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**COUNTER-MEMORIAL OF THE**

**REPUBLIC OF COLOMBIA**

**Chapter 1**

**ECUADOR’S CASE: AN OVERVIEW**

1.1 This Memorial is filed in accordance with the Court’s

Order of 30 May 2008 and responds to the Memorial submitted

by Ecuador on 28 April 2009.

**A. The Court’s Jurisdiction over the Dispute and the**

**Admissibility of Ecuador’s Claims**

1.2 The present dispute concerns Ecuador’s objections to

Colombia’s programme of aerial spraying of illicit coca crops,

and the supposed transboundary impact of that program on

Ecuador, its residents and on the environment.

1.3 In its Memorial, Ecuador seeks to found the jurisdiction

of the Court over the present dispute upon two bases,1 namely:

(a) Article XXXI of the American Treaty on Pacific

Settlement (“the Pact of Bogotá”);2 and

(b) Article 32 of the United Nations Convention

Against Illicit Traffic in Narcotic Drugs and

1 EM, paras. 4.1, 4.3.

2 EM, Vol. II, Annex 1.

2

Psychotropic Substances 1988 (“the 1988 UN

Narcotics Convention”).3

(1) JURISDICTION UNDER THE PACT OF BOGOTÁ

1.4 As to the Pact of Bogotá, Colombia has been a party

since 1968. For its part, Ecuador signed it on 30 April 1948,

subject to the following reservation:

“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.”

Article VI of the Pact provides that the obligation to settle

disputes through access to the Court:

“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.”

1.5 The effect of Ecuador’s reservation upon signature

would have been to expand the Court’s jurisdiction to the

matters deliberately excluded by Article VI, including matters

“already governed by agreements or treaties in force”. But

3 1582 UNTS 164; E/Conf. 82/15; EM, vol. II, Annex 3.

3

(quite apart from

El Gobierno de la Republica Colombia, se compromete a que la mezcla empleada en los Programas de Erradicación de Cultivos Ilícitos mediante Aspersión Aérea con Glifosato en el área de frontera con Ecuador, sea la contemplada en el Plan de Mande Ambiental autorizado por el Ministerio de Ambiente mediante la Resolución 1054 de 2003, que corresponde a una relación de mezcla de: 44% de formula ion comercial de ingrediente active glifosato, 1% de coadyuvante COSMOFLUX y 5% de agua.

Se compromete adicionalmente, a que las descargas por cada hectárea no excederán de 23,65 litros descarga de mezcla, qua este compuesta por 10,4 de formulación comercial de ingrediente active glifosato en una concentración de 480 gramos por litro, 0,24 litres de coadyuvante Cosmoflux y 13,1 litres de agua. Cualquier cambio en la mezcla utilizada en el Programa de Aspersiones en la zona de frontera debut' ser consultado con el Gobierno de Ecuador y consentido por este. El consentimiento de Ecuador no será negado sin fundamentaci6n técnica. En el evento de que exista una divergencia técnica sobre la mezcla, las partes recurrirán a expertos, que serán designados uno por cada uno de los Ministerios de Relaciones Exteriores de cada país y el tercero será designado por ellos mismos, en caso de que no se llegare a este acuerdo en un plazo de una semana, cualquiera de las partes podrá; solicitar al representante de la oficina regional de la FAO la designación del tercer experto. …..

Comisión de Estupefacientes de las Naciones Unidas (CND

CASE CONCERNING AERIAL HERBICIDE SPRAYING (ECUADOR v. COLOMBIA) REJOINDER OF THE REPUBLIC OF COLOMBIA VOLUME VII+ANNEXES 75-