consider it appropriate to request that the President of the Republic of Ecuador dissolve the Ecuadorian side of the Scientific Commission (whose mandate ended 10 July 2007) and initiate other actions aimed at resolving the conflict regarding spraying on the border, given the impossibility of a scientific dialogue with the Colombian side.

With this document we hereby fulfill our commitment to inform the Foreign Ministry about the results of the 2nd Bi-National Meeting of the Scientific Commissions of Ecuador and Colombia. We thank Mr. President Rafael Correa and Minister María Fernanda Espinosa for having relied on our services to accomplish this task in support of our country and the border communities affected by the PECIG.

Sincerely,

Elizabeth Bravo (President)
Ramiro Ávila
Jaime Breilh
Arturo Campaña
César Paz y Miño
Luis Peñaherrera

MEMORIAL DE ECUADOR

ANEXO 83

Comisión Técnico Científica del Ecuador, *Reporte de la Reunión Binacional* (9 de julio de 2007)

II REUNION BINACIONAL COMISIONES CIENTÍFICAS
COLOMBIA-ECUADOR
Bogotá, 9 de julio de 2007

Informe

Participantes.-

Comisión Científica Ecuatoriana (CCE):

Elizabeth Bravo (Presidenta)
Ramiro Ávila
Jaime Breilh
Arturo Campaña
César Paz y Miño
Luis Peñaherrera
Mario Guerrero
Jaime Barberis.

Comisión Científica Colombiana (CCC):

Alberto Gómez (Presidente)
Elizabeth Hodson
Carolina Sofrony
Gonzalo Andrade
Ricardo Montenegro
Antonio Tunjano

Además se incorporaron el Embajador de Colombia ante el Ecuador y algunos funcionarios de la Cancillería Colombiana.

Agenda cumplida.-

1. **Lectura** de los documentos que cada una de las respectivas comisiones habían preparado sobre los documentos científicos de su contraparte. El documento de posición de la CCE se anexa a este informe.

2. Presentación de las **posiciones** sobre cómo continuar el diálogo científico:

   - COLOMBIA: propone acordar una metodología para llevar a cabo estudios de evaluación de riesgo, para cuantificar la deriva y la persistencia del glifosato, y para evaluar la toxicidad aguda, sub-aguda y crónica del mismo. Sugiere la posibilidad de hacer un viaje de verificación a la misma zona ecuatoriana visitada por el Relator de Naciones Unidas sobre salud (Sr. Paul Hunt), y en algún lugar de Colombia donde se estén llevando a cabo las aspersiones para que entendamos su proceso. Y se declara incompetente para recomendar a su gobierno la suspensión de las aspersiones, puesto que las considera enmarcadas en el ámbito político y por tanto ajenas a su condición científico-técnica.

- ECUADOR: se ratifica en el informe y en el pronunciamiento complementario presentado, en el que se consolida un sólido conjunto de argumentos que justifican la inmediata aplicación del principio de precaución, por basarse en presentado, por basarse en suficiente bibliografía científica, en estudios de campo y en observaciones sistematizas, verificaciones y testimonios, muchos de ellos recogidos y realizados por los propios comisionados.

  La propuesta de la CCE, para sostener y dar continuidad a cualquier dialogo científico, fue la de partir de las siguientes premisas:

  - El glifosato no es inocuo para la salud y el ambiente;
  - El problema no se reduce al glifosato y la deriva;
  - El principio de precaución debe aplicarse por existir duda científica y disenso técnico bien sustentados
  - Mientras dure el diálogo científico deben suspenderse indefinidamente las aspersiones aéreas en una franja de 10 Km. contados desde la línea de frontera.
  - De acordarse la realización de estudios conjuntos, estos deberían tener como finalidad evaluar el daño y establecer medidas de compensación.

3. Identificación de algunos **disensos científicos** que reflejan enfoques y conceptualizaciones distintos sobre la problemática:

a) La CCE sostiene que la lógica con que se han llevado a cabo las aspersiones es una lógica militar y de alto impacto; la CCC sostiene que es una lógica de lucha contra las drogas y de bajo riesgo.

b) La CCC sostiene que la tarea científica debería reducirse a la llamada "evaluación de riesgo", pues no solo que ese tipo del análisis tiene como objetivo un manejo permisivo del riesgo, contraponiéndose este criterio al de la CCE, que sostiene que la problemática no se reduce al manejo del riesgo sino a terminar con los impactos demostrados debido a las aspersiones y su reparación integral.

c) La CCE no comparte el punto de vista de que la única escuela científica válida sea la que se sustenta exclusivamente en evidencias fácticas, tipo causa-efecto, ni tampoco una visión de carácter únicamente eco-toxicológico, porque este es un enfoque reduccionista que no toma en cuenta la complejidad de la determinación de los procesos, cuyo dinamismo no se reduce al efecto inmediato, sino a resultados acumulativos, sinérgicos, a mediano y largo plazo.

d) Esta complejidad demanda que la problemática sea abordada desde la interdisciplinariedad: social, biológica, ecológica, económica, de salud física y mental, problemática negada de plano por la comisión colombiana. La CCE considera que el paradigma interpretativo de la ciencia del siglo XXI ha superado definitivamente el enfoque lineal y positivista que pretende ser impuesto por la CCC.

e) La CCE discrepa con varios criterios técnicos de la CCC, en lo que tiene que ver con valoración de la dinámica ambiental del paquete herbicida.

f) La CCE discrepa con los criterios metodológicos seguidos por Colombia en asuntos básicos como el diseño muestral y en la apreciación del valor objetivo de testimonios de las comunidades afectadas que en el mundo entero forman parte de la base de análisis de conflictos de valoración de impactos ambientales.

g) Si bien el informe de las Naciones Unidas puntualiza que existen problemas de salud, sociales y otros, debido al abandono del Estado en las regiones fronterizas, lo que ha sido recogido por la CCC para desvincular los problemas de la zona con el PECIG, los análisis y evidencias proporcionados por la CCE demuestran que las tendencias y gradientes encontrados según intervalos de distancia, y el carácter de los impactos que se valoran, no permiten justificar esa supuesta asociación secundaria que esgrime la CCC para deslindar la responsabilidad de Colombia. Consideramos que, si bien hay una vulnerabilidad de base, ocasionada por problemas heredados de tiempos precedentes, y frente a los que el país ha iniciado un plan de acción concreta. La línea de razonamiento aplicada por la CCC se enfila en una conocida estrategia de culpabilizar a la víctima y a la pobreza.

En base de los argumentos anteriores, la CCE, se reafirmó en que existen suficientes elementos demandar la inmediata aplicación del **principio de precaución**. El mismo que debe aplicarse, según los estándares internacionales (Declaración de Río, Principio XV) cuando:

a) Existe peligro de daño, lo que de acuerdo a la información científica, informes de relatores de Naciones Unidas y estudios de campo, sí ocurre en las poblaciones fronterizas.
b) Existe falta de certeza científica. El debate y disenso entre las dos comisiones revela este elemento.
c) Existe un fin legítimo, que es la protección de la salud y el ambiente.
d) Existen los medios adecuados y eficaces, que, en este caso, son la suspensión de las aspersiones que pueden seguir provocando daños severos y/o irreversibles y la constancia suficiente de los daños infringidos a la población en territorio ecuatoriano.
e) Existe un deber jurídico para aplicarlo, ya que se cumplen los otros elementos. Deber que se refuerza por existir, en el Ecuador, una norma jurídica constitucional (Constitución Política del Ecuador, Art. 91) y una resolución del Tribunal Constitucional.

4. Discusión de **conclusiones**:

La CC COLOMBIA sostuvo que aceptar las premisas ecuatorianas no era un planteamiento científico sino político y que no tenían autorización para aceptarlas. Propusieron firmar un acta en la que conste una supuesta disposición al diálogo y la voluntad de seguir con estudios de campo.

La CC ECUADOR sostuvo que sólo podría continuar el diálogo en base al reconocimiento de los informes científicos sobre el daño y un abordaje integral, que justifican la inmediata aplicación del Principio de Precaución. La CCE propuso

suscribir un acta en la que conste el disenso, las propuestas y las conclusiones. Colombia, arguyendo la necesidad de no exteriorizar el disenso, se negó categóricamente a suscribirla a pesar que se enfatizó en que el acta contiene hechos y no valoraciones políticas. Tampoco la CCE concedió suscribir un acta del tipo propuesto.

No hubo acta, y cada comisión se encargaría de informar a sus Cancillerías sobre los resultados de la reunión.

Por todo lo mencionado nuestras conclusiones son:

1.- La CCE reconoce que el diálogo entre ambas comisiones es imposible.

2.- Los informes presentados por la CCC no son estudios ni científicos, ni independientes, ni buscan entender la afectación o no del PECIG, sino justificar su uso como "un mal menor". Además, la CCC no puede llegar a consensos si no es aceptado previamente por las instancias políticas de ese país.

3. - Es de nuestro entender que ante estas circunstancias la Comisión Científica Binacional, que fuera creada para dilucidar los problemas de la frontera, jamás llegará a un acuerdo científico donde es absolutamente necesario la independencia de las partes.

4.- Por todo ello, y ante la imposibilidad de diálogo, consideramos pertinente solicitarle al Sr. Presidente de la República del Ecuador que disuelva esta Comisión Científica del lado Ecuatoriano (cuyo mandato terminó el 10 de julio del 2007) e inicie otras acciones tendientes a solucionar el conflicto fronterizo de las aspersiones, dado la imposibilidad del diálogo científico con la contraparte colombiana.

Cumplimos así, mediante la presente, el compromiso de informar a nuestra Cancillería sobre los resultados de la II Reunión Binacional de las Comisiones Científicas de Ecuador y Colombia, y agradecemos al Señor Presidente Rafael Correa y a la canciller María Fernanda Espinosa el haber contado con nuestros servicios para realizar esta labor de apoyo a la Patria, y de las comunidades fronterizas afectadas por el PECIG.

Atentamente,

Elizabeth Bravo (Presidenta)
Ramiro Ávila
Jaime Breilh
Arturo Campaña
César Paz y Miño
Luis Peñaherrera

ANNEX 84

Ecuadorian Scientific-Technical Commission *Aide Memoire on the Second Meeting*, (9 July 2007)

CONFIDENTIAL

AIDE MEMOIRE
SECOND MEETING OF THE SCIENTIFIC COMMISSIONS OF ECUADOR AND COLOMBIA TO STUDY AND ANALYZE THE ISSUE OF AERIAL SPRAYING AND THE EFFECTS IT PRODUCES ON THE ECUADORIAN BORDER
Bogotá, Palace of San Carlos, 09.07.2007

1. Relevant Points:

1.1. Colombia literally and fully ratified the position that it has maintained since the beginning of the aerial sprayings in October 2000. The Scientific Commission of Colombia expressed in writing that "*for the Government of Colombia, aerial spraying with a mixture of Glyphosate, CosmoFlux and water for the eradication of illicit coca crops do not enter Ecuadorian territory, and therefore, do not produce harmful effects, either to communities or to the natural environment of Ecuador. Accordingly, they cannot be the source or cause of the eventual harmful effects alleged by Ecuador"*. On the other hand, it stated that, *"although aspects related with the complex issue of the production, trafficking and consumption of illicit drugs have been mentioned, the technical discussion is limited to the drift of sprayings...*"

1.2. Acting accordingly, the Colombian Commission discredited the report of its Ecuadorian counterpart, branding it as "inconsistent", "lacking scientific rigor", "speculative" and "baseless", unjustified adjectives to which it added that the Ecuadorian document contained "fallacious accusations" against the Colombian Administration.

1.3. Faced with these declarations, the Ecuadorian Delegation, in turn:

i.) Recalled that the Commissions were established with the purpose of studying and analyzing the issue of aerial sprayings and their effects on the Ecuadorian border; and,

ii.) Stated that, in the context of these ideas, it could not accept the document delivered by Colombia, because its extra-scientific nature shifted the debate to fields other than those agreed upon, focusing on the justification of the eradication of illicit crops, and diverting it from the core question of the human and environmental damages generated by the aerial sprayings, a fundamental concern for Ecuador.

1.4. Thus ended the first round of conversations and in view of the huge gap existing between the positions of both countries, Ecuador proposed to launch a conceptual dialogue, because the only possibility for reaching agreementwas in the area of methodologies and this would continue the viability of the negotiation. Accordingly, it laid down the following criteria:

i.) That the mutual discrediting (conducted throughout the first part of the meeting) failed to identify in any way the "disagreement", at a time when it was crucial to pinpoint this issue in order to establish a dialogue. With this view, Ecuador urged the Colombian delegation to make the required theoretical efforts essential to overcome the impasse;

ii.) That the confrontation of radically incongruent "interactive paradigms" annuls any possibility of an understanding, because the core point of the dispute, the "aerial sprayings," requires a comprehensive analysis in order to address the issue in all its vast complexity; and,

iii.) That for the same reason, it was necessary to adopt a "multidisciplinary" view, against which it is not possible to present a

narrow view that boxes in the issue within a merely "factual analysis", as that would mean raising an insurmountable barrier. Ecuador recalled that "factual analysis" is a method of an analytical model that has been completely superseded.

1.5. The Ecuadorian attempt to reopen the channels of dialogue only earned the label from Colombia of a "banal semantic disquisition", against which that country opposed the proposal to adopt what it called a “risk evaluation process", which would include the following successive courses of action: "identification of threats", "possibility of occurrence", 'quantification of damages", and "quantification of the danger".

1.6. Faced with such a position, which was nothing but a clear delay tactic (as it represented a vain attempt at resolving the impossible question of "the certainty of the damage"), the Ecuadorian Delegation decided to test its counterpart, indicating that it could accept that new studies are conducted, provided Colombia agreed, in turn to:

i.) Put into practice the precautionary principle;

ii.) Declare the indefinite suspension of aerial sprayings;

iii.) Begin investigations aimed at the assessment of damages and the comprehensive reparation thereof; and,

iv.) Launch a dialogue aimed at bringing about the required reparations.

1.7. In the context of all that has been recorded, efforts to achieve any result were fruitless; accordingly, the respective Presidents of the Scientific Commissions were only able to state verbally that they would report the meeting to their authorities with the object of seeking, through diplomatic channels, any possibility of agreement.

1.8. Ecuador, in turn, blocked the Colombian attempt to sign a document that contained only the aforementioned intention of the Presidents. It did so because the document in question would have meant leaving a written testimony that allegedly, diplomatic channels were still open.

1.9. Despite Ecuador's insistence, the Delegation of Colombia repeatedly refused to sign a minute. The President provided the unusual argument that no one was authorized to sign a document that recorded disagreements. In response to a subsequent request made by one of the national commissioners, the President astonishingly declared that no one had the authority to force his country to sign any document .

1.10. All that was recorded in the end, reveals that the Scientific Commissions' room to maneuver had disappeared; accordingly, the issue of the aerial sprayings returned to the field of political debate and dialogue.

2. General

i. The Meeting was headed by the President of the Colombian Scientific Commission, Doctor Alberto Gómez Mejía.

ii. The Meeting followed the Agenda proposed by the Colombian Delegation, with the modifications introduced by Ecuador. The final version is included as Appendix No. 1.

iii. The Delegations of both countries were comprised by the members of the respective Scientific Commissions, who were accompanied by officials of their respective Foreign Ministries. For Ecuador, the Undersecretary for National Sovereignty and Border Development, Ambassador Jaime Barberis, and the Director General of Border Relations with Colombia, Doctor Mario Guerrero

Murgueytio; and, for Colombia, Doctor Ricardo Montenegro, Director of Territorial Sovereignty, and Mr. Diego Cadena, an Official of that department. The full list is included as Appendix No.

DGRFC/M.G.M.

ANNEX 84

Appendix No. 1

SECOND MEETING OF THE SCIENTIFIC COMMISSIONS OF ECUADOR AND COLOMBIA TO STUDY AND ANALYZE THE ISSUE OF AERIAL SPRAYING AND THE EFFECTS IT PRODUCES ON THE ECUADORIAN BORDER

Bogota, Palace of San Carlos, 09.07.20

AGENDA

1. Presentation by Colombia: "Comments and Review of Document of Ecuadorian Scientific Commission", dated June 2007;
2. Comments of Ecuadorian Scientific Commission on position document of Colombian Commission, dated June 2007;
3. Analysis of consensus and disagreements;
4. Miscellaneous.

APPENDIX No. 2

I. List of Ecuadorian Delegation - Ecuadorian Scientific Commission:

Elizabeth Bravo, Ecologist. PhD, President of Ecuadorian Scientific Commission
Ramiro Avila, LLM, Dr., Commissioner
Jaime Breilh, MD, MSc. PhD., Commissioner
Arturo Campaña, MD, Psychiatrist, Commissioner
César Paz y Miño, MD, PhD, Commissioner
Luis Peñaherrera, Agricultural Engineer. MSc., Commissioner
Mario Guerrero Murgueytio. Dr., Commissioner
Jaime Barberis, Under-secretary for National Sovereignty and Border Development, Assistant to the Commission

II. List of Colombian Delegation - Colombian Scientific Commission:

Alberto Gómez, President
Elizabeth Hodson
Carolina Sofrony E.
Gonzalo Andrade
Rocío Cortés
Ricardo Montenegro (Colombian Foreign Ministry)
Nicolás Rivas (Colombian Foreign Ministry)
Inés Herrera (Colombian Foreign Ministry)
Héctor Arenas (Colombian Foreign Ministry)

RESERVADO

AYUDA MEMORIA

SEGUNDA REUNIÓN DE LAS COMISIONES CIENTÍFICAS ECUATORIANA Y COLOMBIANA, PARA ESTUDIAR Y ANALIZAR LA PROBLEMÁTICA DE LAS ASPERSIONES AÉREAS Y LOS EFECTOS QUE PRODUCEN EN LA FRONTERA ECUATORIANA.

Bogotá, Palacio de San Carlos, 09.07.2007

1. Aspectos más destacados:

1.1. Colombia se ratificó, literal e íntegramente, en la postura que viene manteniendo desde que inició las aspersiones aéreas en octubre del año 2000. La Comisión Científica de ese país expresó, textualmente, que *"para el Gobierno Colombiano las aspersiones aéreas con una mezcla de Glifosato, Cosmo Flux y agua para la erradicación de cultivos ilícitos de coca no pasan a territorio Ecuatoriano, y por lo mismo, no producen efectos nocivos, ni sobre las comunidades humanas, ni sobre el entorno natural de ese país. En consecuencia no pueden ser el origen o causa de eventuales efectos nocivos alegados por Ecuador"*. De otra parte, hizo constar que, "*...si bien se han mencionado temas relacionados con el complejo tema de la producción, tráfico y consumo de drogas ilícitas, la discusión técnica se circunscribe a la deriva de las aspersiones en sí mismas...*".

1.2. Para actuar en concordancia, la Comisión colombiana descalificó el Informe de su homóloga ecuatoriana tildándolo de "inconsistente", "carente de rigor científico", "elucubrativo" y "no sustentado", adjetivos injustificados a los que añadió que el documento ecuatoriano contenía "acusaciones falaces" contra la administración colombiana.

1.3. Frente a tales declaraciones, la Delegación ecuatoriana, por su parte:

i.) Recordó que las Comisiones se conformaron con el fin de estudiar y analizar la problemática de las aspersiones aéreas y los efectos que producen en la frontera ecuatoriana; y,

ii.) Registró que en el marco de esas ideas, no podía aceptar el documento entregado por Colombia, porque su naturaleza extra-científica ubicaba el debate en campos ajenos al convenido, centrándolo en la justificación de la erradicación de los cultivos ilícitos, y distrayéndolo de la cuestión neural consistente en los daños humanos y ecológicos que las aspersiones aéreas generan, preocupación fundamental del Ecuador.

1.4. Concluida así la primera ronda de conversaciones, y visto lo distante de las posturas, Ecuador planteó que se abriera un diálogo de carácter conceptual, por ser la única posibilidad de arribar a acuerdos en el campo metodológico que viabilizaran la continuidad de la negociación. Concordantemente, registró los siguientes criterios:

i.) Que la descalificación mutua (ejercitada a lo largo de toda la primera parte del encuentro) no identificaba en manera alguna el "disenso", en circunstancias en que esa cuestión es fundamental de individuar para poder entablar un diálogo. Con esta visión, Ecuador exhortó a la delegación colombiana, hacer los pertinentes esfuerzos, de carácter teórico, indispensables para superar el impasse;

ii.) Que la confrontación de "paradigmas interpretativos" radicalmente incongruentes anula toda posibilidad de entendimiento, visto que el punto central de la controversia "aspersiones aéreas" impone un análisis comprensivo que aborde el problema en toda su gran complejidad; y,

iii.) Que por lo mismo, se impone adoptar una visión de "multidisciplinariedad", a la que no es posible oponer una visión estrecha que encasille el tema en un "análisis factual" puro y simple, desde que ello equivaldría a interponer un obstáculo insalvable. Recordó que el "análisis factual" es un modelo de tratamiento absolutamente superado.

1.5. Este intento ecuatoriano de reabrir la vía de diálogo sólo mereció de Colombia el calificativo de "intrascendente disquisición semántica", a la que ese país opuso la propuesta de adoptar lo que denominó "proceso de evaluación de riesgos", el mismo que incluiría los siguientes sucesivos pasos de actuación: "identificación de amenazas", "posibilidad de ocurrencia", "cuantificación del daño", y "cuantificación del peligro".

1.6. Ante semejante postura, que no era más que un claro recurso dilatorio (visto que ella significa un intento vano de resolver la imposible cuestión de "la certeza del daño"), la Delegación Ecuatoriana decidió poner a prueba a su contraparte, manifestando que podría aceptar la realización de nuevos estudios, siempre y cuando ella accediera, por su parte a:

i.) Poner en práctica el principio de precaución;

ii.) Declarar suspendidas indefinidamente las aspersiones aéreas;

iii.) Emprender investigaciones destinadas a evaluar el daño y la reparación integral de los mismos; y,

iv.) Iniciar un diálogo destinado a concretar las reparaciones necesarias.

1.7. En el marco de cuanto ha quedado registrado, fueron infructuosos los esfuerzos hechos par conseguir algún resultado, de manera que los respectivos Presidentes de las Comisiones Científicas sólo pudieron hacer constar, de manera verbal, que reportarían a sus autoridades sobre el encuentro en función de buscar, por la vía diplomática, alguna posibilidad de acuerdo.

1.8. Ecuador, por su parte, bloqueó el intento colombiano de que se suscribiera un documento que hiciera constar, únicamente, la señalada intención de los Presidentes. Se actuó de este modo porque el documento en cuestión habría significado dejar testimonio escrito de que la vía diplomática, supuestamente, aún permanece abierta.

1.9. A pesar de la insistencia ecuatoriana, la Delegación de Colombia se negó reiteradamente a firmar un acta. El Presidente adujo el inusitado argumento de que no estaba autorizado para suscribir documentos en los que se registraran disensos. Frente a una ulterior demanda formulada por parte de uno de los comisionados nacionales la Presidencia declaró, sorprendentemente, que nadie estaba en condiciones de obligar a su país a firmar documento alguno.

1.10. De todo cuanto queda registrado, se desprende, finalmente, que el espacio de actuación de las Comisiones Científicas se habría agotado, por lo que el tema de las aspersiones aéreas vuelve al campo del debate y diálogo políticos.

2. Generalidades:

i. La Reunión estuvo presidida por el Presidente de la Comisión Científica Colombiana, Doctor Alberto Gómez Mejía.

ii. La Reunión se desarrolló siguiendo la Agenda propuesta por la Delegación Colombiana, con las modificaciones que introdujo Ecuador, y cuya versión final se incluye como anexo No. 1.

iii. Las Delegaciones de los dos países estuvieron conformadas por los Miembros de las respectivas Comisiones Científicas, a las que acompañaron funcionarios de las respectivas Cancillerías. Por parte de Ecuador, el Subsecretario de Soberanía Nacional y Desarrollo Fronterizo, Embajador Jaime Barberis, y el Director General de Relaciones Fronterizas con Colombia, Doctor Mario Guerrero Murgueytio; y, por parte de Colombia, el Doctor Ricardo Montenegro, Director de Soberanía Territorial, y el Señor Diego Cadena, Funcionario de esa Dirección. La nómina completa se incluye como anexo No 2.

DGRFC/M.G.M.

ANNEX 84

Anexo Nro. 1

SEGUNDA REUNION DE LAS COMISIONES CIENTIFICAS ECUATORIANA Y COLOMBIANA, CONFORMADAS PARA ESTUDIAR Y ANALIZAR LA PROBLEMÁTICA DE LAS ASPERSIONES AÉREAS Y LOS EFECTOS QUE PRODUCEN EN LA FRONTERA ECUATORIANA.

Bogota, Palacio de San Carlos, 09.07.2007

AGENDA

1. Presentación por Colombia: "Comentarios y Revisión al Documento de la Comisión Científica Ecuatoriana", de junio de 2007;
2. Comentarios de la Comisión Científica Ecuatoriana al Documento Posicional de la Comisión Colombiana de junio de 2007;
3. Análisis de consensos y disensos;
4. Varios.

ANEXO No. 2.

I. **Nómina de la Delegación Ecuatoriana - Comisión Científica Ecuatoriana:**

- Elizabeth Bravo. Ecóloga. PhD, Presidenta de la Comisión Científica Ecuatoriana.
- Ramiro Avila. LLM, Dr., Comisionado.
- Jaime Breilh. Md. MSc. PhD., Comisionado.
- Arturo Campaña. Md. Psiquiatra, Comisionado.
- César Paz y Miño. Md. PhD., Comisionado.
- Luis Peñaherrera. Ing. Agrónomo. MSc., Comisionado.
- Mario Guerrero Murgueytio. Dr., Comisionado.
- Jaime Barberis. Subsecretario de Soberanía Nacional y Desarrollo Fronterizo, Adjunto a la Comisión.

II. **Nómina de la Delegación Colombiana - Comisión Científica Colombiana:**

- Alberto Gómez. Presidente.
- Elizabeth Hodson.
- Carolina Sofrony E.
- Gonzalo Andrade.
- Rocío Cortés.
- Ricardo Montenegro. (MINRREE Col.)
- Nicolás Rivas. (MINRREE Col.)
- Inés Herrera. (MINRREE Col.)
- Héctor Arenas. (MINRREE Col.)

ANNEX 85

Diplomatic Note DM/VRE 35868, sent from the Ministry of Foreign Affairs of Colombia to the Ministry of Foreign Affairs of Ecuador (18 July 2007)

[seal]

REPUBLIC OF COLOMBIA
MINISTRY OF FOREIGN AFFAIRS

Bogotá, D.C., 18 July 2007

DM/VRE No. 35858

Your Excellency:

I have the honor of addressing Your Excellency with the aim of expressing to you the surprise with which I have received the recent statements indicating that the Ecuadorian Government has taken the decision to raise a claim against Colombia for the alleged effect of the aerial sprayings being carried out by the Government in Colombian territory.

In this regard, I would like to express to Your Excellency the concerns of my government regarding said statements, as well as the frustration regarding the mechanism created by the Presidents, the Binational Scientific-Technical Commission, which has not advanced in its work.

As Your Excellency can confirm, under the criteria agreed upon to establish the authority and functioning of the Commission in question, it was provided "*...to analyze this problem according to criteria that the same Commission adopts in regard to the Methodology areas of work and others...*", which entailed, during the first meeting, the presentation by both countries of proposals for the work timeline, that included undertaking field inspections. This is impossible to advance without making the necessary visits, studies, and analyses *in situ*.

To Her Excellency
Mrs. MARIA FERNANDA ESPINOSA
Minister of Foreign Affairs of the Republic of Ecuador
Quito

[PAGE 2]

As I expressed in the conversation that we had today, the Colombian delegation participating in the Binational Commission start

from the basis that the work cannot be concluded without the respective visits to the border area, basically because the nature of the Commission is scientific and technical, not political. Thus, please allow me to propose the prompt undertaking of said field work.

Also, I would like to express my desire to hold a meeting with Your Excellency with the purpose of addressing this matter.

I would like to take this opportunity to reiterate to Your Excellency assurances of my highest and most distinguished consideration.

[signature]
FERNANDO ARAUJO PERDOMO
Minister of Foreign Relations

REPÚBLICA DE COLOMBIA
MINISTERIO DE RELACIONES EXTERIORES

DM/VRE No. 35868

Bogotá, D.C., 18 de julio de 2007

Su Excelencia:

Tengo el honor de dirigirme a Su Excelencia con el fin de expresarle la sorpresa con que he recibido las últimas declaraciones según las cuales el Gobierno ecuatoriano ha tomado la decisión de interponer una demanda en contra de Colombia por el supuesto efecto de las aspersiones aéreas adelantadas por el Gobierno en territorio colombiano.

Al respecto, quiero manifestar a Su Excelencia la preocupación de mi Gobierno por dichas declaraciones, así como la frustración frente al mecanismo creado por orden de los señores Presidentes, la Comisión Binacional Científico – Técnica, la cual no ha podido adelantar los trabajos pertinentes.

Como Su Excelencia podrá constatar dentro de los criterios acordados para establecer la competencia y funcionamiento de la Comisión en mención está previsto "*...analizar esta problemática de acuerdo a los criterios que la propia Comisión adopte en cuanto a la metodología, áreas de trabajo y otros...*" lo que conllevó, durante la primera reunión, a la presentación por parte de ambos países de propuestas de cronograma de trabajo que incluían la realización de inspecciones de campo. Lo anterior, es imposible adelantar sin hacer las necesarias visitas, estudios y análisis *in situ*.

A Su Excelencia
la señora **MARIA FERNANDA ESPINOSA**
Ministra de Relaciones Exteriores de la República del Ecuador
Quito

MINISTERIO DE RELACIONES EXTERIORES
ASESORÍA TÉCNICO-JURÍDICA
RECIBIDO POR: KHe
FECHA: 06-01-2009 HORA: 15:54
CONTESTADO CON:
MEMO No. DICTAMEN No.
NOTA No CE No.
FAX No. DE FECHA:
TRAMITA:

ANNEX 85

REPÚBLICA DE COLOMBIA
MINISTERIO DE RELACIONES EXTERIORES

Tal y como lo manifesté en la conversación que sostuvimos el día de hoy, la delegación colombiana que participa en la Comisión Binacional parte de la base de que los trabajos no se pueden concluir sin las respectivas visitas a la zona de frontera, fundamentalmente porque la naturaleza de la Comisión es científica y técnica y no política. Por lo anterior, me permito proponer la pronta realización de dichos trabajos de campo.

De igual manera, quiero expresar mi disposición de celebrar una reunión con Su Excelencia con el propósito de abordar este tema.

Aprovecho esta oportunidad para reiterar a Su Excelencia las seguridades de mi más alta y distinguida consideración.

Fernando Araújo Perdomo.

FERNANDO ARAÚJO PERDOMO
Ministro de Relaciones Exteriores

ANNEX 86

Diplomatic Note 35224/GM/2007, sent from the Ministry of Foreign Affairs of Ecuador to the Ministry of Foreign Affairs of Colombia (27 July 2007)

[seal]
Republic of Ecuador

[seal]
Ministry of Foreign Affairs,
Trade and Integration

Note No. 35224/GM/2007

Quito, 27 July 2007

Mister Minister:

This is with reference to your letter No. DM/VM 35868, dated 18 July 2007.

After seven years of permanent and insistent attempts to reach an understanding that would allow the halting of harmful impacts resulting from the use of a broad-spectrum herbicide package that contains glyphosate, unfortunately, all these actions have failed to reach the expected results.

I have outlined below the main efforts deployed by Ecuador to reach an understanding on this matter:

- In July 2001, the Ministry of Foreign Affairs requested that Colombia to refrain from making aerial sprayings in a 10-km strip from the borderline, in application of the precautionary principle.
- On 10 April 2003, several complaints that had been made by border communities, who requested indemnities for environmental damages, were forwarded to the Colombian Government. The inter-institutional commissions created for this purpose failed to produce any results.
- By Note No. VRE/32759 dated 23 September 2003, the Foreign Ministry of Colombia offered to provide all the available information on the aerial sprayings conducted on the border with Ecuador, an offer that was not fulfilled.
- On 9 February 2004, in the framework of the Meeting of the Inter-institutional Scientific and Technical Commissions, Colombia agreed to the Ecuadorian proposal of making a trip to the border to conduct joint operations and personally collect the testimonies and complaints of the inhabitants of the region which did not take place due to the Colombian lack of definition.

- On 3 August 2004, Ecuador and Colombia signed the Minutes of the IV Meeting of their Scientific and Technical Commissions, in which Colombia agreed to notify Ecuador, through the most expeditious channel, the moment when sprayings would be made, in order to allow the Ecuadorian immediate response team to take samples and make the relevant technical and scientific analysis in an appropriate way. Colombia also failed to fulfill these commitments.

Mister
Fernando Araújo Perdomo
Minister of Foreign Affairs of Colombia
Bogotá

[PAGE 2]

- On 7 December 2005, the Ministers of Foreign Affairs in office at that time signed a joint statement whereby Colombia committed to suspend sprayings, a commitment that was breached soon thereafter. Since then, an indefinite number of spraying flights have been conducted, increasing the negative effects of this practice.
- In January 2007, the Foreign Ministers agreed to establish an independent investigative body, free from any influence, to study the effects of aerial sprayings. Accordingly, the Scientific Commissions of Ecuador and Colombia were created, and in their first meeting, they agreed to exchange documents with their respective scientific and technical bases on 27 April 2007. On that date, the Ecuadorian Scientific Commission had its report ready, while the Colombian Scientific Commission only made it available on 8 June, a fact that delayed the Second Meeting of the Commissions, which was held on 9 July 2007.

Unfortunately, the II meeting of the Scientific Commissions, held in Bogota on 9 July 2007, failed to produce any results or understandings, and this is overwhelming evidence that the path of dialogue has been exhausted.

In view of the above, Ecuador believes that the dialogue process it has maintained with Colombia over seven years with the goal of finding a final solution to the issue of sprayings has been exhausted without results.

Accordingly, the Government of Ecuador, under its constitutional obligation of guaranteeing the exercise of human rights, environmental conservation,

health protection and prevention, urges the Government of Colombia to formalize a written commitment regarding the definitive suspension of aerial sprayings, and thus cause the payment of indemnities to compensate the harmful effects that the sprayings have had on the health and the environment become viable. Otherwise, the Government of Ecuador reserves the right to carry out any actions deemed pertinent to defend its rights.

I avail myself of this occasion to renew to Your Excellency the feelings of my highest and distinguished consideration.

[signature]
Maria Fernanda Espinosa Garces
Minister of Foreign Affairs, Trade and Integration

[seal]

Ave. 10 de Agosto y Carrión. Telf.: 2993 284 – 2993 200. Fax: 2993 273.
Quito-Ecuador. www.mmrree.gov.ec

ANNEX 86

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REPUBLICA DEL ECUADOR

MRE
MINISTERIO DE RELACIONES EXTERIORES, COMERCIO E INTEGRACIÓN

SC

Nota No.35224GM/2007

Quito, 27 de julio de 2007

Señor Ministro:

Me refiero a su comunicación número DM/VM 35868, de 18 de julio del año en curso.

Luego de siete años de permanentes e insistentes intentos por arribar a un entendimiento que permita detener los impactos dañinos provenientes de la utilización de un paquete herbicida de amplio espectro que contiene glifosato, lamentablemente, todas estas acciones no han alcanzado los resultados esperados.

A continuación me permito registrar los principales esfuerzos que el Ecuador ha desplegado, a fin de arribar a un entendimiento en esta materia:

- En julio de 2001, el Ministerio de Relaciones Exteriores requirió que Colombia se abstenga de realizar fumigaciones aéreas en una franja de 10 Kms. contados desde la línea de frontera, en aplicación del principio de precaución.
- El 10 de abril de 2003 se trasladó a conocimiento del gobierno colombiano varios reclamos de las comunidades fronterizas, que presentaron una solicitud de indemnización por daños ecológicos. Las comisiones interinstitucionales conformadas para el efecto, no produjeron ningún resultado.
- Mediante Nota Nro. VRE/32759, de 23 de septiembre de 2003, la Cancillería colombiana ofreció proporcionar toda la información disponible sobre las aspersiones aéreas realizadas en la frontera con Ecuador, ofrecimiento que no fue cumplido.
- El 9 de febrero de 2004, en el marco de la II Reunión de las Comisiones Científico Técnicas Interinstitucionales, Colombia aceptó la propuesta ecuatoriana de efectuar un viaje a la frontera para realizar operaciones conjuntas y receptar directamente el testimonio y las quejas de los habitantes de la región, lo cual debido a indefinición colombiana no llegó a concretarse.
- El 3 de agosto de 2004 se suscribió el Acta de la IV Reunión de las Comisiones Científico Técnicas de Ecuador y Colombia, en la que Colombia se comprometió a notificar al Ecuador, por la vía más expedita, el momento en que se realizarían las aspersiones, a fin de permitir que el equipo ecuatoriano de acción inmediata

Señor Don
Fernando Araújo Perdomo
Ministro de Relaciones Exteriores de Colombia
Bogotá.-

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REPUBLICA DEL ECUADOR

MRE
MINISTERIO DE RELACIONES EXTERIORES, COMERCIO E INTEGRACIÓN

pueda tomar adecuadamente las muestras y realizar los respectivos análisis técnicos y científicos. Este compromiso tampoco fue cumplido por parte de Colombia.

- El 7 de diciembre de 2005, los entonces Ministros de Relaciones Exteriores suscribieron una comunicación conjunta por la cual Colombia se comprometió a suspender las aspersiones, lo cual fue incumplido en corto tiempo. A partir de entonces se realizaron un sinnúmero de vuelos de fumigación que incrementaron los efectos negativos de esta práctica.
- En el mes de enero de 2007, las Cancilleres acordamos la conformación de un órgano investigativo de carácter independiente y libre de influencias, para el estudio de los efectos de las aspersiones aéreas. En tal virtud se crearon las Comisiones Científicas de Ecuador y Colombia cuya I Reunión acordó intercambiar, el 27 de abril de 2007, los documentos, con las respectivas sustentaciones científico-técnicas. En esa fecha, la Comisión Científica Ecuatoriana tuvo listo su informe, mientras que la Comisión Científica Colombiana sólo lo entregó el 8 de junio, particular que retrasó la celebración de la II Reunión de las Comisiones, que sólo pudo llevarse a cabo el 9 de julio de 2007.

La II Reunión de las Comisiones Científicas, llevada a cabo en Bogotá el 9 de julio de 2007, lamentablemente, no produjo resultado ni entendimiento alguno, constituyendo el particular una prueba contundente respecto a que la vía del diálogo ha quedado agotada.

En consideración de lo anotado, el Ecuador considera que el proceso de diálogo que por siete años ha mantenido con Colombia, con miras a encontrar una solución definitiva al tema de las aspersiones, ha quedado agotado sin resultados.

En tal virtud, el Gobierno del Ecuador, en su obligación constitucional de velar por el ejercicio de los derechos humanos, la conservación del medio ambiente, la protección y prevención de la salud, exhorta al Gobierno Colombiano para que formalice un compromiso escrito, respecto a la suspensión definitiva de las aspersiones aéreas y con ello viabilice el pago de indemnizaciones para compensar los efectos dañosos que sobre la salud y el medio ambiente han generado dichas aspersiones, caso contrario se reserva las acciones pertinentes en defensa de sus derechos.

Me valgo de esta ocasión para renovar a su Excelencia, los sentimientos de mi alta y distinguida consideración.

M-ESPINOSA

María Fernanda Espinosa Garcés
Ministra de Relaciones Exteriores, Comercio e Integración

REPUBLICA DEL ECUADOR
GABINETE DEL MINISTRO
MINISTERIO DE RELACIONES EXTERIORES

ANNEX 87

Diplomatic Note DM/VRE/DSF 7649, sent from the Minister of Foreign Affairs of Colombia to the Minister of Foreign Affairs of Ecuador (25 Feb. 2008)

REPUBLIC OF COLOMBIA
[seal] **MINISTRY OF FOREIGN AFFAIRS**

DM/VRE/DSF No. 7649

Bogotá, D.C., 25 February 2008

Madame Minister:

I have the honor to address Your Excellency in reference to our conversation of the past 27 of January, in Cartagena de Indias, during the Meeting of Foreign Affairs Ministers of the Union of South American Nations – UNASUR.

In this regard, please allow me to again express the interest of the National Government in attending to the complaints of Ecuadorian citizens, with the purpose of paying indemnification for real and ascertainable damages, and through the most expedient mechanism possible, for what the corresponding legal analyses are being done, taking into account what was noted on said occasion.

Equally, I would like to take advantage of this opportunity to indicate that the Colombian Government, in consideration of its promise to combat the world drug problem, as well as the threat that this problem represents to our national security, shall continue and strengthen actions directed at the elimination of illicit crops present in its territory, placing special emphasis on the manual eradication program in the area close to our common border.

I would like to take this opportunity to reiterate to Your Excellency the assurances of my highest and most distinguished consideration.

[signature]
FERNANDO ARUJO PERDOMO
Ministry of Foreign Affairs

To Her Excellency
Madame MARIA ISABEL SALVADOR CRESPO
Minister of Foreign Affairs, Trade and Integration
Quito

REPÚBLICA DE COLOMBIA
MINISTERIO DE RELACIONES EXTERIORES

DM/VRE/DSF No.7649

Bogotá, D. C., 25 de febrero de 2008

Señora Ministra:

Tengo el honor de dirigirme a Su Excelencia con ocasión de hacer referencia a nuestro diálogo sostenido el pasado 27 de enero, en la ciudad de Cartagena de Indias, durante la celebración de la Reunión de los Ministros de Relaciones Exteriores de la Unión de Naciones Suramericanas – UNASUR.

Al respecto, me permito de nuevo manifestar el interés del Gobierno Nacional en atender las quejas de ciudadanos ecuatorianos, con el propósito del pago de indemnizaciones de daños reales y comprobables, y a través del mecanismo más expedito que sea posible, para lo cual se adelantan los análisis jurídicos correspondientes, tomando en cuenta lo mencionado en dicha ocasión.

De igual manera, aprovecho la oportunidad para señalar que el Gobierno de Colombia, considerando su compromiso de combatir el problema mundial de las drogas, así como la amenaza que este problema representa para nuestra seguridad nacional, continuará y fortalecerá las acciones dirigidas a eliminar los cultivos ilícitos presentes en su territorio, otorgando especial énfasis al programa de erradicación manual en el área próxima a la frontera común.

Hago propicia esta oportunidad para reiterar a Su Excelencia las seguridades de mi más alta y distinguida consideración.

FERNANDO ARÚJO PERDOMO
Ministro de Relaciones Exteriores

A Su Excelencia
la señora MARIA ISABEL SALVADOR CRESPO
Ministra de Relaciones Exteriores, Comercio e Integración
Quito

ANNEX 88

Diplomatic Note 14087/GM/GVMRE/SSNRF/2008, sent from the Ministry of Foreign Affairs of Ecuador to the Embassy of Argentina in Bogotá
(24 Mar. 2008)

[seal]
Republic of Ecuador

[seal]
Ministry
of Foreign Affairs,
Trade and Integration

No. 14087 GM/GVMRE/SSNRF/2008

The Ministry of Foreign Affairs, Trade and Integration of Ecuador offers its most cordial salutations to the Honorable Embassy of the Argentine Republic in Colombia and, regarding note DM/VRE/DSF No. 7649 dated 25 February 2008, signed by Mr. Fernando Araujo Perdomo, Minister of Foreign Affairs of Colombia, requests that you kindly express the following to the Colombian Government:

The note in question does not satisfy the demands made by the Government of Ecuador to the Government of Colombia on 27 January 2008, at the Foreign Affairs Ministerial Meeting of the Union of South American Nations, UNASUR, regarding the aerial spraying of chemical herbicides carried out by the Government of Colombia in the area of the Ecuadorian-Colombian border.

In particular, the note does not accept the demands of the Government of Ecuador that the Government of Colombia sign a formal agreement and make an obligatory commitment to definitively and permanently cease aerial spraying within 10 kilometres from the border between Ecuador and Colombia. Nor does the note accept in satisfactory terms the demand that the Government of Ecuador be indemnified by the Government of Colombia.

The Government of Ecuador considers the position of the Government of Colombia in relation to the points addressed in said note to be unsatisfactory as regards the interests of the Government and people of Ecuador. For more than seven years the Government of Ecuador has insistently required of the Colombian government a definitive and permanent halt to aerial spraying in areas near the common border, and reparations for the damages caused by these fumigations. The Government of Ecuador considers the position of the Government of Colombia as reflected in the aforementioned note to be fundamentally the same as that which the Government has always maintained, and as unreflective of any substantial change.

With this background, the Government of Ecuador reiterates what it expressed in note No. 35224/GM/2007 dated 27 July 2007, in the sense that it considers the diplomatic route in relation to this issue to be finished and without any possibility of success, and shall heretofore take steps through other peaceful resolution mechanisms established by international law.

The Ministry of Foreign Affairs, Trade and Integration of Ecuador thanks the Honorable Embassy of the Argentine Republic in Colombia for its kind management and would like to take this opportunity to reaffirm assurances of its most distinguished consideration.

[seal]
Quito, 24 March 2008

To the Honorable
Embassy of the Argentine Republic in Colombia.
Bogotá, D.F.

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REPUBLICA DEL ECUADOR

Ministerio
de Relaciones Exteriores,
Comercio e Integración

No. /4087 GM/GVMRE/SSNRF/2008

El Ministerio de Relaciones Exteriores, Comercio e Integración del Ecuador saluda muy atentamente a la Honorable Embajada de la República Argentina en Colombia y, en relación a la nota DM/VRE/DSF No. 7649 de 25 de febrero de 2008, suscrita por el señor Fernando Araújo Perdomo, Ministro de Relaciones Exteriores de Colombia, solicita que se sirva manifestar al Gobierno colombiano lo siguiente:

La nota en mención no satisface las demandas planteadas por el Gobierno del Ecuador al Gobierno de Colombia durante la conversación mantenida por los cancilleres de Ecuador y Colombia el 27 de enero de 2008, con ocasión de la Reunión de Ministros de Relaciones Exteriores de la Unión de Naciones Suramericanas, UNASUR, en relación a las aspersiones aéreas con herbicidas químicos realizadas por el Gobierno de Colombia en la zona de frontera ecuatoriano-colombiana.

En particular, la nota no acepta la demanda del Gobierno del Ecuador de que el Gobierno de Colombia suscriba un convenio formal y de compromiso obligatorio de detener definitiva y permanentemente las aspersiones aéreas dentro de 10 kilómetros de la frontera entre Ecuador y Colombia. La nota tampoco acepta en términos satisfactorios la demanda del Gobierno del Ecuador de que el Gobierno de Colombia le indemnice.

El Gobierno del Ecuador considera que la posición del Gobierno de Colombia en relación a los puntos que sí aborda la referida nota no satisface los intereses del Gobierno y pueblo ecuatorianos. Desde hace más de siete años el Gobierno del Ecuador ha requerido insistentemente que el Gobierno de Colombia detenga definitiva y permanentemente las aspersiones aéreas cerca de la frontera común y que repare los daños causados por esas fumigaciones. El Gobierno del Ecuador considera que la posición del Gobierno de Colombia reflejada en la referida nota es fundamentalmente la misma que ese Gobierno ha mantenido siempre y no refleja cambio sustancial alguno.

Con estos antecedentes, el Gobierno del Ecuador reitera lo que expresó en su nota No. 35224/GM/2007 de 27 de julio de 2007, en el sentido de que considera concluida y sin posibilidades de éxito la vía diplomática en torno a este tema y dará paso en adelante a otros mecanismos de solución pacífica de controversias consagrados por el derecho internacional.

El Ministerio de Relaciones Exteriores, Comercio e Integración del Ecuador agradece a la Honorable Embajada de la República Argentina en Colombia por su amistosa gestión y aprovecha la oportunidad para reiterarle las seguridades de su distinguida consideración.

DESPACHO DE LA CANCILLERIA
ECUADOR

Quito, a 24 de marzo de 2008

A la Honorable
Embajada de la República Argentina en Colombia.
Bogotá, D.F.

ANNEX 89

Government of Putumayo, Government of Nariño, et al.,
Declaration of Puerto Asís (8-9 Sept. 2000)

Declaration of Puerto Asís

8 and 9 September 2000

The 325 participants of The South Responds to Plan Colombia Forum, representing the communities, social leaders, indigenous people, women, children, local and provincial authorities of Valle, Cauca, Caquetá, Nariño and Putumayo; along with a delegation from Ecuador and various social organizations, ONG of human rights, environment, development and peace of Colombia, meeting at the request of PAZ COLOMBIA, the municipality (mayor's office) and the government of Putumayo, met in Puerto Asís on 8 and 9 September 2000 to analyze and propose alternatives to Plan Colombia.

[…]

The fumigations affect the health of the people of areas with illicit economic activities, affect the environment, destroy legal economies, promote displacement and undermine fundamental economic, social and environmental rights.

[…]

Puerto Asís, Putumayo

8 and 9 September 2000

Paz Colombia

Conferencia Internacional sobre Paz y Derechos Humanos

Boletín No. 5
18 de Septiembre de 2000

Calle 19 No. 5-72 Oficina 911
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Comentar

Nombre:

Correo-e:

Comentar

Ver comentarios

Declaración de Puerto Asís

8 y 9 de septiembre de 2000

Las 325 participantes en el Foro El Sur Responde al Plan Colombia, en representación de las comunidades, líderes sociales, indígenas, mujeres, niños, niñas, autoridades locales y departamentales de Valle, Cauca, Caquetá, Nariño y Putumayo; junto con una delegación del Ecuador y varias organizaciones sociales, ONG de derechos humanos, medio ambiente, desarrollo y paz de Colombia, convocadas por PAZ COLOMBIA, la alcaldía, y la gobernación del Putumayo, nos reunimos en Puerto Asís el 8 y 9 de Septiembre de 2000 para analizar y proponer alternativas al Plan Colombia.

Teniendo en cuenta que:

El diseño y las estrategias de erradicación de cultivos ilícitos que contiene el Plan Colombia adelantado por el Gobierno Nacional, desconoció las realidades locales y las iniciativas de las comunidades afectadas, las autoridades locales y regionales.

El Plan Colombia es una estrategia encaminada a desestabilizar y revertir los procesos de transición democrática en la región andina y aplicar medidas represivas contra las protestas sociales, económicas y políticas, generadas por los procesos de globalización y la aplicación del modelo neoliberal.

El Plan Colombia se constituye en un instrumento de lucha contrainsurgente el cual contribuirá de manera negativa al escalamiento y expansión de la guerra que se libra en Colombia desde hace 30 años.

El componente de lucha contra el narcotráfico del Plan Colombia, se inscribe dentro de la política de los Estados Unidos de "tolerancia cero" frente a esta problemática. Por ello, el Plan enfatiza los instrumentos de represión que afectan el eslabón más débil de la producción de la economía cocalera que son los pequeños cultivadores de coca y los recolectores o *raspachines*. La erradicación forzada contra los cultivos ilícitos no toca sustancialmente las

diferentes etapas de la economía cocalera, aquellas que representan las grandes ganancias del negocio, y por el contrario implica el traslado de los cultivos con el consecuente impacto ambiental.

La aplicación del Plan Colombia y su fuerte componente militar, se constituye en un factor adicional de agravamiento de la persistente crisis humanitaria, de derechos humanos y de derecho internacional humanitario que se desarrolla en el país.

El Plan Colombia tiene implicaciones negativas en el actual proceso de paz que se desarrolla con las Farc en la zona de distensión y en los posibles escenarios de negociación con el ELN .

Por lo anterior:

Presentamos ante la opinión pública nacional e internacional, las autoridades y las organizaciones sociales y políticas, la ***Declaración de Puerto Asís*** que recoge el análisis sobre el impacto del Plan Colombia y las iniciativas para que, entre el gobierno nacional, las comunidades y la sociedad colombiana en general formulemos un plan para la paz en Colombia.

Cultivos ilícitos, medio ambiente y desarrollo

Una de las expresiones del Plan Colombia para las zonas con cultivos ilícitos es la intensificación de las fumigaciones, el incremento de las acciones militares como parte de los operativos de erradicación forzosa por vía fluvial, aérea y terrestre. Las fumigaciones son la repetición de una política fracasada que en nada contribuye a resolver este problema y sí promueve el desplazamiento de los cultivos hacia zonas no intervenidas agravando los impactos ambientales.

Las fumigaciones afectan la salud de los habitantes de las zonas con economías ilícitas, afecta el medio ambiente, acaba con economías lícitas, promueve desplazamientos y socava derechos fundamentales, económicos, sociales y ambientales.

Por las anteriores razones exigimos la suspensión inmediata de las fumigaciones como condición necesaria para generar un ambiente de confianza entre el Eestado y las comunidades y poder así desarrollar acuerdos para la implementación de alternativas legales a los cultivos ilícitos.

Frente a las ***fumigaciones químicas y biológicas*** se debe considerar el análisis de técnicas de erradicación manual siempre que ésta sea voluntaria, acordada con las comunidades, de carácter gradual y condicionada a la sostenibilidad de inversiones económicas en lo social y cultural. Se requieren ***acciones que contribuyan a generar tejido social***, una ética de la tolerancia, del respeto por la vida y plenas garantías para la aplicación de una eficaz justicia. Para el análisis de esta propuesta se deben recoger experiencias desarrolladas en Puerto Leguízamo y en Guambía.

El problema de los cultivos ilícitos se origina en la ***crisis del sector rural colombiano***, en la ausencia de condiciones para garantizar la competitividad del sector frente a los impactos de la apertura económica adelantada, sin considerar condiciones mínimas que hiciesen sostenible actividades desarrolladas en el campo. Esta crisis se profundizó con la ***contrarreforma agraria*** adelantada con inversiones del capital producto del narcotráfico que significó la concentración en pocas manos de más de cuatro millones de

la región y en particular contra el Plan Colombia.

3. Exigir de manera inmediata la suspensión de la aplicación del Plan Colombia y el levantamiento de las bases militares norteamericanas de Manta (Ecuador) y de Curazao en el Caribe, e igualmente de la base militar de Tres Esquinas en el departamento del Caquetá, anunciado por los mismos mandos militares como el eje de operaciones del componente militar del Plan Colombia.
4. Llamamos a la necesidad de una mayor participación de la comunidad internacional y al aumento de la cooperación internacional, siempre y cuando estén enmarcadas dentro de un Plan alternativo de desarrollo y paz.
5. Crear una instancia organizativa, cuya composición refleje todas las regiones y sectores sociales que participaron en el Foro.
6. Diseñar un plan de acción cuyas tareas iniciales son: preparar la jornada binacional contra el Plan Colombia el 12 de Octubre, preparar y concertar la participación de la región sur en la conferencia de San José de Costa Rica, e impulsar el próximo encuentro regional del sur que se realizará el resguardo indígena de la María en el departamento Cauca.
7. La plenaria insiste en la necesidad de una salida negociada al conflicto armado y en la participación amplia de los sectores sociales en la negociación con los grupos insurgentes.
8. Ante el proceso de militarización de las fronteras en la región andina y en los países limítrofes con Colombia, proponemos que estas sean declaradas territorios de paz, concertación, convivencia y solidaridad entre los pueblos vecinos.
9. Se hace necesario fortalecer la capacidad de autonomía y resistencia de las comunidades y sectores populares frente al Plan Colombia .
10. Hacer un llamamiento al gobierno Ecuatoriano para que le explique a su pueblo y al colombiano a qué tipo de acuerdo llegó en términos de la cooperación internacional con Estados Unidos.

Puerto Asís, Putumayo
septiembre 8 y 9 de 2000.

Participantes:

COORDINACION COLOMBIA EUROPA-ESTADOS UNIDOS	CONCEJO MUNICIPAL DE APONTE (NARIÑO)
CODHES	INSPECCION DE PIÑUÑA BLANCO Y NEGRO
CINEP	ASOCOMUNAL ORITO
MINGA	MAGISTERIO DEL PUTUMAYO
REDEPAZ NACIONAL, NARIÑO, VALLE, CAQUETA	DEFENSORÍA DEL PUEBLO PUTUMAYO
COLECTIVO DE ABOGADOS	ASOCIACIÓN DE PRODUCTORES AGRICOLAS DE ORITO PUTUMAYO
ANDAS	CONCEJALES DE PUERTO LEGIZAMO,SIBUNDOY,PUERTO CAICEDO, PUERTO GUZMAN.
ATI	SECRETARIO DE EDUCACION DEL
FUNDACION SOCIAL BOGOTA	

ANNEX 89

FUNDACION COMITÉ DE SOLIDARIDAD CON LOS PRESOS POLITICOS	VALLE DE GUAMEZ
CENTRAL UNITARIA DE TRABAJADORES NACIONAL	ITP
CENTRAL UNITARIA DE TRABAJADORES VALLE DEL CAUCA	CORPORACIÓN MALOCA DE MOCOA
FENSUAGRO	COLONIA ECUATORIANA EN LA HORMIGA PUTUMAYO
ANUC-UR CAUCA	CABILDO INDÍGENA DE ORITO
ANUC-UR NACIONAL	ASOCIACION DE MUJERES DEL PUTUMAYO
ORIVAC VALLE	PARROQUIA DE SAN FRANCISCO PUTUMAYO
UNEB NACIONAL	PARROQUIA DE PUERTO CAYCEDO PUTUMAYO
UNION SINDICAL OBRERA U.S.O.	PARROQUIA DE PUERTO ASÍS PUTUMAYO
CEUDES	PARROQUIA HERMANAS DOMINICAS DE LA PRESENTACION
CAMARA COMERCIO PUTUMAYO	UMATA PUTUMAYO
PLANEACION MUNICIPAL PUTUMAYO	C.AZ.
PROPIC PUTUMAYO	ALCALDIA DE TUMACO
ASTRADEP PUERTO ASIS	COMUNIDADES NEGRAS DE TUMACO
ASOCAMP PUTUMAYO	COMISION DE PAZ NARIÑO
DEFENSORIA DEL PUEBLO MOCOA PUTUMAYO	PLANTE NARIÑO
SECRETARIA AGRICULTURA PUTUMAYO	INCORA NARIÑO
ICBF PUTUMAYO	FUNDACION ARCO IRIS NARIÑO
CORPOICA PUTUMAYO	SINTRADIN NARIÑO
SENA PUTUMAYO	COMUNIDADES DEL ROSARIO NARIÑO
PROMOTOR ASUNTOS INDIGENAS PUTUMAYO	COMUNIDADES DE APONTE
CMDR PUTUMAYO	COMUNIDADES DE POLICARPA NARIÑO
GOBERNACION DEL PUTUMAYO	COMUNICADES DE SAN JOSE DE LA FRAGUA CAQUETA
PLAN DEPARTAMENTAL DE CONVIVENCIA DEL PUTUMAYO	

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GOBERNACION DE NARIÑO	COMUNIDADES DE CARMEN DE PIÑUÑA
GOBERNADOR CABILDO SANTA CRUZ PUTUMAYO	VICARIA DEL SUR
GOBERNADOR INDIGENA DE APONTE	VICARIATO DEL PUTUMAYO
SELVA SALUD	ACCION ANDINA
SECCION FOMENTO Y DESARROLLO MOCOA	UNIAMAZONIA
ALCALDIA MUNICIPAL DE PUERTO ASIS	CORPOAMAZONIA
ALCALDLIA MUNICIPAL DE PUERTO CAYCEDO	SITTELECOM PUTUMAYO
ALCALDIA MUNICIPAL DE PUERTO GUZMAN	ASOCIACIONES AGROPECUARIAS DE PUTUMAYO Y CAQUETA
ALCALDIA DE COLON PUTUMAYO	FUNDACION PICACHOS CAQUETA
PERSONERIA FLORENCIA CAQUETA	SINCHI CAQUETA
PERSONERIA DE SIBUNDOY	FUNDECIMA CAUCA
PERSONERIA DE LA HORMIGA	CIMA-CAUCA
PERSONERIA DE PUERTO ASIS	FUNDACION SOL Y TIERRA CAUCA
PERSONERIA DE PUERTO GUZMAN	FUNAMBIENTE CAUCA
PERSONERIA DE PUERTO CAYCEDO	UNIVERSIDAD DEL CAUCA
CONCEJO MUNICIPAL DE PUERTO ASIS	OXFAM POPAYAN
CONCEJO MUNICIPAL DE COLON	RED DE DERECHOS HUMANOS DEL SUROCCIDENTE
CONCEJO MUNICIPAL DE VILLA GARZON	CABILDO INDIGENA GUAMBIA CAUCA
CONCEJO MUNICIPAL DE ORITO	FUNDACION COMITÉ SOLIDARIDAD PRESOS POLITICOS VALLE
CONCEJO MUNICIPAL DE LA HORMIGA	RED DE INICIATIVAS EN DD.HH. DEL VALLE
CONCEJO MUNICIPAL DE SIBUNDOY	CIUDAD ABIERTA. VALLE
CONCEJO MUNICIPAL DE PUERTO CAICEDO	ASOCORO
CONCEJO MUNICIPAL DE APONTE (NARIÑO)	CRIC CAUCA
	CRIU HUILA
	COMITÉ INDIGENA DE ORITO

	COMUNIDAD INDIGENA DE TIERRADENTRO

Delegaciones nacionales e internacionales presentes Mesa Foro El Sur responde al Plan Colombia 9 de septiembre de 2000 Puerto Asís Putumayo

ABC COLOMBIA	COMITÉ ANDINO DE SERVICIOS
ACNUR COLOMBIA	EMBAJADA DE ESTADOS UNIDOS
UNDCP	CONSEJERIA EN PROYECTOS
OACNUDH	DEFENSOR PUEBLO
AMNISTIA INTERNACIONAL LONDRES	COMANDANTE VIGESIMA CUARTA BRIGADA PUTUMAYO
WOLA ESTADOS UNIDOS	IGLESIA CATOLICA PUTUMAYO.
LAWG ESTADOS UNIDOS	

Delegación ecuatoriana.

ISAMIS	SUCUMBIOS
ACNUR-ECUADOR	RED DE HERMANDAD Y SOLIDARIDAD COLOMBO ECUATORIANA
MINSALUD ECUADOR	COMISION DE DERECHOS HUMANOS DEL CONGRESO
MOVIMIENTO POPULAR DEMOCRATIVO ECUADOR	OFICINA DERECHOS HUMANOS ISMIS SUCUMBIOS
CARDEN	RE DE ENLACE
SER PAZ	RED DE DERECHOS HUMANOS Y SINDICALES
IREDH	CRDEN
COMISION ECUMENICA DE DERECHOS HUMANOS -CEDHU-	MOVIMIENTO POPULAR DEMOCRATICO -MPD-
CONFEDERACION DE NACIONALIDADES INDIGENAS DEL ECUADOR -CONAIE-	MUNICIPIO DE QUITO

CRUZ ROJA ECUATORIANA	PACHAKUTIK
FORO POR LA NIÑEZ Y ADOLESCENCIA	REDHSS CEOSL
GRUPO DE MONITOREO AL PLAN COLOMBIA	CPM
RED CEOSL	NUEVA ESPERANZA
AMNISTIA INTERNACIONAL ECUADOR	F.S.M.
RADIO LA LUNA DE QUITO	CONAI
DIARIO EL COMERCIO DE QUITO	SERVICIO PAZ Y JUSTICIA -SERPAJ-
INFA QUITO	COMITÉ PERMANENTE POR LA DEFENSA DE LOS DERECHOS HUMANOS CDH
CENTRO DE DOCUMENTACION EN DERECHOS HUMANOS " SEGUNDO MONTES"	COMISION DE DERECHOS HUMANOS DE IMBABURA
COMITÉ PRO REFUGIADOS	COSDHI
ASAMBLEA PERMANENTE DE DD.HH APDH	INSTITUTO NACIONAL DEL NIÑO Y LA FAMILIA INNFA
COSDHI	INREDH
FEDERACION DE MUJERES ECUADOR	COMITÉ PERMANENTE POR LA DEFENSA DE LOS DERECHOS HUMANOS CHD GUAYAS.
	MOVIMIENTO TOHALLI DE MANABI

Medios

EL COMERCIO DE ECUADOR	NTC
RADIO LA LUNA ECUADOR	UNIVISION
ECUAVISA	ASOCIATED PRESS
LA NACION DE BUENOS AIRES	REVISTA UTOPIAS
EL TIEMPO	COLMUNDO
EL ESPECTADOR	ASOCIATED PRESS
DIARIO DEL SUR PUTUMAYO	WASHINGTON POST
CARACOL	

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ANNEX 89

Desarrollado por Proyecto Atarraya

ANNEX 90

Republic of Colombia, Administrative Department of Health (DASALUD)
Putumayo Province, Office of Planning, Epidemiology Section,
Effects of Aerial Spraying with Glyphosate
Valle del Guamuez – San Miguel – Orito, Putumayo
(Feb. 2001)

ADMINISTRATIVE DEPARTMENT OF HEALTH
PLANNING OFFICE
EPIDEMIOLOGICAL SECTION

EFFECTS OF AERIAL FUMIGATION WITH GLYPHOSATE
VALLE DEL GUAMEZ – SAN MIGUEL – ORITO
PUTUMAYO, FEBRUARY 2001

Dyva Revelo Calderón – Epidemiological Section, DASALUD
PUTUMAYO

[...]

REPORT ON HOSPITALS AND HEALTH CENTERS

The Orito Hospital reports a notable increase in consultations for problems related to allergic reactions of the skin, such as: dermatitis, impetigo, abscesses, abdominal pain, diarrhea, acute respiratory infection, which appeared from the time of the fumigation carried out in the rural areas of the municipality.

According to information from the Administrator of the La Dorada Health Center in the municipality of San Miguel, in the town of Agua Clara the poisoning of people exposed to the fumigations was apparent, with symptomology related to skin and eye irritation, nausea, and acute respiratory infection, as well as bronchitis, the flu, colds, and abdominal pain, among others, which corresponds to the findings of epidemiological studies carried out in other places.[2]

This coincides with the similar observations of medical personnel of the Hospitals of Orito, La Hormiga (Valle del Guamuez), and la Dorada (San Miguel) regarding the fact that, from the start of the fumigations, a notable increase in consultations related to problems of skin reactions, abscesses, impetigo, gastrointestinal infections (abdominal

[PAGE 2]

pain, diarrhea, nausea, vomiting), respiratory infections (bronchitis, asthma), and conjunctivitis was observed.

[2] Workshop Report – Public Forum "Manuel Eradication of Illicit Crops", National University of Colombia, 13 October 2000.

The people who consulted their doctors attributed this symptomology to the spraying received from the planes aimed at the fumigation of illicit crops. However, not all of the people who were affected by the fumigation went to health centers, due to lack of economic resources or the erroneous perception that the method by which the health problems were to be treated was experimental.

[…]

REPORT OF THE LOCAL OMBUDSMAN'S OFFICE OF

[PAGE 3]

VALLE DEL GUAMUEZ

Of the 100 towns in Valle del Guamuez, the municipality with the largest number of inhabitants in the province, after Puerto Asis and Orito, with 35,288 inhabitants; residents of 67 towns were affected by the fumigation in terms of the state of their health, crops, and environment.

[…]
[PAGE 13]
[…]

Table 6.

MORBIDITY BY EXTERNAL CONSULTATION - FEBRUARY	2000	2001	% CHANGE	VALUE OF p.
DIARRHEA	12	69	475.0	0.0000
ACUTE RESPIRATORY INFECTION	13	26	100.0	0.00005
DERMATITIS	1	24	2300.0	0.00005
INFECTION OF THE SKIN AND SUBCOETANEOUS CELLULAR TISSUE	1	47	4600.0	0.0000

GENERAL PYREXIA SYMPTOMS OF UNKNOWN ORIGIN	18	16	-11.1	0.08
OTHER SYMPTOMS RELATED TO THE ABDOMEN AND ABDOMINAL PAIN	0	20	2.000	0.0000
OTHER CAUSES	228	1068	368.4	0.0000
TOTAL CAUSES	273	1270	3650.0	0.0000
SOURCE: RIA EXTERNAL CONSULTATION, SAGRADO CORAZON DE JESUS HOSPITAL				

[…]
[PAGE 15]
[…]

OTHER EFFECTS RELATED TO THE FUMIGATION IN VALLE DEL GUAMUEZ

Regarding the other damages produced by the fumigation, according to the Local Ombudsman's Office, it can be observed that of the total number of hectares affected (7,252), the pastures (grazing areas for livestock) were the areas most affected, with 39% (2,850 hectares), followed by plantain crops (12,6%) and in third place, coca crops with 11% (854 hectares).

[…]

The high percentage of fish affected is worrying (72.3%), as is the case of poultry (hens, roosters, ducks) (21.5%), among the total number of animals that died as a result of the illicit crop eradication program (178,377), a situation which, added to the

fumigation of subsistence crops, constitutes a high risk factor for the food security of the inhabitants of this region.

[…]

DEPARTAMENTO ADMINISTRATIVO DE SALUD
OFICINA DE PLANEACIÓN
SECCION EPIDEMIOLOGÍA

EFECTOS DE LA FUMIGACION AEREA CON GLIFOSATO VALLE DEL GUAMUEZ - SAN MIGUEL – ORITO PUTUMAYO FEBRERO 2001

Dyva Revelo Calderón - Sección Epidemiología DASALUD PUTUMAYO

En cumplimiento de la Resolución 0005 del Consejo Nacional de estupefacientes[1] sobre los mecanismos de control, seguimiento y monitoreo, que permitan evaluar el impacto ambiental, sanitario y epidemiológico generado por el Programa de Erradicación de Cultivos Ilícitos por fumigación, se realizaron entrevistas con personas del área rural y urbana de los municipios de: Orito, Valle del Guamuez y San Miguel, lo mismo que con el personal médico de las Instituciones Prestadoras de Servicios de Salud (IPS), los personeros e inspectores de Policía, de los municipios mencionados que fueron objeto de la fumigación a partir del 22 de diciembre del 2000 hasta el 2 de febrero del 2001.

INFORME DE LOS HOSPITALES Y CENTROS DE SALUD

El hospital de Orito reporta un incremento notorio en la consulta por problemas de reacciones alérgicas de piel como: dermatitis, impétigo, abscesos, dolor abdominal, diarreas, infección respiratoria aguda, presentados a partir de la fumigación realizada en la zona rural del municipio.

Por información del Administrador del Centro de Salud de La Dorada, comprensión del municipio de San Miguel, en la vereda Agua Clara se dio cuenta de la intoxicación de personas expuestas a la fumigación, con sintomatología manifiesta por irritación de piel, de ojos, náuseas, infección respiratoria aguda como bronquitis, gripe y resfriados; además de dolor abdominal, entre otros, lo cual se correspondería con lo encontrado en estudios epidemiológicos realizados en otros lugares[2].

Coincide en las mismas observaciones personal médico de los Hospitales de Orito, La Hormiga (Valle del Guamuez) y la Dorada (San Miguel) cuando refiere que, a partir del inicio de las fumigaciones, se observó un notorio incremento en las causas de consulta por problemas de dermoreacción, abscesos, impétigo,

[1] Resolución #005 del 11 de agosto del 2000, del Consejo Nacional de Estupefacientes, referida a las facultades otorgadas a los Ministerios de Salud, Agricultura y Desarrollo Rural, y Medio Ambiente, para "establecer los mecanismos para vigilar y controlar los riesgos derivados del uso y manipulación de plaguicidas".

[2] Memoria Seminario - Foro Público "Erradicación Manual de cultivos ilícitos", Universidad Nacional de Colombia, 13 de octubre del 2000.

infecciones gastrointestinales (dolor abdominal, diarrea, náuseas, vómito), infecciones respiratorias (bronquitis, asma), conjuntivitis.
Las personas que consultan atribuyen esta sintomatología a la aspersión que recibieron de las avionetas destinadas a la fumigación de cultivos ilícitos. Sin embargo, no todas las personas que fueron alcanzadas por la fumigación acudieron a los organismos de salud, por falta de recursos económicos o percepción errónea de la forma en que debía haberse tratado los problemas de salud que experimentaron.

Ejemplo de ello fueron los niños y niñas de la Escuela Rural de la Concordia, del corregimiento de El Tigre (Valle del Guamuez) quienes según el personal docente, presentaron problemas respiratorios, dolor abdominal, conjuntivitis y dermatitis, pero no acudieron a las instituciones de salud pública, único mecanismo para que DASALUD pueda mantener un seguimiento.

La visita realizada el 9 de febrero del 2001 a la vereda El Rosal, del Valle del Guamuez permitió entrevistar al dueño de una de las fincas afectadas por la aspersión aérea con agroquímicos; esta persona refirió que se encontraba en el potrero de su propiedad en momentos en que las avionetas pasaban fumigando y al ser alcanzado por la fumigación, presentó reacción dérmica con intenso escozor y dolor en la cara. Además, señaló la muerte de gallinas, pollos y ganado porcino (dos cerdos recién nacidos), que fueron asperjados con el químico utilizado para la erradicación de los cultivos ilícitos. Una observación de campo en la huerta de la casa comprobó la muerte de matas de plátano, yuca, borojó, jardín y otras plantas, que fueron objeto de la fumigación, y en consecuencia, la sequía de varias hectáreas de pasto para ganado, así como de la quebrada que atravesaba el potrero de su finca.

Existe una relación de los casos atendidos en el Hospital Sagrado Corazón de Jesús de La Hormiga, con diagnósticos compatibles, con intoxicación por exposición a la aspersión por químicos, atendidos entre el 22 de diciembre del 2000 y el 2 de febrero del 2001.

Muchos interrogantes surgen entonces frente a una situación que puede agravarse dado el impacto sobre los componentes ambiental, social y de salud de las personas.

Con esta premisa y teniendo en cuenta la Constitución Política, la ley 100, el Articulo 43 del Decreto 1291 del 22 de junio de 1994 (funciones de epidemiología), el Articulo 5 del Decreto 1938 de agosto 5 de 1994, además de lo contemplado en el artículo 8 de la Resolución # 005 del 11 de agosto del 2000, lo expuesto en el marco legal para Vigilancia en Salud Pública, como la Ley 9 de 1979, el Decreto 1562 de 1984, referentes a acciones en salud publica, es deber del Estado colombiano, a través de sus instituciones "velar por la salud, vida e integridad de las personas".

INFORME DE LA PERSONERÍA

DEL VALLE DEL GUAMUEZ

De las 100 veredas que existen en el Valle del Guamuez, municipio con el mayor número de habitantes en el departamento, después de Puerto Asís y Orito, con 35.288 habitantes; residentes de 67 de ellas, se consideraron afectados por la fumigación en su estado de salud, cultivos y medio ambiente.

De las 800 quejas interpuestas por los habitantes ante la Personería de La Hormiga, municipio del Valle del Guamuez, la mayor proporción de éstas corresponde a La Esmeralda, El Placer y los Ángeles, veredas con 535 habitantes, 1.014 habitantes y 497 habitantes respectivamente. (Tabla 1)

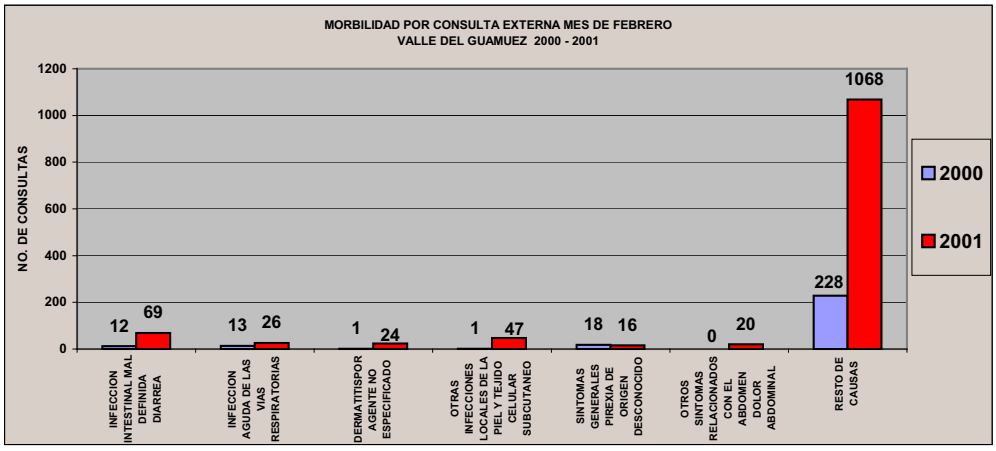
PORCENTAJE DE QUEJAS EN SALUD SEGÚN LOCALIDAD DE PROCEDENCIA
VALLE DEL GUAMUEZ
DICIEMBR E 2000 ENERO Y FEBRERO DEL 2001

Tabla 1.

NO. ORDEN	LOCALIDADES	NO. QUEJAS	%
1	ESMERALDA	44	7.4
2	EL PLACER	32	5.4
3	LOS ANGELES	32	5.4
4	LAS VEGAS	31	5.2
5	COSTA RICA	21	3.5
6	SANTA ROSA DEL GUAMUEZ	21	3.5
7	LA BETANIA	20	3.4
8	SAN ISIDRO	20	3.4
9	MIRAVALLE	19	3.2
10	LA FLORIDA	19	3.2
11	ALTO PALMIRA	18	3.0
12	LAURELES	18	3.0
13	LA PALESTINA	17	2.9
14	SANTA TERESA	15	2.5
15	JARDIN	13	2.2
16	GUADUALES	13	2.2
17	VARADERO	13	2.2
18	EL ROSAL	12	2.0
19	LA CONCORDIA	12	2.0
20	CARIBE	12	2.0
21	BRISAS DEL PALMAR	12	2.0
22	NUEVA ISLA	12	2.0
23	OASIS	12	2.0
24	LA PRADERA	11	1.8
25	LORO 1	11	1.8
26	SULTANA	11	1.8
27	RECREO	11	1.8
28	ALTO HUISIA	10	1.7
29	LORO 8	9	1.5
30	SAN ANDRES	8	1.3
31	PROVIDENCIA	8	1.3
32	ZARZAL	6	1.0
33	ALTO ROSAL	6	1.0
34	SAN MARCOS	5	0.8
35	DELICIAS	5	0.8
36	VILLA DUARTE	4	0.7
37	AGUA BLANCA	4	0.7

ANNEX 90

Gráfico 5.



Fuente: RIA Consulta Externa Hospital Sagrado Corazón de Jesús La Hormiga- Valle del Guamuez

Tabla 6.

MORBILIDAD POR CONSULTA EXTERNA – MES FEBRERO	AÑO 2000	AÑO 2001	% CAMBIO	VALOR DE p
DIARREA	12	69	475.0	0.0000
INFECCION RESPIRATORIA AGUDA	13	26	100.0	0.00005
DERMATITIS	1	24	2300.0	0.00005
INFECCION DE LA PIEL Y TEJIDO CELULAR SUBCUTANEO	1	47	4600.0	0.0000
SINTOMAS GENERALES PIREXIA DE ORIGEN DESCONOCIDO	18	16	-11.1	0.08
OTROS SINTOMAS RELACIONADOS CON EL ABDOMEN DOLOR ABDOMINAL	0	20	2.000	0.0000
RESTO DE CAUSAS	228	1068	368.4	0.0000
TOTAL DE CAUSAS	273	1270	3650.0	0.0000
FUENTE: RIA CONSULTA EXTERNA HOSPITAL SAGRADO CORAZON DE JESUS				

En las historias clínicas de atención de urgencias del mes de diciembre del 2000 sé puede constatar que de 6 casos que consultaron, el 50% atribuye su sintomatología a la fumigación, mientras que del 50 % restante 2 corresponden a intoxicación alcohólica y un caso a intoxicación por manipulación directa de químicos en otras circunstancias (Tabla 7)

RELACION DE PACIENTES QUE CONSULTARON AL SERVICIO DE URGENCIAS DEL HOSPITAL SAGRADO
CORAZON DE JESUS DE LA HORMIGA- DICIEMBRE 23 DEL 2000

CONJUNTIVITIS GONOCOCCICA	1	1.3	0.03
ODONTALGIA	1	1.3	0.03
PALADAR HENDIDO	1	1.3	0.03
TUMOR CONJUNTIVA DERECHA	1	1.3	0.03
MALFORMACION CONGENITA	1	1.3	0.03
ROSEOLA INFANTIL	1	1.3	0.03
PIODERMITIS	1	1.3	0.03
TOTAL	75	100.0	2.13

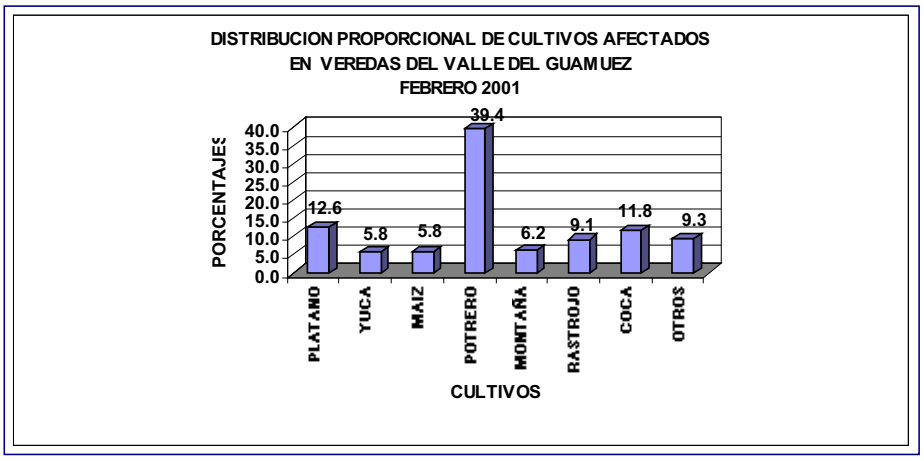
FUENTE: REGISTRO DIARIO DE ATENCION EN CONSULTA - COMITÉ INTERNACIONAL CRUZ ROJA

NOTA: EL MAYOR CONSULTANTE FUE DE 13 AÑOS

OTROS EFECTOS RELACIONADOS CON LA FUMIGACION EN EL VALLE DEL GUAMUEZ

Respecto a los otros daños producidos por la fumigación, según la Personería Municipal se puede observar cómo del total de hectáreas afectadas (7.252), los potreros (áreas de pasto para ganado) fueron las áreas más afectadas, con un 39 % (2.850 hectáreas) seguido por los cultivos de plátano (12.6%) y en un tercer lugar los de coca en un 11% (854 hectáreas).

Gráfico 6

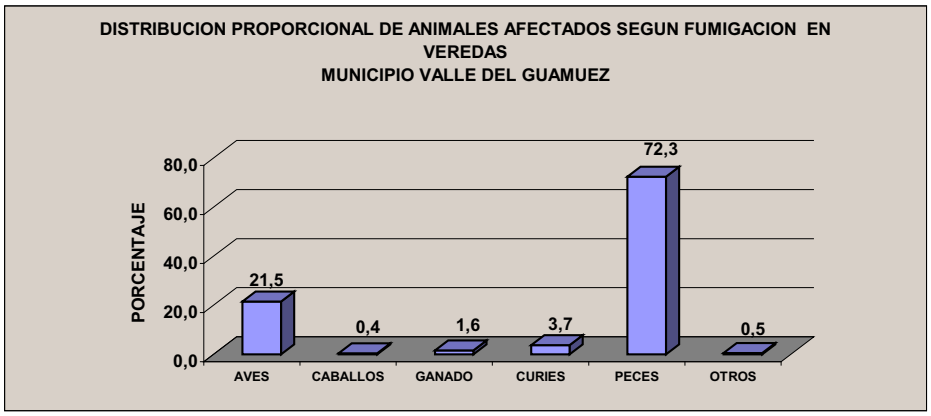


Fuente: Personería municipal la Hormiga Municipio Valle del Guamuez

Es preocupante el alto porcentaje de peces afectados (72.3%), lo mismo que el de las aves de corral (gallinas, pollos, patos) (21.5%) entre el total de animales que murieron como consecuencia del programa de erradicación de cultivos ilícitos, (178.377), situación que, sumada a la fumigación de productos de pan coger,

constituye un factor de alto riesgo para la seguridad alimentaria de los habitantes de esta región.

Gráfico 7.



Fuente: Personería municipal la Hormiga Municipio Valle del Guamuez

INFORME DE LA PERSONERIA SAN MIGUEL

La información disponible en la Personería de La Dorada permitió establecer que 83% (235/281) del total de quejas interpuestas en dicha institución durante el mes de enero del 2001 expresaban efectos adversos en la salud de las personas. El porcentaje por esta misma razón entre las quejas presentadas en el mes de febrero del 2001 fue de 92%(334/362). Los síntomas referidos en esta Personería, son muy similares a los encontrados entre los afectados del Valle del Guamuez.

PORCENTAJE DE QUEJAS EN SALUD SEGÚN LOCALIDAD DE PROCEDENCIA SAN MIGUEL MUNICIPIO DE SAN MIGUEL ENERO – FEBRERO 2001

Tabla 9.

ANNEX 91

Republic of Colombia, Office of the Ombudsman,
Ombudsman Report No. 1, Fumigations and Alternative Development Projects in Putumayo (9 Feb. 2001)

OFFICE OF THE OMBUDSMAN

Ombudsman Delegated for Collective Rights and the Environment

OMBUDSMAN REPORT No. 1

FUMIGATIONS AND ALTERNATIVE DEVELOPMENT PROJECTS IN PUTUMAYO

9 February 2001

[…]
[PAGE 9]
[…]

[…]

4. OMBUDSMAN'S ACTION

4.1 Formation of an Inter-Institutional Mission that visited Putumayo

Due to the complaints presented – indiscriminate fumigations, damage to the projects of Plante and other entities, impacts to the environment, health and socio-economic conditions – the Ombudsman's Office promoted the formation of an Inter-Institutional Commission, composed of officials from this entity, Plante, Corpoamazonía, the Umatas and the personnel of the municipalities visited. Some of the trips included the participation of officials from the United Nations High Commission on Refugees – UNHCR – and journalists from various international media.

In the execution of this mission which, between the 15th and 25th of January, visited different districts of the municipalities of Puerto Asís, Valle del Guamuéz, San Miguel, and Orito, declarations were received from different *campesino* and indigenous municipal authorities, communities and leaders. Similarly, they visited indigenous reserves and councils, as well as *campesino* and settler farms and districts were visited.

[PAGE 10]

In addition, documentary proof of the damages caused was received, and information was compiled by the entities working within the commission. Photographs and film from the places visited were taken and samples collected.

The following is a description of the activities undertaken by the Commission:

[…]

4.1.1.1. Environmental Impacts

- An increase in deforestation in the Putumayan piedmont. Greater effects of necrosis and death are observed, leaving a desolate panorama over vast areas of territory.
- Indiscriminate destruction of the little remaining forest, of subsistence crops and medicinal plants, as well as of pastures and fish-farming ponds, among others.
- Migration of wild animals, principally birds, reptiles and amphibians, caused by the fragmentation of the forests. Also, complaints have been received regarding the deaths of some birds, a fact which could not be corroborated in the field work carried out.

[…]
[PAGE 11]
[…]

4.1.1.2 Social Impacts

- Damage to dietary conditions of the inhabitants of the region. As has previously been mentioned, aerial spraying indiscriminately affected illicit crops, subsistence crops (yucca, cane, *pida*, *chontaduro*, plantain, rice, maize, *vota*, *borojó* and oranges, avocados, beans, *zapote*, and papaya), medicinal plants (Principally yagé, *sábila*, *descansel*, *mata ratón*, *paico*, *yerbabuena*), pastures, fish-farming ponds, chicken coops, the health of *campesinos* and indigenous peoples and, in general, disturbed the economy of the region. The Office of the Ombudsman, in some cases, could observe damages in sites located more than 150 metres from coca plantations.

[…]

- Phenomena of displacement to other areas in the same municipality or to other provinces, including, in a highly striking manner, to Ecuador.

[…]
[PAGE 12]
[…]

- Harm to the health of people. Complaints regarding health effects are related to gastrointestinal problems, skin problems, headaches and nausea, as the more common complaints. Several cases diagnosed under the profile of "exogenous poisoning" have been attended to at Hormiga Hospital.

[…]

DEFENSORIA DEL PUEBLO

Defensoría Delegada para los Derechos Colectivos y el Ambiente

INFORME DEFENSORIAL No. 1

FUMIGACIONES Y PROYECTOS DE DESARROLLO ALTERNATIVO EN EL PUTUMAYO
Febrero 9 de 2001

1. HECHOS

El 11 de enero de 2001, representantes de las comunidades indígenas Cofanes, Awa, Paeces y Pastos provenientes del Putumayo denunciaron ante esta Defensoría que, desde el pasado 22 de diciembre del 2000, se han realizado fumigaciones sobre sus territorios, las que han afectado los cabildos y parcialidades de Santa Rosa de Guamuéz, Nueva Isla, Nuevo Horizonte, Tierra Linda, entre otras.

Los indígenas señalaron que las aspersiones aéreas destruyeron sus cultivos de pancoger y yagé, causaron la muerte de animales y problemas en la salud de la población. Se fumigaron 45 hectáreas de bosques de sitios sagrados y cuatro casas ceremoniales. Adicionalmente, afectaron varios de los proyectos, que, previa concertación con el Plan Nacional de Desarrollo Alternativo – Plante o PNDA - y con recursos de éste, se llevan a cabo en la zona.

Médicos indígenas y aprendices, miembros del Resguardo de Santa Rosa del Guamuéz, en comunicación dirigida a la Defensoría el 25 de enero, solicitan que "ante el grave atropello de la fumigación indiscriminada, y las graves consecuencias que se derivan de estas acciones del Estado, el Cabildo de Santa Rosa del Guamuéz debe recibir **una indemnización inmediata**, recursos para garantizar nuestra alimentación en los próximos meses, mientras sembramos nuevos cultivos, atención médica, hospitalaria y drogas a los miembros de nuestra comunidad, considerando que también nuestras plantas medicinales fueron destruidas, además del restablecimiento de los proyectos productivos afectados, que se mencionan en el Pacto." (Resaltado fuera de texto).

Posteriormente, el pasado 26 de enero, representantes de las comunidades indígenas del resguardo de Buenavista manifestaron ante esta Defensoría que, el 2 de enero, varios helicópteros y dos avionetas sobrevolaron sus territorios y los fumigaron de manera indiscriminada.

Este pacto cobija a la comunidad de las veredas de Ancura, Brisas del Hong Kong, Carmen del Picuña, Cocaya, El Aguila, Jerusalén, Canacas, Las Acacias, Mansoya, Nariño-Nariño, Peneya, Salónica, Santa Isabel, Sinaí, Peña-Sorá, La Danta, Danubio, La Diana, Las Minas, Marmato, Nuevo Diamante, Paraíso, San José, Sardinas, entre otras. Tiene una cobertura de aproximadamente 900 familias y 1620 hectáreas por erradicar.

3.2.3. Procesos de concertación en curso

Los procesos de concertación se adelantan en el municipio de Puerto Asís tendentes a la firma de pactos de erradicación voluntaria y desarrollo alternativo con 2000 familias de Teteye, La Carmilita, La Libertad y Puerto Vega; con 800 familias de Comandante y Bocanas del Cuembi; 490 familias de Piñuña Blanco y 531 familias de Villa Victoria.

También existen procesos de concertación en curso con comunidades de otros municipios: con 700 familias de la Inspección Bloque San Juan del municipio de Villa Garzón; 150 familias de la Inspección de Puerto Limón del municipio de Mocoa; 1500 familias de las Inspecciones de Mayoyoque, Galilea, Gallinazo y El Mandur en el municipio de Puerto Guzmán; 5000 familias de todo el municipio de Orito, un número aún por definir de familias en el Valle del Guamuéz y 6000 familias de todas las Inspecciones del municipio de Puerto Caicedo.

4. ACCIÓN DEFENSORIAL

4.1. Conformación de una Misión Interinstitucional que visitó el Putumayo

A raíz de las quejas presentadas - fumigaciones indiscriminadas, daños a proyectos Plante y de otras entidades, efectos ambientales, en la salud y en las condiciones socioeconómicas - la Defensoría del Pueblo promovió la conformación de una Comisión Interinstitucional, integrada con funcionarios de esta entidad, el Plante, Corpoamazonía, las Umatas y las Personerías de los municipios visitados. En algunos de los recorridos se contó además con la participación de funcionarios de la Oficina del Alto Comisionado de las Naciones Unidas para los Refugiados – ACNUR - y de periodistas de varios medios de comunicación internacionales.

En desarrollo de esta misión que, entre el 15 y el 25 de enero, visitó diferentes veredas de los municipios de Puerto Asís, Valle del Guamuéz, San Miguel y Orito, se recibieron declaraciones de las diferentes autoridades municipales, comunidades y líderes de campesinos e indígenas. Asimismo, se visitaron resguardos y cabildos indígenas, fincas y veredas de campesinos y colonos. Adicionalmente,

se recibieron pruebas documentales sobre los daños ocasionados y se recopiló información por las entidades integrantes de la comisión. De los lugares visitados se tomaron fotografías, se realizaron filmaciones y se levantaron muestras.

A continuación se indican las actividades realizadas por la Comisión:

4.1.1. Evaluación General de los Efectos de las Fumigaciones.

La Comisión Interinstitucional comprobó los impactos que están causando las fumigaciones aéreas utilizadas para erradicar las plantaciones de coca, en las áreas detalladas en los mapas No. 1 y 2 y en la relación georeferenciada de los lugares en que se realizó el seguimiento de las fumigaciones en los municipios del Valle de Guamuéz, San Miguel y Orito.

Estos impactos, que han sido descritos en anteriores investigaciones elaboradas por parte de la Defensoría del Pueblo y otros organismos, pueden resumirse así:

4.1.1.1. Impactos Ambientales

- Aumento de la deforestación del piedemonte putumayense. Se observa mayores efectos de necrosamiento y muerte, dejando un panorama desolador en vastas zonas de terreno.

- Destrucción indiscriminada de la poca selva que aún subsiste, de los cultivos de pancoger y de plantas medicinales, así como de potreros y estanques piscícolas, entre otros.

- Migraciones de los animales silvestres, principalmente, aves, reptiles y anfibios, ocasionadas por la fragmentación de los bosques. Incluso se recibieron quejas sobre la muerte de algunas aves, hecho que no se pudo corroborar en el trabajo de campo realizado.

- Daños sobre los cuerpos de agua.

- Formación de diques en las quebradas a causa de la gran cantidad de hojas caídas de los árboles y otras plantas que obstruyen el libre flujo de las aguas y ocasionan su descomposición y contaminación. Muchos de estos cuerpos de agua o manantiales son la fuente para consumo humano y vegetal. Este fenómeno se evidenció en varias partes, como en el resguardo de Santa Rosa del Guamuéz, en donde el agua cambia de color por los taninos liberados por las hojas.

4.1.1.2 Impactos Sociales

- Perjuicios en las condiciones alimenticias de los habitantes de la región. Como se ha mencionado anteriormente, las aspersiones aéreas afectaron indistintamente los cultivos ilícitos, los cultivos de pancoger (yuca, caña, pida, chontaduro, plátano, arroz, maíz, vota, borojó y naranjos, aguacate, fríjol, zapote, papaya), las plantas medicinales (Yagé principalmente, sábila, descansel, mata de ratón, paico, yerbabuena), los potreros, estanques piscícolas, galpones de gallinas, la salud de los campesinos e indígenas y, en general, trastornaron la economía de la región. La Defensoría en algunos casos, pudo observar daños en sitios ubicados a más de 150 metros de las plantaciones de coca.

- Disminución de la actividad productiva. Algunos de los habitantes no han vuelto a sembrar en las zonas afectadas, bien sea por temor a nuevas fumigaciones y o por falta de recursos para los insumos.

- Incrementos en el costo de vida y pérdida de poder adquisitivo. Lo anterior se desprende, tanto de las consecuencias del reciente paro armado, como por problemas en la comercialización de los productos. Varios de éstos, a pesar de no demostrar mayores síntomas de deterioro, corren el riesgo de no ser vendidos porque no hay mercado para los mismos. Es así como en la cabecera municipal de Valle del Guamuéz se informó a la Comisión que no tienen mercado los chontaduros provenientes de las zonas que fueron fumigadas. Es el caso de los procedentes del resguardo de Santa Rosa del Guamuéz.

- Fenómenos de desplazamiento hacia otras zonas de los mismos municipios o hacia otros departamentos o incluso, de forma muy marcada, hacia el Ecuador.

  Aunque el fenómeno es muy reciente y no existen estadísticas que puedan determinar la magnitud de la situación, ya es posible constatar la existencia de personas desplazadas de una vereda a otra, dentro de un mismo municipio (vgr, de la inspección Jordán Güisia hacia El Venado, las dos localizadas en el Municipio del Valle del Guamuéz).

  De acuerdo con el registro de población indígena desplazada, coordinado por la Red de Solidaridad Social, en Bogotá se encuentran tres familias conformadas por diez personas del pueblo Cofan provenientes del Valle del Guaméz. Neiva y Pasto han recibido población indígena expulsada del Putumayo. Otra población sin registro estadístico se ha desplazado al vecino país del Ecuador.

También se encuentran caseríos casi abandonados (veredas el Maizal, Jordán Ortiz, San Carlos) cuya población ha migrado, principalmente, a los departamentos de Nariño y Cauca.

En el Consulado de Colombia en la ciudad de Lago Agrio, Ecuador, se ha atendido a varias familias desplazadas desde el Putumayo a causa de las fumigaciones aéreas. Según la Cónsul, hace dos semanas se reportaron 750 personas como refugiadas. En la tercera semana de enero, llegaron 11 familias (50 personas). La situación obligó a construir o adecuar albergues, los cuales iniciarán su funcionamiento en febrero. Al respecto, las oficinas del Alto Comisionado de las Naciones Unidas para los Refugiados – ACNUR -, están consolidando los datos. Algunas de las autoridades municipales, señalan que entre el 70% y 80% de la población se ha desplazado a Ecuador.

La situación de refugiados colombianos en Ecuador generó un incremento de la violencia en la ciudad de Lago Agrio. En El Coca, otra población cercana, se impide el ingreso de colombianos.

En las veredas visitadas por la Comisión, algunos de los campesinos afectados manifestaron que de no ofrecerse opciones por parte del Gobierno para volver a "sembrar comida", ellos también tendrán que abandonar sus fincas e ir a buscar refugio y comida a otra parte.

En la vereda San Carlos del municipio de San Miguel, se cerró el colegio por falta de estudiantes y se corre el riesgo de que las juntas de acción comunal pierdan la personería jurídica por falta de socios. La profesora será reubicada en un colegio de la cabecera municipal, en La Dorada.

- Reclutamientos. Varias personas manifiestan que la falta de opciones de subsistencia conducirá a que muchos jóvenes sean reclutados por los grupos armados al margen de la ley.

- Daños en la salud de las personas. Las quejas sobre la afectación a la salud tienen que ver con problemas gastrointestinales, dérmicos, dolores de cabeza y mareos, como las dolencias más comunes. En el hospital de la Hormiga se han atendido varios casos diagnosticados bajo el cuadro de "intoxicaciones exógenas".

4.1.2. Visitas a resguardos, cabildos indígenas, fincas y veredas de campesinos y colonos y evaluación general de los efectos de las fumigaciones

Atendiendo las quejas presentadas por las comunidades indígenas, se pudo constatar que las aspersiones aéreas afectaron, de diferentes

ANNEX 92

Republic of Colombia, Office of the Ombudsman,
Ombudsman Resolution No. 4 (12 Feb. 2001)

Ombudsman Resolution No. 4
12 February 2001

ON THE IMPACT OF FUMIGATIONS ON 11 ALTERNATIVE DEVELOPMENT PROJECTS IN PUTUMAYO

IN CONSIDERATION OF:

The Ombudsman Report No. 1 "Fumigations and Alternative Development Projects in Putumayo" dated 9 February 2001, by the Ombudsman Delegated for Collective Rights and the Environment.

[…]
[PAGE 4]

As it has been shown, the fumigations condemned by this resolution destroyed not only the illicit crops – the target of manual eradication – but also other species necessary for the household subsistence of the beneficiaries of the pacts. Now, these people and communities are facing both the ruin of their household finances as well as a severe food security problem. Given the precarious conditions of this group of people, the action by the State gives rise to a violation of their right to subsistence, which translates into a serious harm to the physical integrity and dignity of the family and its members. It was a matter of introducing a policy that would strengthen the community and move it away from marginality and illegality. However, the arbitrary behavior explained herein has produced an opposite effect to the one desired.

It is declared, with immediate effect, that the authorities correct their actions. The implementation of public policies requires diligence and coherence from the responsible authorities. Otherwise, the desired goals will not be attained, and even if they are, they will be met at the expense of violating the human rights of the population. The administrative function, as noted by the Office of the Ombudsman, was not met in a coordinated and efficient manner by the different State agencies. Instead of State unity, contradiction within the State itself predominated, to the extent that it blatantly violated the pacts and promises by which it was bound.

Having violated the human rights of the affected population, the State should spare no effort to repair, in a material and comprehensive manner, the damage caused by its actions. The situation of the affected people and communities also requires that immediate action be taken to provide them with the means to meet their basic needs, without which their own survival may be seriously threatened.

12. That, finally, taking into account the facts and background stated above, and the jurisdiction of the Office of the Ombudsman, which is described herein below:

- It is the function of the Ombudsman to safeguard the exercise and validity of human rights, in accordance with Article 282 of the Political Constitution and Law 24 of 1992.

- It is the duty of the Ombudsman to make recommendations and observations to the authorities and individuals in the event of threats to or violation of human rights, in accordance with Article 9, paragraph 3, Law 24 of 1992.

- It is the responsibility of the Ombudsman to present regular reports on the results of his/her investigation, publicly denouncing violations of human rights, according to the stipulations set forth in Article 9, paragraph 22, Law 24 of 1992.

HEREBY RESOLVES:

[…]
[PAGE 5]
[…]

1. **TO RECOMMEND THAT** the National Narcotics Council, within 48 hours following the issuance of this Resolution, meet and order the immediate suspension of the fumigation of illegal crops in the Department of Putumayo and in any other area of the country until:

- The National Narcotics Directorate and the Antinarcotics Police have the geocoded information for all projects financed by Plante [acronym in Spanish for National Plan for Alternative Development] or by other national and international institutions, whether or not part of Plan Colombia, whose objective is the alternative development and improvement of

socioeconomic, environmental and cultural conditions of the population living in areas affected by the illegal crops.

- A decision is reached regarding the treatment which should be afforded to the communities who have expressed their intention to perform manual eradication, through the signing of a statement of intent or any other similar statement, but whose negotiation process with the State has yet to be finalized with the signing of the "Manual Eradication and Alternative Development Pacts".

- The National Narcotics Council, meeting in plenary, approves the geocoded information and the prohibition on fumigation of the projects mentioned therein, pursuant to the stipulations under Article 3 of Resolution No. 005 of 2000, issued by this entity.

2. **TO EXHORT** the entities and agencies responsible for drafting and executing the "National Plan for the Fight against Drugs, Colombia 1998-2002", to comply with the coordinating mechanisms stipulated in the Law, in the regulations and in the documentation of the Plan. In the event that these are insufficient, they are to create the necessary mechanisms to prevent contradictions and additional harm to the population.

3. **TO EXHORT** the entities and agencies responsible for drafting and executing the "National Plan for the Fight against Drugs, Colombia 1998-2002", and those in charge of implementing Plan Colombia to coordinate their respective efforts to create conditions that will build trust in the communities, particularly in terms of the negotiation process aimed at manual eradication of illegal crops and setting in motion alternative development programs.

4. **TO EXHORT** the National Narcotics Council to demand the effective completion of the phase of surveillance of the areas with illegal crops as stipulated in Article 2 of Resolution No. 005 of 2000.

[PAGE 6]

5. **TO EXHORT** the Inter-institutional Technical Committee, as stipulated in Article 6 of Resolution No. 005 of 2000, to define the proceedings and procedures for processing the complaints filed regarding the fumigations carried out in Putumayo since December of last year.

6. **TO RECOMMEND** that a representative of the Presidential Plante Program be appointed as a member of the National Narcotics Council and, to this effect, request that respective regulatory modifications be undertaken.

7. **TO EXHORT** the National Narcotics Council, the National Narcotics Directorate, and the Antinarcotics Police to safeguard the rights of the indigenous peoples to the traditional uses of coca, fundamental to their physical and cultural integrity, and to this effect, ensure that the fumigations do not prevent these uses.

8. **TO URGE** the Social Solidarity Network to immediately attend to the food security needs of the Putumayo communities affected by the fumigations.

9. **TO URGE** the Social Solidarity Network to encourage the active participation of indigenous authorities or their representatives in Municipal Committees or Working Groups for Displaced Population Assistance and to work with them to develop a strategy for the distribution of supplies.

10. **TO URGE** the General Directorate of Indigenous Affairs of the Ministry of the Interior to, as part of its mandate, call upon all government institutions at the national level that have responsibilities and functions related to the assistance of indigenous communities in Putumayo to draft comprehensive contingency plans, designed to guarantee the right to life and to physical, social and cultural integrity and to protect their collective rights; similarly, to follow-up, monitor and verify compliance with the measures adopted pursuant to such plans.

11. **TO EXHORT** the National Government to define the necessary procedures for the immediate compensation of the communities affected by the spraying operations carried out in Putumayo during the months of December and January.

12. **TO ORDER** the Legal Actions and Resources Department of the Ombudsman's Office to file the relevant lawsuits for the effective protection of the rights of the indigenous communities in Putumayo affected by the spraying, and the respective compensation for damages, unless the respective entities, within a reasonable time limit, restore the rights that have been violated.

13. **TO ENTRUST** the Ombudsman Delegated for Collective Rights and the Environment and the Ombudsman Delegated for Indigenous Peoples and Ethnic Minorities with the follow-up of this Resolution.

14. **TO SEND** a copy of this Resolution to the members of the National Narcotics Council, the Vice President of the Republic, the Advisor for Civic Coexistence and Citizens Security, the Ministry of the Interior, the Directors of Plan Colombia, Plante, the Social Solidarity Network, and the National Narcotics Directorate.

15. **TO INCLUDE** the report and this Ombudsman Resolution, as well as the results of the follow-up thereto, in the Annual Report to be presented by the Ombudsman to the Congress of the Republic.

EDUARDO CIFUENTES MUÑOZ

Ombudsman

Resolución Defensorial no. 4

Febrero 12 de 2001

SOBRE EL IMPACTO DE FUMIGACIONES EN 11 PROYECTOS DE DESARROLLO ALTERNATIVO EN EL PUTUMAYO

VISTO

El Informe Defensorial No. 1 de la Defensoría Delegada para los Derechos Colectivos y del Ambiente "Fumigaciones y Proyectos de Desarrollo Alternativo en el Putumayo" del 9 de febrero del 2001.

CONSIDERANDO

1. Que como se detalla en el citado Informe Defensorial, que se anexa a la presente y forma parte integrante de la misma, en diferentes oportunidades, representantes de las comunidades indígenas Cofanes, Awa, Paeces, Sionas y Pastos provenientes del Putumayo denunciaron, ante la Defensoría del Pueblo, verbalmente y por escrito, los impactos ocasionados en sus territorios, con motivo de las fumigaciones realizadas desde diciembre del año pasado a la fecha.

2. Que las actividades de erradicación con químicos afectaron, entre otros, los cabildos y parcialidades de Santa Rosa de Guamuéz, Nueva Isla, Nuevo Horizonte, Tierra Linda, resguardos Buenavista y Cofán, la Reserva Yarinal y la comunidad Indígena de Palestina. Así como también otros lugares como El Hacha, Santa Helena, Piñuña Blanco, El Tablero y algunos sectores ubicados sobre el río Putumayo.

3. Que la Defensoría del Pueblo conformó una Comisión Interinstitucional, que se trasladó a la zona para verificar las denuncias presentadas por los representantes de las comunidades y evaluar los impactos de las fumigaciones, principalmente, en territorios donde están ubicados los indígenas y en los cuales se desarrollan proyectos concertados y financiados por entidades como el Plante, Corporación para el Desarrollo Sostenible del Sur de la Amazonía – Corpoamazonía, Unidades Municipales de Asistencia Técnica Agropecuaria –UMATAS, Empresa Colombiana de Petróleos –ECOPETROL, Red de Solidaridad Social y Naciones Unidas.

4. Que en desarrollo de lo anterior, la Comisión realizó, entre otras, las siguientes actividades:

4.1 Visitas a resguardos, cabildos indígenas, fincas y veredas de campesinos y colonos y evaluación general de los efectos de las fumigaciones. Durante estas visitas se recibieron declaraciones y quejas, se acopió información, se tomaron fotografías y muestras y se realizaron filmaciones. En el mapa N°1 se señala el área visitada por la Misión Interinstitucional, la cual está debidamente referenciada, en el anexo 1. En el mapa N° 2 se localizan los proyectos que fueron objeto de las fumigaciones, citando la entidad estatal que los financia o promueve. En las fotografías adjuntas se pueden observar los efectos de las fumigaciones en los potreros, cultivos de yuca, maíz y plátano, así como los daños a los estanques piscícolas y, en general, a la vegetación natural.

4.2 Visitas a los proyectos del Plan de Desarrollo Alternativo, otras entidades del Estado y organismos internacionales. En el cuadro N° 1 se presenta una breve descripción de la localización e impactos sufridos por cada uno de los proyectos, los cuales están descritos en el Informe en comento.

4.3 Recepción de quejas y denuncias en torno a los Pactos de Erradicación Voluntaria en el marco del Plan Colombia. Se encuentran en el Expediente que lleva la Delegada, denominado Fumigaciones en el Putumayo, diciembre 2000 – febrero 2001.

5. Que la Defensoría hizo una revisión de los pactos y acuerdos que, desde 1998, viene impulsando el Plante, tanto con indígenas como con campesinos en la región. Igualmente se revisó el documento del Plante "Construcción de Pactos Sociales de Desarrollo Alternativo, en nueve municipios del Departamento del Putumayo". Los mencionados pactos se enmarcan dentro del Plan Colombia.

6. Que en la Defensoría se realizó una reunión con el Director Nacional de Estupefacientes y el Subdirector Ejecutivo del Plante. En esta oportunidad, el Defensor del Pueblo presentó los temas objeto del Informe No. 1 de la Defensora Delegada para los Derechos Colectivos y del Medio Ambiente. Les manifestó, igualmente, la preocupación de esta entidad, por la falta de una gestión conjunta y coordinada entre las diferentes entidades del Estado frente a las operaciones de aspersión en el Putumayo.

7. Que como demostración de lo anterior, se puede mencionar el Oficio del 22 de diciembre, mediante el cual el Plante remite a la Dirección Nacional de Estupefacientes, 17 mapas de los 41 proyectos que viene acompañando y gestionando. Igualmente, se puede indicar el sobrevuelo realizado por funcionarios de la Policía Antinarcóticos y del Plante, en el cual se identificaron los proyectos de esta última entidad. Estos hechos no fueron óbice para las actividades de aspersión posteriormente adelantadas.

8. Que en la visita a ese departamento, campesinos y colonos expresaron su preocupación por los mensajes contradictorios que reciben sobre las actividades de fumigación. En efecto, mientras algunos representantes del Gobierno, vinculados a la ejecución del Plan Colombia, han indicado que no se empleará esa técnica de erradicación en los lugares en los que se ha avanzado en los procesos de concertación y se han suscrito las actas de intención o

actas de compromiso, otros funcionarios señalan que sólo se detendrán las fumigaciones, cuando se firmen los pactos de erradicación voluntaria. Esto último, lo confirman los hechos relatados en el informe.

9. Que, en síntesis, se observa un alto nivel de descoordinación entre las entidades que tienen a su cargo el "Plan Nacional de Lucha contra las Drogas. Colombia 1998 – 2002", y entre éstas y las que están encargadas de ejecutar el Plan Colombia.

10. Que, a pesar de haberse recibido en esta entidad la comunicación del Director de la Policía Antinarcóticos, en la que comunica la decisión de "**levantar el dispositivo operativo en el sur del país**", esta Defensoría considera que, con base en la normatividad vigente, dicha determinación sólo puede ser adoptada por el Consejo Nacional de Estupefacientes[1].

11. Que la investigación realizada por la Defensoría se ha circunscrito a las acciones de fumigación del Estado, que de acuerdo con las verificaciones efectuadas, afectaron cultivos y zonas amparadas por pactos de sustitución de cultivos ya perfeccionados o en trámite (actas de intención), o beneficiarias de proyectos de desarrollo alternativo. No cabe duda que las comunidades y los campesinos vinculados a una política dirigida a modificar ciertos patrones de producción por otros, luego de individualizada en términos de áreas, tipo de cultivo a erradicar, proyecto a emprender, personas y comunidades comprometidas, financiación y demás aspectos inherentes a esta compleja negociación público-privada, tenían un título jurídico que los sustraía de las operaciones de fumigación previstas por el Estado.

    La abstención específica del Estado, en este caso referida a la no fumigación de las zonas objeto de la sustitución de cultivos, correspondía a la principal obligación o promesa asumidas por éste, a las que se agregaba el apoyo financiero que debía proveer para materializar otras opciones socioeconómicas diferentes de las derivadas de la economía ilegal.

    La fumigación que se llevó a cabo, pese a lo estipulado y prometido, coloca al Estado en la situación de parte que no respeta el acuerdo por ella misma establecido, el cual no podía dejar de honrar sin sacrificar la fe en su propia palabra. Más allá de la transgresión jurídica, los convenios de sustitución y las actas de intención, dieron lugar a la configuración de una representación colectiva que apuntaba a sostener la creencia de que la voluntaria asunción de la erradicación del cultivo ilícito ponía a salvo a la comunidad de las operaciones de fumigación aérea. El comportamiento público, en los casos a que alude esta resolución, no coincide con la fundada expectativa que bien podía mantener la comunidad campesina que se allanó a los pactos.

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[1] Decreto 1206 de 1.973, Ley 30 de 1.986, D.E. 2272 de 1.991 y Decreto 2159 de 1.993, entre otras.

Como se ha podido comprobar, la fumigación objeto de censura en esta resolución, destruyó, además de los cultivos ilícitos –materia de erradicación manual-, otras especies, necesarias para el sustento familiar de los beneficiarios de los pactos. Ahora, estas personas y comunidades enfrentan tanto la ruina de su economía familiar como un severo problema de seguridad alimentaria. Dadas las precarias condiciones de este conjunto de personas, la acción del Estado se erige en causa de violación de su derecho a la subsistencia, que se proyecta en un grave menoscabo a la integridad física y a la dignidad de los núcleos familiares y de sus miembros. Se trataba de implantar una política que fortalecería a la comunidad, alejándola de la marginalidad e ilegalidad. Sin embargo, la conducta arbitraria que se glosa, ha producido un efecto contrario al pretendido.

Se impone, de inmediato, que las autoridades corrijan su actuación. La ejecución de las políticas públicas, exige diligencia y coherencia por parte de las autoridades responsables. De lo contrario, los fines perseguidos no se alcanzan, o si se realizan esto se hace a costo de violar los derechos humanos de la población. La función administrativa, según lo comprobado por la Defensoría, no se cumplió de manera coordinada y eficiente por parte de las diferentes agencias del Estado. En lugar de la unidad de Estado, primó la contradicción del Estado consigo mismo, hasta el punto de que de manera flagrante quebrantó pactos y promesas que lo vinculaban.

Generada la violación a los derechos humanos de la población afectada, no debe el Estado ahorrar ningún esfuerzo para reparar material e integralmente el daño causado con su proceder. La situación de las personas y comunidades agraviadas, demanda que, igualmente, de inmediato, se proceda a proveer los medios para que ellas puedan satisfacer sus requerimientos vitales, sin los cuales su propia subsistencia se encuentra seriamente amenazada.

12. Que, finalmente, teniendo en cuenta los hechos y antecedentes expuestos y la competencia de la Defensoría del Pueblo, que se describe a continuación:

- Es función del Defensor del Pueblo velar por el ejercicio y vigencia de los derechos humanos, de conformidad con el artículo 282 de la Constitución Política y la Ley 24 de 1992.

- Le corresponde al Defensor del Pueblo hacer las recomendaciones y observaciones a las autoridades y a los particulares en caso de amenaza o violación a los derechos humanos, de acuerdo con el artículo 9, numeral 3 de la Ley 24 de 1992.

- Le compete al Defensor del Pueblo rendir informes periódicos sobre el resultado de sus investigaciones, denunciando públicamente el desconocimiento de los derechos humanos, según lo prescrito en el artículo 9, numeral 22 de la Ley 24 de 1992.

RESUELVE:

1. **RECOMENDAR** al Consejo Nacional de Estupefacientes que, dentro de las 48 horas siguientes a la expedición de la presente Resolución, se reúna y ordene la suspensión inmediata de las fumigaciones de cultivos ilícitos en el Departamento del Putumayo y en cualquier otro lugar del país, hasta tanto:

   - La Dirección Nacional de Estupefacientes y la Policía Antinarcóticos cuenten con la información georeferenciada de todos los proyectos financiados por el Plante o por otras instituciones nacionales e internacionales, dentro o fuera del Plan Colombia, y cuyo objeto sea el desarrollo alternativo y el mejoramiento de las condiciones socioeconómicas, ambientales y culturales de la población que habita las áreas afectadas por los cultivos con fines ilícitos.

   - Se defina el tratamiento que debe ser dado a las comunidades que han manifestado su intención de erradicar manualmente, a través de la suscripción de actas de intención o cualquier otra declaración análoga, pero cuyo proceso de concertación con el Estado aún no ha culminado con la firma de los llamados "Pactos de Erradicación Manual y Desarrollo Alternativo".

   - El Consejo Nacional de Estupefacientes, reunido en pleno, apruebe la información georeferenciada y la no fumigación de los proyectos allí contemplados, en los términos del artículo 3º de la Resolución No. 005 del 2000, emanada de este mismo organismo.

2. **EXHORTAR** a las entidades y organismos encargados de la formulación y ejecución del "Plan Nacional de Lucha contra las Drogas, Colombia 1998-2002", a que cumplan con los mecanismos de coordinación previstos en la Ley, en los reglamentos y en el documento del Plan. En caso de ser éstos insuficientes, crear aquellos que sean necesarios a fin de evitar contradicciones y perjuicios adicionales a la población.

3. **EXHORTAR** a las entidades y organismos encargados de la formulación y ejecución del "Plan Nacional de Lucha contra las Drogas, Colombia 1998-2002" y a aquellos encargados de la puesta en marcha del Plan Colombia, que coordinen sus respectivas gestiones a fin de crear las condiciones que brinden confianza a las comunidades, particularmente, en los procesos de concertación tendientes a la erradicación manual de cultivos ilícitos y a la puesta en marcha de programas de desarrollo alternativo.

4. **EXHORTAR** al Consejo Nacional de Estupefacientes, a que exija el cumplimiento efectivo de la fase de reconocimiento de áreas de cultivos ilícitos prevista en el artículo 2 de la Resolución No. 005 del 2000.

5. **EXHORTAR** al Comité Técnico Interinstitucional, previsto en el artículo 6 de la Resolución No. 005 del 2000, a que defina el procedimiento y trámite de las quejas presentadas con ocasión de las fumigaciones realizadas en el Putumayo, desde diciembre del año pasado.

6. **RECOMENDAR** la incorporación de un representante del Programa Presidencial Plante como miembro del Consejo Nacional de Estupefacientes y, en este sentido, solicitar el respectivo ajuste normativo.

7. **EXHORTAR** al Consejo Nacional de Estupefacientes, a la Dirección Nacional de Estupefacientes y a la Policía Antinarcóticos para que velen por el respeto al derecho de los pueblos indígenas a los usos tradicionales de la coca, fundamentales para su integridad física y cultural, y en este sentido, a que las fumigaciones no obstruyan estos usos.

8. **APREMIAR** a la Red de Solidaridad Social para que atienda, de manera inmediata, las necesidades de seguridad alimentaria de las comunidades del Putumayo afectadas por las fumigaciones.

9. **APREMIAR** a la Red de Solidaridad Social, para que propicie la participación activa de las autoridades indígenas o de sus representantes en los Comités o Mesas Municipales de Atención a la Población Desplazada y con ellos se trace una estrategia de distribución de víveres.

10. **INSTAR a** la Dirección General de Asuntos Indígenas del Ministerio del Interior para que, en desarrollo de sus competencias, convoque al conjunto de las instituciones estatales del nivel nacional que tienen responsabilidades y funciones de atención a las comunidades indígenas del Putumayo, para que elaboren planes integrales de contingencia, encaminados a garantizar la vida e integridad física, social y cultural y a proteger sus derechos colectivos. Igualmente, para que adelante el seguimiento, monitoreo y verificación del cumplimiento de las medidas adoptadas en dichos planes.

11. **EXHORTAR** al Gobierno Nacional para que defina los procedimientos necesarios dirigidos a indemnizar, de manera inmediata, a las comunidades afectadas por las operaciones de aspersión en el Putumayo adelantadas durante los meses de diciembre y enero.

12. **ORDENAR** a la Oficina de Acciones y Recursos Judiciales de la Defensoría del Pueblo que interponga las acciones judiciales que procedan para la protección efectiva de los derechos de las comunidades indígenas del Putumayo afectadas por las fumigaciones y para el respectivo resarcimiento de perjuicios, salvo que las respectivas entidades, dentro de un término razonable, restablezcan los derechos conculcados.

13. **ENCARGAR** a la Defensoría Delegada para los Derechos Colectivos y el Medio Ambiente y a la Defensoría Delegada para

los Indígenas y las Minorías Étnicas el seguimiento de la presente Resolución.

14. **REMITIR** copia de la presente Resolución a los integrantes del Consejo Nacional de Estupefacientes, al Vicepresidente de la República, al Consejero para la Convivencia y Seguridad Ciudadana, al Ministerio del Interior, a los Directores del Plan Colombia, del Plante, de la Red de Solidaridad Social y de la Dirección Nacional de Estupefacientes.

15. **INCLUIR** el informe y la presente Resolución Defensorial, así como los resultados de su seguimiento en el Informe Anual, que habrá de presentar el Defensor del Pueblo al Congreso de la República.

EDUARDO CIFUENTES MUÑOZ

Defensor del Pueblo

ANNEX 93

Comptroller General of the Republic of Colombia, Comptroller for the Environment, *Special Audit Regarding Illicit Crop Eradication Policies* (July 2001)

Special Audit Regarding Illicit Crop Eradication Policies

Comptroller General of the Republic –
Comptroller for the Environment

July 2001

[…]
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[…]

This drift effect is the result of the combination of different technical and meteorological variables that make this strategy highly susceptible to error. Factors like the height of spraying, the velocity and direction of the wind and the relative humidity are difficult to control, which affects the precision of the sprayings.

Auditoría especial a la política de erradicación de cultivos ilícitos

Contraloría General de la República – Contraloría Delegada par el Medio Ambiente

Julio de 2001

Contralor General de la República	**Carlos Ossa Escobar**
Vicecontralor	**José Félix Lafaurie Rivera**
Contralor Delegado Para El Medio Ambiente	**Francisco José Ruiz Marmolejo**
Director Estudios Sectoriales Cdma	**Néstor Ortiz Pérez**
Director De Vigilancia Fiscal Cdma	**Francisco Ramírez Rivera**
Auditores	**Luis Fernando Alvarado Cárdenas** **Lucero Peña Pineda** **Maria Nancy Mesa Hernández** **Martha Ivonne Pérez Parra**

en cuenta la interrelación de estos organismos en los ecosistemas, no se puede argumentar que sus efectos se limiten al suelo debido a que ellos se biomagnifican dentro de la cadena trófica a la cual están integrados.

Adicional a esto, en el proceso de fumigación aérea se presenta el efecto de la "deriva", es decir, las desviaciones de las fumigaciones por efecto del viento y la velocidad misma de las aeronaves. Se estima que el Glifosato puede afectar especies vegetales ubicadas a más de 800 m[37]. del sitio específico de aspersión,[38] lo que ha causado que, en muchos casos, se afecten cultivos lícitos de pancoger e incluso cultivos establecidos mediante el programa presidencial del PNDA[39], y los diferentes ecosistemas circundantes a las plantaciones.

Este efecto deriva es el resultado de la conjugación de diferentes variables técnicas y meteorológicas lo que hace a esta estrategia como altamente susceptible a error. Factores como la altura de aspersión, la velocidad y dirección del viento y la humedad relativa, son difícilmente controlables, lo que afecta la precisión en las fumigaciones.

Las fuentes de agua y el recurso suelo también están siendo contaminadas por las prácticas de destrucción e incineración in situ que las instituciones de Defensa y Control del Estado en los últimos 6 años han realizado con 11.494.972 kilogramos de sólidos y 11.137.788 galones de insumos líquidos, además de la destrucción, hasta septiembre de 1999, de 164 laboratorios especialmente en la selva de la cuenca amazónica por parte del Batallón No. 1.

Otra fuente de contaminación son los envases plásticos y canecas metálicas utilizadas y dejadas a la intemperie, puesto que se constituyen en desechos peligrosos. Esto refleja que no se están cumpliendo tampoco los protocolos sobre disposición de insumos incautados.

Si a estas prácticas le sumamos la ausencia de un sistema técnico de almacenamiento (se encuentran distribuidos en el territorio nacional) de estas sustancias peligrosas y de un inventario detallado actualizado, avaluado, donde conste fecha o tiempo de vencimiento y período de depósito los impactos pueden ser aún mayores.

De otro lado, la relocalización de las áreas cultivadas por efectos de la erradicación química también está contribuyendo a los procesos de deforestación. En efecto, si al productor no se le ofrece una alternativa que le permita el mejoramiento de su calidad de vida y la inserción al proceso de desarrollo económico del país, le será indiferente producir en el Guaviare o en el Putumayo lo que conlleva a nuevas colonizaciones con sus consecuentes deforestación, quemas y alteración de las cadenas biológicas. No de otra manera se explica que, como ya se señaló, pese a la creciente fumigación de miles de hectáreas de cultivos ilícitos, su área neta siga creciendo.

De acuerdo con lo manifestado por los responsables de la ejecución de la política de erradicación, no existe certeza científica sobre los efectos en la salud humana; sin embargo, se encuentra literatura sobre los efectos en la salud de las personas, en la que se reporta que el Glifosato por inhalación causa irritación a la nariz y garganta; es irritante de la piel; además, por vía oral puede producir náuseas, vómito, dolor abdominal, y epigastralgia. En este sentido la Directora Ejecutiva de Rapalmira , ha manifestado que a la agricultura se aplica el producto comercial llamado Roundup, que además de su ingrediente activo Glifosato contiene 15% del surfactante polioxietilenoamina (POEA), el cual tiene una dosis letal media oral en ratas más de tres veces

ANNEX 94

Comptroller General of the Republic of Colombia,
Plan Colombia: Second Evaluation Report (10 Dec. 2001)

PLAN COLOMBIA
Second Evaluation Report

Bogotá D.C., 10 December 2001

[PAGE 2]

CARLOS OSSA ESCOBAR
Comptroller General of the Republic

José Felix Laufaurie
Vice Comptroller

Dagoberto Qurioga Collazo
Comptroller Delegated for Defence, Justice and Security

[…]

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Those responsible for implementing the eradication policy say that there is no scientific certainty with regard to its effects on human health and ecosystems; however, there are documents, university investigations, and environmental audits,[29] in our country, on the effects on human health that report that glyphosate inhalation causes irritation to the nose and throat; moreover, contact causes skin irritation. At the same time, oral ingestion produces nausea, vomit, abdominal pain and epigstralgia.

On this matter, Elsa Nivia, Executive Director of Rapalmira, has indicated that in agriculture a commercial product named Roundup is used, which, in addition to its active ingredient glyphosate, contains 15% of the surfactant polyethoxylated tallowamine (POEA), which has a median lethal oral dose

[29] The Office of the Comptroller General of the Republic has conducted several Environmental Audits: "Studies and Analysis of the Illicit Crop Eradication Program in Colombia, herbicides: Glyphosate, September 1997" (Estudios y análisis del Programa de Erradicación de los Cultivos Ilícitos en Colombia, herbicidas: Glifosato, septiembre 1997); "Control and Assessment of Environmental Costs, National Narcotics Council and Directorate" (Control y Valoración de Costos Ambientales, Consejo y Dirección Nacional de Estupefacientes), January 1997; "Environmental Audit of the National Narcotics Directorate" (Auditoría Ambiental a la Dirección Nacional de Estupefaciente), December 2000; and "Special Audit of the Illicit Crop Eradication Policy" (Auditoría Especial a la Política de Erradicación de Cultivos Ilícitos), July 2001.

in rats three times greater than that of glyphosate, and causes gastrointestinal damage, affects the central nervous system, produces respiratory problems, and destruction of red cells in humans. She points out that, in several countries, this herbicide is considered to be among the major pesticides that cause intoxication in humans and most of the skin and eye irritation found in workers, after exposure. Undesirable effects are even more pronounced if the formulation for aerial spraying is mixed with an adjuvant to increase its toxicity.[30]

Glyphosate formulations are one of the major causes of skin problems in agricultural workers in California (USA). In this same state, in 1986, glyphosate ranked fourth among 143 pesticides, as to the number of accidents reported.[31] A study conducted in 1993 by the Berkeley School of Public Health, at the University of California, showed that glyphosate is the leading cause for diseases associated with herbicides among gardeners, and the third cause among farmers.[32]

The Ministry of Health, in 1981, when the first sprayings of marijuana crops appeared, prohibited its use, arguing that herbicides are ecological aggressors and toxic to humans. Likewise, the Committee of Experts on herbicides, convened by the Ministry of Health in 1986, also stated in this regard that: "the herbicides Paraquat, 2,4-D, and glyphosate should not be used in aerial spraying for chemical eradication of illicit crops".

Furthermore, there are numerous complaints filed with the Office of the Ombudsman by communities that have been affected, stating that spraying has been done indiscriminately

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on food crops, livestock and people, and that there have been symptoms of nausea, vomiting, diarrhea, burning of the eyes, skin and throat after the spraying; reports that coincide with information in the literature and are consistent with the position of the Ministry of Health.

However, despite the various concepts and evidence against the use of glyphosate, there are no preventive measures or mitigation of potential damages, nor studies conducted by health authorities to establish a

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[30] For every 10.5 liters of glyphosate, a liter of Agrotin and another of Comosflux [sic] is added. Report from the external Environmental Audit contracted by the National Narcotics Directorate and conducted by Luis Eduardo Parra.

[31] "Impacts of spraying in farming areas" (Impactos de las fumigaciones en zonas de cultivos), Elsa Nivia.

[32] The Ecologist, Vol. 28, No. 5, page 25

correlation between the complaints made by the communities and the application of the herbicide.

From the foregoing, the Office of the Comptroller General of the Republic made an urgent call, in its audit report on the Illicit Crop Eradication Program, to the Ministry of Health, as member of the Technical Advisory Committee, to take the necessary and sufficient steps to establish its effects on health and their prevention.

The profound differences of opinion mentioned above, concerning the type and magnitude of the effects of glyphosate on ecosystems and human health; in addition, to doubts on the exact composition of the mixture sprayed, make credible the existence of a real danger due to the spraying in question. Suspicion that is reinforced when considering that no authority exercises control over the nature and consequences of said sprayings.

Given this scenario of doubt and uncertainty, the Office of the Comptroller General of the Republic instructed the Ministry of the Environment to order, under the Principle of Precaution, established in Law 99 of 1993, and International Environmental Principles approved at the Rio Summit (Brazil, 1992), the suspension of chemical eradication by aerial spraying until environmental, social and economic consequences from the implementation of said policy are defined and the environmental management plan, essential for carrying out this activity in a sustainable manner, is approved.

[…]

PLAN COLOMBIA

Segundo Informe de Evaluación

Bogotá D.C., 10 de diciembre de 2001

ANNEX 94

CARLOS OSSA ESCOBAR
Contralor General de la República

José Felix Lafaurie
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Editor

Este documento fue elaborado con la cooperación de las Direcciones de Estudios Sectoriales y de Vigilancia Fiscal de las Contralorías Delegadas los sectores de Medio Ambiente, Agropecuario, Social, Infraestructura, Gestión Pública e Instituciones Financieras, Economía y Finanzas, y Participación Ciudadana.

Los responsables de la ejecución de la política de erradicación afirman que no existe certeza científica sobre los efectos en la salud humana y los ecosistemas; sin embargo, se encuentran documentos, investigaciones de universidades y auditorías ambientales[29] en nuestro país sobre los efectos en la salud de las personas, en las que se reporta que el glifosato por inhalación causa irritación a la nariz y garganta; además, por contacto es irritante de la piel. Al mismo tiempo, por vía oral produce náuseas, vómito, dolor abdominal, y epigastralgia.

A este respecto, Elsa Nivia, Directora Ejecutiva de Rapalmira, ha manifestado que en la agricultura se aplica el producto comercial llamado Roundup que, además de su ingrediente activo glifosato, contiene 15% del surfactante polioxietilenoamina (POEA), el cual tiene una dosis letal media oral en ratas tres veces mayor que la del glifosato, causa daño gastrointestinal, afecta el sistema nervioso central, y ocasiona problemas respiratorios y destrucción de glóbulos rojos en humanos. Señala que, en varios países, este herbicida está considerado entre los principales plaguicidas que causan incidentes de intoxicamiento en humanos, la mayoría irritaciones dérmicas y oculares en trabajadores después de la exposición. Los efectos indeseables son aún más promunciados si en la formulación para la fumigación aérea se mezcla un coadyuvante para aumentar su toxicidad[30].

Las formulaciones de glifosato son una de las principales causas de problemas dérmicos de trabajadores agrícolas en California (EE.UU.). En este mismo estado, en 1986, el glifosato ocupó el cuarto lugar entre 143 plaguicidas, en cuanto al número de accidentes reportados[31]. Un estudio realizado en 1993 por la Escuela de Salud Pública de Berkeley, en la Universidad de California, demuestra que el glifosato es la causa principal de las enfermedades asociadas a los herbicidas entre los jardineros y la tercera causa entre los agricultores[32].

El Ministerio de Salud, en 1981, cuando se presentaron las primeras fumigaciones en cultivos de marihuana, prohibió su empleo, argumentando que los herbicidas son agresores ecológicos y tóxicos para el hombre. En igual sentido, el Comité de expertos en herbicidas, reunido por el Ministerio de Salud en 1986, también manifestó al respecto que: "no se deben utilizar los herbicidas Paraquat, 2,4-D y glifosato en la fumigación aérea para la erradicación química de cultivos ilícitos".

Por otra parte, existen numerosas denuncias realizadas ante la Defensoría del Pueblo, por las comunidades afectadas, quienes señalan que las fumigaciones se han realizado

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kilogramos de cal, de 60 a 80 litros de kerosén, 200 gramos de permanganato de potasio y un litro de amoníaco concentrado.

[29] La Contraloría General de la República ha realizados varias Auditorías Ambientales: "Estudios y análisis del Programa de Erradicación de los Cultivos Ilícitos en Colombia, herbicidas: Glifosato, septiembre 1997; "Control y Valoración de Costos Ambientales, Consejo y Dirección Nacional de Estupefacientes", enero de 1997, "Auditoría Ambiental a la Dirección Nacional de Estupefaciente", diciembre 2000; y "Auditoría Especial a la Política de Erradicación de Cultivos Ilícitos", julio de 2001.

[30] Por cada 10,5 litros de glifosato se adiciona un litro de Agrotin y un litro de Comosflux. Informe de auditoría Ambiental externa contratado por la Dirección Nacional de Estupefacientes y realizada por Luis Eduardo Parra.

[31] "Impactos de las fumigaciones en zonas de cultivos", Elsa Nivia

[32] Revista The Ecologist, Vol. 28, No. 5, pág. 25.

indiscriminadamente sobre cultivos de pancoger, semovientes y personas, y manifiestan que han presentado síntomas de náuseas, vómito, diarrea y ardor en ojos, piel y garganta una vez realizada la fumigación, afirmaciones que coinciden con lo reportado en la literatura y es congruente con la posición del Ministerio de Salud.

Sin embargo, a pesar de los diversos conceptos y evidencias en contra del uso del glifosato, no hay medidas de prevención o mitigación de las posibles afectaciones, ni tampoco estudios por parte de las autoridades de salud, para establecer correlaciones entre las quejas denunciadas por la comunidad y la aplicación del herbicida.

Por lo anterior, la CGR hizo un llamado urgente, en su informe de auditoría a la Política de Erradicación de Cultivos Ilícitos, al Ministerio de Salud, como miembro del Comité Técnico Asesor, para que tome las medidas necesarias y suficientes para establecer las afectaciones y su prevención.

Las profundas divergencias, señaladas anteriormente, acerca del tipo y magnitud de los efectos del glifosato sobre los ecosistemas y la salud humanan, además de las dudas sobre la composición exacta de la mezcla asperjada, hacen creíble la existencia de un real peligro por causa de las fumigaciones en cuestión. Sospecha que se refuerza al tener en cuenta que ninguna autoridad ejerce controles sobre la naturaleza y consecuencia de dichas fumigaciones.

Ante este escenario de duda e incertidumbre, la CGR requirió al Ministerio del Medio Ambiente para que, en aplicación del Principio de Precaución, establecido en la Ley 99 de 1993, y los Principios Ambientales Internacionales aprobados en la Cumbre de Río (Brasil en 1992), ordene la suspensión de la erradicación química por aspersión aérea, hasta tanto no se definan las implicaciones ambientales, sociales y económicas de la ejecución de dicha política y se apruebe el plan de manejo ambiental necesario para realizar de manera sostenible esta actividad.

El Plan de Manejo Ambiental

Mediante la Resolución 001 del 11 de marzo de 1994, el Consejo Nacional de Estupefacientes (CNE) creó una Comisión Técnica Interinstitucional, conformada por el ICA, Minsalud y Minambiente, para que conceptuaran sobre el uso del herbicida en las fumigaciones, su eficacia, riesgos e impactos, tanto ambientales como sociales. Así mismo, el MMA debía pronunciarse si se intervenía en zonas protegidas, como parques naturales y zonas de reserva o manejo especial. En esta resolución se procede a contratar una Auditoría Ambiental encargada de "controlar y supervisar la técnica y correcta ejecución de la estrategia".

Vale decir que velar por el cumplimiento de la normatividad ambiental vigente era uno de los fundamentos de esa ejecución correcta de la estrategia de fumigación, una actividad del régimen de transición, según el artículo 38 del Decreto 1753 de 1994, por lo que el MMA exigió a la Dirección Nacional de Estupefacientes (DNE) la presentación de un Plan de Manejo Ambiental (PMA) para tal actividad.

ANNEX 95

Republic of Colombia,
Environmental Management Plan for the Illicit Crop Eradication Program Using Aerial Spraying with the Herbicide Glyphosate (ICEPG) (2003)

U.S. DEPARTMENT OF STATE
DIPLOMACY IN ACTION

Environmental Management Plan for the Illicit Crop Eradication Program Using Aerial Spraying ith the Herbicide Glyphosate ICEPG

Report on Issues Related to the Aerial Eradication of Illicit Coca in Colombia
BUREAU OF INTERNATIONAL NARCOTICS AND LAW ENFORCEMENT AFFAIRS
December 2 3

SPRAYING OPERATIONS MANAGEMENT PROGRAM
SPECIFICATION #1

1. ACTIVITY DESCRIPTION

While executing aerial spraying operations using the mixture of this herbicide, some quite specific conditions may occur that may generate potential environmental and social impacts, from the very moment the airplane takes off until it lands. During the trajectory, it may even be necessary to dump the herbicide in flight to ensure the lives of the crew, due either to attacks by terrorists or to aircraft failure.

The elimination of illicit crops in Colombia is justified because it hinders the negative impact related to the production and trafficking of narcotics and to the harm of deteriorating the environment. It also enables introducing new plant species aimed at extracting psychoactive substances. There are several available eradication methods (manual, mechanical, burning, biological, and chemical). However, taking into consideration the location of the illicit crop fields, the characteristics of the landscape, the opposition of the farmers who cultivate plants for illegal purposes, and the presence of outlawed armed groups, the most efficient and least dangerous strategy is aerial spraying with herbicides.

2. OBJECTIVES

- To follow the procedures and technical and environmental parameters for aerial spraying, which result in the efficient eradication of illicit crops sown throughout the national territory, pursuant to the responsibilities assigned, in order to protect and preserve the environment.
- To identify, characterize, and delimit zones with illicit crops.
- To identify and delimit exclusion zones and alert zones.
- To verify that environmental management measures are effectively applied during ICEPG operations.

3. ACTIVITIES TO BE CARRIED OUT

3.1. Prevention Measures

- Do maintenance and checks on and calibration of the spraying equipment on the aircraft.
- Comply with the technical and operational parameters used for applying the herbicide, as set forth herein.
- Comply with the environmental zoning criteria herein.

Maintenance, Checks, and Calibration

Before every mission, the technical personnel at the National Police Anti-Narcotics Division (DIRAN is the Colombian acronym) operations base must check the operational condition of the spraying equipment, and if need be, adjust the equipment.

DIRAN will keep a file of maintenance, check, and calibration reports.

3.2 Technical and Environmental Specifications in the Different ICEPG Phases

The spraying process is carried out in three phases: detecting the illicit crops to be sprayed, spraying, and verification.

3.2.1. Detection Measures

The purpose of the detection process is to identify, characterize, and locate the zones with illicit crops and the zones to be excluded from the programs, using geographical coordinates.

Such characterization will be supported by satellite imagery, aerial photography, and cartography. The ARECI-DIRAN personnel will do the field work to carry out this activity and its main objective is to identify how the soil is used, the presence of settlements, and the delimitation of National Protected Area System zones, ecologically fragile zones and environmentally, socially, and economically sensitive zones, in order to create the basic environmental zoning for each operation.

To do so, there must be strict compliance with 1991 Decree 1843 Article 87 referring to security zones and with Article 1, Paragraph 2 in National Anti-narcotics Commission Resolution 0013 dated June 27, 2003.

The environmental zoning will be delivered, in accordance with the available cartography for operations already carried out and with the frequency stipulated by the Ministry of the Environment, Housing, and Territorial Development.

3.2.2. Spraying Measures

For reasons of security and due to the location of and access to the fields with illicit crops, the spraying must be done using proper aircraft that comply with the parameters in Chart # 1.

3.2.2.1. Operational Parameters

During the spraying operations, bear in mind all technical navigation and spraying requirements, in order to mitigate the potential impact of the spraying on vegetation or on neighboring crops not covered by the ICEPG. These parameters include flying altitude, the size of the drops, dosage, wind velocity, and other favorable weather conditions.

The effect of the drift or side movement of some of the mixture being sprayed could be an inconvenience, considering the consequences that it may have on the ecological surroundings of the plants being sprayed; therefore, the ICEPG will be carried out under proper conditions (see Chart # 1).

Chart # 1

ILLICIT CROP ERADICATION PROGRAM USING AERIAL SPRAYING

OPERATIONAL PARAMETERS

PARAMETER	UNIT OF MEASURE	VALUE OR RANGE	VALUE OR RANGE
		COCA	POPPY
Flying Altitude	Meters	The highest application altitude will be 50 meters; notwithstanding, the operation will be conditioned to the height of the obstacles present in the target spraying zones.	
Maximum Dumping of Commercial Formula with Glyphosate	Liters / Hectare	10.4	2.5
Size of the Drops	Micras	300 - 1,000	
Foreseen Drift	Meters	< 5	
Maximum Outside Temperature during Application	Degrees Celsius	35	20
Maximum Wind Velocity	Knots	5	

For this purpose, there must be strict compliance with 1991 Decree 1843 Article 102 that refers to the pilots' obligations. Likewise, all other articles therein applicable to the program must be taken into account.

3.2.2.2. Other Factors to Bear in Mind during the Spraying Operations

There are other factors that enable increasing the operational efficiency of aerial spraying using Glyphosate, without exceeding technical and economical thresholds; therefore, we recommend not spraying when:

- The fields are plowed or have very limited foliage (only stalks or crops harvested).
- There is imminence of rain or there is rain nearby
- There is evidence of the phenomenon of inverse currents or clouds near the ground. This phenomenon occurs especially in hilly or mountainous areas and in the wee hours of the morning in rainforest zones.
- The pilot has doubts about being able to identify the illicit crop to be sprayed.
- The aircraft is attacked, the equipment damaged or the operational personnel is ill.

3.2.3. Verification

The Eradication Program using aerial spraying with Glyphosate must be verified in order to evaluate the efficiency and effectiveness of the environmental management measures.

3.2.3.1. Measures to Verify Environmental Impact

ANNEX 96

Republic of Colombia, National Health Institute,
Evaluation of the Effects of Glyphosate on Human Health in Illicit Crop Eradication Program Influence Zones (2003)

U.S. DEPARTMENT OF STATE
DIPLOMACY IN ACTION

Evaluation of the Effects of Glyphosate on Human Health in Illicit Crop Eradication Program Influence Zones

Other Releases
BUREAU FOR INTERNATIONAL NARCOTICS AND LAW ENFORCEMENT AFFAIRS
ashington, DC
uly 2 3

Republic of Colombia
Ministry of Social Protection

National Health Institute
Epidemiology Sub directorate and National Reference Laboratory Research Sub directorate

Bogota, uly 2 3

Introduction

In compliance with its responsibility under the Environmental Management Plan set forth for the Illicit Crop Eradication Program, the Ministry of Social Protection has promoted the creation of this project whose purpose is "To explore the possible effects of glyphosate on human health as a result of aerial spraying" linked to the application plan to be carried out in seven (7) provincial departments in the country.

After a process of discussion and analysis of several epidemiological evaluation proposals, we reached the consensus of doing a descriptive case study, the main purpose of which is to determine if the spraying is innocuous or, to the contrary, if it represents some risk to the population. In this manner, we intend to answer to one of the doubts that has been a motive for concern in the community and organizations, both public and private, since the spray program was initiated in Colombia.

We opted to do this study as one of the most viable alternatives considering the limitations that we encountered in carrying out this type of work; the main one being the high cost involved. That is why we chose seven (7) provincial departments in which public order conditions were more favorable to carry out the project.

1. PRESENTATION OF THE PROBLEM

1.2. Research Problem

The problem of the indiscriminate use of pesticides in the most varied of farming and forestry activities by the rural populations in the areas of influence of aerial spraying has led not only to these human nuclei being seriously affected by exposure to a variety of substances while working, but also by exposure through the air and in the food and water that they use; this also occurs to the population at large, through pesticide residues. That is to say that the whole population is exposed to a health risk that is not sufficiently appreciated and perceived by the corresponding health authorities.

Also, these toxic substances are not only eliminating pests but are also affecting the local ecosystems, especially bodies of water, thus endangering the very lives of many species, especially birds, and considerably reducing the life of the soil, wildlife, and benign insects, which are needed to maintain a natural balance.

These pesticides can be found everywhere and are easy for any person to access, even children. This is a situation that is especially serious if we take into consideration that a broad variety of chemical substances are used in illicit crops.

In a report prepared for the National Directorate of Dangerous Drugs (DNE) and the United States Embassy[1] it was verified that 98.7% of illicit crop growers use insecticides and fungicides to control pests and disease; 92.5% use chemical fertilizers, and 95.5% control competition from other plants by using herbicides. Furthermore, the research done by Instituto SINCHI[2] showed that, unlike what producers do with subsistence crops, illicit crop growers go to great lengths to weed their illegal crops and chemically control insects and pests[3].

SINCHI mentions that the economic logic behind this behavior is due to the fact that for food crops growers want to take full advantage of the natural fertility of the soil, whereas for coca crops, because of revenue expectations, producers feel obliged to incorporate chemical technology[3].

It has been established that there are no significant differences between producers in different coca crop regions, as far as how intensely they use farming chemicals, no matter if they have small crops or industrial-type crops. Along these lines, URIBE (1999)[1] established the use of at least 75 different brands of farming chemicals. Regional differences regarding the type of substances used are determined by market availability; many of them enter into the crop areas directly as contraband [3].

ANNEX 96

Table 1 shows the main herbicides used on coca crops, based on DNE data - Colombian Drug Information System (SIDCO).

Table 1. Herbicides Used on Coca Crops			
Commercial Name	**Active Ingredient**	**Of Use**	**To icological Category**
Gramoxone	Paraquat	61.3	II LD Oral: 150 mg/kg
Faena	Glyphosate	10.7	IV LD Oral: 4,300 mg/kg
Anikilamine	2,4D	9.7	I LD Oral: 699 mg/kg
Round up	glyphosate	8.4	IV LD Oral: 4,300 mg/kg
Atrazina	Atrazine	4.8	III LD Oral: 1,780 mg/kg
Karmex	Diuron	2.6	III LD Oral: 5,000 mg/kg
Others	N/A	2.6	

Source: DNE- SIDCO

It is interesting to note that glyphosate is one of the substances most used by illicit crop producers.

The number and variety of insecticides and fungicides is even greater than herbicides and the use of toxicological category I and II substances is notorious; therefore, we expect that the effects on the ecosystems and, particularly on the community, to be quite negative; this situation is compounded if we take into account the fact that many of the farmers still believe the theory that "the greater the quantity and concentration of the farming chemical, the more effective it will be". That is why it is common that the doses used are not the doses recommended by the manufacturer[3].

Among the fungicides used, we mention Mancozeb (Manzate), Koper oxychloride (Oxicloruro de cobre), Carbendazin (Bavistin). Among the insecticides, we name: Metamidophos (Tamaron), Carbaryl (Sevin), Metomyl (Metavin), Carbofuran (Furadan), Prophenophos (Curacron), Endosulfan (Thionil), Methyl Parathion (Parathion), Lambda Cyhalothrine (Matador), Malathion (Malathion), Monochrotophos (Nuvacron), Chlorpiriphos and Cipermerine Chlorpiriphos (Lorsband), Cipermetrine and Diacinon (Comboy), Cipermetrine (Politrin) [3].

The chemical substances that illicit crop growers introduce into the ecosystems on a daily basis cause, among others, the following effects:

1. Contamination of resources: pesticides are capable of contaminating the sources of potable water that humans and animals drink, sources of bodies of water, rivers, and seas. Farming chemicals can reach water sources by following any of the means indicated below.

- Percolation or lixiviation of pesticides applied to the surface of the soil
- Discharge of liquids remaining from the application
- Discarding empty containers
- Flooding or overflow of rivers that reach storage areas[3].

The consequences of this contamination are the loss of aquatic flora and fauna; the loss of the resource as a source of water and nourishment; and the intoxication of human beings and animals[3].

2. Contamination of the soil: some pesticides are directly applied to the soil (herbicides such as 2,4,D and insecticides such as Metomyl). There are others that reach the soil indirectly by dripping from the plant, dripping from the application equipment, being dragged by raindrops (Clordano, Parathion), washing the application equipment, discarding containers, etc [3].

Discarding containers and leftover product: Normally the peasants discard the pesticide containers, the product leftover from the spray processes, and the product remaining in the spraying equipment after washing it[3] in the surroundings (soil and sources of water, incineration, etc). Many recipients are recycled to use them as containers for daily chores and preparing food; usually glass recipients are used for holding liquids (in some regions we have found that the peasants use the Gramoxone recipients for their *guarapo*, a homemade brew), kerosene or water; metal recipients are used to heat or hold water and aluminum recipients are used as containers in the base and refining labs[3].

3. Disposal in septic tank holes: in rural areas of Colombia it is customary to dig holes near the dwellings and deposit garbage in them. Unfortunately, the garbage is not separated and all kinds of materials are put there together, no matter if they are biodegradable, toxic or not[3].

4. Open air incineration: This may cause even greater inconveniences than mere dumping. When exposed to heat, some products emit dioxins and furanes, whose toxic power is greater than the original product s toxic power[3].

Each one of the above-mentioned cases represents a specific problem, but, generally speaking, they directly or indirectly contaminate the surroundings, and more specifically the communities that live in such surroundings[3].

Given that the population is exposed to glyphosate and to other pesticides, it is very difficult to establish a direct cause and effect relationship between exposure to glyphosate from aerial spraying and to differentiate it from the exposure to glyphosate and other pesticides that the population normally uses, particularly because the acute effects are similar.

In fact, in the document "Environmental Impact Caused by Chemical Substances, Illicit Crops, and Related Activities", BERNAL C, H. states, "Many of the complaints that the growers make regarding the aerial spraying carried out by the DIRAN Antinarcotics Police using glyphosate are actually caused by the use of farming chemicals, such as Paraquat and Parathion, which the peasants use on their crops without any technical standards and without protective equipment. Many of these substances are liposoluble, which means that they can be absorbed through the tissues and accumulate in the organism, leading to intoxication, which, in many cases, depending on the toxicological classification of the product, may be fatal" [3].

Health problems caused by exposure to these types of substances are difficult to prevent and control in our country, for several reasons: the lack of technical knowledge and infrastructure required for appropriate management, an insufficient system of monitoring and control, serious deficiencies of information and training in this area for the populations at risk, deficient medical attention and decision-making capacity of the regional agencies, and the non-existence or insufficient existence of a public health system to monitor intoxications caused by pesticides.

Faced with this situation, Colombia must study the possible effects of aerial spraying with glyphosate on the population s health. This study is designed to respond to this need.

1.2. Justification

1.2.1. Theorical Framework

Glyphosate is one of the most widely used herbicides in the world. It has been extensively tested in the United States, Colombia, and in other places and its agricultural use is accepted, recorded, and authorized in 153 countries. Since 1978 Colombia has been carrying out aerial spraying of illicit marihuana, poppy, and coca crops. To do so, a broad gamut of chemicals such as Paraquat (1978), Triclopyr (1985), and Tebuthiuron (1986) was tested, and glyphosate has been used continuously since 1993[4].

The Illicit Crop Eradication Program through Glyphosate Spraying (PECIG) is an official Government of Colombia anti-narcotics policy designed by competent authorities, which commits the executing agencies to conduct the program with minimum social impact and without producing significant harm to the environment. PECIG is a total action strategy for extensive or industrially grown illegal crops carried out by the Colombian National Police Anti-narcotics Division, and this agency must follow strict operational parameters[5].

The decision to implement the program was made by taking into account the following factors, among others: a large portion of illicit crops are industrial by nature; there are substantial difficulties accessing the plots by land or river because of isolation and due to a public order problem that obviates manual eradication; there is strong pressure on ecosystems that are strategic for Colombia; and the detrimental environmental impact caused by activities related to the illegal drug industry[5].

The national government deemed it necessary to employ controlled aerial spraying with the herbicide glyphosate as an effective mechanism for illicit crop eradication due to the national topography. Illicit plantations are located in geographical zones that are difficult to access, which considerably hinders the legitimate control that the State must exercise over them. Due to the above, in January 1992, the National Anti-narcotics Council authorized under law the controlled aerial spraying of illicit crops using glyphosate, provided that the spraying be carried out under strict control procedures and technical conditions, to ensure that it guarantee that neither persons nor natural resources in the surrounding areas would be affected[5].

The National Anti-narcotics Council set forth the legal justification, using as a foundation, among others, 1986 Law 30 1986, 1993 Law 99, 1974 Decree 2811, 1994 Decree 1753, 1991 Decree 1843 and National Anti-narcotics Council 1994 Resolution 0001 and 2000 Resolution 0005[5].

The two above-mentioned resolutions define that the responsibilities for environmental, health, and epidemiological follow-up on the Illicit Crop Eradication Program through Glyphosate Spraying (PECIG) lie with the Ministry of the Environment, the Ministry of Agriculture (ICA), and in the Ministry of Health, respectively[5].

1.2. Physical-Chemical and Toxicological Properties

Microbial degradation is the main cause of glyphosate s decomposition in plants. Loss due to photodecomposition and/or volatilization is minimal or almost null and it is reported that the average life expectancy of glyphosate in plants is up to 6O days[4].

Glyphosate is rapidly and strongly adsorbed by particles in the soil, which hinders its mobility, its lixiviation, and its ability to be adsorbed through roots. Adsorption is greater in soils with high concentrations of trivalent metals such as iron and aluminum, instead of high concentrations of sodium and calcium. The degradation or decomposition of the product in the soil is also of a micro-biological nature. One of the main products of degradation due to bacterial action is amino methyl phosphonic acid (AMPA) that is equally biodegradable. The degradation of glyphosate in the soil is rapid due to microbial action and it has an average life expectancy of approximately 3O days [4].

When it reaches water, glyphosate is adsorbed by suspended particles or in sedimentation and is later degraded; this occurs more slowly than in soils due to the lower number of microbes. Glyphosate in natural bodies of water has an average life expectancy of 7 to 10 weeks.

To icity in Mammals[3]

$LD_{5O.}$ Orally Acute: Rats: 5,6OO mg/kg

Mice: 11,3OO mg/kg

Through the Skin Acute: Rabbits: 5,OOO mg/kg

In food: NOEL (non-observable effect) in
Rats, 31 mg/kg, daily during two (2) years
Dogs, 5OO mg/kg, daily during one (1) year

To icity in Non Mammals[3]

LD_{5O}. Orally Acute: Common Cornish Hen: 4,64O mg/kg
Bees: O,1 mg/bee
Contact: Bees: O.1 mg/bee

LC_{5O}. Cornish Hens and Ducks: 4,64O mg/kg in the food during five (5) days

Trout: 86 mg/liter (96 hours)
Bluegill (fish), 12O mg/liter (96 hours)
Daphnia (fish), 78O mg/liter (48 hours)

Glyphosate is a pesticide that is not very toxic for humans and animals, excluding the toxic degree of the solvents and other components in commercial formulas. Analyses of other types of toxicology confirm the result obtained for rats and classify the herbicide as non-carcinogenous for human beings[4].

1.3. Effects of Glyphosate and its Adjuvants on Health

1.3.1. Short-term Effects (Acute Intoxication)

If glyphosate is inhaled, it may cause slight irritation of the nose and throat mucosa; if there is contact with the eyes, they may become irritated, and if there is skin contact, it causes sensitivity, slight irritation, and photosensitivity[4].

Studies done on living creatures (cows, sheep, and hens) showed that those beings absorb limited quantities of glyphosate. The allowed levels of glyphosate in crops and in animals for human consumption are published in the Federal Regulations Code, Heading 40 (40 CFR), Section 180.364. The acceptable daily amount ingested for human beings is 0.3 mg/kg[6].

Out of 194 cases reviewed in Taiwan and New Zealand, 23 of them were fatal after ingestion of variable volumes, around 114 milliliters [6].

Below is a description of the signs and symptoms for acute intoxication.

Asymptomatic: No symptoms or abnormalities detected during a physical or from lab tests.

Slight: Mainly gastrointestinal symptoms and signs (nausea, vomiting, diarrhea, abdominal pain, pain or burning in mouth and throat) that go away after a 24 hour period. Stable vital signs, no breathing, kidney or cardiovascular difficulties.

Moderate: Estimated ingestions of 20 to 500 ml produce moderate symptoms, estimated ingestions of 5 to 150 ml produce slight symptoms and estimated ingestions of 5 to 50 ml produce no symptoms. Gastointestinal symptoms that last more than 24 hours: gastrointestinal hemorrhaging, esophagitis or gastritis verified through endoscopy, mouth ulcers, hypo-tension that responds to intravenous fluids, breathing dysfunction that does not require intubation, perturbations in the acid - base balance, evidence of transitory hepatic or kidney damage or temporary oliguria.

Severe: Breathing dysfunction that requires intubation, kidney failure requiring dialysis, severe hypo-tension, cardiac failure, coma, repeated convulsions or death.

1.3.2. Effects due to Long-term (Chronic) Exposure

Carcinogenesis: Glyphosate can alter the production of carbon and nitrogen in the soil (with organic matter). An increase in the concentrations of CO_2 in the soil lead to an increase of nitrifying bacteria, which in turn leads to an increase in the concentration of nitrites, making the food grown there also have greater concentrations of nitrites that combined with amines produce nitrosoamines, defined as cancerous substances. In addition, nitrites in high concentrations can produce metahemoglobinemia in animals and human beings. That is to say, glyphosate, through this mechanism, could indirectly lead to carcinogenesis and other pathologies.[4]

In the United States, glyphosate has been classified as non-cancerous for human beings. Nonetheless, the evaluating committee clarified that "this designation is based on the evidence available at the time of the evaluation and must not be interpreted as a definitive conclusion that the agent is not cancerous under any circumstance. "

Mutagenicity: Positive results have been found for mutagenesis in Soil Pseudomona sp pg2982. Glyphosate did not prove mutagenic in tests using mammal cells in *in vitro* and *in vivo* systems. There have been reports of harmful effects in human lymphosite studies that showed that glyphosate produces changes in the ADN of sister chromatides; notwithstanding, the report repeatedly stated that at least

ten (1O) donors should be considered in the study and not two (2) as was done[4,7].

Effects on Reproduction: The maternal non-observable effect level(NOEL) for two (2) teratological studies using rats and rabbits was 1,OOO mg/kg/day and 165 mg/kg/day, respectively.

Teratogenesis and Embryo-toxicity: Using doses of over 3,5OO mg/kg/day of glyphosate on rats, evidence of toxicity to development was observed in the form of de-ossification of the sternum and a drop in total body weight. These doses were also toxic for the mothers. The non-observable effect level (NOEL) for development and maternal toxicity was 1,OOO mg/kg/day. In a study on reproduction made on three generations of rats using different doses, the significant toxic finding was tubular dilating in the kidneys of the first generation newborn the mothers who received the highest doses (3O mg/kg/day). The NOEL for this effect was 1O mg/kg/day[4].

The EPA has concluded that consuming crops treated with glyphosate and animals fed with forage treated with glyphosate in the US does not present food risks when the residues are under the tolerance levels. The toxicity of glyphosate depends jointly on several factors of the ecosystem and on the physiological conditions of each living organism, but in the case of using this herbicide in illicit crop eradication programs, the possibilities of contamination with significant doses would be minimum because, in practice, each illicit crop is treated only once.

In order to understand the possible effects that would be generated on organisms when sprayed from the air with glyphosate, below is an analysis of the doses applied by the program and of the time during which organisms are exposed to it[4].

After the glyphosate is aerially sprayed using a concentration of 162 g/L (16,2% P/V), a minimum 75% of it is deposited on the foliage of the illicit plants; therefore, more than approximately 342 mg/m^2 is stored on this type of plant and an approximate quantity of 38 mg/m^2 reaches the soil. A human being in the area being sprayed may be exposed to approximately 650.8 mg (1.93 ml) of glyphosate. The level for any risk at all is 150 ml ingested orally or 2,000 ml absorbed through the skin; given the above, we deduce that the degree of exposure to glyphosate caused by aerial spraying is insignificant for the critical levels presented for both ingestion and exposure through the skin.

Rodents have a body surface of approximately 300 cm^2 and an average weight of approximately 200 g; therefore, the level of exposure for them will be 11.4 mg and the average lethal dose for this type of organism is at levels higher than 5,600 mg/kg of the rodent s weight, that is to say, for 200 g of the rodent s body weight the average dose to which it would be exposed would be 1,120 mg. Based on that, there would be no possibility that aerial spraying would affect that type of organism.

Some of the commercial formulas of glyphosate have a surfactant known as POEA, at a proportion of near 15%. According to several toxicological research studies, this compound may cause gastrointestinal damage, may affect the central nervous, may cause breathing difficulties and may be able to destroy red blood cells in human blood.

Studies also state that POEA may contain an impurity identified as 1- 4 Dioxane that has proven to have a cancerous capacity on animals and to cause liver and kidney damage to human beings.

The metabolization of glyphosateis preponderantly caused by the microflora, although the resulting metabolites are not taken advantage of by the microorganisms that originated them. In spite of the fact that aerobic and anaerobic degradation of the parental molecule gives origin to at least six (6) metabolites; those that produce most and have most importance are AMPA or Amjno methyl phosphonic acid (CH6 NO3 P) and SARCOSINE or N-Methylglycine, Sarcosine or Acid 2-Methylaminoethanoic (C3 H7 NO2). AMPA can be detected in the soil and in the tissues of the plants and its toxemic capacity is classified as inocuous[4].

During a period of time there was concern that the metabolic process of glyphosate could originate the formation of nitrosamides that are known to induce mutagenic, carcinogenic, and teratogenic effects, or certain intoxications of an acute nature. We now know that that concern was unfounded; no researcher has demonstrated or found evidence of the formation of such metabolites. Something similar occurred with the reports issued after 1990, in the sense that among the decomposition products of the parental molecule of glyphosate we must also include formaldehyde, a compound that is currently on the list of potentially carcinogenic substances; although that possibility exists, the quantities that are produced as a result of normal use in weed control tasks may possibly be of the trace levels, with very little risk for users. The degradation of the parental product may be a fast or a slow process, depending on many conditions; in some cases degradation may occur in less than one week whereas, in others, the average life expectancy may be months or even years [4].

During the document review made for the Environmental Management Plan, we found an Environmental Protection Agency (EPA) study on the analysis of glyphosate, which concluded that the appropriate use of glyphosate, as permitted in the USA, would not cause irrational adverse effects on human beings or on the environment. It is not believed that the spray program exposes human beings who may be in the sprayed fields to said risks. This is due to the fact that the potential irritation and toxicity of the independent ingredients diminishes when the product is diluted in water to make the mixture (the final product is approximately 75% water) and the mixture is dispersed during spraying. Therefore, human beings who may be located under the spray swath released by the airplane are not exposed to concentrated formula levels of glyphosate and if they have symptoms of exposure, they will be reversible and short-term. Furthermore, it is improbable that any one field would be sprayed more than once a year, which reduces the levels of repeated human exposure[4].

For our research background, we only have information on three (3) previous descriptive studies on this topic: one done by D. Revelo et al., "Effects of Fumigation Using Glyphosate on the municipalities of Valle de Guamuez, San Miguel, and Orito, Putumayo. Colombia December 2001" in which an analysis was made of the information found in the complaint forms filed with the local community leaders in the municipalities of Valle del Guamez and San Miguel and those supplied by the Orito Technical Assistance Unit.

ANNEX 97

Republic of Colombia, Office of the Ombudsman,
Ombudsman Resolution No. 28, *The Coffee Crisis and the Possible Fumigations in the Province of Caldas* (21 May 2003)

[seal]
OFFICE OF THE OMBUDSMAN
Human rights, to live in peace

NATIONAL OMBUDSMAN RESOLUTION No. 028

THE COFFEE CRISIS AND THE POSSIBLE FUMIGATIONS IN THE PROVINCE OF CALDAS

Manizales, Caldas, 21 May 2003

[…]
[PAGE 23]
[…]

B. Right to Health and Hygiene

102. In different documents from the Ombudsman's Office the Entity's concern regarding health impacts caused by the use of chemicals in the aerial fumigations has

[PAGE 24]

been presented in a detailed manner. The Office of the Ombudsman has also repeatedly required competent authorities to put into place an Epidemiological Monitoring Plan – PVE, ordered by three Health Ministries (1984, 1992, and 1994). Without the execution of the aforementioned plan it is impossible to affirm or negate the harmlessness of the substances used in the PECIG in a technical and scientific manner.

[…]

104. The absence of said plan prevents the existence of measures and procedures directed towards the prevention, control, and monitoring of the risk factors to health, as provided for in various legal standards, among them the Health Code and the Decree which regulates the use, management and disposal of pesticides.

105. To this concern the following considerations are added: (1) the growing number of complaints filed in the sprayed areas which cite effects to the respiratory and digestive pathways, and to the organs of

sight, as well as skin illnesses, among others; (2) the results of the study carried out by the American Environmental Protection Agency –EPA-[54] in which it was recognized that Glyphosate leaves residual effects in surface waters and affects the ocular system[55]; (3) the inadequate provision of aqueduct and irrigation services, which makes it necessary for inhabitants of rural areas to turn to still and running bodies of water for consumption use, a situation which does not guarantee the

[PAGE 25]

potability of the liquid, and even less in cases in which the water is contaminated because of the use of the chemicals employed in the fumigations; (4) the nutritional defects confronted by rural inhabitants, either because their income for acquiring the minimum provisions of their typical diet has been reduced or because of limitations on ensuring food security, and (4) [*sic*] the limitations suffered by the health sector, which manifests itself in facts such as the decrease in illness prevention and

---

[54] The American law of foreign cooperation for 2002 (Law PL 107 -115, "Foreign Operations Appropriations for FY 2002" of 10 January of this year), by which the resources for the Andean Regional Initiative –IRA- were approved set the conditions for eradication operations in compliance with the following requirements: "(1) The aerial fumigation of coca crops shall be carried out **in agreement with the processes for the use of chemicals** that have been established by the Environmental Protection Agency –EPA-, the Center for Disease Control, and the manufacturing companies of the chemical, and, after consultation with the Colombian government, **it is guaranteed that the fumigations shall meet Colombian law;** (2) The chemicals used in the aerial fumigations, in the manner in which they are applied, **do not pose serious risk or harmful effects to human beings or the environment;** (3) **Effective complaint evaluation mechanisms** are established for the population with regard to health effects and the damage to legal crops caused by aerial fumigation, as well as fair remuneration for all of those who present valid complaints; (…)". Translation by the Ombudsman's Office.

[55] U.S. Environmental Protection Agency, Office of Pesticide Programs, *Details of the Consultation for Department of State: Use of Pesticides for Coca Eradication Program in Colombia,* August 2002. In this document it is indicated that Glyphosate causes acute ocular poisoning, which is the reason that the use of another chemical was recommended. In addition, it must be noted that there have not been any studies conducted- in Colombia or in any other country in the world- which permit the knowledge of the possible effects to human and animal health which arise from the mixture used in Colombia. To this is added the fact that Cosmo Flux 411, which is used as an additive, is not for sale in the United States. Despite the fact that said studies ordered in the PMA [Spanish acronym for Environmental Management Plan] have not been carried out, the Ministry of the Environment, Livelihood, and Territorial Development authorized an additional 2 liters per hectare, through Resolution No. 099 of 2003. Because of this, the mixture currently applied is 108 L/ha of a mix of Round 480 SL + Cosmoflux 411.

control programs, the lack of laboratories for analysis, the precarious situations of the infrastructure, as well as the attacks against the medical mission.

[…]

DEFENSORÍA DEL PUEBLO
Derechos humanos, para vivir en paz

RESOLUCION DEFENSORIAL NACIONAL No. 2

LA CRISIS CAFETERA Y LAS POSIBLES FUMIGACIONES EN EL DEPARTAMENTO DE CALDAS

Manizales, Caldas, mayo 21 de 2003

VISTOS

A. PROGRAMA DE SEGUIMIENTO Y EVALUACIÓN DE LAS POL TICAS P BLICAS ProSeDHer

La Defensoría del Pueblo diseñó un modelo de seguimiento y evaluación de las políticas públicas para la formación, promoción, defensa, protección y realización de los derechos humanos (ProSeDHer). Dentro de este Programa se realiza el seguimiento de la Política Nacional de Lucha contra las Drogas[1], particularmente, en dos de sus estrategias, a saber: El Programa de Erradicación de los Cultivos Ilícitos con Glifosato y el Programa de Desarrollo Alternativo. Esta labor se extiende a la ejecución del Plan Colombia, en los citados componentes[2].

En desarrollo de lo anterior, también se analizó el contenido y alcance del derecho a la alimentación y a la seguridad alimentaria, así como su relación con los derechos a la salud pública, al goce de un ambiente sano y a la salud en conexidad con los derechos a la vida y a la vida digna.

B. LA INVESTIGACIÓN DEFENSORIAL

La investigación defensorial se plasma en diferentes informes elaborados por la Regional Caldas, entre ellos, los siguientes: (1) Análisis del Conflicto Armado en el departamento de Caldas (2001); (2) Fenómeno del Desplazamiento

[1] Dirección Nacional de Estupefacientes. "Plan Nacional de Lucha contra las Drogas, Colombia 1998 – 2002. Los programas estratégicos de dicho Plan son el 1º desarrollo alternativo, 2º la interdicción, 3º el fortalecimiento jurídico e institucional, 4º la reducción de la demanda interna, 5º la gestión ambiental y 6º la política internacional. La coordinación de estas acciones, en las que participan diferentes entidades estatales, le corresponde al Consejo Nacional de Estupefacientes y a la Dirección Nacional de Estupefacientes.

[2] Plan Colombia. Fortalecimiento Institucional y Desarrollo Social, 2000-2002. Reporte al Grupo de Apoyo al Proceso de Paz. En la presentación de este Plan se indica que "(...) el Gobierno Nacional formuló el Plan Colombia el cual, dentro del marco de una política de construcción de paz, liga las estrategias de negociación con la insurgencia, la protección de los derechos humanos, el fortalecimiento del Estado, la recuperación de la economía, el control a la expansión de los cultivos ilícitos, y la protección del ambiente".

arraigados a sus fincas, en las que han visto nacer y crecer a sus hijos, situación que les imprime un carácter de pertenencia diferente a la de los colonos asentados en zonas de frontera agrícola.

99. El desplazamiento agudizaría la situación de marginalidad de estos campesinos, quienes no serían beneficiarios del Sistema Nacional de Atención Integral a la Población Desplazada. Ello como consecuencia de que, por una parte, los éxodos por efectos de las fumigaciones no se reconocen como desplazamiento forzado y, por la otra, la legislación vigente que criminaliza al pequeño cultivador (Ley 30 de 1986). Como la Defensoría lo ha denunciado en diferentes oportunidades, existe una ambigüedad en el tratamiento de estos campesinos[50]. Resultado de ello, es que en tanto algunas normas y políticas lo tratan como un sujeto que puede ser objeto de planes de sustitución y de desarrollo alternativo, otras lo ven como criminal.

100. Ahora bien, en lo que respecta al reconocimiento de los daños que pueden ocasionar las fumigaciones, la Defensoría advirtió que el trámite para la atención de las quejas establecido en la Resolución 017 de octubre de 2001 del Consejo Nacional de Estupefacientes, "es un procedimiento inadecuado e ineficaz"[51]. Prueba de ello es que a la fecha solamente se han reconocido los daños en dos de las múltiples denuncias formuladas en todo el país[52]. Esta situación, agravaría la vulneración de los caficultores, quienes estarían expuestos a no recibir ninguna compensación por los efectos que ocasionen las aspersiones en sus cafetales y en otros proyectos productivos que adelanten.

101. Por lo expuesto se concluye que la aplicación del programa de fumigaciones, además de no ser a solución a la siembra de coca y amapola, atentaría contra los valores constitucionales consagrados en el Preámbulo y en artículo 2 de la Carta, así como contra la fórmula del artículo 1, en la cual Colombia se define como un Estado Social de Derecho, entendido "como el Estado que garantiza estándares mínimos de salario, alimentación, salud, habitación, educación asegurados para todos los ciudadanos bajo la idea de derecho y no simplemente de caridad"[53]. De igual manera, se desconocerían otras normas de la Constitución como son los artículos 13, 43, 44, 46, 47, 64, 65, 66 y 67.

b. Derechos a la salud y a la salubridad

102. En diferentes documentos defensoriales se ha expuesto, de manera detallada, la preocupación de la Entidad frente a los impactos en la salud

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[50] CANO, Ob. Cit. "( ) dentro del marco de la *realpolitik*, por donde se debería empezar entonces es por la"descriminalización" o **DESPENALIZACIÓN** (sic) cultivadores, así como por la **SUSPENSIÓN DE LAS FUMIGACIONES** ( ). Y por poner en marcha ambiciosos **PROGRAMAS DE DESARROLLO ALTERNATIVO COMO UN PASO UE PRECEDA Y NO SUCEDA A LAS FAENAS DE ELIMINACIÓN** manual o mecánica de las plantaciones".

[51] Defensoría del Pueblo. Resolución Defensorial. No. 026 de 2003. Pese al requerimiento formulado por la Entidad al Consejo Nacional de Estupefacientes para que se reforme dicha Resolución, ésta aún se encuentra vigente. Sobre el particular, la Viceministra de Justicia y Derecho en respuesta a la Proposición de la Cámara de Representantes No. 059 de 2002 de octubre de 2002, señaló que "atendiendo las inquietudes del Defensor, el Consejo Nacional de Estupefacientes revisará la Resolución 017 de 2001 con miras a darle mayor operatividad, efectividad y sobre todo constituirlo en instrumento de **garantía de los derechos humanos** (Resaltado fuera de texto).

[52] Las quejas atendidas se presentaron en el municipio de La Paz, departamento del Cesar y en Tumaco, departamento de Nariño.

[53] H.L Wilensky, 1975, citado en la Sentencia T – 406 de 1992 de la Corte Constitucional.

ocasionados por el uso de químicos en las fumigaciones aéreas. Es así como en reiteradas oportunidades, la Defensoría ha requerido a las autoridades competentes poner en marcha el Plan de Vigilancia Epidemiológica – PVE, ordenado por tres Ministros de Salud (1984, 1992 y 1994). Sin la ejecución del referido Plan es imposible, de manera técnica y científica, afirmar o negar la inocuidad de las sustancias que se emplean en el PECIG.

103. La omisión por parte de las autoridades sanitarias en formular, financiar y ejecutar el PVE constituye una flagrante violación de los artículos 49 y 336 de la Constitución. El primero, protege el derecho a la salud al disponer que la atención a la salud es un servicio público a cargo del Estado y que le corresponde a éste asegurar su prestación eficiente para todos los habitantes del territorio nacional. Por su parte, el artículo 336, al definir el bienestar general y el mejoramiento de la calidad de vida, dispone que es un "objetivo fundamental" del Estado solucionar "las necesidades insatisfechas de salud".

104. La ausencia del citado Plan impide que existan medidas y procedimientos dirigidos a la prevención, control y vigilancia de los factores de riesgo para la salud, como lo disponen diferentes normas legales, entre ellas, el Código Sanitario y el Decreto que reglamenta el uso, manejo y disposición de plaguicidas.

105. A esta preocupación se suman las siguientes consideraciones: (1) el creciente número de quejas que se presentan en las zonas asperjadas que dan cuenta de afectaciones en las vías respiratorias, digestivas y en los órganos de la visión, así como de enfermedades cutáneas, entre otras dolencias; (2) los resultados del estudio realizado por la Agencia de Protección Ambiental norteamericana –EPA-[54] en los que se reconoce que el Glifosato deja efectos residuales en las aguas superficiales y afecta el sistema ocular[55]; (3) la inadecuada prestación de los servicios de acueducto y alcantarillado, que obliga a los habitantes de las zonas rurales a acudir a cuerpos de agua estáticos y corrientes para proveerse para su consumo, situación que no garantiza la potabilidad del líquido, menos en aquellos casos en que se

[54] La ley Norteamérica de cooperación externa para el año 2002 (Ley PL 107 -115 "Foreign Operations Appropriations for FY 2002" del 10 de enero de este año), mediante la cual se aprobaron los recursos para la Iniciativa Regional Andina -IRA, condicionó las operaciones de erradicación al cumplimiento de los siguientes requisitos: "(1) La fumigación aérea de los cultivos de coca se lleva a cabo **en concordancia con los procedimientos para el uso de los químicos** que han sido establecidos por la Agencia de Protección Ambiental - EPA, el Centro para el Control de Epidemias y las compañías manufactureras del químico y, luego de consultar al Gobierno Colombiano, **se garantice que las fumigaciones est n conformes a las leyes colombianas**; (2) Los químicos utilizados en las fumigaciones aéreas, de la manera en que son aplicados, **no significan graves riesgos o efectos nocivos para los seres humanos y el medio ambiente**; (3) Se establezcan **mecanismos efectivos que eval en las que as** de la población referentes a la afectación de su salud y a los daños de sus cultivos legales causados por la fumigación aérea, así como que se remunere de manera justa a todos aquellos que presenten quejas meritorias; (...)". Traducción de la Defensoría del Pueblo.

[55] U.S. Environmental Protection Agency Office of Pesticide Programs Details of the Consultation for Department of State Use of Pesticide for Coca Eradication Program in Colombia, August 2002. En este documento se indica que el Glifosato ocasiona toxicidad ocular aguda, razón por la que se recomendó emplear una sustancia diferente. Adicionalmente se debe insistir en que aún no se han realizado estudios - en Colombia ni en ningún otro país del mundo- que permitan conocer los posibles efectos en la salud humana y animal de la mezcla que se emplea en Colombia. A ello contribuye el hecho de que el Cosmo Flux 411 que se usa como aditivo no se comercializa en Estados Unidos. Pese a que no se han realizado dichos estudios ordenados en el PMA, el Ministerio de Ambiente, Vivienda y Desarrollo Territorial, mediante ha Resolución No. 099 de 2003, autorizó el aumento de 2 litos por hectárea. De forma tal que la mezcla que se aplica en la actualidad es de 10 8 lts/ha de la mezcla Round 480 SL Cosmoflux 411.

encuentra contaminado por el uso de los químicos empleados en las fumigaciones; (4) las carencias nutricionales que enfrentan los habitantes rurales bien sea por disminución de sus ingresos para adquirir los mínimos previstos para la canasta familiar o por las limitaciones para procurarse su seguridad alimentaria, y (4) las restricciones que adolece el sector de la salud que se traduce en hechos como la disminución de los programas de prevención y control de enfermedades, la falta de laboratorios de análisis, las precariedades en su infraestructura, así como los atentados contra la misión médica.

106. Conforme a lo anterior se puede afirmar que la aplicación del PECIG vulneraría los derechos de los caldenses a la salud y a la salud pública (arts. 44, 49, 64, 78 y 361 C.P.) y, con ello, a la vida y a la vida digna (art. 11 ídem).

c. Protección y conservación del medio ambiente, de los recursos naturales y del equilibrio ecológico

107. Varios años después de la orden del Consejo Nacional de Estupefacientes de adoptar las medidas para garantizar "la no afectación de personas o recursos del entorno natural" en la ejecución del PECIG[56], la máxima autoridad ambiental -ante los reiterados incumplimientos de la DNE- adoptó la decisión de imponer el Plan de Manejo Ambiental, a través de la Resolución 1065 de 2001, modificada parcialmente por la Resolución 108 del 31 de enero de 2002.

108. Pese a la existencia de dicho Plan, actualmente no se puede afirmar que la aplicación del Programa de Erradicación Aérea se ajusta a los preceptos constitucionales y legales que tutelan la protección y conservación del medio ambiente, de los recursos naturales y del equilibrio ecológico, en el marco del principio de desarrollo sostenible contemplado en el Estatuto Superior[57].

109. La anterior aseveración se sustenta, principalmente, en el permanente incumplimiento por parte de las autoridades encargadas de su ejecución del PECIG (DNE y Dirección Antinarcóticos de la Policía Nacional - DIRAN), de las siguientes medidas previstas en el referido Plan:

a. **Falta de contratación de la auditoría t cnica ambiental y de su correspondiente interventoría.**

b. **Aplicación de la Resolución 341 de 2 2 del Ministerio del Ambiente.** Pese a que este acto administrativo fue ratificado por la resolución que impuso el PMA, varias de las normas de esta resolución no han sido observadas por la DNE y la DIRAN, motivo que condujo a la apertura de la respectiva investigación por parte de la máxima autoridad ambiental, dentro del proceso que aún se encuentra en trámite (Resolución 1066 del 26 de noviembre de 2001). Las disposiciones, presuntamente incumplidas son el artículo 2º que impone realizar, durante seis meses, evaluaciones de impacto ambiental y proponer las medidas para mitigarlos; el artículo 6º que dispone iniciar de "manera inmediata" el programa de inspección, verificación y control para comprobar la efectividad en la aplicación de medidas de manejo ambiental

[56] Resolución 001 de 1994 del Consejo Nacional de Estupefacientes.
[57] Frente a una acción popular interpuesta en el departamento de Nariño, el Consejo de Estado dispuso en un fallo del 10 de octubre de 2002, que en la ejecución del PECIG se debía dar estricto cumplimiento al Plan de Manejo Ambiental (Expediente 5200123310002000 1172 01).

ANNEX 98

Comptroller General of the Republic of Colombia,
Plan Colombia: Fourth Evaluation Report (July 2003)

REPUBLIC OF COLOMBIA
Office of the Comptroller General of the Republic

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Cover Design: Nestor Patiño Forero
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CGR Design Group
This document was prepared with the cooperation of the Directorates for Sectorial Studies and Fiscal Oversight; Offices of Comptrollers responsible for the sectors of Environment, Agriculture, Social, Infrastructure, Public Management and Finance Institutions, Economy and Finance, and Citizens' Participation

Printed by: Imprenta Nacional

3. Estimate of the area of cultivated and eradicated coca in Colombia 97

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[…]

DOUBTS ABOUT THE MIXTURES

According to information the available,[49] planes are spraying a mixture that includes a solution of 44% formulated glyphosate herbicide, 55% water and 1% Cosmoflux (an additional surfactant), and that 10.4 liters (2.75 gallons) of this mixture are sprayed per hectare of coca crop. However, there are conflicting accounts as to whether the product being used is Roundup Ultra, Roundup SL, or another formulation, and whether or not coca and poppy crops are being sprayed with the same mixture and concentration. Moreover, the chemical composition of Cosmoflux is also not available, based on the argument that it constitutes information protected under intellectual property rights. Without this information, it is impossible to determine with certainty whether EPA requirements are being met.

If the formulated product is Roundup SL, then this product was only recently approved for use in the United States, but not for agricultural purposes. There is some question about the registration of this product, because the manufacturer, Monsanto, has stated that it has no intention of marketing the product in the United States.

Recently, in November 2000, the U.S. EPA prosecuted and successfully convicted Larry Johnson, of Montana, for illegally importing Roundup SL (at that time sold abroad as Roundup Export), "the sale of which is prohibited in the United States because it can cause severe and irreversible eye damage".

[PAGE 36]

If the formulated product is Roundup Ultra, then the spray mixture used in Colombia is much more concentrated as it is applied in greater doses than the maximum levels recommended by the manufacturer, according to instructions of the label for use in the United States[50]. The spray mixture for

[49] Taken from the document sent to Members of the U.S. Congress, written 23 September 2002, by Anna Cederstay, Earthjustice and Interamerican Association for Environmental Defense-AIDA.

[50] Taken from the document written by Ted Schetter, Director of Science and Environmental Health Network, 18 September 2002, and sent to Members of the U.S. Congress.

Colombia has 44% Roundup Ultra per volume, while the label for use in the United States for Roundup Ultra allows concentrations of 1.6% to 7.7% for most uses, and, at most, a concentration of 29%. The U.S. label states that in most situations, aerial application should not exceed 1 litre of the formulated product per acre. In Colombia, the rate is almost 4 ½ times that amount.

Label requirements for Roundup Ultra specify that users "should not apply this product in a way that it will come into contact with those using the product or other people, whether directly or through drift. Only those handlers who are properly protected should remain in the area during application". However, local inhabitants are not informed of the scheduled sprayings and are likely to be in the area when herbicides are applied.

Both U.S. labels for Roundup SL and Roundup Ultra specify that the product "not be applied directly to water or areas where water is present" and that the user should take precautionary measures to avoid drift. However, there is information indicating that water bodies, agricultural areas, and land for other uses are being sprayed.

The legality of the sprayings under Colombian law has been repeatedly questioned, both by the Office of the CGR and other Colombian government entities, including the Constitutional Court, the Office of the Ombudsman, 22 Colombian Senators and Representatives, who have identified legal prerequisites that have not been met, including, among others:

- Lack of planning and coordination for environmental management of the areas being sprayed.

- Lack of coordination among responsible agencies, and the Ministry of Health's inability to exercise oversight authority established by law.

In January of last year, an environmental management plan was finally implemented. However, there is no Environmental Audit to verify its compliance. The bid process called for the award of the contract was unsuccessful and no contract has been awarded; thus, at present there is no control of the aforementioned Management Plan.

Risks of aerial spraying

It is impossible to know with certainty the risks posed to human beings and the environment by chemicals being sprayed. Neither the United States Government nor the Colombian Government have presented an adequate assessment of potential impacts on human health and ecosystems of the formulated mixture, sprayed under conditions of direct exposure in Colombia. The State Department has requested toxicity evaluations for three different herbicide formulas, but the results have not yet been presented.

To date, there are no procedures in place to monitor health and environmental effects resulting from spraying, and there is no basic data in Colombia to evaluate the impact of the fumigation on health or on the environment. No studies have been identified that demonstrate the safety for human health or the environment of this combination of chemicals and the way in which they are being applied in Colombia; despite the fact that the label for products most used indicates that Roundup Ultra causes "eye irritation" and Roundup SL causes "irreversible eye damage, is harmful if swallowed or inhaled, and may cause skin irritation".

In situations in which people are not informed of when sprayings will occur, and, therefore, are not properly protected, direct exposure to herbicides can be expected. There have also been numerous reports of illnesses associated with exposure to chemical spraying, such as skin lesions and rashes, gastrointestinal infections, acute respiratory infections, and conjunctivitis.

Even though studies conducted in Colombia do indicate a potential impact on human health from the fumigation, no further studies are underway or planned at this time.

[PAGE 37]

The State Department has assured that aerial herbicide spraying does not cause harm to human health, but the three studies used to support these claims present no credible scientific evidence that spraying is safe for human health.

The first health study is irrelevant because it does not consider the impacts from spraying for eradication of coca plantations; but rather focuses on impacts from the poppy eradication program, which poses less risk

(herbicide solutions used to control coca are nine times more concentrated than those used to control poppy).
The second study was conducted five months after the spraying took place and was therefore inconclusive. With regard to this study, the Environmental Protection Agency – EPA and the Centers for Disease Control – CDC indicated that in order to determine whether aerial spraying is making people sick, they must test the subjects before and immediately after the spraying.

The third scientific review is not applicable because it assesses the risks of glyphosate and Roundup products under specific conditions, which are extremely unlikely in Colombia, for example, that drinking water be purified prior to ingestion; that workers wear protective clothing; that only small quantities of contaminated surface waters be consumed, etc.

The broad-spectrum herbicides used in aerial spraying are designed to kill a wide range of plants and could destroy plant species in danger of extinction and disrupt or destroy different habitats. Since Colombia is one of the countries that is richest in biodiversity, the threat from spraying is particularly serious. Studies demonstrate that glyphosate formulations have toxic effects on aquatic organisms such as fish, amphibians, insects, crawfish and water fleas. Glyphosate can also affect land organisms: earthworms, fungi and microorganisms. Spraying can also lead to deforestation and loss of habitat when farmers clear new undisturbed areas and forests in response to the destruction of their legal and illegal crops.

Procedures to evaluate
claims for damages caused.

So far it has been impossible to document any compensation for damages to health or legal crops caused by fumigations carried out since December 2000. Approximately 1400 claims have been filed with the Office of the Ombudsman in Bogotá, but it is not known whether any of them has resulted in compensation, not including those filed with the Attorney General's Office.

On 4 October 2001, the CNE (National Narcotics Council) issued Resolution 017 establishing a new procedure for filing claims for damages caused by aerial spraying. It established that claims are to be filed with the local Ombudsman, who in turn will ask the local offices of the Umata (Municipal Unit for Agricultural Technical Assistance) to verify the claim by visiting and inspecting the affected farm; prior to this, victims must

certify their ownership of the affected properties. Once the damage is verified, the claim is sent to the Anti-Narcotics Division of the Police, who will then certify whether spraying took place at the time and place the victim claims. If the police certify that spraying did not take place, the procedure ends. If they certify that, in fact, there was spraying, the police will send another verification mission to determine the value of the loss. However, in order for compensation to occur, the final request must include satellite reports, spraying diagrams, and local reports on detection of illegal crops.

This procedure has serious flaws, among others, and most obvious is that the same agencies responsible for carrying out the sprayings, the DNE [National Narcotics Directorate] and the Anti-Narcotics Division of the Police, are charged with evaluating the claims for damages, thus becoming judge and party in the conflict.

Moreover, according to Resolution 017, the police can decide to not verify a claim for security reasons. For those circumstances, no alternative procedure has been defined.

The process requires that victims to go to the nearest town to file their claims. But, in these regions travel from one zone to another is very difficult and expensive, and sometimes it means putting the lives of *campesinos* at risk. There is no reason to expect the police to have the capacity to assess the value of lost crops.

Finally, and perhaps most serious is that the procedure applies only to agricultural losses and there is no mechanism in place to process the claims for damage to human health and ecosystems.

[…]

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Impresión: Imprenta Nacional

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ciones aéreas. Finalmente, esta licitación fue declarada desierta, y se convocó a una nueva, de donde se desprende que este plan de manejo ambiental se está llevando a cabo sin una debida supervisión y control.

Para este informe, se continúa con el seguimiento al citado plan, en particular considerando las condiciones de fumigación que el Congreso de los Estados Unidos incluyera en la Ley Pública 107-115, es decir, el acta de asignaciones para el extranjero del año fiscal 2002. Según ésta, la intención era atender la creciente preocupación respecto a las consecuencias de las fumigaciones aéreas del programa de erradicación sobre la salud y el medio ambiente; y también lograr un equilibrio entre la ayuda para el programa de desarrollo alternativo y la erradicación forzada mediante la fumigación.

Condiciones de la Ley Pública 107-115 de los EE.UU. para las fumigaciones del Pecig

Esta Ley, del año fiscal 2002, contempla para las fumigaciones aéreas, entre otras, las siguientes condiciones:

- Que los fondos asignados mediante esta Acta y que se utilizan para el abastecimiento de los químicos del programa de fumigación aérea de cultivos de coca podían ponerse a disposición únicamente si el Secretario de Estado, tras consultar con el Administrador de la Agencia de Protección Ambiental-EPA, con el Secretario del Departamento de Agricultura y, si era apropiado, con el Director de los Centros para el Control y Prevención de Enfermedades, determinaba y reportaba al Comité de Apropiaciones que:

  1. La fumigación aérea de coca está llevándose a cabo de conformidad con los controles normativos requeridos por la Agencia de Protección Ambiental, tal y como consta en las etiquetas para uso del producto en los Estados Unidos, tras haber consultado con el Gobierno Colombiano a fin de percatarse de que la fumigación se realiza de conformidad con las leyes colombianas.

  2. Los químicos utilizados en la fumigación aérea de coca, de la forma cómo se están aplicando, no plantean riesgos irrazonables o causen efectos adversos a los humanos o al medio ambiente.

  3. Se dispone de procedimientos para evaluar los reclamos de las comunidades locales en el sentido de que su salud ha sido deteriorada o de que sus cultivos agrícolas lícitos fueron dañados por dichas fumigaciones aéreas de coca, y para proporcionar compensación justa a aquellos reclamos que merecen ser atendidos.

- Que estos fondos podrán no ponerse a disposición si luego de haber transcurrido seis meses a partir de la fecha de aprobación de esta Acta, los programas de desarrollo alternativo no han sido desarrollados en consulta con comunidades y autoridades locales de los departamentos en los que se ha planificado llevar a cabo tales fumigaciones aéreas, y en los que dicha fumigación aérea de coca ha sido practicada y tales programas han sido ejecutados.

Dudas sobre mezclas

De acuerdo con la información disponible[49], los aviones están utilizando en sus aspersiones una mezcla que incluye una solución al 44% de herbicida con fórmula de glifosato, 55% de agua y 1% de Cosmoflux (un surfactante adicional), y que 10.4 litros (2.75 galones) de esta mezcla se fumigan por hectárea de cultivo de coca. Sin embargo, existen cuentas que se contradicen respecto de si el producto formulado que se está utilizado corresponde a Roundup Ultra, Roundup SL, o alguna otra fórmula, y si los cultivos de coca y amapola están siendo fumigados con la misma mezcla y concentración. Además, la composición química de Cosmoflux tampoco está disponible, basándose en el argumento de que constituye información bajo propiedad intelectual. Sin esta información es imposible conocer con certeza si los requisitos de la EPA están siendo cumplidos.

Si el producto formulado corresponde a Roundup SL, es muy reciente la aprobación para el uso de este producto en los Estados Unidos, pero no para fines agrícolas. Existe alguna inquietud respecto del registro de este producto, debido a que el fabricante, Monsanto, ha declarado que no tiene intención de comercializar el producto en los Estados Unidos.

Recientemente, en noviembre de 2000, la EPA en los Estados Unidos enjuició y exitosamente condenó a Larry Johnson, de Montana, por haber importado ilegalmente Roundup SL (en ese entonces vendido en el exterior como Roundup Export), "la venta del cual está prohibida en los Estados Unidos, debido a que puede ocasionar daños oculares severos e irreversibles".

49 Tomado del documento enviado a los miembros del Congreso de los Estados Unidos, escrito el 23 de septiembre de 2002, por Anna Cederstav, de Earthjustice and Interamerican Association for Environmental Defense-AIDA.

Si el producto formulado corresponde a Roundup Ultra, la mezcla de fumigación que se utiliza en Colombia es tanto más concentrada como aplicada en dosis mayores que los niveles máximos recomendados por el fabricante, según instrucciones de la etiqueta para uso en los Estados Unidos[50]. La mezcla de fumigación para Colombia contiene 44% de Roundup Ultra por volumen, mientras que la etiqueta para uso en los Estados Unidos para Roundup Ultra permite concentraciones de 1.6% a 7.7% para la mayoría de los usos, y, como máximo, una concentración del 29%. La etiqueta de Estados Unidos indica que en la mayor parte de las condiciones, la aplicación aérea no deberá exceder de un litro (quart) por acre del producto formulado. En Colombia, la tasa corresponde a casi 4 ½ veces esa cantidad.

Los requisitos de etiqueta para Roundup Ultra especifica que los usuarios "no deberán aplicar este producto de manera que entre en contacto con quienes lo apliquen u otras personas, ya sea directamente o acarreado por el viento. Únicamente quienes lo manejen y estén debidamente protegidos podrán permanecer en la zona durante su aplicación". Sin embargo, los habitantes locales no son informados de las fumigaciones planificadas y pueden encontrarse en la zona donde se aplican los herbicidas.

Las etiquetas de los Estados Unidos, tanto para Roundup SL como para Roundup Ultra, precisan que el producto "no sea aplicado directamente al agua, ni a zonas donde se encuentre presente agua" y el usuario debe adoptar medidas específicas de precaución para evitar el acarreo por el viento. Sin embargo, existe información que indica que los cuerpos de agua, zonas agrícolas y tierras destinadas a otros usos están siendo fumigados.

La legalidad de las fumigaciones bajo las leyes colombianas ha sido reiteradamente cuestionada, tanto por la CGR, como por otras entidades gubernamentales del Estado colombiano, incluidas la Corte Constitucional, la Defensoría del Pueblo, 22 senadores y congresistas colombianos, quienes señalaron que los prerrequisitos legales no habían sido cumplidos, e incluían, entre otros:

- Ausencia de planificación y coordinación en el manejo ambiental de las zonas que son fumigadas.
- Falta de coordinación entre las agencias responsables, y la incapacidad del Ministerio de Salud para ejercer la autoridad de supervisión que le compete bajo la ley.

Sólo hasta enero del año pasado se impuso un plan de manejo ambiental. Sin embargo, no cuenta con una Auditoría Ambiental que constate su cumplimiento. La licitación convocada para su contratación fue declarada desierta y aún no se ha contratado ésta; así las cosas, no hay en el momento ningún control sobre el mencionado Plan de Manejo.

Riesgos de las fumigaciones aéreas

No es posible conocer con certeza los riesgos que los químicos asperjados plantean a los seres humanos y al medio ambiente. Ni el Gobierno de los Estados Unidos ni el de Colombia han presentado una evaluación adecuada de los posibles impactos para la salud humana y los ecosistemas a causa de las mezclas formuladas que están siendo fumigadas bajo las condiciones de exposición directa que tienen lugar en Colombia. El Departamento de Estado ha solicitado que se practiquen evaluaciones de toxicidad para tres distintas fórmulas de herbicidas, pero los resultados no han sido presentados todavía.

Hasta la fecha, no se cuenta con los procedimientos para hacer un seguimiento de los efectos ambientales y sobre la salud como resultado de las fumigaciones, ni tampoco existen datos básicos en Colombia que permitan evaluar el impacto que la fumigación tiene sobre la salud o el ambiente. Tampoco se ha identificado estudio alguno que demuestre la seguridad que plantee, para la salud humana y el ambiente, esta combinación de químicos y la manera como están siendo aplicados en Colombia, a pesar de que la etiqueta de los productos más usados indican que Roundup Ultra causa "irritación de los ojos," y Roundup SL causa "daños oculares irreversibles, es dañino si se lo traga o inhala, y podría ocasionar irritación de la piel".

En situaciones de no información a las personas de cuándo se van a producir las fumigaciones, y, por ende, no tener la protección adecuada, es previsible la exposición directa a los herbicidas. También, ha habido numerosos informes de enfermedades asociadas con la exposición a fumigaciones químicas, tales como lesiones a la piel y urticaria, infecciones gastrointestinales, infecciones respiratorias agudas y conjuntivitis.

Aunque los estudios llevados a cabo en Colombia sí indican un posible impacto sobre la salud humana a causa de la fumigación, no se están llevando a cabo en la actualidad estudios, ni se han planificado por el momento.

50 Tomado del documento escrito por Ted Schetter, director del Science and Environmental Health Network, del 18 de septiembre de 2002 y enviado a los miembros del Congreso de los Estados Unidos.

El Departamento de Estado ha asegurado que la fumigación con herbicidas por aire no ocasiona daños a la salud humana, pero los tres estudios utilizados para apoyar tales declaraciones no presentan evidencia científica confiable en el sentido de que la fumigación es segura para la salud humana.

El primer estudio de salud es irrelevante, porque no considera las repercusiones que ha tenido la fumigación realizada para erradicar las plantaciones de coca; más bien se centra en los impactos originados en el programa de erradicación de la amapola, que ofrecen menos riesgo (las soluciones de herbicidas utilizadas para el control de la coca son nueve veces más concentradas que aquéllas que se utilizan para el control de amapola).

El segundo estudio fue llevado a cabo cinco meses después de haberse realizado la fumigación y por tanto no fue concluyente. Con relación a este estudio, la Agencia de Protección Ambiental-EPA (Environmental Protectión Agency) y el Centro para el Control de Enfermedades-CDC (Control Diseases Center), indicaron que para poder determinar si las aspersiones aéreas están enfermando a la gente, es necesario hacer pruebas en personas expuestas antes e inmediatamente después de la fumigación.

La tercera revisión científica no es aplicable, ya que evalúa el riesgo que plantean el glifosato y los productos Roundup bajo condiciones específicas, cuyo cumplimiento es muy poco probable en el ámbito colombiano; por ejemplo, que el agua potable sea purificada antes de su ingestión, que los obreros porten ropa de protección, que únicamente unas pequeñas cantidades de aguas superficiales contaminadas se consumen, etcétera.

Los herbicidas de amplio espectro utilizados en las fumigaciones aéreas están diseñados para matar una amplia gama de plantas y podrían destruir especies vegetales que se encuentran en peligro de extinción, así como alterar o destruir distintos hábitat. Como Colombia es uno de los países más ricos en biodiversidad, la amenaza resultante de las fumigaciones es particularmente grave. Los estudios demuestran que las fórmulas de glifosato tienen efectos tóxicos sobre los organismos acuáticos, como peces, anfibios, insectos, cangrejos y pulgas de agua. El glifosato también puede afectar a los organismos de tierra: lombrices, hongos y microorganismos. La fumigación también puede conducir a la deforestación y pérdida de hábitat cuando los agricultores desbrozan nuevas áreas vírgenes y bosques intocados, como respuesta a la destrucción de sus cultivos legales e ilegales.

Los procedimientos para evaluar reclamos por daños ocasionados

Hasta el momento no ha sido posible documentar ninguna compensación por daños a la salud o a los cultivos legales a causa de las fumigaciones efectuadas desde diciembre de 2000. Alrededor de 1.400 quejas se encuentran archivadas en la oficina del Defensor del Pueblo en Bogotá, pero no se sabe si alguna de ellas ha resultado en el pago de una compensación, sin contar con las interpuestas ante la Procuraduría General de la Nación.

El 4 de octubre de 2001, el CNE emitió la Resolución 017 que establece un nuevo procedimiento para la presentación de quejas sobre daños causados por la fumigación aérea. Se estableció que deben hacerse ante el personero municipal, quien a su vez pedirá a las oficinas locales de la Umata que verifiquen la queja por inspección, visitando las fincas afectadas; previamente se debe certificar por parte de las víctimas la propiedad del predio afectado. Una vez verificado el daño, la queja se envía a la Dirección Antinarcóticos de la Policía, la cual certificará si se llevó a cabo o no una fumigación en el momento y lugar mencionado por el afectado. Si la policía certifica que no hubo fumigación, el proceso llega a su fin. Si certifican que, en efecto, se produjo una fumigación, la policía envía otra comisión de verificación para constatar el valor de las pérdidas. Sin embargo, para que la compensación se concrete, la solicitud final debe incluir informes satelitales, diagramas de la operación de fumigación, y el reporte local sobre la detección de cultivos ilegales.

Este procedimiento tiene graves faltas; entre otras, y la más obvia, es que las mismas agencias responsables de llevar a cabo las aspersiones, la DNE y la Policía Antinarcóticos son las encargadas de evaluar los reclamos por los daños causados, constituyéndose así en juez y parte en el conflicto.

También, según la Resolución 017, la Policía puede decidir no verificar un reclamo por razones de seguridad. En estas circunstancias, no hay definido un procedimiento alterno.

El procedimiento indica que las víctimas se desplacen al municipio más cercano a presentar sus quejas. Pero en estas regiones, trasladarse de una zona a otra es muy difícil y costoso, y a veces implica poner en riesgo la vida de los campesinos. No existe razón para esperar que la policía cuente con la capacidad de evaluar el valor de los cultivos perdidos.

Finalmente, y quizás lo más grave, es que el procedimiento únicamente aplica a las pérdidas agrícolas, y

no tiene mecanismo alguno para tramitar los reclamos por daños a la salud de los seres humanos y ecosistemas.

Conclusiones

- Partiendo de la incertidumbre sobre cuál es la mezcla química que está siendo rociada, la información disponible indica que su uso no cumple con los controles de la Agencia de Protección Ambiental-EPA.
- Si bien han sido presentados dos estudios de toxicidad implicados en el impacto que la mezcla química fumigada tiene sobre los seres humanos y la ecología, uno referido a los casos del municipio de Valle de Guamuez-Putumayo, y el Tablón de Gómez-Nariño, ambos contratados por la embajada de los EE.UU. con una clínica toxicológica local, en ambos casos, los informes concluyen que no puede hacerse una relación causal directa entre las fumigaciones y las afecciones denunciadas por la comunidad. Sin embargo, aclaran que la información es insuficiente y que se requiere una metodología más compleja para llegar a determinar esta relación, por lo que tampoco puede descartarse que exista.
- Esta carencia de datos básicos en Colombia que permitan evaluar las repercusiones que las fumigaciones tienen sobre la salud y el medio, ha sido señalada previamente en varios informes de la CGR, así como el hecho de que no se han realizado ni se han planificado estudios epidemiológicos que permitan determinar estos impacto.
- En Colombia las fumigaciones han sido llevadas a cabo sin tomar en cuenta los requisitos legales exigidos por las autoridades, y ha despertado serias objeciones constitucionales.
- No se ha proporcionado compensación alguna a los pequeños productores cuyos cultivos legales han sido destruidos por la fumigación.
- No existe mecanismo alguno que permita tramitar los reclamos de daños a la salud humana.

ANNEX 99

Comptroller General of the Republic of Colombia,
Plan Colombia: Fifth Evaluation Report (Dec. 2004)

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Printed by:
Imprenta Nacional

Office of the Comptroller General of the Republic
Calle 17 No 9-82
Telephone: 282 17 06 - 282 15 09
Bogotá, D.C., Colombia
December - 2004
www.contraloriagen.gov.co

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The Environmental Management Plan

There has been talk about the PECIG [acronym in Spanish for Program for Illicit Crop Eradication Using Aerial Spraying with Glyphosate] environmental management plan since 1996, but it is in November 2001 that the MAVDT [acronym in Spanish for Ministry of the Environment, Housing and Territorial Development] imposed said plan through a resolution, at the same time that an investigation was opened, by presenting a list of charges against the DNE [acronym in Spanish for National Narcotics Directorate], which appealed these decisions. In 2003, the Ministry accepted the DNE's request for modification, as follows:

By means of Resolution 930 of 1 September 2003, the Ministry investigates the DNE for failing to comply with the environmental management plan. Subsequently, by means of technical opinion number 0010 of 15 January 2004, the Ministry informs the DNE of the need to notify the pilots of the aircrafts to stop spraying when they are over areas of wooded vegetation that separate adjoining lots of illicit crops as to minimize the effects of the herbicide on natural elements not included in the program; this confirms the mixing of licit and illicit crops and states that the effectiveness of the spraying is 80%.

The PMA [acronym in Spanish for Environmental Management Plan] presented by the DNE in 2001 consisted of 13 environmental management specifications, with their respective descriptions, objectives, activities, follow-up and control, people responsible, timetable and costs. It has been structured in three types of activities: preventive measures, mitigation and correction measures and, finally, compensation measures. In 2003, the DNE requested modification of the PMA and the Ministry, by means of Resolution 1054 of 30 September 2003, modified it, changing the 12 specifications of the PMA[34], initially approved through Resolution 1065 of

[34] It is important to remember that the PMA , which only has 12 specifications, is imposed through Resolution 1065 of November 2001.

2001, by reducing the environmental management plan to eight specifications.

With regard to the reduction of the environmental management plan specifications, the Ministry said that this was due to their consolidation, without this entailing any alteration of the primary objective which is prevention, mitigation, compensation and control. However, to combine specification number 1: Spraying Operations Management Program with specification number 6, Spraying Operations Inspection, Verification and Control Program, into one and to be headed by the DNE, apparently is not very appropriate, given that in practice, the DNE is the entity that operates, oversees, controls, and resolves the citizens' complaints generated by the PECIG. Moreover, the technical environmental audit of the program has not been put into operation.

With respect to the management plan, it is also appropriate to draw special attention to soil indicators, since it is already known that the country does not have the necessary laboratories to conduct tests on herbicide residues, being forced to use foreign laboratories (some laboratories in the United States have been used), to carry out tests of the damage caused by the herbicide.

Resolution 99 of 31 January 2003, in which the MAVDT gives the DNE twelve months to present the results of the "Efficiency Study on the application of glyphosate, its residues, and its AMPA metabolite on soils", states that the ICA [acronym in Spanish for Agricultural Institute of Colombia] and Ministry of Health shall supervise the execution and verification of said study.

In 2004, by means of Opinion 218 of 25 March, MAVDT granted a four-month extension to the DNE to present the study that seeks to assess the efficiency of the application of glyphosate and its residues.

[PAGE 34]

In this regard, there is concern that this type of study was not required at the beginning of the Illicit Crop Eradication Program Using Aerial Spraying with Glyphosate and that, after 18 years of continuous aerial spraying and complaints from the community, the country does not know the nature of the herbicide residues on the soil and the damages and impacts that it may cause to wildlife, ecosystems, and to the Amazon biodiversity. These studies have not yet been conducted and, in the meantime, the PECIG continues without an appropriate environmental assessment.

As to the postponement and delay in submitting the environmental management plan by the DNE, MAVDT admits in a communication sent to the auditing commission[35] that, since 1994, by Decree 1753, the DNE was required to present an environmental management plan for the PECIG, and its formulation and drafting were continuously postponed by repeated administrative procedures, until 2001, when the application of preventive measures was ordered. That is, five years after the law compelled the DNE to present an environmental management plan, the MAVDT orders, once again, that the DNE to comply with the legislation in force. An additional aspect that should be kept in mind is that before 1994, and before the enactment of Decree 1753, environmental aspects of the programs and projects were regulated by the Natural Resources Code (Decree-Law 2811 of 1974), without exempting the DNE and environmental authorities from this responsibility.

External environmental audit

PECIG currently does not have an External-Technical Environmental Audit, as established by Resolutions 005 and 013 of 2000 and 2003, respectively

A relevant point is the lack of inclusion or participation of regional autonomous corporations and/or UMATAS [acronym in Spanish for Municipal Agricultural Technology Transfer and Assistance Units] in the

[35] 2200.2.27815 of April 30, 2004

scheme of the management plan, when these entities have been legally defined for the implementation of policies and environmental management of the areas in their jurisdiction. There is no coordination between the implementation and development of the environmental plan and entities from the SINA [acronym in Spanish for National Environmental System].

The environmental management plan (PMA), before its modifications, contained the prerequisite of an external and independent technical audit of the program, including regular reports from the DNE to the Ministry of the Environment. However, the one recently modified eliminates the requirement of an independent audit, which has been one of the main requirements of the former Ministry of the Environment, the Office of the Ombudsman and the Office of the Comptroller General of the Republic.

Although the PMA does not require a technical audit, this requirement has not been eliminated altogether. In fact, as a substitute for the requirement of the PMA, the National Narcotics Council (CNE) in September 2003 enacted Resolution 0031, ordering that "the Illicit Crop Eradication Program Using Aerial Spraying with Glyphosate (PECIG) carry out an audit, preferably with resources from international cooperation".

Verification and Follow-up

With regard to verification, MAVDT is responsible for conducting them and has been making visits for this purpose. The following are some of the most relevant aspects of the different departments.

The reports in general show that the proposed and approved management plan is not being accompanied with those aspects related to social components and public health. Of special concern is the lack of alternative programs of social nature, statistics and health management programs in all the departments in which the Illicit Crop Eradication Program is being carried out.

The concern that the environmental management plan is not being wisely applied in the different areas where the program is conducted emerges from

the analyzed reports. Three important aspects can be highlighted: first, in general, specification number 6 (communication and social management), specification number 4 (wastewater management program at PECIG bases) and specification number 5 (environmental monitoring program) are not being met.

The implementation of the environmental management plan costs the country 2,743 million pesos for a period of two years under a no-conflict situation; with conflict in the scenario, the DNE estimates the cost of the program implementation at 6,554.5 million pesos[36]. Likewise, a mission within the environmental management plan, which duration is estimated to be an hour and a half, costs US $14,873.52; from this amount 78% of the cost is for the aircraft, 8% for human resources, and the remaining 14% for fuel.

[PAGE 35]

PECIG operation

With regard to the components for the development of the program, it is known that the import of Roundup herbicides, the commercial form of glyphosate and Cosmoflux, an oily type additive that is mixed to the glyphosate and water solution, enabling the solution to have greater stability and adherence to the leaves and stem of the plant, ascends approximately to 752,420 gallons of glyphosate and 17,591 gallons of Cosmoflux. (Table 12)

In table 12, attention is drawn to the high concentration in percentage of the chemicals (glyphosate and Cosmoflux) in the amount of water used for the departments of Guaviare, Nariño, Norte de Santander and Caquetá.

The "annual verification of the effectiveness of PECIG operations and assessment of collateral effects" conducted by a commission made up of officers from the ICA, DNE, the Anti-Narcotics Division of the National Police Force, the United States Embassy's Narcotics Affairs Office, and this

[36] Folio 2677, record 18 of file number 793.

Ministry, with logistical and security support from the National Police, during the days of 11 and 26 November 2003, highlights the following aspects[37]:

"The assessment was conducted by helicopter, flying over the lots at a low altitude, with double turns of 360 degrees in both directions, so as to obtain a better appreciation of the aspects to be assessed".

"Once the lots subject to assessment were defined, the criteria to be considered and the evaluation methodology to be used by each evaluator were established. This was based on visual appreciation and estimation of the overall effectiveness of sprayings on the entire field, the estimation of the effectiveness of the eradication of coca plants, the collateral effects on elements outside of the spraying target area, and additional observations that could be made in situ, such as the presence of laboratories, seedling nurseries, housing, replanting, stumps, intermingled crops and proximity to bodies of water".

Some of the assessment results are described as follows:

"…in a couple of cases, it was possible to see that the coca fields located in the same area, but separated by bands of vegetation greater than five metres were continuously sprayed, unnecessarily affecting this wooded mass, even if the impact might not be as permanent

[37] "Biannual activity report conducted in connection with the Environmental Management Plan. July-December 2003 period" MAVDT º

Table 12

Components for the PECIG
Period November 2002 to April 2003
(Gallons)

	Roundup (Glyphosate)	**Cosmoflux**	**Water**	**% (Glyphosate + Cosmoflux/water**
Cauca	1.295,20	252,06	121.988,68	1%
Cesar	431,68	85,85	8.070,45	6%
Guaviare	50.294,52	1.277,12	71.217,35	72%
Nariño	268.532,69	1.603,07	88.682,62	305%
Norte de Santander	17.092,24	412,72	34.951,27	50%
Huila	326,40	64,22	6.130,54	6%
Caquetá	38.237,45	5.100,44	43.861,79	99%
Estimated year	752.420,36	17.590,96	749.805,40	103%

Source: DVF-CDMA. Quarterly progress report from PECIG to DNE

[PAGE 36]

as previously indicated, and that there was temporary defoliation of the crown of the tallest trees." It is important to take into consideration this component of the operation to the extent that the complaints against this program basically originate on account of this detail. In fact, it is known that only three gallons of glyphosate over a hectare of plantain crops, for example, are sufficient ruin that plantain crop; thus, 10.4 gallons per hectare on this crop or any other type of vegetation definitely burns the foliage and stem. Therefore, an urgent appeal must be made to the pilots that operate the program aircrafts to close the spraying valves in areas that are not, nor should be, the target of the program".

[…]

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***Impresión*:**
Imprenta Nacional

Contraloría General de la República
Calle 17 Nº 9-82
Teléfonos: 282 17 06 - 282 15 09
Bogotá, D.C., Colombia
Diciembre - 2004
www.contraloriagen.gov.co

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al glifosato[33] y no a la mezcla que como tal se emplea en las fumigaciones en áreas del territorio nacional. Todo lo anterior hace que no sean comparables estos estudios.

El plan de manejo ambiental

Sobre el plan de manejo ambiental del PECIG se empieza a hablar desde 1996, pero es en noviembre de 2001 que el MAVDT impone dicho plan mediante resolución, a la vez que se abre una investigación, elevando pliego de cargos a la DNE, que apela estas decisiones mediante recurso. En 2003 el Ministerio acepta la solicitud de la DNE de modificarlo, como se expone a continuación:

Mediante la Resolución 930 del 1 de septiembre de 2003 el Ministerio requiere a la DNE por el incumplimiento del plan de manejo ambiental. Posteriormente, mediante concepto técnico 0010 de 15 de enero de 2004, el Ministerio comunica a la DNE la necesidad de notificar a los pilotos de las aeronaves para detener la aspersión cuando se encuentre en áreas de vegetación boscosa que separen lotes contiguos de cultivos ilícitos con el fin de minimizar los efectos del herbicida sobre elementos naturales no objeto del programa; este mismo confirma la entremezcla de cultivos lícitos con ilícitos y manifiesta que la efectividad de la aspersión es del 80%.

El PMA presentado por la DNE en 2001 consta de 13 fichas de manejo ambiental, con su respectiva descripción, objetivos, actividades, seguimiento y monitoreo, responsables, cronograma y costos y se ha estructurado en tres tipos de actividades: medidas de prevención, medidas de mitigación y corrección y finalmente, medidas de compensación. En 2003, la DNE solicita la modificación del PMA y el Ministerio, mediante Resolución 1054 del 30 de septiembre de 2003, lo modifica, cambiando las doce fichas del PMA[34], inicialmente aprobado mediante la Resolución 1065 de 2001 y el plan de manejo ambiental se reduce a ocho fichas.

Sobre la disminución de fichas del plan de manejo ambiental, dice el Ministerio que se debió a la integración de las mismas sin que ello implique la alteración del objetivo primordial que es la prevención, mitigación, compensación y control; sin embargo, integrar las fichas 1: Programa de manejo de las operaciones de aspersión y 6, programa de inspección, verificación y control de las operaciones de aspersión, en una sola y en cabeza de la Dirección Nacional de Estupefacientes, al parecer no es muy apropiado, pues en la práctica es la DNE la entidad que opera, vigila, controla y resuelve las quejas de los ciudadanos originadas en el PECIG y, adicionalmente, la auditoría técnica ambiental externa del programa no ha operado.

Respecto al plan de manejo es pertinente también hacer un llamado de atención especialmente sobre los indicadores de suelos, pues es ya sabido que el país no cuenta con los laboratorios requeridos para elaborar ensayos de residuos de herbicidas, viéndose obligado a utilizar laboratorios extranjeros (se han utilizado algunos de los Estados Unidos), para poder contar con pruebas de afectación por causa del herbicida.

La Resolución 99 del 31 de enero de 2003, en donde el MAVDT le concede doce meses para que la Dirección Nacional de Estupefacientes entregue los resultados del "Estudio de Eficiencia en la aplicación del glifosato y la residualidad del mismo y de su metabolito AMPA en suelos" dice que el ICA y el Ministerio de Salud supervisarán la ejecución y verificación de dicho estudio.

En 2004 y mediante Concepto 218 del 25 de marzo, el MAVDT concede prórroga de cuatro meses a la DNE para la entrega del estudio que busca evaluar la efi-

33 Con respecto a las características y propiedades del herbicida glifosato, la docotora Cilia L. Fuentes, quien es profesora titular de la Facultad de Agronomía de la Universidad Nacional, en la página 3 del reporte "Comportamiento del Glifosato en el Suelo" de agosto de 2004, señala: "El glifosato es un herbicida no selectivo, de uso posemergente y acción sistémica, recomendado para el control de la mayoría de plantas arvenses herbáceas y semileñosas anuales y perennes. En general, se informa que este compuesto al llegar al suelo es inmediatamente "inactivado" sin dejar residuos que puedan afectar cultivos posteriores; tampoco penetra por las raíces de los cultivos ya establecidos. No es volátil. Los riesgos de causar daños a los cultivos vecinos se reducen considerablemente cuando las aplicaciones se realizan con equipos terrestres y el viento en calma, dirigido a las malezas y utilizando pantalla protectora para evitar que las gotas de aspersión caigan sobre las partes verdes de las plantas deseables (Ahrens, 1994; Pitty, 1995)". Igualmente, en el mismo documento se precisa: "En Colombia existe muy poca información experimental acerca del comportamiento de este compuesto en el ambiente, y en particular, su destino en los suelos prácticamente no ha sido estudiado. Debido al uso continuado de este herbicida a lo largo de muchos años (cerca de 30 años), podría ser que existan residuos ligados a los componentes orgánicos (sustancias húmicas) y minerales (arcillas, óxidos metálicos) del suelo. Estudiar el comportamiento del herbicida glifosato en tres suelos del agroecosistema arrocero del departamento del Tolima, Colombia, es de importancia para el país, porque en primera instancia, los resultados que se obtengan, permitirán aportar a la comprensión de las implicaciones ambientales del uso del glifosato en el suelo, y en segundo lugar, se optimizará una metodología para estudiar la interacción glifosato-suelo, que podrá servir de base para emprender otros estudios (e.g. en suelos provenientes de zonas de cultivos ilícitos, actualmente tratadas con el herbicida en cuestión)".

34 Es importante recordar que mediante Resolución 1065 de noviembre del 2001 se impone el PMA el cual sólo tiene doce fichas.

ciencia en la aplicación del glifosato y la residualidad del mismo.

Al respecto, preocupa que este tipo de estudios no se haya exigido al inicio del Programa de Erradicación de Cultivos Ilícitos con glifosato y que, después de 18 años de aspersión continuada y de quejas de la comunidad, el país no conozca el tipo de residualidad del herbicida en suelos y las afectaciones e impactos que pueda generar a la fauna silvestre, a los ecosistemas, y a la biodiversidad amazónica. Estos estudios aún no se han llevado a cabo y, entre tanto, el PECIG continúa sin una evaluación ambiental apropiada.

Sobre la dilación y demora en la presentación del plan de manejo ambiental por parte de la DNE, el MAVDT admite en comunicación enviada a la comisión de auditoría[35] que, desde 1994, a través del decreto 1753, se requiere a la DNE el plan de manejo ambiental para el PECIG, y que su formulación y elaboración fue reiteradamente dilatada por medio de repetidos procedimientos administrativos, hasta cuando en 2001 se ordena la aplicación de medidas preventivas. Es decir, cinco años después de que la ley obligara a la DNE a la presentación de un plan de manejo ambiental el MAVDT requiere, una vez más a la DNE, el cumplimiento de la legislación vigente. Un aspecto más que se debe tener presente es que antes de 1994, y de la promulgación del decreto 1753, los aspectos ambientales de los programas y proyectos estaban regulados por el Código de los Recursos Naturales (Decreto Ley 2811 de 1974), sin que se pudiese eximir de dicha responsabilidad a la DNE y a las autoridades ambientales.

La auditoría externa ambiental

Actualmente el PECIG no cuenta con la Auditoría Técnica Externa Ambiental, como lo establecen las Resoluciones 005 y 013 de 2000 y 2003, respectivamente.

Un punto pertinente es la no inclusión ni la participación de las corporaciones autónomas regionales y/o las UMATAS en el esquema del plan de manejo, siendo estos los organismos legalmente definidos para la ejecución de la política y el manejo ambiental de las zonas de su jurisdicción. No se observa coordinación entre la ejecución y desarrollo del plan de manejo ambiental y las entidades del SINA.

El plan de manejo ambiental (PMA), antes de ser modificado, contenía la exigencia de una auditoria técnica externa e independiente del programa, así como informes regulares de la DNE al Ministerio del Medio Ambiente. Sin embargo, el que fue recientemente modificado elimina la exigencia de la auditoria independiente, que ha sido una de las principales exigencias del anterior Ministerio del Medio Ambiente, de la Defensoría del Pueblo y de la Contraloría General de la República.

Si bien el PMA ya no exige una auditoria técnica, éste requisito no ha sido eliminado del todo. De hecho, como sustituto del requisito del PMA, el Consejo Nacional de Estupefacientes (CNE) en septiembre del 2003 promulgó la Resolución 0031, ordenando que "el Programa de Erradicación de Cultivos Ilícitos (PECIG), contará con una auditoria, contratada preferentemente con recursos de cooperación internacional".

La verificación y el seguimiento

En cuanto a la verificación, el MAVDT tiene la responsabilidad de llevarlas a cabo y ha venido realizando visitas para este fin. A continuación se presentan algunos de los aspectos más relevantes de las mismas a los distintos departamentos.

Los informes en general muestran que el plan de manejo propuesto y aprobado no se está cumpliendo, preocupando sobre todo los aspectos relacionados con las componentes social y de salud publica. La falta de programas alternativos de carácter social y las estadísticas y programas de manejo de salud son inexistentes en todos los departamentos donde se desarrolla el Programa de Erradicación de Cultivos Ilícitos.

De los informes analizados se desprende la preocupación de que el plan de manejo ambiental no se aplica de manera juiciosa en las diferentes bases aéreas donde opera el programa. Se pueden remarcar tres aspectos importantes: el primero, en general la ficha 6 (referente al programa de comunicación y gestión social), la 4 (referente al programa de manejo de aguas residuales en las bases del PECIG) y la ficha 5 (programa de monitoreo ambiental), no se están cumpliendo.

La implementación del plan de manejo ambiental le cuesta al país $2.743 millones, para hacerlo durante dos años en condiciones de no conflicto; en el escenario de conflicto la DNE estima la implementación del mismo en $6.554,5 millones[36]. Similarmente, una misión dentro del plan de manejo ambiental, cuya duración se estima en una hora y media cuesta

35 2200.2.27815 del 30 de abril del 2004.

36 Folio 2677 de la carpeta 18 del expediente 793.

US$14.873,52; de este monto la aeronave participa con el 78% de este costo, los recursos humanos participan con el 8% y los costes de combustible el restante 14%.

La operación del PECIG

Sobre los insumos para desarrollar el programa, se sabe que la importación de los herbicidas Roundup, forma comercial del glifosato y cosmoflux, aditivo de tipo aceitoso que se mezcla a la solución de glifosato y agua, permitiendo una mayor adhesión y permanencia de dicha solución a las hojas y al tallo de la planta, asciende aproximadamente a 752.420 galones de glifosato y a 17.591 galones de Cosmoflux (cuadro 12).

En el cuadro 12, llama la atención la elevada concentración en porcentaje de los químicos (glifosato y cosmoflux) sobre el nivel de agua utilizada para los departamentos de Guaviare, Nariño, Norte de Santander y Caquetá.

La "verificación anual de la efectividad de las operaciones del PECIG y evaluación de efectos colaterales" por parte de una comisión integrada por funcionarios del ICA, de la Dirección Nacional de Estupefacientes, de la Dirección Antinarcóticos de la Policía Nacional, la Oficina de Asuntos Narcóticos de la Embajada de Estados Unidos de América y este Ministerio, con apoyo logístico y de seguridad de la Policía Nacional, realizada durante los días 11 y 26 de noviembre de 2003, señala como aspectos a destacar los siguientes[37]:

- "La evaluación se hizo mediante sobrevuelo a los lotes en helicóptero y a baja altura, realizando giros dobles de 360 grados en ambos sentidos, para poder tener una mejor apreciación de los aspectos a calificar".
- "Una vez definidos los lotes objeto de verificación, se establecieron los criterios a tener en cuenta y la metodología de calificación a emplear por cada uno de los evaluadores, la cual se basó en la apreciación y estimación visual de la efectividad general de la aspersión sobre la totalidad del lote, la estimación de la efectividad de la erradicación sobre la planta de coca, los efectos colaterales sobre elementos externos a la zona objeto de aspersión y observaciones adicionales que se pudieran apreciar en el sitio, como presencia de laboratorios, semilleros, viviendas, resiembras, soqueo, cultivos entremezclados y cercanía a cuerpos de agua".

Algunos de los resultados de la verificación se describen así:

- "... se pudo apreciar en un par de casos que lotes con coca localizados en una misma área, pero separados por cordones de vegetación mayores de cinco metros fueron asperjados de manera continua, afectando sin necesidad esta masa boscosa así el impacto no sea permanente como

37 "Informe semestral de actividades adelantadas en relación con el Plan de Manejo Ambiental. Periodo julio - diciembre 2003", MAVDT.

Cuadro 12

Insumos del PECIG
Periodo noviembre del 2002 a abril del 2003
(Galones)

	Roundup (Glifosato)	Cosmoflux	Agua	% (Glifosato + Cosmoflux/agua
Cauca	1.295,20	252,06	121.988,68	1%
Cesar	431,68	85,85	8.070,45	6%
Guaviare	50.294,52	1.277,12	71.217,35	72%
Nariño	268.532,69	1.603,07	88.682,62	305%
Norte de Santander	17.092,24	412,72	34.951,27	50%
Huila	326,40	64,22	6.130,54	6%
Caquetá	38.237,45	5.100,44	43.861,79	99%
Total	376.210,18	8.795,48	374.902,70	103%
Estimación año	752.420,36	17.590,96	749.805,40	103%

Fuente: DVF-CDMA. Informe trimestral de avance del PECIG de la DNE.

se señaló anteriormente y que consiste en la defoliación temporal de la copa de los árboles más altos". Este componente de operación es importante considerarlo en la medida en que las quejas allegadas por el programa se originan básicamente por este detalle. En efecto, se sabe que con sólo tres galones de glifosato sobre una hectárea de cultivo de plátano, por ejemplo, son suficientes para acabar con esta platanera, así que 10,4 galones por hectárea en este cultivo o cualquier otro tipo de vegetación quema de manera segura su follaje y tallo. Por tanto, se debe hacer un llamado urgente a los pilotos que operan las aeronaves del programa, para que cierren las llaves de aspersión en zonas que no son ni deben ser objeto del programa".

Es importante llamar la atención sobre algunos aspectos descritos en la verificación y seguimiento; por ejemplo, la metodología de calificación de los evaluadores, que se basó en la apreciación y estimación visual; los efectos colaterales de la fumigación, pues se apreciaron resiembras de coca, soqueo, cultivos entremezclados y cercanía a cuerpos de agua; el informe asegura que los efectos residuales del herbicida en el suelo no son permanentes y la forma de evaluarlo es con observación simple del terreno, sin mediar muestras y ensayos de laboratorio; la entremezcla de cultivos lícitos como plátano, maíz y yuca, evidenciando las formas como los cultivadores pretenden evadir la aspersión, implica en todo caso la destrucción de cultivos agroalimentarios; se observó la defoliación de bosques aledaños como resultado del efecto deriva; y finalmente recomienda la comisión, además de la aspersión, la quema de estos suelos para evitar la resiembra, dejando entrever la espiral en la que se va sumergiendo el país en desarrollo de este programa, sin que medie en todo caso la prevención ambiental.

Finalmente, es pertinente decir que la dosis del herbicida se ha aumentado durante el desarrollo del Pecig. En efecto, el programa se define con 4,4 litros/ ha, posteriormente se incrementa su concentración a 8,4 ltr/ha y finalmente, el MAVDT aprueba mediante Resolución 0099 de enero del 2003, el incremento de la dosis a 10,4 ltr/ha, sin que medien evaluaciones técnicas, ni pruebas de laboratorio ni en campo que permitan establecer el grado de afectación de los recursos naturales renovables por cuenta del herbicida.

El sistema de quejas y compensación

Todas las quejas allegadas al MAVDT son transferidas a la Dirección Nacional de Estupefacientes, tal como lo contempla la Resolución 017 del 2001 de la DNE, en donde establece que el procedimiento y la responsabilidad de su trámite es responsabilidad de este mismo organismo. El proceso lo desarrolla casi en su totalidad la Dirección Antinarcóticos de la Policía Nacional, organismo también encargado de responder por la ejecución operativa del programa, observándose, por tanto, que es la misma Policía Nacional la que tiene el poder de decidir o juzgar si la queja es válida o no, cuando establece el nexo de causalidad.

De manera similar el proceso de certificación del daño como consecuencia de la aspersión se hace casi imposible de determinar en la medida en que, como se describe en el apartado anterior, no existen laboratorios en Colombia capaces de determinar la residualidad del herbicida en el suelo, debiéndose llevar a laboratorios de los Estados Unidos, que son, en últimas, los que determinan esta causalidad, o afectación que manifiesta el quejoso.

Situación pertinente de tener en cuenta también en el proceso es la circunstancia de orden público de las zonas en las que se desarrolla el Pecig, pues las largas distancias, la falta de vías de comunicación, y la misma situación de orden público, impiden de una u otra manera bien que se registre la queja o bien que las visitas de verificación se puedan realizar en los plazos estipulados para tal fin.

En 2002 el Ministerio de Justicia admite la recepción de 4.500 quejas o reclamaciones, de las cuales sólo cinco han sido admitidas por la Policía Nacional (0,1%). La Defensoría del Pueblo había registrado, a octubre del 2002, 6.553 quejas. En 2003 la DNE recibió 2.124 en el departamento de Nariño, de las cuales 442 (21%) fueron rechazadas y el resto está en proceso (Oficio 2648 del 26 de septiembre del 2003-Dirección Antinarcóticos, carpeta 26 del expediente 793). Para la CGR, continua siendo preocupante el doble papel de juez y parte que tienen los organismos encargados de gestionar las quejas de las comunidades, dado que viola el principio universal de separación entre evaluador y evaluado, el cual debe preservarse siempre, pero más aún en la ejecución de políticas y programas como el Pecig, que es de gran sensibilidad.

Aunque los resultados indican reducción puntual de los cultivos, se debe evaluar el costo social y ambiental del mismo, el efecto rotación o traslado de cultivos, pero sobretodo todo no dejar de lado el principio de precaución avalado y acordado por la comunidad internacional incluida Colombia (que lo acoge mediante la Ley 99 de 1993), sobre los efectos de riesgo para la salud humana y la biodiversidad del

ANNEX 100

Colombian National Police, Antinarcotics Directive,
Monitoring and Evaluation of the Spraying Operation to Eradicate Illicit Coca Crops Inside Sierra de la Macarena National Park (Nov. 2006)

ANNEX 100

[seal]

NATIONAL POLICE
ANTINARCOTICS AGENCY

ENVIRONMENTAL MONITORING AND EVALUATION OF THE SPRAYING OPERATIONS FOR THE ERADICATION OF ILLICIT COCA CROPS WITHIN SIERRA DE LA MACARENA NATIONAL PARK

PROGRAM FOR THE ERADICATION OF ILLICIT CROPS BY AERIAL SPRAYING WITH GLYPHOSATE-PECIG-

Bogota, November 2006

ANNEX 100

National Police – Antinarcotics Agency, Program for the Eradication of Illicit Crops through Aerial Spraying of the Herbicide Glysophate –PECIG-

[PAGE 14]
[…]

4.2 PHYSIO-CHEMICAL ANALYSIS

The following table displays the laboratory results for the physio-chemical analysis carried out by the Agustin Codazzi Geographic Institute, which is attached as an annex to this report, and which corresponds to the samples before the spraying, immediately after the spraying, and 28 days later.

PROPERTIES	RESULT			INTERPRETATION
	BEFORE	AFTER	28 days	
	Sand: 35.1%	Sand: 35.4%	Sand: 41.5%	Passes from clay loam to loam and later to clay loam. There is no disturbance.
TEXTURE	Lime: 30.4%	Lime: 42.4%	Lime: 30.3%	
	Clay: 34.5%	Clay: 22.2%	Clay: 28.3%	
pH	5.2	4.5	4.2	Changes from strongly acidic to extremely acidic
Exchangeable acidity	0.67 meq/100g	3.1 meq/100g	3.4meq/100g	Aluminum is considered an important factor to take into account, because its content is greater than 2.
Saturation of Exchangeable Aluminum	15.1%	73.6%	81.3%	Changes from a level which will not affect crops to a level that is toxic for the majority of crops.
Organic material	Organic Carbon: 1.2%	Organic Carbon: 1.1%	Organic Carbon: 1.3%	A low content is present, which does not vary between samples
	Total Nitrogen: 0.14%	Total Nitrogen: 0.12%	Total Nitrogen: 0.15%	A moderate amount is present, which does not vary between samples.

[PAGE 15]

Cationic Exchange Capacity	12.8 meq/100g	6.6 meq/100g	10.3 meq/100g	Varies from moderate to low and after 22 days reestablishes itself at moderate. There is no significant variation.
Calcium (Ca)	3.4 meq/100g	0.26 meq/100g	0.39 meq/100g	A low level with a significant decrease over 22 days.
Magnesium (Mg)	0.22 meq/100g	0.66 meq/100g	0.16 meq/100g	Presents a low level which does not vary over 22 days.
Potassium (K)	0.16 meq/100g	0.14 meq/100g	0.15 meq/100g	Remains at moderate levels without significant variation.
Sodium (Na)	0.04 meq/100g	0.05 meq/100g	0.08 meq/100g	Normal, as content must always be lower than 1.
Total bases	3.78 meq/100g	1.11 meq/100g	0.8 meq/100g	Presents a low level with a significant decrease over 22 days.
Saturation of bases	29.60%	16.80%	7.60%	Remains at low levels, showing accelerated decrease.
N-NO3 (nitrates)	N.D.	4.6 ppm	1.1 ppm	Though there was no detection before spraying, a significant decrease was shown over 22 days
N-NH4 (ammonium)	12 ppm	3.6 ppm	0.56 ppm	The ammonium content is at a critical level due to the fact that it is below 20 ppm and it diminishes over time.
Phosphorus (P)	46.1 ppm	1.8 ppm	2.6 ppm	A significant decrease is observed, changing from moderate to low.

ANNEX 100

POLICÍA NACIONAL
DIRECCIÓN ANTINARCÓTICOS

SEGUIMIENTO Y MONITOREO AMBIENTAL DE LA OPERACIÓN DE ASPERSIÓN PARA LA ERRADICACIÓN DE CULTIVOS ILÍCITOS DE COCA DENTRO DEL ÁREA DEL PARQUE NACIONAL NATURAL SIERRA DE LA MACARENA

PROGRAMA DE ERRADICACIÓN DE CULTIVOS ILÍCITOS MEDIANTE ASPERSIÓN AÉREA CON GLIFOSATO –PECIG-

Bogota, Noviembre - 2006

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ANNEX 100

Los resultados de las muestras de agua que se anexan en el informe fueron tomadas en fuentes loticas que bordeaban el lote objeto de monitoreo y que se tomaron antes de la aspersión, inmediatamente después y a los 28 días de la aspersión, los resultados obtenidos se presentan en la siguiente tabla:

COMPUESTO	RESULTADO			LIMITE DETECCION	
	ANTES	DEPUES	28 dias	Glifosato mg/L	AMPA mg/L
GLIFOSATO	<LD	<LD	<LD	0,01	0,008
AMPA	<LD	<LD	<LD		

De lo anterior se deduce que no hay evidencia de uso de herbicidas a base de Glifosato en el área, a la vez que no hay efectos directos de las aspersiones aéreas con glifosato para el control de los cultivos de coca con las fuentes de agua.

4.2. ANÁLISIS FISICOQUÍMICO.

A continuación se detallan los resultados del laboratorio para análisis fisicoquímico efectuado por el Instituto Geográfico Agustín Codazzi que se anexan en el informe y que corresponden a las muestras antes de la aspersión, inmediatamente después y a los 28 días de la aspersión.

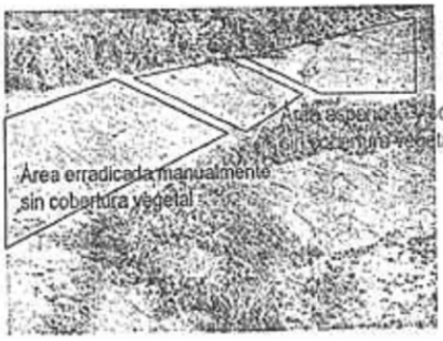
PROPIEDADES	RESULTADO			INTERPRETACION
	ANTES	DEPUES	28 dias	
TEXTURA	Arena : 35.1% Limo : 30.4 % Arcilla : 34.5 %	Arena : 35.4% Limo : 42.4 % Arcilla : 22.2%	Arena : 41.5% Limo : 30.3 % Arcilla : 28.3%	Pasa de Franco Arcilloso a Franco y posteriormente a Franco Arcilloso. No hay perturbación.
pH	5,2	4,5	4,2	Pasa de fuertemente acido a extremadamente acido
Acidez Intercambiable (A.I.)	0.67 meq/100g.	3.1 meq/100g.	3.4 meq/100g.	El aluminio se considera un factor importante a tener en cuenta, ya que su contenido es mayor a 2
Saturación de Aluminio Intercambiable (S.A.I)	15,1%	73,6%	81,3%	Varía de un límite no afectable a cultivos a un nivel toxico para la mayoría de cultivos.
Materia Orgánica	Carbón Orgánico: 1.2%	Carbón Orgánico: 1.1%	Carbón Orgánico: 1.3%	Se presenta un bajo contenido que no varía entre los muestreos.
	Nitrógeno Total : 0.14%	Nitrógeno Total : 0.12%	Nitrógeno Total : 0.15%	Se presenta un margen medio que no varía entre los muestreos.

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Capacidad de Intercambio Cationico (CIC)	12.8 meq/100g	6.6 meq/100g	10.3 meq/100g	Varia de medio a bajo y a los 22 días se reestablece en medio. No hay variación significativa.
Calcio (Ca)	3.4 meq/100 g.	0.26 meq/100 g.	0.39 meq/100 g.	Presenta un nivel bajo con una alta disminución los 22 días.
Magnesio (Mg)	0.22 meq/100 g.	0.66 meq/100 g.	0.16 meq/100 g.	Se presenta en un nivel bajo que no varia a los 22 días.
Potasio (K)	0.16 meq/100 g.	0.14 meq/100 g.	0.15 meq/100 g.	Se mantiene en niveles medios sin variación significativa.
Sodio (Na)	0.04 meq/100 g.	0.05 meq/100 g.	0.08 meq/100 g.	Normal ya que su contenido debe ser siempre menor a 1
Bases totales (B.T.)	3.78 meq/100 g.	1.11 meq/100 g.	0.8 meq/100 g.	Presenta un nivel bajo con una alta disminución los 22 días.
Saturación de Bases.	29,60%	16,80%	7,60%	Se mantiene en niveles bajos presentando una acelerada disminución.
N-NO3 (nitratos).	N.D	4.6 ppm	1.1 ppm	Aunque en el antes no hay detección, se presenta un alta disminución a los 22 días.
N-NH4 (amonio)	12 ppm	3.6 ppm	0,56 ppm	El contenido de amonio esta en el nivel crítico debido a que esta por debajo de 20 ppm que se disminuye a lo largo del tiempo.
Fósforo (P)	46.1 ppm.	1.8 ppm.	2.6 ppm	Se observa una alta disminución al pasar de medio a niveles baj

4.3. COBERTURA VEGETAL.

Después de los 28 días de la aspersión se realizó una evaluación y se encontró que en el área asperjada con glifosato se presento una alta eficacia de control de coca y se inicio un proceso de recuperación vegetal.



ANNEX 101

Republic of Colombia,
Environmental Risk of the Herbicide Glyphosate (date unknown)

1. ENVIRONMENTAL RISK ASSESSMENT FOR THE HERBICIDE GLYSOPHATE

The environmental risk evaluation for the herbicide whose active ingredient is glyphosate, used in the eradication of illicit crops, was carried out using the methodology developed by Ines Toro Suarez for the Ministry of the Environment (Assessment Methodology for Environmental Impacts of Pesticide Use). In the first level of the evaluation the physio-chemical properties are established, which allows for prediction of its behavior in a natural environment. Each of these parameters are compared with known values for the same parameter in order to determine behavior in each environmental compartment[1]. Each compartment is analyzed for the pesticide's persistence (half-life), potential to bioaccumulate, mobility, and formation of non-extractible residues. From the combination of the properties of the herbicide and its method of application, the end-points of the evaluation are established or the environmental compartment to assess are identified. In both cases, the three "trans"[2] are analyzed: transport, transfer, and transformation.

In the second level of evaluation, the worst case scenario for the application of the herbicide is determined, with the worst case scenario being defined as any situation in which an extreme quantity of herbicide reaches the environment.

To carry out the environmental impact study with respect to the use of pesticides, the Ministry of the Environment (1995) established the use of an environmental risk assessment, with "environmental risk" being defined as the probability that exposure to a chemical agent in the natural environment would produce an adverse effect.

Taking into account the environmental risk assessment methodology developed by Ines Toro for Colombia, an assessment was carried out for the application of glyphosate in the aerial eradication of illicit crops program, based on the physical, chemical and toxological properties of the compound as well as its behavior in the environment under these conditions of use.

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[1] "Environmental Compartment": a designation given by Dr. Ines Toro to each element of the biotic or abiotic environment.

[2] Term employed by Dr. Toro for analysis of the destinations of molecules in a pesticide once they have been applied.

1.1 CHARACTERIZATION OF GLYPHOSATE AS A PESTICIDE

In this item, a synthesis of the physio-chemical properties of the herbicide is presented, all of which are used for the assessment. The detailed characterization of the product is presented in the Environmental Management Plan for the Eradication of Illicit Crops, submitted by the National Antinarcotics Agency in 1998, Chapter III, Project Description.

Table 1 Physio-chemical properties of active ingredient (glyphosate)

Property	**Pure Compound (active ingredient)**
Molecular Formula	C_3 H_8 N O_5 P
Molecular Weight	1.69 g/mol
Physical State	White solid
Odor	Inodorous
Density	0.5 g/mL
Melting point	184.5 °C

[PAGE 2]

Vapor Pressure	1.84 x 10^{-7} mm Hg at 45°C
Boiling Point	It decomposes
pH in 1% solution	2.5
Solubility in water	12,000 ppm at 25°C
Other solvents	None
Stability	32 days at 25°C and pH = 5, 7 or 9
Partition coefficient octanol/water	P_{OW} = -2.8
Henry's Law constant	< 7 x 10^{-11}
Corrosiveness	Not corrosive
Ignition point	This compound is considered combustible. Fires from this material can be controlled with a dry chemical, carbon dioxide, and/or water spray.
Reactivity with packaging materials	This chemical can react with galvanized steel, but not with containers made of stainless steel, to produce hydrogen, which can form a highly explosive mix. This can react with caustic materials (bases) to free heat. It corrodes iron. This chemical is stable for

	two weeks at a temperature of up to 60°C, if protected from light. Solutions of this chemical in water, 95% ethanol, or acetone are stable for 24 hours under normal conditions.

Source: Environmental Management Plan for the Eradication of Illicit Crops, 1998.

Glyphosate or N-Phosphonomethyl glycine (I.U.P.A.C. and C.A.) [CAS 1071-83-6] is known and widely used in more than 100 countries around the world. It is also approved by environmental authorities such as the U.S. EPA (Environmental Protection Agency) in the United States.

In Colombia the ICA approved its use and commercial sale, labeling it as a wide-spectrum herbicide due principally to its molecular structure, which is formed by a fraction of glycine and an aminophosphate radical attached as a substitute for one of the hydrogens of the alpha-amine group.

The structure of Glyphosate is as follows:

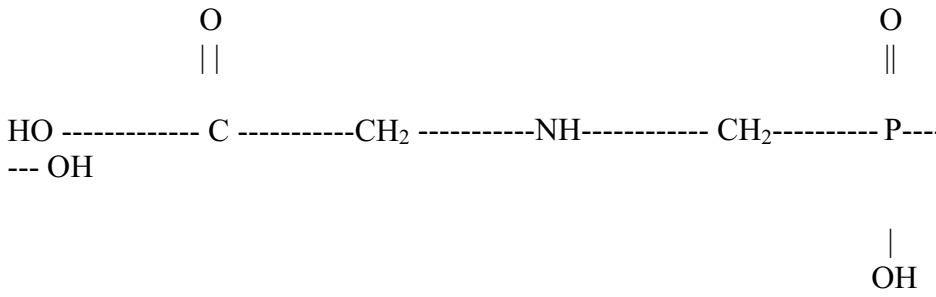


Figure 1. Glyphosate. Pure compound, active ingredient. (N-Phosphomethyl glycine). As can be seen in the molecular structure of Glyphosate, it possesses groups such as carbonyl (C = O) and amine (-NH), therefore this herbicide can react as an acid, forming hydrogen bonds with other compounds, including with itself. This characteristic

gives the molecule an elevated level of solubility in water. This characteristic defines its behavior in surface waters.

[PAGE 3]

[section missing]

…a disagreeable odor for humans.

Glyphosate is sold according to the needs of the consumer, but the common commercial presentation is in water-soluble concentrates of isopropylamine salt of N-Phosphomethyl glycine. Other presentations can be found, including: N-Phosphomethyl glycine of 98-99% purity, exclusively for use in laboratories; N-Phosphomethyl glycine at a technical grade of 80-98%, for use in trials and studies; and soluble powders for dusting and fumigation formulas. For this reason, Glyphosate or its active component N-Phosphomethyl glycine can be found in different grades of purity on the Colombian market.

The majority of pesticides are characterized by possessing both an active ingredient as well as inert ingredients and impurities. The latter generally are present due to the need to modify a pesticide to achieve a satisfactory adaptation to the environment. For Glyphosate for commercial use in liquid form, the active ingredient is N-Phosphomethyl glycine at 41% isopropylamine salt; the inert substances present represent 59% of the total commercial formulation.

Some commercial formulations of Glyphosate are used with surfactants to try to increase its effectiveness at killing plants. Also, these compounds can help to more easily break up Glyphosate for the absorption of the active compound into the plant foliage. In soil, these surfactants are degraded by microorganisms and have a median half-life of less than a week. Some of the commercial formulations of Glyphosate [sentence breaks off].

1.2 PRELIMINARY ASSESSMENT BASED ON MOLECULAR STRUCTURE

Once some general characteristics of Glyphosate are established, a preliminary assessment was carried out based solely on the molecular structure of the active ingredient, because its environmental parameters have been experimentally determined. Therefore, and according to the

methodology for the assessment of environmental impacts caused by pesticides, the assessment criteria are as follows:

1.2.1 CRITERIA: PHOTOLYSIS

Glyphosate is an aliphatic compound, for that reason the active ingredient of the pesticide does not absorb electromagnetic radiation. Therefore, photolysis cannot occur in the molecule, and there is no possibility of abiotic transformation of the pesticide in the environments where spraying takes place.

1.2.2 CRITERIA: POLARITY OF THE MOLECULE

The active component of Glyphosate, (N-Phosphomethyl glycine), can be considered an ionic compound because of the group (acid) present in the molecule, and due to this reason it tends to donate protons to water, and so may be considered anionic (pKa values and an analysis of the migration capacity in groundwater will be provided later in the document).

The active component of Glyphosate, the molecule of which is shown in figure 1, is polar due to the presence of electro-negative groups, such as oxygen. This fact is confirmed because its solubility in water is greater than 30mg/L (1. 2 g/100 mL) and its partition coefficient in Octanol-water (K_{OW}) is less than 3 (-2.8). These two parameters help to establish very important characteristics regarding the impact at using this compound in the different environmental compartments studied.

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[PAGE 4]

Table 2 pKa for Glyphosate in water at 25°C

	Pka
pka1	2.32
pka2	5.86
pka3	10.86

From these values it may be inferred that the acid group in the Glyphosate molecule is strong, and therefore has an elevated tendency to donate protons in an aqueous solution. For this reason in environments with elevated pH, Glyphosate has a reduced mobility, given that the compound has the tendency to neutralize pH.

From the molecular structure of Glyphosate it can be concluded that moist environments and elevated pH levels favor the molecule's penetration, and therefore its later biodegradation in the soil because of its elevated solubility and capacity for ionization (elevated constants, pKa) which it possesses in water. Also, because it is an aliphatic compound without covalent bonds it does not have the capacity to break up due to the action of light, and therefore cause some abiotic reaction with the resultant compounds.

1..2.4 APPLICATION METHOD OF THE PRODUCT

According to the form of application, which specifically for the program is done by aerial channels, the exposed environmental compartments are: SOIL, SURFACE WATER, FOLIAGE AND AIR.
The regions currently being treated include: Catatumbo, the Andean region, the Amazon region, and the Orinoquia region.

1.3 IDENTIFICATION AND EVALUATION OF NEGATIVE IMPACTS

To determine the destination of the herbicide, the analysis of the three "trans" was performed according to the specifications of the methodology.

1.3.1 SOIL

Persistence Study

Glyphosate is not a pesticide with prolonged residual action (between 30 and 141 days for the soil component). However, due to a variety of factors related to the degradation process of the herbicide, its degree of persistence varies.

For soil, the half-life, or to metabolize or disappear, is approximately 60 days[3]. There are other studies which report a moderate persistence with a median typical half-life (TD_{50}, time required for the disappearance of half of the initial quantity of a substance in a specific environment) of 47 days. All crops can be planted or transplanted immediately after application[4]. For laboratory studies, the typical half-life is observed to be around 25 days[5].

[lines cut off]

[3] www.monsanto.com
[4] Wouchope, R.D. *et al.* 1992, Rev. Environ. Contam. Toxicol. 123:1.
[5] Weed Science Society of America, Herbicide Handbook, *Glyphosate*, 7th Edition, 1994

[PAGE 5]

…the microorganisms. Some of these microorganisms can be affected by the action of the herbicide, but in general this action does not cause changes to the overall functions of the soil.

Depending on the period of persistence, which on average is 60 days, the effects of phytotoxicity in the soil are reduced, due to the fact that every product of a chemical nature undergoes a degradation process or a process of total or partial change in its molecular constitution and its physio-chemical properties, as soon as it enters into contact with the surrounding environmental components. Although the mobility of Glyphosate in the soil is almost null because of its high rate of absorption in colloids and clays, the decomposition of the active ingredient by way of metabolic action from microorganisms can vary depending on the organic material content of the soil. Because of this, Glyphosate is considered to have a reduced phytotoxicity in the soils of Colombia.

Given that the phytotoxicity is considered to be reduced, it is necessary to understand the destination of the compound, through which the behavior of Glyphosate in the soil can be described both physically and in terms of microbiology.

The first behavior is the absorption of Glyphosate in active soil sites (compounds of available phosphate to bond with the Glyphosate molecule) even though there are specific cations which diminish the soil absorption capacity of Glyphosate, including Fe^{+2}, Fe^{+3} and Al^{+3}; this can cause the constant elevation of the absorption of this compound in soils of a sandy-clay-chalky and sandy-chalky type.

The second type of behavior is biodegradation caused by the action of microorganisms in the soil. The metabolization of Glyphosate is usually caused by microflora in the soil, though the resulting metabolites (approximately 6) are not used by the microorganisms which create them. The following are the most important metabolies: AMPA (aminomethylphosphonic acid) and Sarcosine (N-methylglycine, hydrochloric sarcosine or 2-methylaminoethanol acid).

Bioconcentration Study

The bioconcentration study for the soil is determined with analysis of the solubility constant (1.2 g/100 mL) and the octanol-water constant (-2.8),

which, having been analyzed at critical levels, establish that there is no possibility of bioconcentration in the soil, and therefore the product is not toxic to soil microorganisms.

Transformation Study[6]

Various strains of bacteria have the capacity to decompose and degrade glyphosate. In the majority of laboratory experiments, the degradation rate of glyphosate in soils seems to be rapid. In the majority of cases, the process can be described as a linear kinetic of the first order.

In other cases, a non-linear model of the first order better describes the observed results (PTRL East Inc., 1991)

$C = C_0 (1 + ßt)^0$,

[PAGE 6]

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…laboratory, the maximum quantities in sandy-chalky and alluvial-chalky soil were 27 and 29%, respectively, of the radioactivity applied (PTRL East Inc. 1991). From the data in this study, TD_{50} values for AMPA of approximately 50 days in sandy and alluvial-chalky soils could be obtained.

The fact that the AMPA is more persistent than glyphosate was also demonstrated in another laboratory experiment (Monsanto, Inc. 1972b) in which the quantities of AMPA after 111 days were 10 to 17% of the initially applied activity. In this study, the temperature (32°C) was higher than in the aforementioned studies.

Some lesser, unidentified metabolites were quantified in a study of 364 days at the same laboratory (PTRL East Inc., 1991) with sandy-chalky and alluvial-chalky soils. Such metabolites did not exceed 3.5% of the applied quantity, while other uncharacterized metabolites did not exceed 1.5% each. Rueppel *et al.* (1977) quantified some lesser metabolites which did not exceed 1% of the activity applied. These were N-methylamino-methylphosphonic acid, glycine, N,N-dimethylamine-methylphosphonic acid, hydroxymethylphosphonic acid and two unknown metabolites.

[6] Environmental Management Plan for the Eradication of Illicit Crops, 1998.

In laboratory experiments under aerobic conditions, the quantities of residue bound to the soil immediately after application were 9 to 35% of the applied dose, after which an irregular course was observed during the 112 days of the experiment (Monsanto 1,972b). In general, the initial quantities were the maximum encountered.

In other experiments, however, the maximum quantities of bonded residue to appear were reached after 14 days, where they remained more or less constant, or decreased (PTRL East inc. 1991). These maximum concentrations were 7 to 9% of the initial applied quantity, and were less compared to other studies, probably due to the use of better extraction procedures.

The mineralization of glyphosate in soil occurs under aerobic and anaerobic conditions in the laboratory and, though the rates differ in an appreciable manner, the results principally depend on the respiration rate of the soil, and on the temperature. When:

In an anaerobic study with 15 Swedish forest soils, TD_{50} values based on the liberation of CO_2 varied between 6 and 200 days. The mineralization was found to be correlated to the respiration rate of the soil, but not to the pH or the organic material content of the soil (Torstensson & Stark, 1981). This finding was confirmed by Torstensson & Stenstrom (1986) and Heinonen-Tanski (1989).

Tortensson & Stenstrom (1986) also reported that glyphosate was co-metabolized. In this case, the cometabolizing microorganisms do not receive an energy supply from degrading glysophate.

In the soil, glyphosate seems to be degradable by microorganisms in two ways (Jacob *et al.*, 1988). One route is through the formation of AMPA and a C_2 fragment, probably glyoxylate. This system of degradation was proposed by a number of researchers (Monsanto, 1972b, PTRL East Inc., 1991). In this route, the cleavage of the C – N bond is the first stage. However, there is another degradation route through sarcosine (N-methylglycine) and orthophosphate, after which the sarcosine is degraded to glycine and a unit of carbon, which eventually forms CO_2, probably via formaldehyde (Kishore and Jacob, 1987, Jacob *et al*. 1998). In this route, the breaking of the C – P bond is the first step. In experiments with ^{14}C-glyphosate, isolated crops of *Psudomonas* sp., LBr strain, were capable of degrading glyphosate along both routes (Jacob *et al.*, 1988).

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[PAGE 7]

1.3.2 UNDERGROUND WATER

The effects on underground water depend on the mobility of the herbicide in the soil, which is analyzed using absorption constant, the normalized absorption constant, and the desorption constant, as well as the solubility, criteria described below.

The absorption effect is so accentuated, and takes place in such a short period of time, that all tests keep demonstrating that there is no place for lixiviation, for that reason it can also be anticipated that there is very little probability of contamination to subterranean water due to contamination from the soil.

Glyphosate is adsorbed and quickly fixed by the soil. The adsorption of glyphosate is correlated with the quantity of fixation sites of available phosphates, and seems to occur by linking to phosphonic acid[7].

In laboratory experiments in which glyphosate was added to aqueous solutions in the soil, the adsorption coefficient ($K_{S/L}$) was 18 to 377 dm^3/kg in nine soils, which varied from sandy-chalky to clay-chalky (Glass, 1987).

In both experiments, the process of adsorption could be described by the Freundlich equation. Glass (1987) found adsorption values for the clay-like minerals montmorillonite, illite and kaolinite of 138, 115 and 8 dm^3/Kg, respectively[8].

KO values are 324 for sandy-clay-chalky soils and 600 for sandy chalky soil.

The K_0 values for glyphosate for the distinct types of soils vary around an average value of 24,000 mg/L, which allows it to be classified as practically immobile, according to the McCall classification[9].

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[7] Weed Science Society of America, Herbicide Handbook, 7th Edition, 1994.
[8] WHO/IPCS. Environmental Health Criteria No. 159, *Glyphosate*, 1994.
[9] Wauchope, R.D. *et al*. 1992, Rev.Environ. Contam. Toxicol. 123:1.

Given its high affinity for soil components, as has been established, glyphosate is practically immobile, with a minimal probability of transport by lixiviation or movement in runoff.

In a chromatographic study of sandy-chalky, alluvial-sandy-chalky and sandy-chalky [sic] topsoils, it was found that glyphosate presented an Rf value (mobility in the fixed phase) of between 0.14 and 0.2 (Sprankle *et al.*, 1975) and in another study with the same types of soil, the values obtained were < 0.2 (Monsanto, Inc., 1972c).

In a study of lixiviation in columns of 30 cm of height, with a high water flow of 51 cm in two days, 0.1 to 6.6% of the radioactivity applied lixiviated. This experiment was conducted on eight types of soil, which varied between sandy-chalky with an organic material content of 0.7%, to volcanic ash with an organic material content of 9.5%. More than 90% of the radioactivity applied was recovered in the surface layer from 0 to 14 cm.
The process of translocation of herbicides can be achieved through several routes, including the carrying of particles by air currents, evaporation and, in some form, by…

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…of available evidence, cataloguing it as being of very low radical absorption and null mobility in the soil.

1.3.3 SURFACE WATER
When glyphosate enters into water as runoff due to accidental excessive spraying or a period of dew, the water adsorbs to the sediments, where it biodegrades. The persistence period can reach up to 171 days, but its detection can be carried out several days after environmental exposure to the pesticide, and the concentration tends to diminish with time due to biodegradation.

As the persistence period in water is greater than 4 days, a bioconcentration and transference analysis should be conducted. The parameters for the study of these items are the same (solubility and K_{OW}).

As the solubility of glysophate in water is above 30 mg/L and the partition coefficient for octanol-water is less than 3, it can be concluded that there

is no possibility that the pesticide in question can bioconcentrate in fish, or transfer to the organic material suspended in the water or in sediments. Therefore, Glyphosate can be considered non-recalcitrant (Log $K_{OW} < 5$), unlike aldrine, heptachlor, chlordane and DDT. As the persistence period of Glyphosate is greater than 4 days, the transformation study was not carried out regarding the presence of this compound can be present in water.

1.3.4 AIR

Regarding the air compartment, in general when a substance is freed to the atmosphere in the form of an aerosol, the particles can cause visible light dispersion, and therefore interfere with light-transmission processes (particles less than 100 microns in size). This process depends exclusively on the size of the particle and the substance, because particles of greater size tend to be more rapidly attracted by gravity.

In the case of the program, the effects on air are negligible, given that the precise objective is to guarantee that the droplets fall effectively over the target (coca crops), for which sizes of 300 to 1,500 microns are used, which guarantees the effectiveness of the application, avoids loss of product, and therefore economic losses. The size of the droplets used in the Eradication Program was validated by the ICA (August of 1998).

For the air compartment, it is equally important to note that the herbicide glyphosate has a low vapor pressure, therefore it does not vaporize. This means that there is no possibility of it being inhaled by animals or redistributed by air.

For the air, and in accord with the methodology followed, it should be noted that in the literature there is no model which integrates the different parameters (vapor pressure, K_{OW}, vapor pressure, distribution constants, solubility, the Henry's Law constant, etc.) that predict the presence of these compounds in the air. However, when Glyphosate is freed to the atmosphere in the form of an aerosol, the particles can cause visible light dispersion and therefore interfere in light-transmission processes.

After establishing the environmental compartments exposed and the action of this pesticide, it can be concluded that this is a persistent compound in the soil and in the air, because its…

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The toxicity of Glyphosate for aquatic organisms estimated to be low, corresponding to moderate to low intervals in different regulations (EPA), both for acute and chronic exposure.

In fish, and in accord with the low coefficient of octanol-water partition (very soluble), it seems very improbable that Glyphosate can bioaccumulate in tissue.

The toxicity of Glyphosate is low in algae, including in green algae.

Table 4 Environmental Indicators in aquatic ecosystems

Species	**Parameter**	**Values (mg/L)**	**Critical Level (mg/l)**
Fish	CL_{50} (96 hours)	2.4 – 34	5-10
Algae	EC_{50} (48 hours)	2.4	5-10
Dapnia pulex	EC_{50} (96 hours)	19	
Dapnia magna	EC_{50} (96 hours)	24-37	

Regarding aquatic ecosystems, it has been found that, like in terrestrial systems, the degree of bioconcentration is minimal in fish and algae, as mentioned in the previous table. This was concluded from observing the physical parameters previously used. The transfer capacity to the soil in this type of ecosystem is very low, due to the elevated solubility of the compound in water. The transfer from water to air may be very high because of the elevated vapor pressure of the pesticide, but once Glyphosate enters the water, its water solubility does not let the pesticide volatilize. There is no information regarding any type of biotic or abiotic transformation of the pesticide in the water.

1.6 ANALYSIS OF TRANSPORT, TRANSFORMATION AND TRANSFERENCE IN THE USE OF GLYPHOSATE

In the environmental risk assessment for the use of pesticides, the destination of the compound once it is dispersed to the air must be taken into account, which can be achieved with a transport, transformation and transference analysis. Transport includes the movement of the compound from one site to another, without the compound changing in any way, and so a transport analysis determines the mobility of the compound, and

therefore the potential risk presented to groundwater. Transference occurs when an analyzed pesticide passes from one environmental compartment to another, for example from soil to water. Finally, transformation can be of two types: abiotic or biotic. The first case includes the changes produced by the adsorption of solar energy by covalently bonded molecules, or photolysis, and certain types of chemical reactions, such as hydrolysis, oxidation, reduction, etc., while biotic transformations include any transformation effected by microorganisms in the environment.

1.6.1 TRANSPORT

The mobility of glysophate in soil is almost null, due to the high rate of adsorption into colloids and clays, which is to say that once the pesticide is spread, it fixes and decomposes through the metabolic action of microorganisms, and it is therefore believed that for the conditions in Colombia, there is no lixiviation into groundwater. One key parameter in the determination of the transport capacity to groundwaters is the pH of the soil where the pesticide is going to be dispersed. With this parameter…

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The adsorption effect is so accentuated and takes place in such a short time that all tests continue to demonstrate that there is no place for lixiviation, therefore it can also be anticipated that there is very little probability of groundwater contamination due to contamination from the soil. In laboratory experiments in which glyphosate was added to aqueous solutions in the soil, the adsorption constant was 324 for sandy-clay-chalky soils, and 600 for sandy-chalky soils. The normalized adsorption constant for glyphosate for the distinct types of soils vary around an average value of 24,000 mg/L, which allows it to be classified as immobile, according to the McCall classification.

To predict the transference of a compound from water to air, the water-air partition coefficient is commonly used, or the Henry's Law constant. In this analysis, volatility (Henry's Law) is used as a parameter. Though this compound is very volatile in the air, once it reaches the water its elevated solubility does not allow it to volatilize.

1.6.3 TRANSFORMATION

Transformation of this compound can only be biotic, due to the fact that the glyphosate molecule is metabolized by microflora, though the resulting metabolites (approximately 6) are not used by the microorganisms which initiated the process. The following are the most important metabolizates: AMPA (aminomethyl phosphonic acid) and Sarcosine (N-methylglycine, hydrochloric sarcosine or 2-methylaminoethanolic acid).In plants, this compound affects a metabolic function necessary for the correct functioning of the plant, and in fauna, as mentioned before, this pesticide is not bioaccumulable. It does not present abiotic changes (photolysis and chemical changes) due in great part to the molecular structure of the compound.

1.7 EFFECTS ON HUMAN HEALTH

Effects to humans from contact with pesticides are based on analysis of the compound's capacity to be:

- Carcinogenic
- To generate effects from its ingestion and
- To generate effects from dermal exposure, determined by sensitization to the product.

These effects can be determined through the LD50/LC50 value, which is assigned according to the effects of a herbicide dispersed in the environment and with animal exposure tests. The LD50/LC50 value is the quantity of the substance which causes death in 50 percent of test animals, with a smaller LD50/LC50 value signifying greater toxicity. The EPA classifies herbicides of acute toxicity into four categories in descending order ("I" is more toxic and "IV" is less toxic). Glyphosate is classified as a category IV herbicide on the EPA scale for acute oral toxicity, based on tests carried out on rats. The results for other types of toxicology confirm the results obtained…

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A	Human Carcinogen
B	Probable human carcinogen
C	Possible human carcinogen
D	D is not classifiable as a carcinogen in humans
E	Evidence that it is non-carcinogenic in humans

** Glyphosate is classified as Category E.

1.7.1 Ingestion

The symptoms that can be caused by Glyphosate poisoning by ingestion can include the erosion of the intestinal tract, which manifests as a difficulty in swallowing, sore throat, and gastrointestinal hemorrhaging. Other organs affected are the lungs, liver, cardiovascular system, kidneys and central nervous system.

In general, moderate symptoms are associated with ingestion of 20 to 500 mL, light symptoms with 5 to 150 mL, and no symptoms from 5 to 50 mL.

1.7.2 Contact

The signs and symptoms resulting from incidental dermal exposure in the use of the compound include skin diseases such as periorbital edema, cardiovascular effects (tachycardia and hypertension), inflammation and paresthesia at the site of contact, and prolonged cutaneous irritation. Two studies on cutaneous irritation were carried out on volunteers on exposed skin of the forearms for 24 hours, with an application of 0.9 mL of a 9:1 dilution of Glyphosate in water. It was found that this exposure produced no effects.

1.7.3 Sensitization

In one sensitization study carried out with Glyphosate on 204 human volunteers, reports indicated that no effect presented itself. Also noted was the absence of photosensitivity (sensitivity to light) due to Glyphosate exposure in volunteers.

According to the aforementioned aspects, such as the degree of carcinogenic potential, incidental or deliberate oral consumption, dermal exposure and sensitization, it was found that Glyphosate is not harmful to humans. However, this degree of harmfulness depends exclusively on the degree of exposure the human being encounters.

1.8 LETHAL DOSE ANALYSIS FOR ORGANISMS

To determine the possible effects which could be caused to organisms during the aerial spraying of Glyphosate, an analysis of the doses applied in the program was carried out, as well as analysis of the exposure time of organisms.

Glyphosate was sprayed aerially, one time, at a concentration of 162 g/L (16.2% P/V). This was deposited over at least 75% of the foliage of illicit plants, therefore approximately more than 342 mg/m^2 was deposited on this type of plant. The foregoing indicates that a quantity of approximately 38 mg/m^2 reached the soil through the foliage. A human located in the spraying area could possibly be exposed to 650.8 mg (1.93 mL) of Glyphosate. The level of some risk…

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…the surface of the body is 300 cm^2 and average weight is approximately 200g. Therefore the level of exposure would be 11.4 mg; the average lethal dose for this type of organism is found at levels of greater than 5,600 mg/kg of the weight of the rodent. Therefore, for 200 g of body weight in a rodent, the average dose to which it could be exposed is 1,120 mg. According to this, there is no possibility that an aerial spraying could affect this type of organism.

For large rodents with a body surface of 2,500 cm^2 and a body weight of 2.5 kg, the degree of exposure will be 95 mg of herbicide. The average lethal dose is 12,500 mg of total weight, therefore the degree of exposure for this type of organism is negligible in terms of a lethal dose.

In the event of accidental aerial spraying over water bodies, the expected concentrations of the herbicide for 1 m^2 of water surface are:

- 38 mg/L at 10 cm of depth
- 0.77 mg/L at 50 cm of depth
- 3.8 mg/L at 1 m of depth

- 1.9 mg/L at 2.0 m of depth

Table 6 Risk levels for some aquatic microorganisms

Organism	Mg/L of Glyphosate
Fish	100
Algae	8
Daphnia	780

Comparing these values with the risk levels for aquatic ecosystems, the exposure values are lower than the risk levels for aquatic organisms.

As can be observed in the prior analysis, the exposure levels to Glyphosate when it has been sprayed depend on the surface area occupied by an organism and the proportional weight. These levels are generally negligible when compared to the average lethal doses for the organisms studied, from which it may be concluded that the degree of harmfulness for these is also negligible. Another aspect to take into account is the capacity of glyphosate to enter into the foliage of illicit plants, a characteristic which makes this compound an excellent pesticide for this type of illicit crop due to the fact that its method of entry into the plant is through the foliage. The solubility of Glyphosate has been confirmed as a very important property in the depth analysis, as shown in table 9. In deeper water, the compound dissolves more quickly.

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1 EVALUACIÓN DE RIESGO AMBIENTAL DEL HERBICIDA GLIFOSATO

La Evaluación de riesgo ambiental para el herbicida cuyo ingrediente activo es glifosato, aplicado para la erradicación de cultivos ilícitos, se realiza empleando la metodología elaborada por Inés Toro Suárez para el Ministerio del Medio Ambiente (Metodología de evaluación de los impactos ambientales generados por el uso de plaguicidas), en la cual en un primer nivel de evaluación se establecen las propiedades físico-químicas, determinantes para predecir su comportamiento en el medio natural, cada uno de estos parámetros se evalúa frente a valores ya conocidos del mismo parámetro para determinar de esta forma su comportamiento en cada compartimiento ambiental[1], este comportamiento se analiza determinando su persistencia (vida media), poder bioconcentrador, movilidad y formación de residuos no extractables. De la combinación de las propiedades del herbicida y su forma de aplicación se establecen los puntos finales de evaluación o compartimientos ambientales a evaluar, en los cuales se efectúa el análisis de los tres trans[2], transporte, transferencia y transformación.

En un segundo nivel de evaluación se determino el peor escenario para la aplicación del herbicida, definiendo como peor escenario aquel en que una cantidad extrema del herbicida llegaría al ambiente.

Para realizar el estudio de impacto ambiental referente al uso de pesticidas se estableció por parte del Ministerio del Medio Ambiente (1995), la aplicación de una evaluación de riesgo ambiental, considerando la definición de ***riesgo ambiental*** como la probabilidad que la exposición a un agente químico, en el medio natural produzca un efecto adverso.

Tomando la metodología de evaluación de riesgo ambiental desarrollada por Inés Toro para Colombia, se desarrollo la evaluación de la aplicación de glifosato, por el programa de erradicación aérea de cultivos ilícitos, fundamentada en propiedades físicas, químicas y toxicológicas del compuesto así como en su comportamiento ambiental según las condiciones de uso.

1.1. CARACTERIZACIÓN DEL GLIFOSATO COMO PLAGUICIDA

En este ítem se presentará una síntesis de las principales propiedades físico-químicas del herbicida, las cuales son empleadas para la evaluación. La caracterización detallada del producto se presento en el, Plan de Manejo Ambiental para la Erradicación de cultivos ilícitos, entregado por la Dirección Nacional de Estupefacientes en 1998, Capitulo III, Descripción del proyecto.

Tabla 1 Propiedades Físico-Químicas del Ingrediente activo (glifosato)

Propiedad	Compuesto Puro (ingrediente activo)
Fórmula Molecular	$C_3 H_8 N O_5 P$
Peso Molecular	169.1 g/mol
Estado Físico	Sólido blanco
Olor	Inodoro
Densidad	0,5 g/Ml
Punto de Fusión	184,5 ° C

1 Compartimiento ambiental, designación dada por la Dra. Inés Toro a cada elemento ambiental biótico o abiótico.

2 Termino empleado por la Dra. Toro para analizar el destino de las moléculas de un plaguicida una vez es efectuada su aplicación.

Presión de Vapor	$1,84 \times 10^{-7}$ mm de Hg a 45°C
Punto de Ebullición	Se descompone
pH en solución al 1%	2,5
Solubilidad en Agua	12 .000 ppm a 25°C
Otros Solventes	Ninguno
Estabilidad	32 días a 25°C y pH = 5,7 ó 9
Coeficiente de Partición octanol/agua	P_{ow} = -2,8
Constante de Ley de Henry	$< 7 \times 10^{-11}$
Corrosividad	No corrosivo
Punto de inflamación	Este compuesto se considera combustible. Los incendios que envuelven este material pueden ser controlados con un químico seco, dióxido de carbono y/o agua en spray.
Reactividad con materiales de envase	Este químico puede reaccionar con acero galvanizado, pero no con contenedores de acero inoxidable para producir hidrógeno el cual podría formar una mezcla altamente explosiva. Este puede reaccionar con materiales cáusticos (bases) para liberar calor. Es corrosivo al hierro. Este químico es estable por dos semanas a una temperatura de hasta 60°C, si se protege de la luz. Las soluciones de este químico en agua, etanol 95% o acetona son estables por 24 horas bajo condiciones normales

Fuente: Plan de Manejo Ambiental para la erradicación de cultivo ilícitos, 1998.

El Glifosato o N-Fosfonometil glicina (I.U.P.A.C y C.A) [CAS 1071-83-6] se reconoce y es utilizado de forma masiva en más de 100 países a nivel mundial, igualmente es aprobado por entidades ambientales, tales como la U.S E.P.A (Enviromental Protection Agency) en los Estados Unidos.

En Colombia el ICA aprueba su uso y comercialización, reconociéndolo como un herbicida de amplio espectro debido principalmente a su molécula la cual se forma por una fracción de glicina y un radical aminofosfato unido como sustituyente de uno de los hidrógenos del grupo α-amino.

La formula estructural del Glifosato es la siguiente

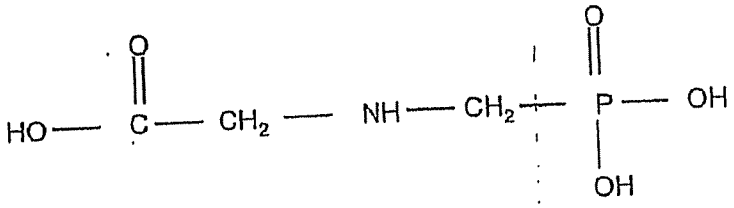


Figura1. Glifosato. Compuesto puro, Ingrediente activo. (N-Fosfonometil glicina).

Como se observa en la estructura molecular del Glifosato este posee grupos tales como el carbonilo (C = O) y amino (-NH), por lo tanto este herbicida puede reaccionar como un ácido, formando puentes de hidrógeno con otros compuestos e inclusive consigo mismo, esta característica confieren a la molécula una elevada solubilidad en agua. Esta característica determinará su comportamiento en aguas superficiales.

El grupo químico general al que pertenece este pesticida es N- Fósforo aminoácido. Además dentro del grupo de pesticidas se considera como herbicida. La presencia del grupo amino secundario en la molécula colabora en la formación de puentes de hidrógeno y provoca a su vez el olor desagradable para los humanos.

El Glifosfato se comercializa de acuerdo a las necesidades de consumo que se presente en el medio, pero la presentación comercial común es en concentrados solubles en agua de la sal isopropanolamina del N-Fosfonometil glicina. Se pueden obtener otras presentaciones tales como: N-Fosfonometil glicina de grado de pureza 98 – 99 % para uso exclusivo en el laboratorio, N-Fosfonometil glicina en grado técnico 80-98% para uso en ensayos y estudios, polvos mojables para espolvoreo y formulaciones fumigantes. De acuerdo con esto el Glifosato o su componente activo N-Fosfonometil glicina se pueden encontrar en diferentes grados de pureza en el mercado colombiano.

La mayoría de los pesticidas se caracterizan por poseer tanto un componente activo como compuestos inertes o impurezas. Estas últimas por lo general se deben a la necesidad de modificar el pesticida para lograr una adaptación satisfactoria de este al medio. En cuanto al Glifosato de uso comercial y presentación el líquido soluble el ingrediente activo de este es el N-Fosfonometil glicina, en sal isopropilamina 41%; las sustancias inertes presentes representan el 59% total de la formulación comercial.

Algunas formulaciones comerciales del Glifosato, son empleadas con surfactantes para tratar de buscar un aumento en la efectividad de su carácter biocida, igualmente estos compuestos ayudan a romper más fácilmente el Glifosato en la absorción del compuesto activo en el follaje de la planta. En tierra, estos surfactantes son degradados por microorganismos y tienen un tiempo de vida media de menos de una semana. Algunas de las formulaciones comerciales del Glifosato.

1.2. ANÁLISIS PRELIMINAR BASADO EN LA ESTRUCTURA MOLECULAR.

Una vez establecidas algunas características generales del Glifosato se procedió a efectuar el análisis preliminar, basado solo en la estructura molecular del ingrediente activo ya que los parámetros ambientales se determinan experimentalmente sobre este. Por lo tanto y de acuerdo a la metodología de evaluación de impactos ambientales generados por el uso de plaguicidas los criterios a evaluar son los siguientes:

1.2.1 CRITERIO: FOTOLISIS

El Glifosato es un compuesto alifático, debido a esto el ingrediente activo del plaguicida no absorbe radiación electromagnética, de esta manera no se puede ocasionar fotolisis en la molécula y no habrá posibles transformaciones abióticas del pesticida en los comportamientos ambientales donde se efectúe la aspersión.

1.2.2 CRITERIO: POLARIDAD DE LA MOLECULA

El componente activo del Glifosato (N-Fosfonometil glicina) se puede considerar como un compuesto iónico, por el grupo (ácido) presente en la molécula, debido a esto tiende a donar protones al agua por lo que se puede considerar como aniónico (más adelante se dan los valores de pKa y se analiza la capacidad de migración al agua subterránea).

El componente activo del Glifosato cuya molécula se muestra en la figura 1, es polar por la presencia de grupos electronegativos tales como oxígeno. Este hecho se ratifica por que la solubilidad en agua es mayor de 30 mg/L (1,2 g/100 mL) y el coeficiente de partición Octanol – agua (K_{ow}) es menor de 3 (-2,8). Estos dos parámetros ayudarán a establecer características muy importantes acerca del impacto de la utilización de este compuesto en los diferentes compartimientos ambientales estudiados.

1.2.3 CRITERIO: CONSTANTE DE DISOCIACIÓN DEL ACIDO O Pka

En la siguiente tabla se muestran las constantes de ionización del ingrediente activo de Glifosato.

Tabla 2 pka para el Glifosato en agua a 25°C.

	Pka
pka1	2,32
pka2	5,86
pka3	10,86

De estos valores se infiere que el grupo ácido existente en la molécula de Glifosato es fuerte y por lo tanto tiene una tendencia elevada a donar protones en solución acuosa por esto en medios con pH elevado el Glifosato tiene una reducida movilidad, dado que el compuesto tendrá la tendencia a neutralizar el pH.
De la estructura molecular del Glifosato se puede concluir que ambientes húmedos y pH elevado van a favorecer la penetración de este y por lo tanto su posterior biodegradación en el suelo por la elevada solubilidad y capacidad de ionización (elevadas constantes, pKa) que posee en el agua. Además, por ser un compuesto alifático sin enlaces conjugados no tiene la capacidad de presentar rompimiento de su molécula por acción de la luz y por lo tanto ocasionar alguna reacción abiótica de los compuestos resultantes.

1.2.4 FORMA DE APLICACIÓN DEL PRODUCTO.

De acuerdo con la forma de aplicación, la cual específicamente para el programa se realiza por vía aérea, los compartimientos ambientales expuestos son:
SUELO, AGUA SUPERFICIALES, FOLLAJE Y AIRE.
Las regiones actualmente de aplicación son: Catatumbo, región andina, amazonía y orinoquia.

1.3. IDENTIFICACIÓN Y EVALUACIÓN DE IMPACTOS NEGATIVOS.

Para la determinación del destino del herbicida, se realiza el análisis de los tres trans de acuerdo con lo establecido en la metodología.

1.3.1 SUELO

Estudio de persistencia

El Glifosato no es un plaguicida de acción residual prolongada **(entre 30 y 141 días, para el componente suelo)**. Sin embargo por la multiplicidad de factores relacionados con el proceso de degradación del herbicida, este grado de persistencia varia.

Para el suelo el tiempo de vida media o sea el tiempo requerido para que la mitad de la cantidad del producto aplicado se metabolice o desaparezca se encuentra establecido en 60 **días aproximadamente**[3], existen otros estudios que reportan una moderada persistencia con una vida media típica (**TD_{50}, tiempo requerido para la desaparición de la mitad de la cantidad inicial de una sustancia en un medio determinado) de 47 días**. Todos los cultivos pueden ser sembrados o transplantados inmediatamente después de la aplicación[4]. **Para los estudios de laboratorio, la vida media típica se observa alrededor de 25 días**[5].

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3 www.monsanto.com

4 Wauchope, R.D. *et al.* 1.992. Rev.Environ. Contam. Toxicol.123:1

5 Weed Science Society of America, Herbicide Handbook, *Glyphosate*, 7th Edition, 1.994

Igualmente algunos autores aseguran que normalmente el efecto biocida, del glifosato es de muy corta duración en los suelos tropicales, por que la molécula es susceptible de degradación rápida y capaz de fraccionarse y dar origen a componentes tales como el CO_2, el agua, cierta fracción nitrogenada y algunos fosfatos, todo esto por la acción principal de los microorganismos. Algunos de estos microorganismos pueden ser afectados por la acción del herbicida, pero en general esta acción no presenta cambios sobre las funciones globales del suelo.

De acuerdo con el periodo de persistencia, promedio de 60 días, se considera el efecto de fitotoxicidad en el suelo, es reducido, debido a que todo producto de naturaleza química tiene un proceso de degradación o de cambios totales o parciales en su constitución molecular y en sus propiedades físico-químicas, tan pronto como entra en contacto con los componentes del medio circundante. Aunque la movilidad del Glifosato en el suelo es casi nula, por efecto de la altísima rata de adsorción en los coloides y las arcillas, la descomposición del ingrediente activo por acción de microorganismos en metabolitos puede variar de acuerdo con el contenido de materia orgánica en el suelo. Por ello para los suelos colombianos se considera que la fitotoxicidad del Glifosato es reducida.

Dado que la fitotoxicidad se considera reducida, es necesario entender el destino del compuesto, para lo cual se describe el comportamiento del Glifosato tanto físico como microbiológico en el suelo.

El primer comportamiento se da por la adsorción del Glifosato en sitios activos del suelo (compuestos de fosfato disponibles para enlazarse con la molécula de Glifosato) aunque existen cationes específicos que disminuyen la capacidad de adsorción en el suelo del Glifosato tales como Fe^{+2}, Fe^{+3} y Al^{+3}; esto puede ocasionar la elevada constante de adsorción de este compuesto en suelos de tipo arenoso-arcilloso-gredoso y arenoso gredoso.

El segundo tipo de comportamiento se dada por la biodegradación por acción de microorganismos dispuestos en el suelo. La metabolización del Glifosato es causada, en forma preponderante, por la microflora del suelo, aunque los metabolitos resultantes (6 aproximadamente) no son aprovechados por los microorganismos que los originaron.

Los siguientes son los metabolitos más importantes: AMPA (ácido amino metil fosfónico) y Sarcosine (N-metilglicine, sargosine hidroclorico o 2 –ácido metilaminoetanoico).

Estudio de Bioconcentración.

El estudio de bioconcentración en el suelo se determina con el análisis de la constante de solubilidad (1.2 g/100 ml) y la constante octanol-agua (-2.8), los cuales al ser analizados frente a los niveles críticos, permiten establecer que no existe posibilidad de bioconcentración en suelo y por ende no existe toxicidad del producto a los microorganismos del suelo.

Estudio de transformación.[6]

Varias cepas bacterianas se encuentran en capacidad de descomponer y degradar el glifosato. En la mayoría de los experimentos de laboratorio, la tasa de degradación de glifosato en suelos, parece ser rápida. En la mayoría de los casos, el proceso puede ser descrito como una cinética lineal de primer orden.

En otros casos, un modelo no lineal de primer orden, describe mejor los resultados observados (PTRL East Inc., 1.991) :

$$C = C_0 (1 + \beta t)^{\alpha},$$

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6 Plan de Manejo Ambiental para la Erradicación de Cultivos Ilícitos. 1998

en donde C es la concentración de glifosato al tiempo t, C_0 es la concentración inicial, y α y β son constantes que reflejan la variabilidad espacial.

El principal metabolito de glifosato en condiciones aerobias es el AMPA. En experimentos de laboratorio, las máximas cantidades en suelo arenoso-gredoso y aluvial-gredoso fueron 27 y 29%, respectivamente, de la radioactividad aplicada (PTRL East Inc., 1.991). De los datos de éste estudio, se pudieron obtener valores de TD_{50} para el AMPA, de aproximadamente 50 días en suelos arenoso y aluvial-gredoso.

El hecho de que el AMPA es más persistente que el glifosato, fue también demostrado en otro experimento de laboratorio (Monsanto Inc., 1.972b), en el cual, las cantidades de AMPA después de 111 días, eran de 10 a 17% de la actividad inicialmente aplicada. En éste estudio, la temperatura (32°C) fue mayor que en los estudios arriba discutidos.

Algunos metabolitos menores no identificados, fueron cuantificados en un estudio del mismo laboratorio (PTRL East Inc., 1.991) de 364 días de duración, con suelos arenoso-gredoso y aluvial-gredoso. Tales metabolitos no excedieron el 3,5% de la cantidad aplicada, en tanto que otros metabolitos no caracterizados, no excedieron el 1,5% cada uno. Rueppel *et al.*, (1,977) cuantificaron algunos metabolitos menores que no excedían 1% de la actividad aplicada. Tales fueron ácido N-metilamino-metilfosfónico, glicina, ácido N,N-dimetilaminometilfosfónico, ácido hidroximetilfosfónico y dos metabolitos desconocidos.

En experimentos de laboratorio en condiciones aerobias, las cantidades de residuo ligado al suelo, inmediatamente después de la aplicación, fueron de 9 a 35% de la dosis aplicada, después de lo cual se observó un curso irregular en el tiempo durante los 112 días del experimento (Monsanto, 1.972b). En general, las cantidades iniciales, fueron las máximas encontradas.

En otros experimentos, sin embargo, las cantidades máximas de residuo ligado aparecieron alcanzadas después de 14 días, donde permanecieron más o menos constantes o, aún, decrecieron (PTRL East Inc., 1.991). Éstas concentraciones máximas fueron de 7 a 9% de la cantidad inicial aplicada, y resultan menores al compararlas con otros estudios, probablemente debido al empleo de mejores procedimientos extractivos.

La mineralización de glifosato en el suelo, ocurre en condiciones aerobias y anaerobias en el laboratorio y, aunque las tasas difieren de manera apreciable, los resultados dependen principalmente de la tasa de respiración del suelo, y de la temperatura. Cuando:

En un estudio anaerobio con 15 suelos forestales suecos, valores de DT_{50} basados en la liberación de CO_2 variaron entre 6 y 200 días. La mineralización se encontró correlacionada con la tasa de respiración del suelo, pero no con el pH ni con el contenido de materia orgánica del mismo (Torstensson & Stark, 1.981). Tal hallazgo fue confirmado por Torstensson & Stenström (1.986) y Heinonen-Tanski (1.989).

Torstensson & Stenström (1.986) reportaron además, que glifosato era co-metabolizado. En éste caso, los microorganismos cometabolizantes, no reciben suministro de energía alguno al degradar el glifosato.

En el suelo, el glifosato parece ser degradable por los microorganismos a través de dos vías (Jacob *et al.*, 1.988): Una ruta, vía formación de AMPA y un fragmento C_2, probablemente glioxilato. Éste esquema de degradación fue propuesto por muchos investigadores (Monsanto, 1.972b, PTRL East Inc., 1.991). En ésta ruta, el clivaje de la unión C-N es la primera etapa. Sin embargo, hay otra ruta de degradación vía sarcosina, (*N*-metilglicina) y ortofosfato, después del cual la sarcosina es degradada a glicina y a una unidad de un carbono, que eventualmente forme CO_2, probablemente vía formaldehído (Kishore & Jacob, 1.987, Jacob *et al.*, 1.988). En ésta ruta, la ruptura del enlace C-P es el primer paso. En experimentos con ^{14}C-glifosato, cultivos aislados de *Pseudomonas* sp., cepa LBr fueron capaces de degradar glifosato de acuerdo con ambas rutas (Jacob *et al.*, 1.988).

Aproximadamente 5% del glifosato aplicado, no fue degradado por la vía del AMPA, pero sí por la de la sarcosina[7].

1.3.2 AGUA SUBTERRÁNEA.

La afectación de las aguas subterráneas, depende de la movilidad del herbicida en el suelo, la cual se analiza con las constantes de adsorcion , la constante de adsorción normalizada, la constante de desorción y la solubilidad, criterios cuya descripción se presenta a continuación.

El efecto de adsorción es tan acentuado y tiene lugar en tan corto tiempo que todas las pruebas siguen demostrando que no hay lugar a lixiviación, por lo cual también se puede anticipar que son muy pocas las probabilidades de contaminación de aguas subterráneas, a partir de la contaminación del suelo.

El glifosato es adsorbido y rápidamente fijado por el suelo. La adsorción del glifosato se correlaciona con la cantidad de sitios ligadores de fosfato disponibles, y parece ocurrir por ligado de la fracción de ácido fosfónico[8].

En experimentos de laboratorio en los cuales se añadió glifosato a suspensiones acuosas de suelo, el coeficiente de adsorción $K_{S/L}$ fue de 18 a 377 dm^3/Kg en nueve suelos que variaron desde arenoso-gredoso a turba (Hance, 1.976) y de 33 a 76 dm^3/Kg en tres suelos desde arenoso gredoso a arcilloso-gredoso (Glass, 1.987).

En ambos experimentos, el proceso de sorción pudo ser descrito por la ecuación de Freündlich. Glass (1.987) encontró valores de adsorción para los minerales arcillosos montmorillonita, illita y caolinita, de 138, 115 y 8 dm^3/Kg, respectivamente[9].

Los valores de K_D corresponden a 324 para suelos arenoso-arcilloso-gredoso, y 600 para suelo arenoso-redoso.

El valor de K_{OC} para el glifosato, para los distintos tipos de suelo oscila alrededor de 24.000 mL/g de valor promedio, lo cual permite clasificarlo como prácticamente inmóvil de acuerdo con la Clasificación de McCall[10].

Dada su alta afinidad por los componentes del suelo, como ya se estableció, glifosato es prácticamente inmóvil con una mínima probabilidad de transporte por lixiviación o arrastre por escorrentía.

En un estudio en cromatografía de capa fina de suelos arenoso-gredoso, aluvial-arenoso-gredoso y arenoso-gredoso, se encontró que glifosato presenta un valor de Rf (movilidad en la fase fija) de entre 0,14 y 0,2 (Sprankle *et al.*, 1.975), y en otro estudio con los mismos tipos de suelo, los valores obtenidos fueron de <0,2 (Monsanto, Inc., 1.972c).

En un estudio de lixiviación en columnas, de 30 cm de altura, con un alto flujo de agua de 51 cm en dos días, <0,1 a 6,6% de la radioactividad aplicada, se lixivió. Éste experimento se condujo en con ocho tipos de suelo, que variaron entre arenoso-gredoso con un contenido de materia orgánica del 0,7% a cenizas volcánicas con un contenido de materia orgánica de 9,5%. Más del 90% de la radioactividad aplicada se recuperó de la capa superficial de 0 a 14 cm.

El proceso de translocación de los herbicidas se puede lograr por varias rutas, incluyendo el arrastre de partículas por las corrientes de aire, por la evaporación y, en alguna forma, por

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7 WHO/IPCS, Environmental Health Criteria No. 159, Glyphosate, 1.994., Ver Bibliografía de referencia. En Plan de Manejo Ambiental para la Erradicación de cultivos ilícitos, 1998.

8 Weed Science Society of America, Herbicide Handbook, 7th Edition, 1.994

9 WHO/IPCS, Environmental Health Criteria No. 159, Glyphosate, 1.994.

10 Wauchope, R.D. *et al.* 1.992, Rev.Environ. Contam. Toxicol.123:1

las corrientes de agua. Se sabe, sin embargo, que la baja presión de vapor de Glifosato hace que en el compuesto se de una mínima o ninguna volatilidad, que la percolación de residuos en el suelo es negligible y por la gran magnitud del proceso de adsorción y el resto de evidencias disponibles, catalogarlo como de muy baja absorción radicular y nula movilidad en el suelo.

1.3.3 AGUA SUPERFICIAL

Cuando el Glifosato entra al agua como escorrentía, por una excesiva aspersión inadvertida o tendencia de rocío, el agua lo adsorbe en los sedimentos donde se biodegrada. El período de persistencia puede llegar hasta 171 días, pero su detección se realiza varios días después de ser expuesto el pesticida al medio y la concentración de este tiende a disminuir con el tiempo debido a su biodegradación.
Como el período de persistencia en el agua es mayor de 4 días se debe realizar un análisis de bioconcentración y transferencia. Los parámetros para estudiar estos ítems son los mismos (Solubilidad y K_{ow}).
La solubilidad del Glifosato en agua está por encima de los 30 mg/L y el Coeficiente de partición octanol-agua es menor a 3, se puede concluir que no existe la posibilidad de que el pesticida en cuestión se bioconcentre en los peces, o se transfiera a la materia orgánica suspendida en el agua o los sedimentos. Por lo tanto el Glifosato puede ser considerado como no recalcitrante (Log K_{ow}<5) a diferencia del aldrín, el heptacloro, el clordano y el DDT.
Como el tiempo de persistencia del Glifosato es mayor a 4 días no se realiza el estudio de transformación que este compuesto puede presentar en el agua.

1.3.4 AIRE

En cuanto al compartimiento aire, en general cuando se libera a la atmósfera una sustancia en forma de aerosol las partículas pueden causar dispersión de la luz visible y por lo tanto interferir con los procesos de trasmisión de la luz (partículas con tamaños inferiores a 100 micras), este proceso depende exclusivamente del tamaño de partícula de la sustancia, ya que a mayor tamaño la fuerza de gravedad tiende a atraerlo rápidamente.
Para el caso del programa el efecto en aire es despreciable, dado que precisamente un objetivo del mismo es garantizar que las gotas caigan efectivamente sobre el blanco (cultivos de coca), para lo cual se emplean tamaños de gota entre 300 y 1500 micras, lo cual garantiza efectividad de la aplicación, se evitan pérdidas del producto y por ende pérdidas económicas. El tamaño de las gotas empleadas en el Programa de Erradicación fueron avaladas por el ICA,(Agosto de 1998).
Para el compartimiento aire, igualmente es importante anotar que el herbicida Glifosato tiene un baja presión de vapor, por ello no se vaporiza, lo que significa que no existe una posibilidad de ser inhalado por animales o redistribuido por el aire.
Para el aire y de acuerdo a la metodología seguida se anota que no se encuentra en la literatura un modelo que integre los diferentes parámetros (presión de vapor, K_{ow}, presión de vapor, constantes de distribución, la solubilidad, la constante de la ley de Henry etc.) que predigan la presencia de estos compuestos en el aire. Sin embargo, cuando el Glifosato se libera a la atmósfera en forma de aerosol las partículas pueden causar dispersión de la luz visible y por lo tanto interferir con los procesos de trasmisión de la luz,
Luego de establecer los compartimientos ambientales expuestos a la acción de este pesticida se puede concluir que en el suelo y el agua es un compuesto persistente ya que su período de vida esta por encima de los 100 días, aunque la persistencia en estos medios es benévola, dado que no se presenta bioconcentración en los dos medios.

1.3.5 FOLLAJE.

En cuanto al follaje se encuentra que el pesticida utiliza esta parte de la planta solo para acceder al sistema vascular de la misma y ya en este, se inhibe la producción de una enzima llamada EPSPS necesaria para el correcto metabolismo de la planta.

1.4. IMPACTO EN LOS ECOSISTEMAS TERRESTRES

Una vez analizados los aspectos relacionados con los compartimientos ambientales afectados por las aspersión aérea del Glifosato se realiza un análisis del impacto de este en los ecosistemas terrestres, para ello se muestra la siguiente tabla.

Tabla 3 indicadores ambientales en ecosistemas terrestres.

Especie indicadora	Parámetro	Valor	Nivel Crítico
Mamíferos	DL_{50},oral	4900- 5000 mg/kg de peso vivo	100-500
Microorganismos	CL_{50}(mg/kg/día)		
Lombriz de tierra		158-500 * mg/kg suelo seco	
Abejas	DL_{50}	100 µg de ingrediente activo/abeja	50-100 µg abeja
Aves	CL_{50}	5620 mg/kg de alimento	500-1000 mg/kg de alimento

****depende del suelo donde se encuentre la lombriz.***

De acuerdo con la tabla se observa que todos los valores de dosis por peso de especie están por encima de los valores críticos, lo que indica que el Glifosato no puede llegar a afectar especies benéficas (mamíferos, Lombriz de tierra, aves). Sin embargo se observa que la dosis letal en su límite superior es igual a su valor crítico, por lo cual habrá que analizar la exposición de este tipo de especies con las dosis aplicadas por el programa. Sin embargo es procedente anotar que dado el cultivo objeto de erradicación (Coca), el cual por sus características es limpio y permanentemente fumigado para evitar el ataque de plagas, la presencia de insectos es baja o prácticamente nula.

Para el análisis de la toxicidad en aves los valores son semejantes a los observados para mamíferos. Por lo tanto se considera que no representa riesgo para aves, además dada la forma de aplicación del herbicida, por vía aérea esto ahuyenta a las aves, evitando que estén en contacto con el producto.

En ecosistemas terrestres se observa que los niveles críticos de Glifosato están por debajo de los valores de la dosis letal media para animales mamíferos, aves e insectos benéficos, los niveles anteriores se dan por la no acumulación de este compuesto en tejidos debido a la solubilidad y el coeficiente de partición.

Los niveles expuestos en la tabla 6 se pueden alcanzar solo por aspersiones sucesivas y continuadas del pesticida en un mismo sitio, durante periodos de tiempo prolongados. Igualmente el compuesto en nuestros ecosistemas no se presenta la transferencia debido a la capacidad de fijación y adsorción en cierto tipo de suelos (alto contenido de materia orgánica). En cuanto a la transformación del compuesto, esta solo se considera que esta dada por vía biótica, debido a que la molécula de Glifosato es metabolizada por una serie de microorganismos. En las plantas la acción del compuesto se da por la alteración de una función metabólica necesaria para el correcto funcionamiento de esta y en la fauna como se mencionó anteriormente este pesticida no es bioacumulable.

1.5. IMPACTO EN LOS ECOSISTEMAS ACUÁTICOS.

Una vez estudiada la influencia del Glifosato en los ecosistemas terrestres se procede a analizar los impactos en los ecosistemas acuáticos.
La toxicidad del Glifosato para organismos acuáticos se estima como baja, correspondiendo a los intervalos de moderada a baja de las distintas legislaciones (EPA), tanto en exposiciones agudas como crónicas.
En los peces y de acuerdo al bajo coeficiente de partición octanol-agua (muy soluble en ella) resulta muy poco probable que el Glifosato se bioacumule en los tejidos.
En algas la toxicidad de Glifosato es baja, aún para algas verdes.

Tabla 4 indicadores ambientales en ecosistemas acuáticos.

Especie	Parámetro	Valores (mg/L)	Nivel crítico (mg/L)
Peces	CL_{50} (96horas)	2,4 – 34	5-10
Algas	EC_{60} (48 horas)	2,4	5-10
Dapnia pulex	EC_{60} (96 horas)	19	
Dapnia magna	EC_{60} (96 horas)	24-37	

En cuanto a ecosistemas acuáticos se encuentra que al igual que en los terrestres el grado de bioconcentración es mínimo en los peces y algas mencionados en la tabla anterior, lo anterior se concluye de observar los parámetros físicos utilizados anteriormente. La capacidad de transferencia al suelo desde este tipo de ecosistema es muy baja debido a la elevada solubilidad del compuesto en agua. La transferencia del agua al aire puede ser muy grande por la elevada presión de vapor del pesticida, pero una vez el Glifosato se encuentra en el agua la solubilidad en agua no deja volatilizar el pesticida. No existen informaciones de algún tipo de transformación biótica o abiótica del pesticida en el agua.

1.6. ANÁLISIS DE TRANSPORTE, TRANSFORMACIÓN Y TRANSFERENCIA EN LA UTILIZACIÓN DE GLIFOSATO.

En la evaluación de riesgos ambientales generados por el uso de plaguicidas se debe tener en cuenta el destino que va a tener este una vez dispersado en el aire, lo cual se logra con un análisis del transporte, transformación y transferencia. El transporte envuelve el movimiento del compuesto de un lugar a otro sin que este sufra ningún cambio y por lo tanto un análisis de transporte determina la movilidad del compuesto y por lo tanto el riesgo potencial que este puede representar para las aguas subterráneas. La transferencia ocurre cuando el pesticida analizado pasa de un compartimiento ambiental a otro como por ejemplo del suelo al agua; por último la transformación puede ser de dos tipos abiótica o biótica. El primer caso comprende los cambios producidos por la absorción de energía solar por moléculas con enlaces conjugados o fotólisis y la química en la cual se presentan ciertos tipos de reacciones como son la hidrólisis, la oxidación, la reducción etc., mientras que la biótica corresponde a las transformaciones realizadas por microorganismos dispuestos en el medio.

1.6.1 TRANSPORTE

La movilidad del Glifosato en el ambiente del suelo es casi nula, por efecto de la altísima rata de adsorción en los coloides y las arcillas, es decir una vez el pesticida se esparce este se fija y descompone por acción de microorganismos en metabolitos, por lo tanto se considera que para las condiciones colombianas no se presenta lixiviación a las aguas subterráneas. Un parámetro clave en la determinación de la capacidad de transporte a aguas subterráneas es el pH del suelo donde el pesticida vaya a ser dispersado, con este parámetro se puede

deducir si el compuesto va a estar en su estado iónico o no y de esta manera determinar si los iones puedan migrar a las aguas subterráneas.

1.6.2 TRANSFERENCIA

El efecto de adsorción es tan acentuado y tiene lugar en tan corto tiempo que todas las pruebas siguen demostrando que no hay lugar a lixiviación, por lo cual se puede anticipar que son muy pocas las probabilidades de contaminación de aguas subterráneas, a partir de la contaminación del suelo. En experimentos de laboratorio se añadió Glifosato a suspensiones acuosas de suelo, la constante de sorción corresponden a 324 para suelos areno-arcilloso-gredoso, y 600 para suelo arenoso – gredoso. La constante de sorción normalizada para el Glifosato, para los distintos tipos de suelo oscila alrededor de 24000 mL/g de valor promedio, lo cual permite clasificarlo como inmóvil de acuerdo con la clasificación de McCall.

Para predecir la transferencia de un compuesto del agua al aire comúnmente se usa el coeficiente de partición agua-aire o la constante de la ley de Henry. En este análisis se utilizó como parámetro la volatilidad (ley de Henry), aunque este compuesto es muy volátil en el aire un vez se encuentra dispuesto en agua la elevada solubilidad de este no permite que se volatilice.

1.6.3 TRANSFORMACIÓN

En cuanto a transformación solo se considerar que esta es biótica debido a que la molécula de Glifosato es metabolizada por la microflora, aunque los metabolitos resultantes (6 aproximadamente) no son aprovechados por los microorganismos que los originaron. Los siguientes son los metabolitos más importantes: AMPA (ácido amino metil fosfónico) y Sarcosine (N-metilglicine, sargosine hidroclorico o 2 –ácido metilaminoetanoico).

En la plantas este afecta una función metabólica necesaria para el correcto funcionamiento del vegetal y en la fauna como se mencionó anteriormente este pesticida no es bioacumulable; no se presentan cambios abióticos (fotólisis y químicos) debido en gran parte a la estructura molecular del compuesto.

1.7. EFECTOS EN LA SALUD HUMANA.

El efecto que puede tener el contacto de un ser humano con pesticidas, se basa en el análisis de la capacidad del compuesto a ser:

- ✓ carcinógeno,
- ✓ A los efectos generados por su ingestión y
- ✓ A los efectos generados por la exposición dérmica, determinados por la sensibilización al producto.

Estos efectos se determinan mediante un valor LD50/LC50 el cual se asigna según los efectos de un herbicida dispersado en el ambiente y se prueba con exposición en animales. El número LD50/LC50 es la cantidad de sustancia que causa muerte en un 50 por ciento de los animales de la prueba, entre más pequeño sea el número LD50/LC50, el compuesto es más tóxico. La EPA clasifica los herbicidas por toxicidad aguda en cuatro categorías, en orden descendente ("I" más tóxico y "IV" el menos tóxico). El Glifosato se clasifica como categoría IV en la escala de la EPA para toxicidad oral aguda basada en pruebas dirigidas en ratas. Los resultados de otros tipos de toxicología confirman el resultado obtenido para ratas y sustentan la categoría del herbicida como no – carcinógeno en humanos.

Tabla 5 Clasificación dela Enviromental Protection Agency (EPA)

Categoría	Descripción
A	Carcinógeno Humano
B	Carcinógeno Humano Probable
C	Posible Carcinógerio Humano
D	D no es clasificable como carcinógeno en Humanos
E	Evidencia de No carcinogenicidad para Humanos

** **El Glifosato se clasifica como Categoría E**

1.7.1 Ingestión.

Los síntomas que puede ocasionar una intoxicación con Glifosato por ingestión pueden ser la erosión del tracto intestinal, manifestándose como la dificultad de tragar, dolor de garganta y hemorragia gastrointestinal. Otros órganos afectados son pulmones, hígado, sistema cardiovascular, riñones y sistema nervioso central.
En general, síntomas moderados se asocian con ingestiones estimadas de 20 a 500 mL, síntomas leves con 5 a 150 mL y ningún síntoma con 5 a 50 mL..

1.7:2 Contacto.

Los signos y síntomas resultantes de la exposición dérmica incidental al uso del compuesto incluyeron enfermedades de piel tales como edema peri-orbitario, efectos cardiovasculares (taquicardia e hipertensión), inflamación y parestesia en el sitio de contacto e irritación cutánea prolongada. Dos estudios de irritación cutánea se realizaron en voluntarios donde se expuso la piel del antebrazo de estos durante 24 horas a una aplicación de 0,9 mL de una dilución 9:1 de Glifosato en agua. se encontró que esta exposición no produjo efectos.

1.7.3 Sensibilización.

Un estudio de sensibilización se llevo a cabo en 204 voluntarios humanos con Glifosato, los reportes indicaron que no se presentó ningún efecto. También se encontró la ausencia de fotosensibilización (sensibilidad a la luz) por Glifosato en Voluntarios.
De acuerdo a los aspectos anteriormente mencionados tales como grado de carcinogenicidad, consumo oral incidental o deliberado, exposición dérmica y sensibilización se encontró que el Glifosato no es nocivo para los humanos, sin embargo este grado de nocividad depende exclusivamente del grado de exposición en que el ser humano se encuentre.

1.8. ANÁLISIS DE DOSIS LETALES ORGANISMOS

Para efectos de determinar los posibles efectos que se generarían en los organismos cuando se asperja por vía aérea el Glifosato, se realiza un análisis de las dosis aplicadas en el programa y el tiempo de exposición de los organismos a la misma.
Una vez se asperja el Glifosato por vía aérea, a una concentración de 162 g/L (16,2% P/V), Este se deposita como valor mínimo en un 75%, sobre el follaje de las plantas ilícitas, por lo tanto aproximadamente más de 342 mg/m^2 se almacenan en este tipo de plantas. Lo anterior indica que al suelo llega una cantidad aproximada de 38 mg/m^2 provenientes del follaje,
Un humano que se encuentre en el lugar de la aspersión esta en la posibilidad de estar expuesto aproximadamente a 650,8 mg (1,93 mL) de Glifosato. El nivel de algún riesgo se

encuentra en 150 mL/ por vía oral o 2000 mL por vía cutánea. Como se observa el grado de exposición por aspersión aérea de Glifosato, es despreciable para los niveles críticos presentados tanto para la ingestión por vía oral como por exposición vía cutánea.
Para roedores, la superficie corporal aproximada es de 300 cm^2 y su peso medio aproximado es de 200 g. Por lo tanto el nivel de exposición será de 11,4 mg, la dosis letal media para este tipo de organismos se encuentra en niveles superiores a 5600 mg/kg de peso del roedor, por lo tanto para 200 g de peso corporal de un roedor la dosis media a la que se encontraría expuesto sería de 1120 mg . De acuerdo con esto no existe posibilidades de que una aspersión aérea afecte a este tipo de organismos.
Para roedores grandes con superficie corporal de 2500 cm^2 y un peso corporal de 2,5 kg, el grado de exposición será de 95 mg del herbicida. La dosis media letal se encuentra en 12.500 mg de peso total, por lo tanto el grado de exposición de este tipo de organismo es despreciable en cuanto a la dosis letal.
En caso de aspersión aérea accidental sobre cuerpos de agua, las concentraciones esperadas del herbicida en los mismos, disponibles para 1 m^2 de espejo de agua son:

- ✓ 38 mg/L a 10 cm de profundidad.
- ✓ 0,77 mg/L a 50 cm de profundidad.
- ✓ 3,8 mg/L a 1 m de profundidad.
- ✓ 1,9 mg/L a 2,0 m de profundidad.
- ✓

Tabla 6 Niveles de riesgo para algunos microorganismos acuáticos.

Organismo	mg/L de Glifosato
Peces	100
Algas	8
Daphnia	780

Comparando estos valores con los niveles de riesgo para ecosistemas acuáticos se tendría que los valores de exposición están por debajo de los niveles de riesgo para los organismos acuáticos.
Como se observa en el análisis anterior los niveles de exposición al Glifosato cuando este ha sido asperjado, dependen de la superficie que ocupe un organismo y del peso del mismo en forma proporcional. Estos niveles por lo general son despreciables al ser comparados con la dosis letales medias de los organismos estudiados por lo cual se puede concluir que el grado de nocividad para estos es despreciable. Otro aspecto a tener en cuenta es la capacidad que tiene el Glifosato de ubicarse en el follaje de las plantas ilícitas, característica que hace a este compuesto un excelente pesticida para este tipo de cultivos ilícitos debido a que la forma de entrada a la planta de este es a través del follaje. La solubilidad del Glifosato se ratifica como una propiedad muy importante en el análisis por profundidades mostrados en la tabla 9, debido a que a mayor profundidad, el compuesto se disuelve con mayor velocidad.

ANNEX 102

Republic of Colombia, Office of the Ombudsman,
The Execution of the Strategy for Aerial Eradication of Illicit Crops, with Chemicals, from a Constitutional Perspective (date unknown)

The execution of the strategy for aerial eradication of illicit crops, with chemicals, from a constitutional perspective.

Position of the Office of the Ombudsman.

Introduction

The Office of the Ombudsman has repeatedly solicited from the Government a review of the Policies of the War on Drugs and, particularly, the suspension of the Aerial Eradication of Illicit Crops strategy throughout the country[1]. These requests have been supported, principally, by the argument that the execution of this procedure does not conform with constitutional and legal standards, nor with international standards related to environmental protection and human rights.

In effect, the form in which the strategy of aerial fumigation of illicit crops has been carried out, in addition to having demonstrated its ineffectiveness – with the constant expansion of these crops within the country – has disregarded principles and norms which aimed at ensuring public health, protection and conservation of the environment, and the special protection which the State must provide to the most vulnerable. The lack of respect for these norms in the execution of the program has resulted in a high socio-economic and environmental cost, and, what is worse, has affected the rights of thousands of Colombians.

[…]
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[…]

In such circumstances, among others later to be mentioned, in the judgment of this Institution, the execution of the Program for the Eradication of Illicit Crops does not comply with constitutional norms.

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[1] The Reports of the Ombudsman's Office 1 and 2 from February and April 2001, from the Representative for collective Rights and the Environment; Ombudsman's Resolution No. 4 of February 2001, communications to the Minister of Law and Justice of May and June 20001, and various interventions of the Ombudsman before the Congress of the Republic.

La ejecución de la estrategia de erradicación aérea de los cultivos ilícitos, con químicos, desde una perspectiva constitucional.

Posición de la Defensoría del Pueblo.

Introducción

En reiteradas ocasiones, la Defensoría del Pueblo ha solicitado al Gobierno la revisión de la Política de Lucha contra las Drogas y, particularmente, la suspensión de la estrategia de Erradicación Aérea de los Cultivos Ilícitos en todo el país[1]. Dicha solicitud se ha sustentado, principalmente, en la constatación de que la ejecución de tal procedimiento no se ajusta a la normatividad constitucional y legal, ni a las normas internacionales relativas a la protección del medio ambiente y al respeto de los derechos humanos.

En efecto, la forma como se ha desarrollado la estrategia de fumigación aérea de los cultivos ilícitos, además de haber mostrado su inefectividad - con el constante aumento de la extensión de los referidos cultivos en el país -, ha desconocido los principios y normas que buscan asegurar la salud y la salubridad pública, la protección y conservación del medio ambiente, y la protección especial que el Estado debe brindar a los más vulnerables. El desconocimiento de dicha normatividad ha llevado a que se tenga que pagar un alto costo socio-económico y ambiental por la ejecución del citado Programa y, lo que es más grave aún, ha afectado los derechos de miles de colombianos.

En este sentido, la oposición de la Defensoría a que se continúe ejecutando el referido Programa no significa que se desconozca la gravedad del problema del narcotráfico y los efectos nocivos que genera el cultivo, procesamiento y venta de las referidas sustancias ilícitas. Por el contrario, esta Institución reconoce la necesidad de combatir el narcotráfico y sus efectos, pero estima que la definición y la ejecución de las medidas y estrategias que se adopten para enfrentar dicho problema debe tener pleno sustento en el orden constitucional colombiano. De este

[1]Los Informes Defensoriales 1 y 2 de febrero y abril de 2001, de la Delegada para los Derechos Colectivo y del Ambiente; la Resolución Defensorial N° 4 de febrero de 2001, las comunicaciones al Ministro del Justicia y el Derecho de mayo y julio de 2001, así como las distintas intervenciones del Defensor ante el Congreso de la República.

modo, por ejemplo, no puede admitirse que, bajo el argumento de 'eliminar los cultivos ilícitos', las autoridades colombianas omitan su deber constitucional de proteger el medio ambiente y, por el contrario, contribuyan a destruirlo. Ello es lo que ocurre al fumigar los cultivos de coca, amapola y marihuana, pues es bien sabido que, luego de las fumigaciones, la extensión de los cultivos ilícitos se mantiene talando nuevos bosques en otras zonas del país, con lo cual se incrementa la deforestación. La misma situación se presenta cuando las autoridades competentes, luego de decomisar miles de toneladas de precursores químicos que se utilizan en la producción de estupefacientes, no les dan un adecuado manejo ya que, como ellas mismas lo han reconocido, no cuentan con los medios físicos y económicos para hacerlo. De esta forma, en muchas ocasiones se procede a la incineración de estas sustancias en lugares alejados y de difícil acceso, como ocurre en la selva amazónica u otras zonas selváticas, lo cual afecta indiscutiblemente el equilibrio ambiental. Por otra parte, tampoco puede aceptarse que las medidas que se adopten no consulten la obligación del Estado de velar por los derechos fundamentales de las personas, como ha ocurrido en el desarrollo del programa de fumigaciones, el cual – como se explica en este documento - ha afectado los derechos a la salud y a la vida de los pobladores de las diversas regiones en donde se ejecuta el referido procedimiento.

En tales circunstancias, entre otras que se mencionan más adelante, a juicio de esta Institución, la ejecución del Programa de Erradicación de Cultivos Ilícitos no se ajusta a las normas constitucionales.

En el presente documento se pretende mostrar cómo la ejecución del referido programa ha desconocido distintos preceptos constitucionales y legales, y cómo ello ha puesto en riesgo la salud y la calidad de vida de los pobladores de estas zonas del país y ha implicado un sacrificio desproporcionado de los derechos de muchos de ellos. De este modo, en primer lugar, se analiza la constitucionalidad de la estrategia de erradicación por medio de un juicio de proporcionalidad, el cual arroja la conclusión de que la ejecución del programa de fumigaciones restringe desproporcionadamente principios constitucionales y derechos fundamentales de los colombianos. En segundo término, luego de presentar brevemente los antecedentes del programa actual de erradicación aérea de los cultivos ilícitos, se explica detalladamente el permanente desconocimiento de la referida normatividad constitucional y legal. Así, primero se expone el desconocimiento de las normas que materializan el aseguramiento de la salud como derecho y como cometido estatal, y se precisa cuál es la consecuencia de ello en materia de afectación de la salud de las personas. Luego, se indica cuál ha sido el incumplimiento de la normatividad relacionada con la protección y conservación del medio ambiente y los perjuicios que ello implica. Posteriormente, se explica cómo la ejecución del procedimiento ha afectado particularmente a sectores vulnerables de la población, como son los