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# CHEMICAL TAKING:

## GLYPHOSATE AND THE ERADICATION OF DUE PROCESS IN COLOMBIA

by David A. Wilhite\*

### INTRODUCTION

Cocaine politics continues to take a toll on Colombian social, political, economic, and legal stability. Coca<sup>1</sup> is indigenous to the Andean Mountains and for hundreds of years, native populations and immigrants to the region have consumed its leaves for both medicinal and customary purposes.<sup>2</sup> The United States consumes cocaine at a rate of over 300 metric tons per year.<sup>3</sup> Each year approximately 6,548,000 North Americans consume cocaine, annually spending \$43.6 billion.<sup>4</sup> In an effort to curb this consumption, and because coca is the base of cocaine, the American and Colombian governments have combined forces using pesticide in an attempt to eradicate the problem at its perceived source, the coca plant.<sup>5</sup>

The legal, social, and political effects of spraying Glyphosate on coca plants demonstrate flaws in the policy of relying on a chemical to perform a government function. Glyphosate is a legal chemical, most famously the base of Monsanto's Round-Up. The chemical is produced in the United States, mixed in Colombia,<sup>6</sup> and sprayed by American planes on the Colombian countryside.<sup>7</sup> Despite this lawful chain, images, accounts, and notions of stripped tropical forest as well as bereft local farmers and indigenous communities raise questions as to the legality of spraying Glyphosate.<sup>8</sup> This article explores the effect of the spraying of Glyphosate with special attention to the issue of property rights. Through an analysis of Colombian expropriation laws, this article will argue that government reliance on aerial spraying of coca crops results in an illegal chemical expropriation.

### THE USE OF GLYPHOSATE: A CHEMICAL EXPROPRIATION?

Part of Plan Colombia and the Andean Counterdrug Initiative ("CEI") involves the aerial spraying of illegal coca cultivations with Glyphosate.<sup>9</sup> The Colombian Government is currently spraying a Glyphosate cocktail on coca crops throughout its territory, from the Amazon River Basin to the Northern Caribbean coast.<sup>10</sup> This program is meant to eliminate the cultivation of coca by killing the plant before it can be converted to

cocaine, illegally transported, and consumed in the lucrative American market.<sup>11</sup>

For decades in Colombia, three extra-military armed groups have battled with drug lords, the State, each other, and the civilian population, resulting in as many as 30,000 deaths in some years<sup>12</sup> and 2.5 million displaced persons (second only to Sudan in number of displaced persons).<sup>13</sup> These violent groups as well as political and diplomatic wrangling fuel a devastating guerilla conflict.<sup>14</sup> Armed groups and drug lords rely in large part on capital from the illegal drug trade,<sup>15</sup> as well as extortion, kidnappings, and forced displacement.<sup>16</sup> To dam the flow of illegal capital, the Colombian government cooperates with the United States in an attempt to eradicate the illegal cultivation of the coca plant.<sup>17</sup>

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*[S]praying is for a public purpose, the resulting temporary disruption in productivity may constitute an illegal temporary taking. . .*

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Dusting planes, Blackhawk helicopters, American military agents, and U.S. Department of Defense contractors work in unison with Colombian forces and under U.S. Congressionally mandated guidelines<sup>18</sup> to apply Glyphosate to coca cultivations using aerial spraying.<sup>19</sup> The aerial eradication program in Colombia sprayed a record 136,551 hectares of coca and over 3,000 hectares (7,000 acres) of opium poppy in 2004.<sup>20</sup> In 2005, Colombia cultivated 80,000 of the 158,000 hectares cultivated in Colombia, Bolivia, and Peru.<sup>21</sup>

Though scientists from the U.S. Environmental Protection Agency and Organization of American States have found Glyphosate's negative environmental and human consequences to be negligible, controversy persists.<sup>22</sup> A sprayed field takes approximately six to eight months to recover productive crops.<sup>23</sup> The use of a second chemical in the Glyphosate cocktail, Cosmoflux, allows the Glyphosate to penetrate the waxy leaves of tropical plants.<sup>24</sup>

Spray pilots apply the herbicide at altitudes of less than one hundred feet,<sup>25</sup> and "while every effort is made to minimize human and mechanical mistakes, occasional errors are unavoidable."<sup>26</sup> As such, many neighboring cultivations, both illicit and licit, have been destroyed. Glyphosate spraying has allegedly resulted in harm to "food plots, including bananas, beans, plan-

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tains and yucca, as well as chicken and fish farms.”<sup>27</sup> Further, according to some sources, an investigation by the municipal police of Valle del Guamuez found “that as of February 2001, fumigations killed 38,357 domesticated birds, 719 horses, 2,767 head of cattle, 128,980 fish, and 919 other animals such as pigs, cats, and dogs.”<sup>28</sup>

The Colombian Ombudsman (*Defensoría del Pueblo*) has received 5,844 claims for damage to food crops since late 2001, claims that, under the Colombian Drug Commission Resolution 00017 guidelines, only warrant attention if they are found in licit crop zones.<sup>29</sup> Of those, the U.S. Department of State reports that 28 claims were paid with total compensation of \$159,000.<sup>30</sup> The process of review has thus resulted in compensation payments to less than 0.5 percent of the claimants at \$5,678.50 a payment. These figures leave questions as to the role of due process for property owners whose lands were destroyed incidentally, while neither hearings nor compensation exist for those lands sprayed purposefully by the eradications.

Though the spraying is for a public purpose, the resulting temporary disruption in productivity may constitute an illegal temporary taking by the Colombian government. Although the Colombian government has implemented laws that mirror international and U.S. expropriation laws, the aerial spraying does not meet legal standards contained therein.<sup>31</sup> Do these laws allow the elimination of due process standards by substituting a government presence with the use of Glyphosate?

### GOVERNMENT EXPROPRIATIONS: PROTECTION OF INDIVIDUAL RIGHTS

#### COLOMBIAN EXPROPRIATION LAW

In order to be legal, any government expropriation must protect the individual property owner’s rights. Private property rights, enshrined in the U.S. Constitution’s Fifth Amendment and extended to the states through the Fourteenth Amendment, allow for the taking of private property by a government action only when that taking serves a public purpose, follows due process, is nondiscriminatory, and is accompanied by just compensation.<sup>32</sup> International standards closely replicate this formula.<sup>33</sup> For example, Article 21 of the American Convention on Human Rights, “Pact of San Jose,” to which Colombia is a signatory, provides for expropriation protection.<sup>34</sup> Colombian national laws provide for protection against an expropriation, regulatory expropriation, and temporary expropriation without due process and compensation.<sup>35</sup> These standards create a balancing test between the use of police power for a public purpose on one side and the proprietor’s privacy interest on the other.<sup>36</sup>

The Colombian standard for expropriation resembles international and U.S. laws on the subject and requires previous payments to property owners and direct legislative and judicial involvement.<sup>37</sup> Colombian expropriation laws are found in Article 58 of its Constitution.<sup>38</sup> Private property may not be violated save for public utility or social interest. Where such a conflict exists, the private right must give way to the social interest.<sup>39</sup> The law further mandates that the State may expropriate

lands when the legislature establishes the need to meet a public purpose or a social interest. This finding must then be executed through a judicial sentencing and accompanied by previous indemnification.<sup>40</sup> Article 34 of the Colombian Constitution creates an exception to the basic standard established in Article 58 by permitting expropriation as part of a criminal sentence, allowing seizure of goods obtained through illegal enrichment.<sup>41</sup>

#### OF TEMPORARY TAKING AND INCIDENTAL DAMAGES

In Colombia, as in the United States, a temporary taking is a legal exercise of police power as long as it is accompanied by compensation and protection of due process rights.<sup>42</sup> For example, Article 59 of the Colombian Constitution specifically

Courtesy of David Wilhite.



The geography of the Andes Mountains is ideal for growing coca with its isolated and fertile fields.

declares that in times of war the government may temporarily expropriate lands without prior indemnification.<sup>43</sup> Decree 1420, Article 21, Paragraph 6 mandates that “for estates that are used for productive activities which will be subject to an affectation causing a temporary or definitive restriction to the generation of income derived from their development, independently from the assessment of the estate, a compensation for loss of income will be recognized, for up to a maximum of six (6) months.”<sup>44</sup> This decree, intended for use in environmental regulation, requires compensation and due process protections for temporary takings of a “right of way” as well as “economic activity in the effected estate.”<sup>45</sup> Article 90 of the Constitution provides that the State will be liable for any illegal damages caused by the actions or omissions of public authorities.<sup>46</sup> This standard requires government compensation for temporary takings as well as incidental damages to adjacent properties during a temporary taking.<sup>47</sup> This decree in conjunction with Article 34 of the Colombian Constitution demonstrates a legal responsibility on the part of the government to conduct a due process complaint hearing before a temporary expropriation or to provide post-expropriation indemnification if a temporary taking is effected under exigent circumstances, for instance during a time of war.<sup>48</sup> These laws parallel U.S. laws, where the Supreme Court has held that the standard bar on incidental damages to surrounding property subject to a taking does not apply in temporary takings.<sup>49</sup>

In standard expropriations, as well as the temporary taking and incidental damages taking, Colombian laws meet international standards and parallel U.S. laws on the subject. However, coca fields sprayed by Glyphosate as well as the incidental damages occurred to neighboring farms, and indigenous groups' lands result in a "chemical expropriation" that does not meet those standards. According to the official count, this equated to at least 137,000 hectares of chemically expropriated lands in 2004. Are due process protections absent from this action?

### EXIGENT CIRCUMSTANCES: DUE PROCESS CASUALTIES OF COLOMBIA'S MANY WARS

Colombia has been effective in creating a stable investment climate in part because of Article 58 of its Constitution.<sup>50</sup> Even in times of war, the Colombian Constitution protects private property rights faced with a temporary taking.<sup>51</sup> But Law 793 of 2002 creates a special harbor for expropriations of property "directly or indirectly" related to illicit drug activity without compensation.<sup>52</sup> Recently, President Alvaro Uribe Velez stated, "many times we have considered the fact that these lands belong to a *campesino* (low income land worker) or a small-farm owner, but this problem of coca in Colombia... financing terrorist groups, we cannot get stuck in just fumigation because we fumigate in one place and it comes back in another."<sup>53</sup>

Law 793 parallels attempts in U.S. law to allow broad police power expropriations in drug cases, attempts that were struck down in *United States v. James Daniel Good Real Property*.<sup>54</sup> The U.S. Supreme Court weighed heavily the possibility of mistaken seizures resulting from a lack of evidentiary findings.<sup>55</sup> Both the Constitutional Court of Colombia and the Supreme Court of the United States have upheld the notion that, barring exigent circumstances, both a government audience and compensation must offset any government taking. If exigent circumstances do exist, these Courts have held, then where a hearing could not be held prior, it must be held after to determine if the expropriation requires compensation.

In 2003, the Colombian Constitutional Court affirmed that the "public purpose" of illicit-property expropriations without compensation, codified into law 793, outweighed private property interests.<sup>56</sup> The Court authorized Law 793, declaring that through this law, the government has properly "*establecen las reglas que gobiernan la extinción de dominio*," or that this law establishes rules that govern the execution of eminent domain.<sup>57</sup> Because this law provides for a legislative and judicial procedure, namely a hearing to verify the illicit connections of the condemned property, the Court found that it met a due process standard. The effect of this law is to allow government exercise of eminent domain on

property proven to be directly or indirectly connected to illicit behavior without payment of just compensation.

The temporary chemical expropriations caused by the use of Glyphosate in Colombia do not meet this standard, nor any of the others presented above. Here, no legislative or judicial hearings take place. The failure to provide them cannot be excused by the exigent circumstances of the war on drugs, nor by the temporary nature of the taking. Yet, a "temporary restriction on economic activity" of six to eight months occurs as a result of a chemical spraying and no compensation is awarded, and post-expropriation hearings are provided for only those properties sprayed incidentally, as opposed to any property sprayed.<sup>58</sup>

Lastly, of the thousands of claims presented under the rubric of Resolution 00017 to the national Ombudsman, only a small fraction has been paid. As previously discussed, Colombian law requires compensation for temporary taking of the economically productive activities of an estate.<sup>59</sup> While Decree 1420 deals with environmental concerns, the tests it describes clearly exist to meet the expropriation standards set out in Articles 58, 59, and 34 of the Constitution. Resolution 00017, however, does not meet these standards and thus exposes a due process gap in the current use of Glyphosate.<sup>60</sup> Failure to provide hearings or pay compensation strongly contradicts Colombian expropriation law on several accounts.

In contrast to the legal regime set up in Resolution 00017, Law 793 could be interpreted to require that property owners accused of growing coca be brought before the court for a pre-expropriation hearing to establish a direct or indirect connection to illicit activity.<sup>61</sup> Further, Articles 58, 59, and 34 of the Colombian Constitution most likely would require a hearing for all proprietors whose land have been taken, not merely those

who may have suffered incidental damage.<sup>62</sup> Lastly, even in the exigent circumstances of the War on Drugs, in keeping with other wartime powers, the state must take steps to correct a temporary taking after the fact through compensation or a hearing to establish why compensation is not given.<sup>63</sup>

### THE EXIGENT CIRCUMSTANCES OF WAR: CIVILIANS IN A JUDICIAL NO MAN'S LAND

The due process problems of these temporary "chemical takings" are rooted in the oft-noted absence of the State in large swaths of the Colombian countryside. As a result of this absence, the legal infrastructure cannot or does not support hearings on and enforcement of expropriations, by fumigation or otherwise on licit or illicit crops.<sup>64</sup> Recent attempts at augmenting State presence have met with frustrating results.<sup>65</sup> On December 28, 2005, the Revolutionary Armed Forces of Colombia ("FARC") killed 29 Colombian Army soldiers as they

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attempted to protect manual coca eradication workers in a National Park.<sup>66</sup> The surrounding towns of La Albania, Palestina, and Playa Rica suffered similar attacks and have been deserted by the banana farmers and others who lived in the area.<sup>67</sup> Emptied towns, displaced persons, and banana and coca fields peppered with anti-personnel mines are not the only casualties of this type of power vacuum.<sup>68</sup> This scene is repeated throughout the Colombian countryside and has been for many decades, leaving expectations of a prompt hearing less realistic with every abandoned town.<sup>69</sup>

While the total hectares of coca cultivations reduced dramatically from 2001 through 2004 thanks to the use of Glyphosate, recent analysis demonstrates that Colombia continues to be the highest exporter of coca and had a three percent increase in hectares of coca cultivation in 2005.<sup>70</sup> This new figure combined with the slowed trend of reduction in the 2003 and 2004 shows a tide change in the effectiveness of the program.<sup>71</sup> It appears that President Uribe Velez was correct in his observation that use of Glyphosate merely results in cultivation in other areas.<sup>72</sup> The U.S. State Department recently acknowledged that coca cultivations have not been stopped and that, in fact, attempts to eliminate them are creating a “ballooning” of the same problem into neighboring Peru, Bolivia, and Ecuador.<sup>73</sup>

## CONCLUSION

The use of Glyphosate by the parties implementing CEI does not act as an effective substitute for the presence of the State in those areas where it is being sprayed. Rather, Glyphosate spraying results in a new kind expropriation, a “chemical taking.” The resulting State deficit is made evident in an erosion of due process rights. While debate continues on the effectiveness of Glyphosate in fighting coca, it is evident that the government requires a normalized legal regime with stronger judicial system to hear the due process concerns of affected citizens and the political will to use them. Failure to do so creates a discriminatory effect whereby affected parties are forced to bear both the high economic burden of eliminated capital flows from coca and the social burden of a guerilla war. Using Glyphosate as a means of enforcing the police arm of the state does not address the political, judicial, and economic deficit exposed by the temporary chemical taking.

Legal remedies for the chemical takings reach the international realm through the Inter-American Commission of Human Rights. However, legal remedies cannot address all the political problems that the use of Glyphosate demonstrates. If Colombia’s troubles, as has been postulated, are a result of a lack of government presence, the use of Glyphosate, whether legal or not, only serves to deepen those troubles by widening the breach between citizen and government.



## ENDNOTES: Chemical Taking in Colombia

<sup>1</sup> Coca cultivated for its narcotic effects are generally referred to as Coca Erythoxylum. See Bruce A. Bohm and Fred R. Ganders, *Biosystematics and Evolution of Cultivated Coca (Erythroxylaceae)*, SYSTEMATIC BOTANY, Vol. 7. No. 2 (Apr. 1982), 121,133.

<sup>2</sup> See Joel M. Hanna, *Coca Leaf Use in Southern Peru: Some Biosocial Aspects*. AMERICAN ANTHROPOLOGIST, New Series Volume 7, No.3 (Sept. 1976) 630, 634.

<sup>3</sup> UN Office on Drugs and Crime, *World Drug Report Vol. 1*, available at [http://www.unodc.org/pdf/WDR\\_2005/volume\\_1\\_web.pdf](http://www.unodc.org/pdf/WDR_2005/volume_1_web.pdf) (last visited Mar. 4, 2006) [hereinafter *World Drug Rpt.*].

<sup>4</sup> *World Drug Rpt.*, *id.*

<sup>5</sup> See generally, Zachary P. Mugge, Note, Plan Colombia: The Environmental Effects and Social Costs of the United States’ Failing War on Drugs, 15 Colo. J. Int’l Envtl. L. & Pol’y, 309 (discussing the role of Aerial eradications in the War on Drugs). See also Resolution 00017, 04/10/2001 Dirección Nacional de Estupifacientes [National Drug Commission], (incorporating La Carta Acuerdo de Cooperación para la Prevención y el Control del Problema de las Drogas, the 1999 treaty between the United States and Colombia for the elimination of Coca and cocaine, into the larger framework of the Commission’s hearing of claims resulting from aerial spraying of Glyphosate.)

<http://www.dnecolombia.gov.co/contenido.php?sid=103>, (last visited (Mar. 19, 2006).

<sup>6</sup> Mugge, *supra* note 5. (outlining debate on between scientist on strength of Glyphosate mixes).

<sup>7</sup> Mugge, *id.*

<sup>8</sup> Danielle Knight, *Plan Colombia: Fumigation Threatens Amazon, Warn Indigenous Leaders, Scientists*, Nov. 21, 2000, INTER PRESS SERVICE.

<sup>9</sup> See U.S. Department of State, Aerial Eradication of Illicit Coca and Poppy in Colombia <http://www.state.gov/p/inl/rls/rpt/aeicc/c14651.htm> (Outlining Andean Regional initiatives to combat cocaine production), (last visited Mar. 19, 2006).

<sup>10</sup> World Drug Rpt., *supra* note 3, at 62

<sup>11</sup> World Drug Rpt., *supra* note 3, at 62.

<sup>12</sup> Steven Dudley, *Walking Ghosts, Murder and Guerrilla Politics in Colombia* (2004).

<sup>13</sup> *Colombia’s Displaced People*, Economist, Feb. 11, 2006, at 37. See also P.W. Fagen, A. Fernandez Juan, F. Stepputat & R.V. Lopez, G. Kongevej *Internal Displacement in Colombia: National and International Responses*, Inst. Int’l Stud., Working Paper 03.6, June 2003.

<sup>14</sup> Country Information for Colombia, U.S. Department of State, <http://www.state.gov/r/pa/ei/bgn/35754.htm> (last visited Mar. 19, 2006).

<sup>15</sup> Country Information for Colombia, *id.*

<sup>16</sup> See Luz E. Nagle, *Colombian Asylum Seekers: What Practitioners Should Know About The Colombian Crisis*. 18 GEO. IMMIGR. L.J. 441, Spring, 2004.

<sup>17</sup> Coca leaves, mashed into a paste or pasta, are in fact only one of the ingredients of cocaine. “The pasta is first washed in kerosene. It is then chilled. The kerosene is removed. Gas crystals of crude cocaine are left at the bottom of the tank. Typically, the crystals are dissolved in methyl alcohol. They are then recrystallised and dissolved once more in sulfuric acid. Further washing, oxidation and separation procedures involve potassium permanganate, benzole, and sodium carbonate.” <http://www.cocaine.org/process/html> (last visited Mar. 19, 2006).

<sup>18</sup> Act. Pub. L. No. 107-115, 567, 115 Stat. 2118, 2165 (2002), <http://law2.house.gov/download/pls/22C32.txt>, (last visited Mar. 4, 2006).

<sup>19</sup> Mugge, *supra* note 5.

<sup>20</sup> *Plan Colombia: Major Successes and New Challenges*, Roger F. Noriega, Assistant Secretary for W. Hem. Aff. Statement Before the House Int’l Rel. Com. Washington, D.C. May 11, 2005.

<sup>21</sup> *Colombia Sigue Siendo el Mayor Exportador Mundial de Cocaína, Dice Informe de la ONU*, EL TIEMPO,

- [http://eltiempo.terra.com.co/judi/2006-03-01/ARTICULO-WEB-\\_NOTA\\_INTERIOR-2766271.html](http://eltiempo.terra.com.co/judi/2006-03-01/ARTICULO-WEB-_NOTA_INTERIOR-2766271.html) (last visited Feb. 28, 2006). [Colombia Continues to be the World's Largest Exporter of Cocaine, Says U.N. Report].
- <sup>22</sup> *Científicos de la OEA Aseguran que el Glifosato no Representa Riesgo para los Seres Humanos*, El Tiempo Apr. 22, 2005. [Organization of American States' Scientists Assure that Glyphosate does not Represent Human Risk].
- <sup>23</sup> Mugge, *supra* note 5.
- <sup>24</sup> See Sheridan Pauker, *Spraying First and Asking Questions Later: Congressional Efforts to Mitigate the Harmful Environmental, Health, and Economic Impacts of U.S.-Sponsored Coca Fumigation in Colombia*, 30 *ECOLOGY* L.Q. 661 at 666 (2003).
- <sup>25</sup> Joseph Weir, *The Aerial Eradication of Illicit Coca Crops in Colombia, South America: Why the United States and Colombian Governments Continue to Postulate its Efficacy in the Face of Strident Opposition and Adverse Judicial Decisions in the Colombian Courts*, 10 *DRAKE J. AGRIC. L.* 205 at 218, (2005).
- <sup>26</sup> Weir, *id.* at 218.
- <sup>27</sup> Pauker, *supra* note 24 at 667.
- <sup>28</sup> Mugge, *supra* note 5 at 330.
- <sup>29</sup> Int'l Narcotics Control Strgy. Rep., 2006, Bureau for Int'l Narcotics and L. Enforcement Affairs, March 2006, <http://www.state.gov/p/inl/rls/nrcrpt/2006/vol1/html/62106.htm> (last visited Mar. 3, 2006). See also *National Drug Commission*, *supra* note 5 (outlining the mechanism for presenting claims of damages incurred by the spraying of Glyphosate in its Resolution 0017 of 2001 and, under Article 9, limiting response exclusively to licit crops and only when a judicial action has not been brought.) "Artículo 9º. Reposición de cultivos. El grupo de quejas repondrá exclusivamente a los afectados en sus plantaciones lícitas como consecuencia directa de la aspersión aérea con el herbicida glifosato en aplicación del Programa de Erradicación de Cultivos Ilícitos, siempre y cuando éstos no hubieren iniciado una acción judicial o judicial." <http://www.dnecolombia.gov.co/contenido.php?sid=103>, (last viewed Mar. 19, 2006).
- <sup>30</sup> Int'l Narcotics Control Strategy Rpt., *supra* note 29.
- <sup>31</sup> See C-1065/03, Expediente D-4691 Demanda de Inconstitucionalidad en Contra de los Artículos 2, 3, 4, 5, 6, 7, 9, 11, 12, 13, 16, 17, 20 y 24, parciales, de la Ley 793 de 2002, [http://www.ramajudicial.gov.co/csj\\_portal/jsp/frames/index.jsp?id-sitio=6&ruta=../jurisprudencia/consulta.jsp](http://www.ramajudicial.gov.co/csj_portal/jsp/frames/index.jsp?id-sitio=6&ruta=../jurisprudencia/consulta.jsp), (analyzing the constitutionality of Colombian expropriation laws), (last visited Mar. 5, 2006).
- <sup>32</sup> See *Kelo v. City of New London*, 125 S. Ct. 2655, (2005) (recounting the Courts analysis of takings law as applied to a government taking for the public purpose of economic revitalization).
- <sup>33</sup> See generally Antonio R. Parra, *Applicable Substantive Law in ICSID Arbitrations Initiated Under Investment Treaties*, *ICSID News* Vol. 17, No. 2 Fall 5, 9 (2000).
- <sup>34</sup> See American Convention on Human Rights art. 21, <http://www.oas.org/juridico/english/Treaties/b-32.htm> (last visited Mar. 3, 2006).
- <sup>35</sup> COLOM. CONSTIT. Art. 58 reads "Se garantizan la propiedad privada y...Por motivos de utilidad pública o de interés social definidos por el legislador, podrá haber expropiación mediante sentencia judicial e indemnización previa...dicha expropiación podrá adelantarse por vía administrativa, sujeta a posterior acción contenciosa administrativa, incluso respecto del precio." Constitución Política de Colombia Art. 58, [http://www.presidencia.gov.co/constitu/titulo2\\_2.htm](http://www.presidencia.gov.co/constitu/titulo2_2.htm) (last visited Mar. 6, 2006).
- <sup>36</sup> *Restatement of the Law Third, The Foreign Relations Law of the United States*, American Law Institute, Vol. 1, 1987, § 712.
- <sup>37</sup> COLOM. CONSTIT., *supra* note 35, art. 58.
- <sup>38</sup> COLOM. CONSTIT., *supra* note 35, art. 58.
- <sup>39</sup> COLOM. CONSTIT., *supra* note 35, art. 58.
- <sup>40</sup> COLOM. CONSTIT., *supra* note 35, art. 58.
- <sup>41</sup> COLOM. CONSTIT., *supra* note 35 art. 34.
- <sup>42</sup> See *Kimball Laundry Co. v United States* 338 US 1 (1949) (finding that proper measure of compensation for a temporary taking is the economic productivity that the property would have acquired during the time of the taking.)
- <sup>43</sup> COLOM. CONSTIT., *supra* note 35 art. 59.
- <sup>44</sup> Decree 1420, art. 21, ¶ 6 of the Ministerio de Medioambiente de Colombia (Colombian Environmental Ministry) Resettlement Policy Framework, [http://www.minambiente.gov.co/viceministerios/ambiente/dir\\_agua\\_potable\\_saneam\\_basico/direccion/politica\\_agua\\_saneam\\_basico/ressettlement\\_policy\\_framework.pdf](http://www.minambiente.gov.co/viceministerios/ambiente/dir_agua_potable_saneam_basico/direccion/politica_agua_saneam_basico/ressettlement_policy_framework.pdf). (last visited Mar. 4, 2006).
- <sup>45</sup> Decree 1420, *id.*
- <sup>46</sup> Decree 1420, *id.*
- <sup>47</sup> Decree 1420, *id.*; see also, COLOM. CONSTIT., *supra* note 35, at art. 90.
- <sup>48</sup> See *Decree 1420*, *supra* note 44.
- <sup>49</sup> See *Kimball*, *supra* note 42.
- <sup>50</sup> See Alexander's Gas and Oil News and Trends, <http://www.gasandoil.com/goc/news/ntl93265.htm>.
- <sup>51</sup> COLOM. CONSTIT., *supra* note 35, Art. 58
- <sup>52</sup> Law 793, Dec. 27 2002 Art. 1 and Art. 2, <http://www.presidencia.gov.co/leyes/2002/diciembre/dominio.htm> (last visited Mar. 6, 2006).
- <sup>53</sup> *Presidente Alvaro Uribe Oredeno Expropiacion de Predios Donde Haya Cultivos de coca y Amapola*, El Tiempo, Sept. 2004 [http://eltiempo.terra.com.co/coar/NARCOTRAFICO/narcotrafico/ARTICULO-WEB-\\_NOTA\\_INTERIOR-1787925.html](http://eltiempo.terra.com.co/coar/NARCOTRAFICO/narcotrafico/ARTICULO-WEB-_NOTA_INTERIOR-1787925.html), (Mar. 6, 2006). [President Uribe Orders Expropriation of enclosures where Coca and Poppy are cultivated].
- <sup>54</sup> Bruce Voss, *Recent Developments: Even a War has Some Rules: the Supreme Court Puts the Brakes on Drug-Related Civil Forfeitures* *University of Hawai'i Law Review*, 493, 532 (1994). (In *Good*, a landlord's property was seized as part of a narcotics bust. The Court balanced Mr. Good's due process rights in controlling his property, the possibility of error when property owners cannot protect themselves through a hearing, and lastly, by showing that the government purpose did not outweigh the private interest because, unlike seizures of movable property, there was not a "pressing need for prompt action." The Court further rejected the government's assertion that in a criminal setting, the public interest in a criminal taking outweighed the private property interest. The Court rejects this argument and further explores exceptions to due process obligations stating that "[w]e tolerate some exceptions to the general rule requiring pre-deprivation notice and hearing, but only in 'extraordinary situations where some valid government interest is at stake and justifies postponing the hearing.'")
- <sup>55</sup> *United States v. Good Real Prop.* 510 U.S. 43, 52 (1993).
- <sup>56</sup> Corte Constitucional ("CC"), 2003, C-1065/03 Cosa Juzgada Constitucional/ Demanda de Inconstitucionalidad (Colom.), [http://www.ramajudicial.gov.co/csj\\_portal/jsp/frames/index.jsp?id-sitio=6&ruta=../jurisprudencia/consulta.jsp](http://www.ramajudicial.gov.co/csj_portal/jsp/frames/index.jsp?id-sitio=6&ruta=../jurisprudencia/consulta.jsp) (last visited Mar. 5, 2006). [Question of Constitutionality of Law 793 before the Constitutional Court]
- <sup>57</sup> *Const. Court, id.*
- <sup>58</sup> See *Decree 1420*, *supra* note 44, (discussing the time limitations on a temporary taking under the environmental conditions of the decree). See also *Resolución 00017*, *supra* note 5, (creating a timetable of one rotation and two rotation crops where by damages are measured based on the number of harvests land may produce per year). *Id.*
- <sup>59</sup> *Decree 1420*, *supra* note 44.
- <sup>60</sup> *Colom. Const. supra* note 35; see also *Resolution 00017*, *supra* note 5.
- <sup>61</sup> *Law 793*, *supra* note 52, at art. 2.
- <sup>62</sup> COLOM. CONSTIT., *supra* note 35, at arts. 34 & 59.
- <sup>63</sup> COLOM. CONSTIT., *supra* note 35.
- <sup>64</sup> See *supra* note 20 (reaffirming analysis that "[t]here is no single explanation for the wide range of Colombia's troubles, but they are rooted in the traditionally limited government presence in large areas of the interior..." (<http://www.state.gov/p/wha/rls/rm/2005/q2/46564.htm>).
- <sup>65</sup> *La Violencia Deja Pueblos Fantasmas en Colombia*, *La Razón*, Feb. 28, 2006. [The Violence Leaves Ghost Towns in Colombia].
- <sup>66</sup> *La Violencia, id.*

<sup>67</sup> *La Violencia, id.*

<sup>68</sup> *La Violencia, id.*

<sup>69</sup> Compare [www.Semana.com](http://www.Semana.com) (outlining attacks by all armed groups and an explanation of the populations in areas surrounding the attacks, [http://www.semana.com/wf\\_InfoSeccion.aspx?IdSec=25](http://www.semana.com/wf_InfoSeccion.aspx?IdSec=25).) with UNODC *Colom. Coca Cultivation Survey*, June 2005 (showing maps of coca cultivation that significantly overlap areas of violence but negating a linear relationship between coca cultivation and poverty). (last visited Mar. 6,

2006).

<sup>70</sup> *Cientificos, supra* note 22

<sup>71</sup> *Cultivation Survey, supra* note 68 at 70.

<sup>72</sup> *Presidente Alvaro Uribe, supra* note 53.

<sup>73</sup> *Departamento de Estado de E.U. Reconoce que Cultivos Ilícitos en Colombia no Ceden*, EL TIEMPO, Mar. 1, 2006, [http://eltiempo.terra.com.co/judi/2006-03-01/ARTICULO-WEB-\\_NOTA\\_INTERIOR-2768934.html](http://eltiempo.terra.com.co/judi/2006-03-01/ARTICULO-WEB-_NOTA_INTERIOR-2768934.html) (last visited Mar. 19, 2006). [U.S.

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