

INTERNATIONAL COURT OF JUSTICE

APPLICATION
INSTITUTING PROCEEDINGS

filed in the Registry of the Court
on 31 March 2008

AERIAL HERBICIDE
SPRAYING

(ECUADOR v. COLOMBIA)

COUR INTERNATIONALE DE JUSTICE

REQUÊTE
INTRODUCTIVE D'INSTANCE

enregistrée au Greffe de la Cour
le 31 mars 2008

ÉPANDAGES AÉRIENS
D'HERBICIDES

(ÉQUATEUR c. COLOMBIE)

I. LETTER FROM THE AMBASSADOR OF ECUADOR
(APPOINTED) TO THE KINGDOM OF THE NETHERLANDS
TO THE REGISTRAR OF THE INTERNATIONAL COURT
OF JUSTICE

EMBAJADA DEL ECUADOR
EN LOS PAÍSES BAJOS

No. 4-4-3/08.

The Hague, 31 March 2008.

Sir,

I have been instructed by my Government to present the Application to institute proceedings against the Republic of Colombia, in relation to the damages caused to the Ecuadorian State, its inhabitants and the environment through the spraying of chemical herbicides.

In this regard, in addition to the Application, I am enclosing herewith the letter No. 15080-GM/2008, dated 28 March 2008, by means of which Mrs. María Isabel Salvador-Crespo, Minister of Foreign Relations, Commerce and Integration of Ecuador informs Mr. Diego Cordovez-Zegers, that he has been appointed as Agent before the International Court of Justice, by the President of Ecuador.

The Application and the above-mentioned letter, have been duly authenticated by the Ecuadorian Consulate in The Hague.

Accept, Sir, the assurances of my highest consideration.

(Signed) Rodrigo RIOFRÍO-MACHUCA,
Ambassador of Ecuador (appointed).

I certify that the above signature is authentic and it is used by Ambassador Rodrigo Riofrío-Machuca in all his private and public duties.

(Signed) Helena YÁNEZ-LOZA,
Chargée d'affaires a.i. of Ecuador.

II. APPLICATION INSTITUTING PROCEEDINGS

REPÚBLICA DEL ECUADOR
MINISTERIO DE RELACIONES EXTERIORES

To the Registrar,
International Court of Justice.

The undersigned being duly authorized by the Government of the Republic of Ecuador:

1. In accordance with Articles 36 (1) and 40 of the Statute of the Court, and Article 38 of the Rules, I have the honour to submit this Application instituting proceedings in the name of the Republic of Ecuador against the Republic of Colombia.

NATURE OF THE DISPUTE

2. This case concerns Colombia's aerial spraying of toxic herbicides at locations near, at and across its border with Ecuador. The spraying has already caused serious damage to people, to crops, to animals, and to the natural environment on the Ecuadorian side of the frontier, and poses a grave risk of further damage over time. Ecuador therefore respectfully requests a judgment of the Court ordering Colombia to *(a)* respect the sovereignty and territorial integrity of Ecuador; *(b)* take all steps necessary to prevent the use of any toxic herbicides in such a way that they could be deposited onto the territory of Ecuador; *(c)* prohibit the use, by means of aerial dispersion, of such herbicides on or near any part of its border with Ecuador; and *(d)* indemnify Ecuador for any loss or damage caused by its internationally unlawful acts.

3. Every year since at least 2000, Colombia has used airplanes and helicopters to spray powerful, broad-spectrum herbicides (the chemical composition of which it refuses to disclose) over wide swaths of territory in the two States' border region. The putative target of Colombia's spraying has been illicit coca and poppy plantations in the frontier area. The impacts of Colombia's spraying, however, have not been confined to its side of the border. Fumigations dispersed by Colombia along or near the boundary line have been carried across the border and have caused significant deleterious effects in Ecuador. In addition, on some occasions aircrafts participating in Colombia's fumigation operations have, without authorization, crossed into Ecuadorian airspace and sprayed within the territory of Ecuador.

4. During and after each of Colombia's spraying campaigns, for instance, Ecuador's population in the northern boundary areas has reported serious adverse health reactions including burning, itching eyes, skin sores, intestinal bleeding and even death. Because of the non-discriminating nature of the her-

bicide used by Colombian authorities, there has also been serious and widespread damage to non-target plant species, including key local crops such as yucca, plantains, rice, coffee, hay and others. The consequences of the crop damage have been serious in the context of the subsistence farming needs of the local population.

5. Throughout the years since the spraying started in 2000, Ecuador has made repeated and sustained efforts to negotiate an end to the fumigations. Twice, the Parties have convened bilateral scientific commissions for purposes of examining the issues arising from Colombia's sprayings. These negotiations have proved unsuccessful. Even on the occasions when Ecuador thought it had reached agreement with Colombia to put an end to the aerial sprayings, the fumigations subsequently resumed. It is therefore plain that the attitude of Colombia makes impossible for the Parties' dispute to be settled by diplomatic means. Ecuador has been left no choice but to bring this Application instituting proceedings to secure redress for the violation of its rights as set forth more fully below.

6. Before proceeding further, Ecuador takes the opportunity to reaffirm that it is firmly opposed to the export and consumption of illegal narcotics. It has a strong and consistent record in this respect. The issues presented in this Application relate exclusively to the methods and locations of Colombia's operations to eradicate illicit coca and poppy plantations — and the harmful effects in Ecuador of such operations.

THE COURT'S JURISDICTION

7. The Court has jurisdiction over the present dispute by virtue of the operation of the American Treaty on Pacific Settlement of Disputes, Bogotá, 30 April 1948 ("Pact of Bogotá")¹, Article XXXI, which provides:

"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."

Ecuador and Colombia are parties to the Pact of Bogotá.

8. The Court also has jurisdiction over the present dispute in accordance with the provisions of the 1988 United Nations Convention against Illicit

¹ United Nations, 30 *Treaty Series*, 55.

Traffic in Narcotic Drugs and Psychotropic Substances (“1988 United Nations Drug Convention”)², Article 32 of which provides:

“Any such dispute [relating to the interpretation or application of the Convention] which cannot be settled in the manner prescribed in paragraph 1 of this article [that is, by negotiation, enquiry, mediation, conciliation, arbitration, recourse to regional bodies, judicial process or other peaceful means of the parties’ choosing] shall be referred, at the request of any one of the States Parties to the dispute, to the International Court of Justice for decision.”

Ecuador and Colombia are parties to the 1988 United Nations Drug Convention.

THE FACTS

Background

9. The majority of the world’s coca (*Erythroxylum coca*) is grown in Colombia. It is also one of the world’s largest producers of opium poppy (*Papaver somniferum*) and a significant source of marijuana (*Cannabis sativa*).

10. Confronted with this reality, the Government of Colombia has used various strategies to eradicate illicit narcotics crops. One of these strategies has been the aerial spraying of coca and poppy crops with chemical herbicides. From the outset, this practice has met opposition from affected populations, policy makers and scientists. As early as 1984, for example, the Government of Colombia, through its National Health Institute, convened a group of herbicide experts to consider the potential harms from aerial spraying. The experts opposed the aerial spraying of any herbicide, including, in particular, glyphosate, a powerful, broad-spectrum herbicide used widely in agriculture. The experts stated:

“Glyphosate: Its aerial use for the eradication of crops of marihuana and coca is not recommended. The data obtained in animal experimentation show low acute toxicity; its acute toxicity in humans is little known. In the literature reviewed there is no information concerning chronic toxicity in humans. Neither is there information with respect to its mutagenic and tetragenic effects . . .”³

11. The experts subsequently reiterated their opposition, stating:

“[T]he Committee reiterates its position of having not recommended the use of glyphosate or any other herbicide by means of aerial spraying . . . the proposed program is inadvisable because it would be accepting human experimentation.”⁴

12. Notwithstanding the recommendations of its own experts, Colombia

² United Nations doc. E/CONF.82/15 (1988), reprinted in 28 *International Legal Materials (ILM)* 493 (1989).

³ Administrative Tribunal of Cundinamarca, Colombia, Second Section, Subsection “B”, 13/6/2003, “*Claudia Sampedro y Hector Suarez v. Ministry of Environment and Others*” (Col.), p. 15.

⁴ *Ibid.*

continued to spray herbicides aerially as part of its effort to combat the cultivation of illegal narcotics and its internal armed insurgency. Colombia has placed particularly heavy reliance on aerial spraying since 1999 when it adopted "Plan Colombia", a programme originally devised by then-President Andrés Pastrana Arango to promote peace, combat narcotics, and foster democracy. From its inception, the counter-narcotics component of Plan Colombia has emphasized the chemical eradication of illicit coca and poppy plantations by aerial spraying of herbicides across wide swaths of Colombian territory, including areas located along that country's south-western border with the Ecuadorian provinces of Esmeraldas, Carchi and Sucumbios.

Aerial Sprayings near or in Ecuador

13. Aerial fumigations under Plan Colombia officially began in 2000. Early spraying was conducted in Colombia's south-western Provinces of Putumayo and Nariño, which abut the northern Ecuadorian Provinces of Sucumbios, Carchi and Esmeraldas. Sprayings at the Ecuador border began soon thereafter. In October 2000, for example, the Ecuadorian hamlet of San Marcos in the Province of Carchi, home to the Awá indigenous community, was sprayed, as was the settlement of Mataje in the Province of Esmeraldas. Between January and February 2001, Colombia conducted a weeks-long campaign of heavy spraying along the boundary near the community of San Francisco Dos in the Province of Sucumbios. Herbicides were sprayed day after day during those two months, with only brief respites. On the days spraying took place, the fumigations were conducted virtually continuously between 6 a.m. and 4 p.m. Clouds of spray mist dropped from the planes, carried with the wind and fell on people, homes, plants and animals (both wild and domestic) in Ecuador, as well as on the San Miguel River which constitutes the border between the two countries in that area.

14. Immediately after the sprayings, residents in and around San Francisco Dos developed serious adverse health reactions including fevers, diarrhoea, intestinal bleeding, nausea and a variety of skin and eye problems. Children were affected particularly badly. At least two deaths occurred in the days immediately following these initial sprayings — in a community where no similar deaths had been reported in the two preceding years. Other children required transportation to modern medical facilities elsewhere in Ecuador.

15. People were not the only ones affected. Area vegetation, including local agricultural crops, was devastated. Yucca, corn, rice, plantains, cocoa, coffee and fruit turned brown, became desiccated and died. Animals were similarly hard hit: reported deaths of poultry and fish were particularly wide-spread, and dogs, horses, cows and other animals also became ill.

16. Over the seven years of spraying to date, Colombian aircraft involved in the fumigations have repeatedly violated Ecuadorian airspace. Sometimes, they sprayed herbicides right up to the boundary and then used Ecuadorian air space to turn around to resume spraying on the border. On other occasions, they continued spraying even as they flew into and over Ecuadorian territory, dropping their spray directly on people, plants and animals in Ecuador. On

those occasions when Colombian aircraft nominally respected Ecuador's territorial integrity, aerial drift resulted in the dispersion of the herbicide into Ecuadorian territory.

17. Some of the Ecuadorian communities adversely impacted by Colombia's aerial spraying, and the approximate time periods when they were impacted, are listed below:

<i>Province</i>	<i>Communities</i>	<i>Date</i>
Esmeraldas	Mataje	October 2000
Carchi	Awá community of San Marcos	October 2000
Sucumbíos	San Francisco 1 and 2, Nuevo Mundo, and San Pedro del Cónдор	December-February 2001
Carchi	Awá community of San Marcos	October-November 2001
Sucumbíos	Chone II, Playera Oriental, Palma Seca, Puerto Nuevo, Santa Marianita, 5 de Agosto, and Puerto Mestanza	August-October 2002
Sucumbíos	Santa Marianita, Corazón Orense, 5 de Agosto, and Puerto Mestanza	July 2003
Carchi	Chical	December 2004
Sucumbíos	Frente al Azul	December 2004
Esmeraldas	Limones	April 2005
Carchi	Awá community of San Marcos	May 2005
Sucumbíos	The communities from Salinas to Puerto Nuevo	December 2006
Sucumbíos	The communities from Puerto el Carmen to Río Abajo	January 2007

In addition to the areas specifically listed, sprayings also occurred in other less populated areas, including primary forest in both Colombia and Ecuador.

18. The effects of the aerial spraying on Ecuadorians living in these border communities mirror the effects on Colombians who have been exposed to spraying, as reported by Colombian governmental agencies and non-governmental organizations. According to the results of an investigation conducted in the Colombian Province of Putumayo, as a result of aerial sprayings in that Province several thousand Colombians were reported to be suffering from a host of symptoms, including eye irritation, respiratory problems, heart arrhythmias, skin lesions, temporary paralysis and temporary blindness, among other problems. Thousands of animals were also reported to have died, and food crops were destroyed.

The Herbicidal Mixture Reportedly Used by Colombia

19. Colombia has refused to disclose to Ecuador the precise chemical composition of the herbicide it is using. In communications, and in press reports, it has indicated that the primary “active” ingredient is glyphosate (*N-phosphonomethyl glycine*), an isopropylamine salt used widely as a weed killer. Glyphosate works by inhibiting the shikimate metabolic pathway common to all plants. It is desirable as a herbicide precisely because of its non-selective, broad-spectrum characteristics. Put directly, it kills virtually any plant.

20. Glyphosate is also portrayed as desirable because of its alleged minimal toxicity to humans and animals, which do not possess the shikimate pathway. The product label of a common glyphosate-based weed killer widely available to consumers in other parts of the world suggests reasons for concern, however. It contains explicit warnings:

“CAUSES SUBSTANTIAL BUT TEMPORARY EYE INJURY.

HARMFUL IF SWALLOWED OR INHALED.

Do not get in eyes or on clothing.

Avoid breathing vapor or spray mist.

FIRST AID	Call a poison control center or doctor for treatment advice.
IF IN EYES	— Hold eye open and rinse slowly and gently with water for 15-20 minutes. — Remove contact lenses if present after the first 5 minutes then continue rinsing eye.
IF INHALED	— Remove individual to fresh air. If not breathing, give artificial respiration, preferably mouth-to-mouth. Get medical attention.
IF SWALLOWED	— This product will cause gastrointestinal tract irritation. Immediately dilute by swallowing water or milk. Get medical attention. NEVER GIVE ANYTHING BY MOUTH TO AN UNCONSCIOUS PERSON.

.....
Do not apply this product in a way that will contact workers or other persons, either directly or through drift. Only protected handlers may be in the area during application.

.....
AVOID DRIFT. EXTREME CARE MUST BE USED WHEN APPLYING THIS PRODUCT TO PREVENT INJURY TO DESIRABLE PLANTS AND CROPS.

Do not allow the herbicide solution to mist, drip, drift or splash onto desirable vegetation since minute quantities of this product can cause severe damage or destruction to the crop, plants or other areas on which treatment was not intended.”⁵

21. Recent toxicological studies also suggest that glyphosate poses very real risks. For instance, laboratory studies have found adverse effects in all standard categories of toxicology testing. These include medium-term toxicity (salivary gland lesions), long-term toxicity (inflamed stomach linings), genetic damage (in human blood cells), effects on reproduction (reduced sperm counts in rats; increased frequency of abnormal sperm in rabbits), and carcinogenicity (increased frequency of liver tumours in male rats and thyroid cancer in female rats). Although, of course, no human experiments have been conducted, studies of people exposed to glyphosate (generally farmers) indicate an association with an increased risk of miscarriages, premature birth and non-Hodgkin’s lymphoma. The toxicity of glyphosate is especially severe when it is inhaled, as it would be in the case of exposure to the mist from aerial spraying.

22. Glyphosate is also rarely used alone. It is typically used in combination with other chemicals known as surfactants that heighten the product’s efficiency by increasing uptake by a plant’s leaves. Although they are typically labelled “inert” (as contrasted with the “active” ingredient, glyphosate), these chemicals are sometimes more toxic than the glyphosate itself, and the combination yet more toxic still. A common surfactant used with glyphosate, and reportedly included in the mix employed in Colombia, is polyethoxylated tallowamine (“POEA”) which, by itself, has been demonstrated to cause eye burns, skin redness and blistering, nausea and diarrhoea. Glyphosate and POEA combined are significantly more toxic than either administered separately.

23. Reports also indicate that the herbicidal mixture used in Colombia includes an additional surfactant known as Cosmoflux 411F that is used to penetrate the waxy surface coating of plant leaves. Cosmoflux is manufactured in Colombia. Its chemical composition is unknown and Colombia refuses to disclose the formula, claiming that it is proprietary. The glyphosate/Cosmoflux combination has not been subject to proper evaluations for safety to humans or even to animals.

Characteristics of the Border Region

24. Ecuador’s northern border area has unique characteristics. It is comprised of three distinct geographic zones: the western coastal area, the mountainous Andes in the centre, and the Amazonian jungle to the east. The region is home to communities of indigenous peoples, including the Awá, who continue to live according to their ancient traditions and are deeply dependent on their natural environment. Most of the population in the region lives in extreme poverty and relies on subsistence farming of traditional crops like yucca, plantains, corn, coffee and other foodstuffs to survive. As a result, their connection

⁵ Available at http://www.umt.edu/sentinel/roundup_label.pdf.

to the land is deep. Infrastructure in these areas is underdeveloped, healthcare is rudimentary and formal education is minimal.

25. Ecuador is also one of just 17 countries in the world designated by the World Conservation Monitoring Centre of the United Nations Environment Programme as “megadiverse”. Although it covers only 0.17 per cent of the Earth’s area, Ecuador possesses a disproportionately large share of the world’s biodiversity. In fact, Ecuador has the world’s highest biological diversity per area unit; i.e., on average, there are more species per square kilometre in Ecuador than anywhere else in the world. According to the World Resources Institute, it has 302 mammal species, 19,362 plant species, 640 breeding bird species (including 35 per cent of the world’s hummingbird species), 415 reptile species, 434 amphibian species and 246 fish species⁶. Approximately 25 per cent of its territory is made up of national parks and protected areas⁷.

26. As a consequence, Colombia’s fumigations are being conducted in a particularly vulnerable area in a manner that dramatically heightens the risks involved to people and to the natural environment. A recent Report of the United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people identifies serious concerns:

“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 . . .

28. Currently, the region’s most serious problem is the aerial spraying of illicit crops on the Colombian side of the border, using glyphosate [*sic*] 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

⁶ World Resources Institute, Ecuador Country Profile, Biodiversity and Protected Areas, available at <http://earthtrends.wri.org/text/biodiversity-protected/country-profile-54.html>.

⁷ *Ibid.*

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 substance crops, diminishing soil quality and reducing yields, affecting both the economic activities of communities and the population's access to adequate food.”⁸

27. The use of glyphosate-based chemical mixture in a tropical climate gives rise to serious risks and uncertainties. Such testing as has been done concerning the toxicity of glyphosate and its lasting effects on biota has typically been conducted in temperate climates on the substantially more limited set of plant and animal species native to those very different regions. It is not known whether the ostensible conclusions reached in those studies apply equally in a megadiverse tropical setting where the soil is generally less fertile than in temperate climates, and endemic plants have evolved a delicate equilibrium with the fungi, bacteria and cyanobacteria in the soil that play essential roles in maintaining the nutrient cycle. The effects of glyphosate on this ecological balance are untested, although studies suggest that glyphosate reduces populations of nitrogen fixing bacteria. Many similar key questions are similarly unanswered. Colombia's conduct amounts to a dangerous ecological and toxicological experiment on a vast scale.

Previous Attempts at a Diplomatic Settlement of the Dispute

28. The Government of Ecuador has been seriously concerned about Colombia's aerial spraying of herbicides under Plan Colombia since it learned Colombia was contemplating fumigations in the border region. On 24 July 2000, for example, the Ministry of Foreign Affairs of Ecuador sent a note to the Embassy of Colombia in Quito expressing its preoccupation about the potentially “grave impacts on human health and the environment, with possible repercussions for Ecuador . . .”. From the start, Colombia has been equally clear that it has no interest in addressing Ecuador's concerns. Thus, in December 2000, it rejected a proposal by the Government of Panama to discuss this aspect of Plan Colombia in an international forum as “inappropriate” and “inconvenient”.

⁸ Document A/HRC/4/32/Add.2 (28 December 2006).

29. In July 2001, after fumigations along the border began, Ecuador's Ministry of Foreign Affairs sent the Colombian Embassy in Quito a further note requesting

“information concerning the type of substances that are being used in the fumigations as well as about the specific areas in which these works are being carried out and the areas where they are being planned in the future”.

Ecuador's note requested that, due to the impacts on the environment and human health in the Ecuadorian border communities, Colombia refrain from further aerial spraying within 10 kilometres of the frontier. Colombia never provided the information Ecuador requested, but rather tried to forestall meaningful enquiry by contending simply:

“Plan Colombia is, precisely, the most effective method for protecting the fraternal country of Ecuador from the perverse effects of narco-trafficking and armed conflict, in a way that is aimed at preventing them from continuing to get stronger and metastasizing to Ecuador.”

Likewise, Colombia refused Ecuador's request to observe a 10-kilometre buffer zone where no spraying would take place.

30. Further diplomatic exchanges also failed to elicit Colombia's co-operation. In April 2002, for example, Colombia again made clear that it had no interest in negotiating about the fumigations. In response to complaints from Ecuador concerning the effects the sprayings were having in its territory, Colombia insisted that it would not abandon an “irreplaceable instrument for solving the Colombian conflict and alleviating the danger that it presents to other countries, in particular neighbours”. In July 2003, Ecuador's Ministry of Foreign Affairs sent a note to its Colombian counterpart proposing once again the establishment of a 10-kilometre no-spraying zone along the border with Ecuador. By note dated 23 September 2003, Colombia rejected the proposal, stating:

“The establishment of an aspersion-free strip along the common frontier, as proposed by the Government of Ecuador . . . , is unacceptable to the Government of Colombia for multiple reasons”,

including the ostensible fact that

“[t]he forced eradication is accepted as a legitimate method in the fight against illicit crops, and is carried out based on procedures compatible with the preservation of human health and the environment, in conformity with the principle of precaution enshrined in the 1992 Rio Declaration on Environment and Development”.

31. In light of the Parties' inability to resolve their differences through the usual diplomatic channels, Ecuador and Colombia agreed in late 2003 to set up a special Scientific and Technical Commission to investigate the effects of the sprayings in Ecuador. Although the Commission met four times between late

2003 and August 2004, the Parties' delegations were unable to reach agreement on the effects of the sprayings in Ecuador.

32. Following the deadlock of this first joint Scientific and Technical Commission, diplomatic exchanges fell back into the same unavailing pattern. Ecuador continued to complain and express its concerns over the manifest effects of the sprayings, and Colombia continued to dismiss those concerns as unfounded. Even on the rare occasions when the Parties appeared to have made progress, steps backward quickly followed. Thus, in December 2005, upon Colombia's completion of its spraying for that year, and after repeated requests by the Government of Ecuador, the two Governments issued a joint communiqué in which Colombia agreed temporarily to suspend further sprayings within 10 kilometres of the border. When the time came for the next cycle of annual spraying in December 2006, however, Colombia resumed spraying along the border and throughout the 10-kilometre buffer zone.

33. Following additional protests from Ecuador, the Parties agreed once again in early 2007 to take the issue outside the usual diplomatic channels by forming another joint Scientific Commission for purposes of assessing the damages in and to Ecuador. The Scientific Commission met twice, and was unable to make any progress due to an unbridgeable gap dividing the two delegations' approaches. The second and final meeting of the Commission in July 2007 ended without agreement, or even consensus on joint minutes.

34. Colombia refused to stop, suspend, or even reduce its aerial spraying along the border with Ecuador. At a meeting of Ministers of Foreign Affairs on 28 May 2007, Colombia's Minister of Foreign Affairs, Mr. Fernando Araújo Perdomo, stated that "Colombia is not in a position to make commitments with respect to the question of the fumigations; nor could it predict what decision it will take in the future in this respect." Confronted with this reality, Ecuador informed Colombia by diplomatic note dated 27 July 2007 that it considered the process of dialogue exhausted, and without prospects for success. This Application now follows.

Enduring Effects

35. The serious adverse effects of Colombia's aerial sprayings on Ecuador have been immediate and dramatic. They have also persisted across time and continue to be felt to the present day. Indeed, the Report of the United Nations Special Rapporteur notes 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". In the community of San Francisco Dos where sprayings first began in January and February 2001, for example, maize yields following Colombia's aerial spraying were reduced by more than half. The nearby community of Las Salinas, also impacted by the aerial spraying, suffered equally severe reductions in its maize yields. As of the filing of this Application, similar effects continue to be felt on crops of yucca, rice, cocoa, coffee, plantains and other staples on which local populations depend for survival.

36. The lingering effects of the fumigations go beyond crop damage. In part owing to the effects on their means of livelihood, in part owing to the health effects, and in part owing to the terror induced by the sprayings, a sizeable percentage of the local population has been forced to relocate to areas further from the border with Colombia. The community of Puerto Mestanza in Sucumbios Province is one example. Prior to the start of the sprayings nearby in August 2002, it was home to some 86 tenant farmer families. By 2005, only four families remained. Other border communities have been decimated. Overall, as much as 50 per cent of the population that formerly lived within 10 kilometres of the border with Colombia have fled the area since the start of the fumigations.

THE CLAIMS OF ECUADOR

37. Ecuador claims that by aerially spraying toxic herbicides at locations at, near and over its border with Ecuador, Colombia has violated Ecuador's rights under customary and conventional international law. The harm that has occurred, and is further threatened, includes some with irreversible consequences, indicating that Colombia has failed to meet its obligations of prevention and precaution.

THE JUDGMENT REQUESTED

38. On the basis of the facts and law referred to above, Ecuador requests the Court to adjudge and declare that:

- (A) Colombia has violated its obligations under international law by causing or allowing the deposit on the territory of Ecuador of toxic herbicides that have caused damage to human health, property and the environment;
- (B) Colombia shall indemnify Ecuador for any loss or damage caused by its internationally unlawful acts, namely the use of herbicides, including by aerial dispersion, and in particular:
 - (i) death or injury to the health of any person or persons arising from the use of such herbicides; and
 - (ii) any loss of or damage to the property or livelihood or human rights of such persons; and
 - (iii) environmental damage or the depletion of natural resources; and
 - (iv) the costs of monitoring to identify and assess future risks to public health, human rights and the environment resulting from Colombia's use of herbicides; and
 - (v) any other loss or damage; and
- (C) Colombia shall
 - (i) respect the sovereignty and territorial integrity of Ecuador; and
 - (ii) forthwith, take all steps necessary to prevent, on any part of its territory, the use of any toxic herbicides in such a way that they could be deposited onto the territory of Ecuador; and
 - (iii) prohibit the use, by means of aerial dispersion, of such herbicides in Ecuador, or on or near any part of its border with Ecuador; and

39. Ecuador reserves the right to modify and extend the terms of this Application, as well as the grounds invoked.

PROVISIONAL MEASURES

40. Ecuador reserves its rights, pursuant to Article 73 of the Rules of Court, to request the indication of provisional measures.

* * *

41. Pursuant to the provisions of Article 31 of the Statute of the Court and Article 35 (1) of its Rules, the Republic of Ecuador states its intention to designate a judge *ad hoc*.

42. In accordance with Article 40 of the Statute of the Court, the Minister of Foreign Affairs of Ecuador has appointed the undersigned, Dr. Diego Cordovez, as Agent for these proceedings. It is requested that all communications in this case be notified to the Agent at the following address:

The Embassy of the Republic of Ecuador
to the Kingdom of the Netherlands,
Koninginnegracht 84,
2514 AJ The Hague.

Respectfully,

(Signed) Dr. Diego CORDOVEZ,
Agent of the Government
of the Republic of Ecuador.

The Hague, 31 March 2008.

III. LETTER FROM THE MINISTER OF FOREIGN RELATIONS
OF ECUADOR TO MR. DIEGO CORDOVEZ-ZEGERS, QUITO

[Translation submitted by Ecuador]

REPÚBLICA DEL ECUADOR
MINISTERIO DE RELACIONES EXTERIORES

No. 15080-GM/2008.
28 March 2008.

Dear Mr. Cordovez,

I have the pleasure to inform you that, by means of Executive Decree No. 990 of 27 March 2008, the Constitutional President of the Republic of Ecuador, Rafael Correa Delgado, has appointed you as Agent of the Republic of Ecuador before the International Court of Justice, with the rank of Ambassador on Special Mission, for all the effects concerning the application that the National Government will file against the Republic of Colombia, regarding the damages caused to the Ecuadorian State, its inhabitants and the environment through the spraying of chemical herbicides.

Pursuant to this appointment, you are duly authorized to sign the corresponding application and act on behalf of the Republic of Ecuador throughout the judicial proceedings.

I avail myself of this opportunity to reiterate to you the assurances of my highest consideration.

(Signed) María Isabel SALVADOR-CRESPO,
Minister of Foreign Relations,
Commerce and Integration.

LETTER FROM THE MINISTER OF FOREIGN RELATIONS OF
ECUADOR TO MR. DIEGO CORDOVEZ-ZEGERS, QUITO

LETTRE DU MINISTRE DES RELATIONS EXTÉRIEURES
DE L'ÉQUATEUR À M. DIEGO CORDOVEZ-ZEGERS, QUITO

[Original Spanish text]

[Texte original en espagnol]

REPÚBLICA DEL ECUADOR
MINISTERIO DE RELACIONES EXTERIORES

N° 15080-GM/2008.

Quito, a 28 de marzo de 2008.

Estimado doctor Cordovez:

En cumplimiento de lo dispuesto por el señor Presidente Constitucional de la República, Economista Rafael Correa Delgado, mediante Decreto Ejecutivo No. 990 de 27 de los corrientes, me es grato comunicar a usted que ha sido designado Agente de la República del Ecuador ante la Corte Internacional de Justicia, con el rango de Embajador en Misión Especial, para todos los efectos relativos a la demanda que el Gobierno Nacional presentará contra la República de Colombia, en relación a los daños causados al Estado ecuatoriano, sus habitantes y su medio ambiente por las aspersiones con herbicidas químicos.

En virtud de esta designación, queda usted debidamente autorizado para suscribir la correspondiente demanda y a actuar en nombre de la República del Ecuador durante el proceso judicial.

Hago propicia la ocasión para reiterar a usted las seguridades de mi más distinguida consideración.

(Firmado) María Isabel SALVADOR-CRESPO,
Ministra de Relaciones Exteriores,
Comercio e Integración.
