



Above the Law, Under the Radar: A History of Private Contractors and Aerial Fumigation in Colombia

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Key Points:

- The employment of private military and security companies (PMSCs) to carry out government policies has grown exponentially over the past two decades.
- Conventional explanations for this rise, such as cost-saving and down-sizing, do not appear convincing, given the evidence. Instead, it seems national governments are paying a premium to enjoy two major benefits of outsourcing: secrecy and a lack of accountability.
- Aerial fumigation of illicit crops in Colombia, backed financially, diplomatically and logistically by Washington, is a case in point. The ineffective policy is of dubious legality, causes damage to people and the environment, and would, if carried out by US military forces, imply the direct involvement of the US in Colombia's civil war, thereby triggering the application of international law as it applies to armed conflict.
- Moreover, there is substantial evidence suggesting that fumigation, while failing in its officially declared goals, does achieve strategic objectives for Washington and Bogota through the displacement of the rural population from areas of insurgent influence.
- For Colombia, the presence of foreign contractors has implied a significant undermining of national sovereignty. In addition, it has removed any viable recourse for citizens subject to human rights violations by contractors - whether during the course of fumigation operations or otherwise.

INTRODUCTION

The number of professional entities employed by governments to fulfil military tasks is by now unprecedented.¹ Increased demand over the past two decades, primarily from the United States, has engendered a drastic increase in both the size and scope of outsourced operations. During the first Gulf War, a reported one in every one hundred deployed US personnel was a private contractor. By 2001, the US Department of Defense was already considered to be employing around 700,000 full and part-time contractors, and following the invasion of Iraq in 2003, the

number of contractors working for the US government grew to exceed that of regular military personnel in-country.² Prior to the 1990s, certain logistical and construction work had been outsourced by the US military, but it was over the course of that decade that the first boom took place for the outfits now commonly referred to as private military and security companies (PMSCs). Contractors were employed by the US government mainly to carry out logistics, construction, training and, in the Andean region, engage in certain elements of the so-called War on Drugs.³ A

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second and larger expansion of the industry followed the US-led invasions of Afghanistan and Iraq: Washington opted to outsource various military and non-military tasks, and the number of PMSCs grew to take advantage of the demand; services covering the spectrum of operations began to be offered. Estimates now put the size of the global market at well over US\$100 billion a year. Growth has been slowing due to market saturation and the winding down of the wars in Afghanistan and Iraq, but there are no signs the trend towards privatisation of military services is being reversed; traditional arms companies have been expanding into the field, hoping to take advantage of the lucrative opportunities.

The United States is overwhelmingly the largest employer of PMSCs – followed by the United Kingdom⁴ – and is where the majority of such companies are based. Out in the field, contractors are employed in almost every element of US military operations, from back-end logistics, to strategic consultancy, to direct involvement in hostilities. Corporations have also recognised the advantages, turning to hired arms to protect their assets and infrastructure. The work carried out by PMSCs is broad and diverse: contractors are used in air reconnaissance, mine clearance, aircraft maintenance, military and police training, and provide private security for officials and infrastructure; they are often, from sites in the US, controlling the lethal drones active over Asia and the Middle East. During the occupation of Iraq, security details, infrastructure protection, and even interrogation and torture were outsourced by the US military. And in Latin America, PMSCs have been employed to undertake maintenance of materiel, training, and, most controversially, aerial fumigation operations. It is this final element of the issue area that will be examined in the pages that follow. With a focus on the case of Colombia, the report will explore the outsourcing of the aerial fumigation of coca crops within the broader strategic objectives of the US and Colombian governments. The aim is to

explore not only the dynamics of the decision to outsource fumigation, but also the context for the continuation and even expansion of a harmful, destructive and ostensibly failing policy. It is hoped that a holistic understanding of this episode in the drug policy of Colombia will help inform debates around future options within the country, including those following the indefinite suspension of aerial fumigation in May 2015.

THE BENEFITS OF OUTSOURCED WAR

Over the past two decades the image of the lone mercenary, the quintessential soldier of fortune, has been replaced by a professional entity offering a range of military services. The UK-based NGO War on Want has discussed the rise of these organisations that ‘have moved from the periphery of international politics into the corporate boardroom, and are now seeking to become a respectable part of the military sector’:

Today, the PMSC industry comprises hundreds of companies operating in more than 50 countries worldwide and working for governments, international institutions and corporations. They provide a wider array of services than traditional mercenaries, and employ better public relations machines. They are involved in direct combat, operational support, the provision of security, intelligence gathering, training, technical assistance and post-conflict reconstruction. PMSCs also encompass a wide variety of legal structures: private companies, companies listed on the stock market, and subsidiaries of much larger entities.

Important moral and legal questions are raised by fact that PMSCs have grown to become integral parts of modern Western warfare. Numerous dedicated publications have discussed these issues in detail and the arguments will not be repeated here.⁵ Instead, a selection of the more consequential implications, relevant to the topic being

discussed, will be mentioned. Perhaps most importantly, PMSCs, particularly in the manner they have been used by the US government, have provided an effective vehicle for skirting accountability and bypassing restrictions on the use of military forces overseas. Writing in the *Yale Journal of International Affairs*, Allison Stanger and Mark Eric Williams describe this undermining of democracy as the first benefit of outsourcing:

In Eastern Europe, Latin America, South Asia, and the Middle East, outsourcing has enabled Washington to undertake a diverse set of strategic operations—and in some instances, to do so without committing a large contingent of U.S. troops. Such flexibility is especially useful to presidents who pursue policies that lack strong support from Congress or the American public. To illustrate this point, consider the extraordinary flexibility of U.S. policy in the former Yugoslavia, where outsourcing enabled Washington to attain three strategic advantages: influence the balance of power on the ground, retain an official position of ‘honest broker,’ and uphold the 1991 UN embargo on weapons sales to any of the warring groups.⁶

In an unusually candid comment, one senior American official explained why it had been useful to hire contractors from the US military services company DynCorp to do logistics work during negotiations in Sudan:

Why are we using private contractors to do peace negotiations in Sudan? The answer is simple. We are not allowed to fund a political party or agenda under United States law, so by using private contractors, we can get around those provisions. Think of this as somewhere between a covert program run by the CIA and an overt program run by the United States Agency for International Development. It is a way to avoid oversight by Congress.⁷

With this advantage in mind, it should be recognised that the tendency to use PMSCs has

taken place amid a general preference among US administrations for clandestine operations. The wars in Afghanistan and Iraq relied heavily on Central Intelligence Agency (CIA) and Special Forces-run paramilitaries that are able to act free from accountability and scrutiny - beyond the occasional scandals unearthed by journalists. Likewise, the secretive US Joint Special Operations Command (JSOC) has been given a greater role over the course of the wars, while the drone programme, amounting to a global campaign of officially-denied extra-judicial assassination, provides perhaps the most prominent example of modern ‘dark’ operations. Furthermore, as both wars progressed and came under scrutiny, information was increasingly classified and shielded from the public. These trends likely represent a recognition among policy makers that they cannot openly deploy the kinds of operations used in the past - in South East Asia in the 1960s for example. While it would be incorrect to claim the emergence of a large market for PMSCs represents some fundamental change in foreign policy goals, it is likely right, as Stanger and Williams point out, that employing contractors has allowed the United States Government ‘to pursue a more ambitious foreign policy agenda than its all-volunteer force might otherwise have allowed.’ In this sense, PMSCs are not particularly revolutionary: they are foreign policy by other means, one more tool at the disposal of the state and analogous in practice to a CIA covert operation or support for local proxy forces like paramilitaries.

In keeping with the trend towards secrecy, oversight of contractor activity has been almost non-existent. In the US the procurement process itself plays an important role in avoiding public and congressional scrutiny. Contracts below a \$50 million threshold do not require approval from Congress and there is no legal obligation to provide information about the text, either to the public or other officials. If procurement takes place through the Pentagon - via the Foreign Military Sales programme,

used for services for foreign governments – the State Department licensing procedure is bypassed entirely. Examining the available information on Pentagon contracts between October 2001 and May 2013, David Vine, an Associate Professor at the American University in Washington D.C., found the largest share of contracts had been granted to unidentified ‘miscellaneous foreign contractors’.⁸ Contracts also tend to be vague, allowing for a broad interpretation of tasks, which in turn allow officials to deny responsibility if PMSCs overstep their official contract or if things go wrong.

How PMSCs should be considered from a legal standpoint is a point of contention and debate. Of particular concern is the fact that the conventional established mechanisms and legal avenues for prosecuting members of the armed services do not cover contractors. This discussion is important, but it is also important to recognise how contractors have been defined and treated *in practice*. In countries where its military forces are stationed, Washington has been careful to sign agreements – often with governments the US helped install – that grant impunity for its forces. Contractors have been covered in such agreements. Across their theatres of operations, although perhaps most infamously in Iraq and Afghanistan, these modern soldiers of fortune have demonstrated a propensity to engage in grievous abuses and violations of human rights.⁹ The official response has been illuminating. In the vast number of cases impunity has been the norm, meaning little or no disparagement of similar behaviour in future.¹⁰ US officials have not pressed for relevant legislation or prosecutions and have regularly granted new contracts to companies under investigation for abuse or fraud, implying these issues have not been of concern. ‘Apparently, there is no misdeed so big that it can keep guns-for-hire from working for the government,’ comments one *Guardian* journalist in an article detailing yet another case of abuse by the US company

Blackwater, later renamed Xe and now known as Academi.¹¹ Neither the US or UK governments have worked to create specific legislation pertaining to PMSCs; perhaps realising the detrimental impact it would have on the utility of hiring contractors, they have generally been reluctant to bring individuals or companies to justice for their crimes. There has also been no concerted effort to introduce or amend relevant international laws, and no dedicated system of accountability has been created to address PMSC activity.¹²

In the early 2000s, in the midst of the contracting boom, the United Nations General Assembly did pass a relevant convention – the International Convention against the Recruitment, Use, Financing and Training of Mercenaries – which banned the use of mercenaries by States. The United States and the UK refused to ratify the convention. The UN’s Special Rapporteur on The Question of the Use of Mercenaries stated in 2001 that, in his opinion, private security companies constitute ‘one of the new forms of mercenary activity’.¹³ In 2005, the UN established a dedicated Working Group on the Use of Mercenaries. In a 2007 statement, the group expressed their concern with the poor response to the Convention, which only 30 States had ratified, and with ‘the lack of regulation at the regional and national levels regarding private military and security companies which operate without oversight and accountability.’ The statement ended by urging ‘exporting States to avoid granting immunity to these companies and their personnel.’¹⁴ In Afghanistan, Iraq, Colombia and elsewhere, the US had already signed agreements granting full impunity to their contracted employees, removing any recourse to legal measures in response to crimes committed against the population; a remarkable surrender of national sovereignty. The UN’s Special Rapporteur warned in 2003 that the vagueness of relevant conventions, which have been useful for the employing countries, pose a serious threat to weak States:

*The persistence of mercenary activities, the tremendous variety of methods by which mercenaries operate and the support networks and organizations hidden behind these activities show that States, particularly the smallest and weakest ones, are not adequately protected against mercenarism and its various forms. There are international legal instruments which condemn mercenarism, but their definition and characterization of it are flawed, that is, they contain gaps, imprecision, technical defects and obsolete terms that lend themselves to overly broad interpretation.*¹⁵

The lack of external pressure has had ramifications in an industry that is in no rush to self-regulate. It appears also to have led to a gradual de-professionalisation: as the bottom line became the goal, PMSCs operating in Iraq reduced both pay and required qualifications. In his book on PMSCs, Shawn Engbrecht, a former-contractor-turned-author, compares the PMSC system to that of PADI, the international scuba-diving body responsible for accreditation. In the early days of recreational scuba diving, a potentially dangerous activity, a number of deaths reflected badly on the industry and deterred possible customers. In response, the diving community professionalised, successfully creating and enforcing strict guidelines, practices and a recruitment policy that made scuba-diving a safe activity. Engbrecht compares this to the PMSC recruitment process he experienced in Iraq:

To apply as a security contractor ... one must send in an application, which may or may not be fact checked. Many companies have no prerequisites and offer no formal training for the most part. Without further ado, one is issued a high-velocity rifle and has the power to terminate life. ... This is the best a multi-billion dollar industry with stupendous profit margins has been able to concoct in terms of organizing its profession.

‘If PMCs bought out the diving industry,’ Engbrecht writes, ‘we’d all drown.’¹⁶

Another major benefit of outsourcing, openly recognised both by officials and individuals involved in the sector, is that the death of a contractor does not provoke the same kind of public reaction as the death of a uniformed soldier. ‘If a [private contractor] is shot wearing blue jeans,’ remarks one PMSC lobbyist, ‘it’s page fifty-three of their hometown newspaper.’¹⁷ The wars in Iraq and Afghanistan have demonstrated the accuracy of this comment. The former U.S. Ambassador to Colombia, Myles Frechette, once explained: ‘Congress and the American people don’t want any servicemen killed overseas. So it makes sense that if contractors want to risk their lives, they get the job.’ Such comments provide another indication that the growing use of PMSCs is not just a natural progression following post-Cold War military downsizing, as many have suggested, but is part of the constant search by officials to avoid the gaze of an increasingly aware public. A contractor can, in the manner of a local paramilitary soldier, carry out US policy unleashed, without fear of repercussion. Engbrecht points out the implications of Order 17, which was signed in 2004 between the US government and the newly installed Iraqi regime and which gave PMSCs impunity from local prosecution: ‘In short, [contractors] were supplied with a legal, U.S. Government-sanctioned license to run amok without redress of any grievance. [The Bush administration] essentially placed tens of thousands of armed men beyond the reach of any law.’¹⁸

A further justification has been offered for the use of PMSCs: cost-saving. Of the reasons so far discussed, this seems the least plausible as an explanatory factor for their adoption. On the one hand, the link between privatisation of military services and cost-reduction is not proven. Nevertheless, more importantly, not only does the evidence undermine the argument, it suggests the opposite: the nature of the contracting process demonstrates a preference for using expensive foreign companies over local options and a lack of serious concern with

inefficiency, massive cost overruns and often fraud. Any cost-saving influences of a market system are subverted by the regular handing out of no-bid contracts, and the US PMSC market is also oligopolistic, dominated by a small number of favoured contractors.

Contracts also tend to include explicit stipulations allowing for massive cost overruns – known as ‘cost-plus’. The provision means the government is obliged to reimburse expenses and to provide an extra fee on top. For the PMSC, this means there is actually an incentive to run-up high costs. Again, the official response has suggested this is no great worry: instances of fraud, sometimes on a massive scale, have only been pursued occasionally and have not barred companies from future contracts. ‘Publicly available data shows that Defense Department dollars flowing into non-competitive contracts have almost tripled since the terrorist attacks of 9/11,’ the Center for Public Integrity reported in 2011. Justifying such practices, US officials have regularly fallen-back on the claim of ‘an unusual and compelling urgency’ that forces them to push through such contracts. Sole-source contracts, where only one bid is accepted, and bridge agreements, in which the contract is simply extended and not reopened to competition, are also common; in Iraq and Afghanistan a quarter of all contracts were bridge extensions. Subcontracting by contractors is typical practice, and leads to enormous and unnecessary fees for intermediaries.

The US government’s Narcoterrorism Technology Program Office, which is responsible for granting contracts, uses two types of contractors, ‘primes’ (of which there are five) and then ‘subprimes’.¹⁹ Many contracts are granted to ‘primes’ on the knowledge they will simply be handed over to subcontractors. ‘Can you imagine the amount of money we are spending on the middleman cut in this government?’ stated Senator Claire McCaskill at a dedicated subcommittee hearing in the US Senate. ‘In the Pentagon alone, it

is billions of dollars,’ she said, adding, ‘this would never happen in the private sector.’ Again, such practices are officially justified on grounds of expediency.²⁰ Another problem is the tendency to grant ‘umbrella contracts’ covering a wide range of services to one organisation, as oppose to dividing up the tasks into relevant areas and having the contracts competed over individually. ‘Sole-source and other noncompetitive contracting practices at the Pentagon have been the subject of numerous investigations by the Government Accountability Office, the Defense Department’s Inspector General, and the Commission on Wartime Contracting, among other government watchdogs,’ notes the Center for Public Integrity. The shared conclusions of these investigations were ‘wasted dollars, lower quality goods and services, and in some cases, outright fraud.’ While the policy means a major windfall for certain companies, the Center pointed out that ‘the taxpayer is the loser’, left picking up the bills. According to the US Commission on Wartime Contracting, between \$31 to \$60 billion of taxpayer money was lost to fraud during the wars in Afghanistan and Iraq.²¹ President Obama has expressed a desire to reform the process, but in reality little has changed.²²

A 2010 Subcommittee Hearing on Contracting Oversight, just cited, provides an illustration of the approach taken by the US Department of Defense. The witnesses present, to be interviewed by the subcommittee, were David T. Johnson, the Assistant Secretary for International Narcotics and Law Enforcement Affairs at the Department of State (INL), and William F. Wechsler, the Deputy Assistant Secretary for Counternarcotics and Global Threats within the Department of Defense. Over the course of the hearing it became clear that, quoting Senator and subcommittee Chairperson Claire McCaskill, ‘The State Department appears to have underreported its contracts to the Subcommittee by hundreds of millions of dollars for Colombia alone’. It was also revealed that between 1999 and 2009 the

Defense Department had spent \$5.3 billion on counternarcotics programmes, an estimated 18 per cent of which had gone to contractors. The Defense Department representative was unable to offer an accurate number for the amount spent because, he announced to an incredulous audience of Senators, that task had been outsourced to a contractor, at a cost of \$50,000, and the figures had not yet come back. ‘Are you kidding me?’ McCaskill is quoted as saying. ‘Have we gotten to that point that we have to hire a contractor to prepare for a Subcommittee on Contracting Oversight hearing? Does anybody else feel that you are in a hall of mirrors in a fun house?’²³

Another issue central to the use of contractors is worth mentioning. PMSCs are profit-maximising companies: they have a vested interest in making their operations more profitable. Given the opportunity they have regularly taken advantage of their position to extract as much payment as possible, whether that means outsourcing to unreliable local providers at much lower prices or simply not carrying out the work and pocketing the cash. It also influences the way they operate. Shawn Engbrecht describes some of the cost-saving measures taken in Iraq:

*When a PMC is forced to compensate a family for a “bad kill”, the money has to come from the profit margin of the PMC. As PMCs are “for profit” entities, there is every incentive to drag feet, lose paperwork, and simply deny that the event even occurred in the first place. It was always easy to blame “another security company” as so many operated in the same battlespace.*²⁴

PMSCs have also taken advantage of ‘offshoring’ and other methods to protect their revenues from taxation at home.²⁵ Compounding these issues are the close links between PMSCs and officials in the US, and the occasional rotation of personnel between these organisations.²⁶ The case of Lieutenant General Robert Dail is an illustrative example: four months after

leaving his job as the head of the Pentagon’s Defense Logistics Agency, Dail took a position with Supreme Group, a major beneficiary of Pentagon food contracts during his tenure.²⁷

PRIVATISED POLICY IN COLOMBIA

The fumigation of illicit crops in Colombia is the longest running and perhaps one of the most controversial US government policies to be outsourced to a private company. Through the provision of massive amounts of funding, and concomitant diplomatic support and occasional pressure, Washington has ensured the continuation of a policy that has caused damage to people and the environment, incited tensions between Colombia and its neighbours, and stoked outrage both at home and abroad. Fumigation has also been criticised for being ineffective, even counter-productive, and is recognised to be one of the least cost-efficient means of combating drug production. In Colombia it is especially expensive: spray planes regularly need to be accompanied by helicopters and ground forces in order to deter guerrilla attacks.²⁸

The first instance of aerial fumigation in Colombia was in 1978 in the Sierra Nevada mountain range near the city of Santa Marta on the Caribbean coast. The target was marihuana.²⁹ Since then the use of aerial spraying has grown substantially, in the process displacing cultivation of illicit crops from a handful of Colombia departments to around two thirds. Coca cultivation is today the main target, along – to a lesser extent – with marihuana and opium crops. The herbicide being sprayed has changed over time, but in the 1980s the government began spraying a glyphosate-based product (Round-Up Ultra, manufactured by the Monsanto Corporation), which, until late 2015, remained the chemical of choice.

Fumigation operations carried out by Colombian forces had been sporadic up until the 1990s when the US stepped in with enormous

financial backing.³⁰ Since then the US-financed aerial fumigation of illicit crops in Colombia has been carried out by the Virginia-based PMSC Dyncorp. Dyncorp, which was formed in 1951, began operating in Colombia around 1993 and reportedly began spraying in 1996. The company offers a range of services to both governments and corporations. Its staff have been active in a number of overseas theatres for the US military and, notoriously, in a domestic capacity following Hurricane Katrina in New Orleans. Dyncorp's involvement in the Andean region and the 'Drug War' began in earnest in the 1990s. In 1991, DynCorp received a 5-year \$99 million contract from the INL to undertake aircraft maintenance and training for local pilots and mechanics, and to conduct fumigation operations in the Andean countries and Guatemala. This contract expired in 1996. Three 'sole-source' contract extensions were then handed out, including the contract to operate fumigation in Colombia, and in 1998, another 5-year contract reportedly worth \$170 million was awarded for work in the Andean region.³¹ By 2000 Dyncorp had become the third largest employee owned business in the United States and effectively an unofficial private arm of the US government, relying on the State for the vast majority of its revenue. Since 2001, the company has continued to do well from the War on Drugs: between 2005 and 2009, of the total \$3.1 billion in contracts awarded by Washington for counter-narcotics work DynCorp received more than a third (\$1.1 billion). As is now normal for the industry, the company has a 'political action committee' dedicated to lobbying the US congress. In 2001, 'DynCorp retained two lobbying firms ... to successfully block a bill that would have forced federal agencies to justify private contracts on cost-saving grounds.'³² During the 2012 elections, Dyncorp 'donated \$10,000 to both the chair and ranking member of the House Armed Services Committee, and made additional donations to thirty-three other members of the House and Senate armed services committees and sixteen members of the two appropriations committees.'³³

In 2003, the company was sold to Computer Sciences Corporation, then to Veritas Capital fund LP in 2005. It went public in 2006 as DynCorp International and was acquired by Cerebus Capital Management in 2010. In 2011 a record number of staff were hired, 12,300, taking the total number of employees to around 27,000. DynCorp maintains close connections with Washington. In 2008, Veritas Capital Fund, then the holding company, took on General Barry McCaffrey, former director of the US Office of National Drug Control Policy (1996-2001), and self-described 'unabashed admirer of outsourcing' as a member of its advisory council on Defense and Aerospace.³⁴ James Woolsey, former CIA director, once sat on the board.³⁵ Employees in the field have on a number of occasions been found to engage in criminal acts, including drug use and trafficking, sexual harassment and human trafficking, and human rights abuses against local populations. The company has also been accused of fraud and over-billing. During the 1980s, it was DynCorp subcontractor Eagle Aviation Services and Technology that assisted the transfer of weapons to the contra terrorist groups attacking the Nicaraguan government as part of what became known as the Iran-Contra scandal.³⁶

In Colombia evidence suggests that Dyncorp employees engage in a variety of activities including the piloting of fumigation and observation planes, search and rescue helicopters, and the helicopter gunships that accompany the spray planes on their missions.³⁷ Contractors also undertake maintenance of materiel and training of local forces, and there are some indications they are involved in intelligence gathering, interception of guerrilla communications and the provision of satellite images of guerrilla movements and base locations. In a few cases, DynCorp contractors have carried out rescue missions of downed helicopters,³⁸ leading to exchanges of fire with the guerrillas.³⁹ The company's involvement expanded greatly following Plan Colombia, the US funding initiative that began in 2000; their

presence in the country grew from around 50 employees in 1998 to around 335 (including US and non-US nationals) by 2001.⁴⁰ Among the other beneficiaries of the Plan, which handed many official tasks over to private businesses, were Chemonics International, which was awarded a contract to oversee Alternative Development initiatives; Associates in Rural Development Inc., a subsidiary of Tetra Tech, which won a similar contract; and Checchi and Company Consulting, which was involved in working on Justice Reform and subcontracted out part of the work to Partners of the Americas and the International University of Florida. Other PMSCs that have reportedly operated in the country, undertaking a variety of tasks, are California Microwave Systems, Arinc, Rendon Group, ACS Defense, Northrop Grumman, Lockheed-Martin, ManTech, TRW, Matcom and Alion.⁴¹

Involved in military and military-related tasks, Dyncorp has become an important actor in Colombia's domestic conflict. Employees have even been the target of guerrilla attacks: in 1998, a FARC assault on the Miraflores airbase was considered to have been aimed at the Dyncorp contractors working there.⁴² (In a famous case involving contractors from a different firm, in 2003 three contractors working for California Microwave Systems, under contract from Northrop Grumman, were captured and another reportedly killed by the FARC following the shooting down of their plane while they were, officials said, involved in an operation to monitor coca cultivation.⁴³ A rescue mission involving three more contractors also crashed.) Through the outsourcing of certain operations to Dyncorp, successive US administrations have been able to have a greater presence in Colombia than that mandated by Congress under the Plan Colombia funding. When the funding began, Congress had approved the presence of 400 US military personnel and 400 U.S. citizen contractors, figures that later rose to 800 military personnel and 600 US contractors; according to State department officials, the total number of contractors in Colombia had to be halved from around 1,200 in order to

meet the new restrictions.⁴⁴ It is not known for certain, but it is likely that a significant proportion of DynCorp's employees in Colombia are non-US nationals; in 2001, according to press reports, the figure was two thirds.⁴⁵

The US government's employment of a US company to carry out a policy in another country has serious ramifications for Colombia's national sovereignty. Access to information on the policy is a serious issue, especially for local civil society. The prestigious Colombian legal collective, *Corporación Colectivo de Abogados José Alvear Restrepo*, reports that the procurement of services arrangement under which DynCorp operates is constructed so 'that no Colombian government agency may exercise any control or oversight of the bi-national programs undertaken by mercenary transnational security enterprises, which are legalized through these agreements.' The collective also notes that 'Colombian agencies do not even have information concerning the number of mercenaries in the country.'⁴⁶ In 2006, the collective requested the Defense Ministry make public the number of contractors that had worked on Plan Colombia since 2000. The response was blunt: 'This Ministry does not possess information as to the number of contract workers (national or foreign) that have supported the different programs implemented with the cooperation of the US government as a part of Plan Colombia since 2000. This information is exclusively handled by the US Embassy in Colombia.' 'Not even the Civil Aviation Administration (Aeronáutica Civil) has knowledge of the activities undertaken by DynCorp aircraft in Colombia,' reports the most popular Colombian weekly, *Semana*. According to their source, 'No authority, be it Aviation, Customs, Police, or Army, is authorized to review DynCorp aircraft arriving to Colombia. The Narcotics Affairs Section is who decides which aircraft, leaving from the US air bases and entering the country, are subject to revision. No one knows what is transported in those planes when they return to the US because they are untouchable.'⁴⁷

The lawyer's collective argue that when the Colombian government accepted the conditions that have allowed contractors to operate in this way, 'it undermined national integrity, which is a conduct classified in the Colombia's Criminal Code (Article 455 of the Colombian Constitution), consisting in carrying out 'acts tending to undermine the territorial integrity of Colombia, subjecting the country -either entirely or partially- under foreign domination, affecting its nature as a Sovereign State, or fracturing national unity.' Regardless, 'no Colombian authority has yet to make a pronouncement against the presence of mercenaries in Colombia. To the contrary, it has been justified by claiming: 'US military presence in national territory does not signify it has a bellicose nature, since there are also acts of international fraternity and courtesy, whose acceptance or not depends on the signing of bilateral agreements', to quote the considerations of a Chamber of Representatives investigative commission into possible crimes committed by then President Alvaro Uribe. The conclusion lacks weight, the collective points out, because 'judicial and legislative branches in Colombia have never examined these agreements, as ordered by constitutional procedures in force.'⁴⁸

Contractors in Colombia enjoy a blanket impunity that denigrates sovereignty and would surely not be permitted to foreign citizens working in the United States. In an illustrative example in 2000, a local police officer was removed from his post reportedly at the behest of the Narcotics Affairs Section of the US embassy in Bogota.⁴⁹ He had been leading the investigation into the trafficking of heroin to the US by DynCorp employees. After his removal there were no subsequent prosecutions. In 2005, the Colombian Attorney General (*Procurador General de la Nación*) had written to then President Alvaro Uribe requesting relevant laws be enacted that would bring contractors under the jurisdiction of the Colombian legal system. He received no response from the administration that had

earlier signed away the right to send any US citizen to the International Criminal Court without first asking Washington's permission.⁵⁰

Such is the subservience of the Colombian State to US objectives that public disagreements over fumigation, despite the controversies and the impact on the local population and environment, have been rare and superficial. When they have occurred, they have offered a useful insight into the relationship. A prominent case of discord was the suspension of the fumigation programme in August 1996 over the Colombian government's objection to US citizens piloting the spray planes. The government demanded the task be transitioned to Colombian pilots. (It is revealing that despite the history of documented harm to the local population, fumigation had, until recently, only ever been suspended over tactical disagreements or when a contractor was killed.⁵¹) Washington's response, the internal documents show, was to offer an ultimatum: allow US or third-country nationals to fly the planes (then owned by the US government) or 'go it alone'. The resulting capitulation by the Colombians goes some way in illuminating the internal dynamics of the relations between the two governments. A declassified US embassy cable recounts the moment the Colombian Minister of Defense and two representatives from the Colombian National police, a General and a Colonel, received a dressing-down by the US ambassador for their 'lack of cooperation'. 'General Montenegro sat throughout with his arms crossed, lips tightly sealed, staring firmly at the ceiling,' the cable reported, while the police Colonel 'at times with tears running down his cheeks' tried in vain to rebuke the criticisms. Further castigation by the Ambassador was met with 'stunned silence' by the Colombians. The Minister of Defense eventually conceded that he would 'reluctantly' recommend to the President that the use of US pilots be allowed. The US ambassador, the cable notes, was 'amazed to see the Colombians give way so easily.'⁵² Fumigation was restarted after just over a

week's suspension. (The cable also provides an example of established practice in Colombia: tying any opposition to government policy to the FARC. Referring to the enormous protests against fumigation in 1996, the Colombian representatives told the US ambassador it was 'imperative to begin spraying coca immediately ... so as not to give the narcos and the guerrillas, who had inspired the peasant demonstrations, the belief that by arranging demonstrations they could stop or even slow down the drug eradication program.' Referring to these events, the embassy comments that the Colombian government had 'courageously withstood widespread, large scale demonstrations in Southern Colombia.')

Another cable, sent from the INL to the US embassy in Bogota just prior to the meeting, laid out the options that should be offered to the Colombians, and advised the ambassador to warn them of the implications of not playing along: 'Ambassador should stress the urgent need to move this program forward deliberately and quickly, and the importance of this program to Colombia's certification.'⁵⁴ The Colombian government is no-doubt well aware of the costs of disobeying Washington. In the words of one Colombian commentator writing in *Le Monde Diplomatique*: 'Any time a high authority in Colombia has welled with dignity and tried to protest, Washington has threatened to remove economic help.'⁵⁵ The internal US government documents do suggest that around the late 1990s there was some support for phasing out the use of private contractors in favour of locally trained pilots; according to the US embassy, this transition would help in 'blunting simplistic nationalist criticisms about US presence.'⁵⁶ Nevertheless, the hand-over never occurred and instead Dyncorp's presence increased in the following years.

The hiring of Dyncorp contractors to run the aerial fumigation programme is a paradigm example of the problems with outsourcing discussed earlier. According to those familiar with the mechanics of the process, Dyncorp

is paid per hectare of illicit crops sprayed, the result of which is an approach to spraying that prioritises profits. It makes sense, from the perspective of a profit-seeking entity, therefore, to spray one large area of crops, move to another area and spray, and so on, eventually returning to the first area when cultivation has returned in force.⁵⁷ It would not be profit-maximising to spray one area and then return shortly after in order to deter further cultivation, something a government programme might choose to do. The fact that the tasks for which Dyncorp is paid are consistently not achieving their purported aim has not affected the granting of contracts. Neither do inflated costs appear to be a concern; a State Department Audit, for example, has argued that paying Dyncorp employees is a far more expensive option than having the local police hire local contractors, but that finding has had no implications for policy. Declassified internal discussions also demonstrate the recognition that the 'savings would be considerable' if local pilots were used instead of contractors.⁵⁸ Oversight has, as usual, been almost non-existent. Although it is officials at the Narcotics Affairs Section within the US Embassy who are supposed to oversee Dyncorp's operations, the US government does not appear to monitor the company's activities in Colombia. As the US government sees it, Dyncorp is fulfilling a contract, a business arrangement. The US Embassy, which is supposed to be in charge of the following of all the contracts, does not effectively oversee Dyncorp's activities. The PMSC is in charge of hiring the employees, and providing the necessary material. The US government, meanwhile, 'is interested only in outcomes,' according to a US embassy official in Bogota.⁵⁹ Contractors in Colombia are essentially accountable to no one for their actions in country; a remarkable surrender of sovereignty on the part of the Colombian government, the only government in the world that, until the programme was suspended last year, allowed fumigation on its territory. Events have put this accountability to the test. For example, there

is evidence that contractors from the private company Airscan, along with US officials, supplied the intelligence that led to the 1998 bombing of a Colombian town and resulted in the deaths of 18 civilians. There have been no investigations or recriminations. In a report published in 2011, a US Subcommittee on contracting pointed out that, 'The federal government does not have any uniform systems in place to track or evaluate whether counternarcotics contracts are achieving their goals'.⁶⁰ During a meeting of the Subcommittee on the same topic, Senator Claire McCaskill noted, 'It's becoming increasingly clear that our efforts to rein in the narcotics trade in Latin America, especially as it relates to the government's use of contractors, have largely failed.' McCaskill commented on the now familiar lack of concern with either costs or measures of success: 'Without adequate oversight and management we are wasting tax dollars and throwing money at a problem without even knowing what we're getting in return.'⁶¹

THE US GOVERNMENT IN COLOMBIA

Washington's support for fumigation is only one element of its policies in Colombia. And in order to understand the framework into which the policy fits, it needs to be considered within the broader engagement in the country. The modern roots go back to the 1940s and the assassination of a popular presidential candidate which ignited social tensions and began a brutal civil war in which over 200,000 people lost their lives. The violence subsided only after an agreement was signed in 1958 between two competing groups, the Liberals and the Conservatives, forming what was known as the National Front government. The power-sharing agreement essentially held in place the colonial-style structures of wealth and influence, but allowed a space for two separate sets of elites in managing the country. A third group, opposed to the vastly unequal distributions of land and wealth, then

came under vicious attack from both sides. The US intervened to support the oligarchic groups in the 1950s, providing training, funding and assistance. In the early 1960s, armed rebellions developed in the countryside, driven to violence by the lack of political means through which desires for changes in the vastly unequal distributions of wealth and land ownership could be realised. The US stepped-up its assistance, and since then superpower intervention has ensured the continuation of an economic and political arrangement controlled by a local group of elites, and an economic model that has progressively opened the country to foreign capital. Writes Doug Stokes in his study of US intervention: 'While the Colombian state was repressive prior to US [Counter-Insurgency - CI] aid and training, the qualitative character of US intervention in Colombia served further to legitimate, support and entrench the strategy of state terrorism. US-sponsored CI was thus directly responsible for the ideological legitimization of widespread terror directed specifically at civil society in the name of anti-communism.'⁶² US intervention in Colombia, Stokes writes, has 'served to raise the associated costs of dissent and ... was designed to pacify or destroy restive sections of society while insulating national economic and political structures from popular reforms.' Drawing on US counter-insurgency manuals, Stokes demonstrates how foreign training, support and indoctrination of the armed forces created an atmosphere in which 'membership of trade unions, political lobbying and even criticism of the government were considered signs of "communist subversion"'.⁶³

The end of the Cold War has done nothing to slow these tendencies: paramilitary and state violence actually became worse through the 1990s alongside massive and rising US support. Historically, it is the paramilitaries and the state that have been responsible for the vast majority of threats, violence and killings in the country.⁶³ Judged in terms of strategic objectives, the US-backed policies have been a resounding success. Colombia has one of

the friendliest investment climates in the region and is a staunch US ally. Not unrelated, it is also the most dangerous country in the world to be a trade unionist, and the security forces have a horrendous record of abuses, massacres and assassinations and are closely linked to paramilitary groups. Human rights defenders, environmentalists, and opposition political members are regularly threatened and killed. To give one recent example, an opposition political movement that emerged in 2012 and called for a change in the country's exclusionary economic regimen had 27 of its leading members and activists murdered over the course of the following year.⁶⁴

The injustices that led to an armed uprising in the 1960s have meanwhile not been rectified. Vast inequalities in land ownership remain. Today 77 per cent of the country's productive land is in the hands of 13 per cent of the owners, and 3.6 per cent of that group hold almost a third of all productive land.⁶⁵ Aggressive neo-liberal economic reforms enacted over the past two and half decades have meanwhile had the usual effect: a GDP-based 'economic miracle' for some, rising inequality, and stagnating poverty for the most vulnerable. Through the 1990s, as the reforms took their toll, the proportion of people living in poverty in Colombia reached 40 per cent; in 1986 it had been 18 per cent.⁶⁶ After a decade of liberalisation a Colombian university study concluded that 'the effects are largely negative in terms of the process of development and overcoming social gaps in the country.'⁶⁷ At the mid-point of the administration of Alvaro Uribe (2002-2010), a hard line right-winger and US-favourite, rural poverty reached 80 per cent; a fact worth keeping in mind during the later discussion of fumigation, cultivation and 'counter-narcotics'. Between 2002 and 2009 Colombia fell from 68th to 77th on the UN's Human Development Index and by the end of Uribe's two terms in office, the UN Economic Commission on Latin America noted Colombia was the only major country in the region with a growing gap between rich and poor. In terms

of wealth, Colombia is today one of the most unequal countries in the most unequal region of the world. Steady GDP growth and rising Foreign Direct Investment are widely praised with little consideration of the facts on the ground. According to a report by UNHABITAT, 60 per cent of workers in Colombia are considered to be engaged in the informal sector, and Colombia is one of the few country's in Latin America where,⁶⁸ 'there has been an increase in the informal sector in a period of good economic performance.'⁶⁹

In order to maintain the political and economic dispensation, the government and its paramilitary allies continue to engage in executions, torture and massacres, threats and targeted assassinations.⁷⁰ Investigations and prosecutions against the perpetrators have been rare; impunity tends to be around 90 per cent for military and paramilitary murders of human rights defenders, trade unionists and opposition political activists.⁷¹ The US has played a decisive role in Colombia, and, although there has been occasional minor changes and withholding of funds, support to the government has been essentially unwavering. Officials regularly speak with pride of the situation they have engendered in the country, holding it up as a model to be replicated elsewhere.⁷²

THE ROOTS OF COCA CULTIVATION

Colombia became a major producer of cocaine during the 1980s. Production grew in the 1990s alongside punishing reforms that opened the country to an avalanche of foreign goods and hit hardest in the agriculture sector. Such economic policies, pursued for decades by the Colombian government and supported by Washington, are at the core of a poor farmer's decision to cultivate coca. In a recent study, the Government's Comptroller General drew the link between the State's long-held objectives and the dire situation for poor farmers in the countryside. The prevalent 'agricultural policy

crisis', noted their report, is the outcome of 'the lack of political will on the part of the state to make viable the *campesino* economy'. While the present administration has adopted reforms ostensibly designed to create a more equitable distribution of land, these policies 'in reality display the contrary'. The incumbent Santos administration (2010-), like its predecessors, is focused on promoting 'exclusive trading strategies, based in "mega-projects" which don't solve the underlying problem,' but instead 'could consolidate and deepen even further both displacement and concentration of land.' These are the reasons that 'after almost 200 years of reforms and counter-reforms, and many billions of pesos invested, the same crisis reigns in agriculture.' And it is why rural farmers in Colombia have had to rely on growing first marihuana, and later coca and opium in order to meet their subsistence needs.⁷³

Domestic agricultural production has suffered at the hands of subsidised foreign competition and a lack of investment and support from the State, which, on the standard Latin American model, is dedicated to encouraging large-scale monoculture production and resource extraction for export. Washington's policies have been central to the creation of the country's prevalent agricultural crisis. In 1954, for example, the Food for Peace agreement forced subsidised US wheat on the Colombian market. Colombia, a wheat producer at the time, half a century later imports its wheat from the US. In 1988, the US and the International Financial Institutions led the way in ending the International Coffee Agreement (ICA), a price stabilising mechanism for the small-scale farmers responsible for the majority of coffee production (at the end of the 1980s around 300,000 farmers were employed in growing coffee beans and the industry provided around 2 million jobs in the country). Prices plummeted with the termination of the ICA. Many families, left destitute, chose to cultivate coca, a resilient crop with a stable market. Under the new

rules, post-ICA, a Colombian government programme designed to stabilise coffee prices would technically be illegal.

In any case, the State has done little to alleviate the crisis experienced by the small agriculture producer. The Free Trade Agreement between the US and Colombia which came into effect in 2012 marked the culmination of two decades of reforms. The impact for agriculture, it was recognised, would be disastrous. OXFAM America pointed out that 1.8 million farmers could suffer a significant drop in their income. The poorest would be hardest hit, they said, with an estimated 400,000 who earned less than minimum wage set to lose 48 per cent to 70 per cent of their income. The charity warned that these farmers left without a viable livelihood would have few options except migration, joining the FARC, or growing coca.⁷⁴ Within a year, the local press reported that 'as was entirely predictable, the initial damage is occurring in agriculture, where the country's tariffs have been relinquished and U.S. subsidised goods accepted.' Agricultural imports increased 50 per cent within 8 months of the FTA coming into effect, and it was evident the economy was increasingly 'becoming more dependent on foreign investment and the mining model.'⁷⁵ It is thanks to the US-backed 'pro-rich development model', to quote the term used by a coalition of foreign NGOs in the country, and the repression that has enforced it, that today in the Colombian countryside almost half the population are poor, in some regions poverty is as high as 80%, around 60% are without direct access to clean drinking water, and around 13% are illiterate, with levels of access to healthcare and education uniformly low.⁷⁶ Regardless, these issues at the core of coca cultivation are generally ignored during the technical debates over the efficacy of one supply-side policy or another. Nevertheless, it is the Colombian government's policies that have made traditional agricultural livelihoods less and less viable without a replacement

being offered. When farmers have been driven to grow illicit crops in order to survive, the State has responded by attacking them with chemicals.⁷⁷

Other factors have also contributed to the viability of illicit crops for rural farmers. Forced displacement, often the direct result of State or paramilitary actions, has been a key motor behind illicit crop cultivation. The violence of the 1950s and 1960s forced many people to flee to remote areas of the country seeking refuge and land to work. Lacking viable markets for licit crops, marihuana, opium, and later coca were adopted as substitutes. Particularly since the 1980s, in strategic and resource rich regions of the country paramilitary forces have driven people off their land - a process referred to locally as a 'counter-agrarian reform' - allowing for wealthy landowners to purchase the abandoned areas or for corporations to later move in and begin operations. The State has regularly been complicit - directly or tacitly - in these actions. Fumigation itself has also contributed to displacement through the destruction of livelihoods, forcing communities to move on, often to more remote areas. In the process, the policy has played a role in stratifying land ownership: small-scale farmers forced to relocate sell their land to large landholders, the only groups generally in a position to make purchases (See Box 1). These are among the factors that have created a situation in which more than 5 million people in Colombia are considered to have been displaced from their homes. Through the 1990s, it was the combination of economic liberalisation and violent displacement that created the structural conditions in which coca cultivation grew from 37,100 hectares in 1992, to over 120,000 hectares seven years later.⁷⁸

Economic reforms that addressed the inequities in the country, and reversed the 'pro-rich model', would be a major counter-narcotics initiative; as would going after the paramilitary groups and their facilitators in the government and the military. The US and Colombian governments

have done the opposite: deepening the crisis in agriculture that impels cultivation, while providing tacit or sometimes direct support to paramilitaries. The focus has instead been ardently concentrated on the insurgent groups, although whether the FARC and ELN (The National Liberation Army, the second largest insurgent group) are involved in trafficking, or what the nature of that involvement is, has been incidental for policy planners. In a 1994 internal document, now declassified, the US Drug Enforcement Administration reported that 'Despite Colombian security forces' frequent claim that FARC units are involved directly in drug trafficking operations, the independent involvement of insurgents in Colombia's domestic drug production, transportation, and distribution is limited,' adding also: 'no credible evidence indicates that the FARC or ELN has directed, as a matter of policy, that their respective organizations directly engage in independent drug production or distribution ... [and] neither the FARC nor the ELN are known to have been involved in the transportation, distribution, or marketing of illicit drugs in the United States or Europe.'⁷⁹ Another report produced a year earlier by the Defense Intelligence Agency found 'there is little indication that the various guerrilla factions are cultivating their own fields and coordinating their own processing and delivery systems.'⁸⁰

Comments such as these challenge the commonly cited argument that Colombian officials had tricked the US government into supporting what was really a counter-insurgency initiative disguised as an anti-drug programme by exaggerating the insurgency-drug connection for their own purposes. The US, the internal documents show, was well aware of the actual situation on the ground. In 2000, the UN also acknowledged that the FARC did not appear to be involved in the shipment and exportation of illicit drugs, noting that they instead had a policy of taxation - applied to all products under their areas of control - and were calling for Alternative Development initiatives to reduce the reliance on coca

cultivation.⁸¹ Regardless, the focus has been overwhelmingly on the ‘narco-guerrilla’, not on the socio-economic conditions, nor the paramilitaries, who through the 1980s and 1990s had become heavily involved in drug trafficking. By the time of the enormous funding increase that was Plan Colombia, it was clear that the processing and production of cocaine took place under areas of paramilitary control, and that these groups were responsible for managing trafficking routes. In 2000, Carlos Castano, leader of the largest paramilitary group, said publicly that in certain departments of the country as much as 70 per cent of the group’s funding came from drug trafficking. Yet the paramilitaries, aligned with the interests of the military, acting often as the shock troops of the economic and political model by carrying out political murders and intimidation and displacement, were not the targets but the beneficiaries.⁸² The practice of ‘targeting FARC areas almost exclusively’, writes Colombia scholar Forrest Hylton, discussing Plan Colombia, fumigation and targeted interdiction ‘helped paramilitaries vertically integrate their criminal enterprise and turn it into a political instrument,’ with baleful results for Colombian society.⁸³

Paramilitaries have also been directly involved in fumigation operations. The first major

operation under Plan Colombia was the so-called ‘Push into Southern Colombia’, focused on Caqueta and Putumayo, regions where the most cultivation took place and where the guerrillas had a strong presence. Fumigation there was met with little resistance: spray planes were not attacked in the way they had been elsewhere. The fact was later attributed to the work of paramilitary forces, who had entered the zone earlier and, through attacks on the guerrillas and the use of terror and violence against the local population, cleared the areas to be fumigated.⁸⁴ According to *Washington Post* journalist Scott Wilson, this selectivity was propelled by strategic concerns: ‘The argument at the time, always made privately, was that the paramilitaries provided the force that the army did not yet have.’⁸⁵

The core of ‘counter-narcotics’ in Colombia has been focused on fumigating and spraying a harmful chemical on the crops of poor rural farmers. It has not included serious initiatives designed to chase illicit money, much of which has ended up in US banks. Efforts to pursue government officials involved in the trade or the paramilitaries have been relatively limited. As have efforts to prevent the flow of precursor chemicals, used to transform the coca leaf into cocaine and often diverted from US companies.

Box 1: View from the Ground: Coca in Guaviare

South of the Andes, in the area of Colombia known as *Los Llanos* (the plains), lies the department of Guaviare, a vast and humid and largely empty region the size of Croatia and home to around 100,000 people. Like many remote areas of the country, the region was settled by people fleeing the violence of the civil war and the process of land consolidation elsewhere.

Once settled, many families were forced to create lives for themselves in the countryside. Despite repeated promises the State has provided little help to these communities. During a visit by GDPO researchers to isolated rural areas, it often felt that not much might have changed over the course of half a century; we

in fact were present at the inauguration of one village's electricity supply. The FARC have had a presence in the region and held control over certain areas for decades; the paramilitaries arrived later, in the early 2000s. The capital is San Jose de Guaviare, a city of low-level buildings a short flight or a 12 hour bus journey from Bogota. On the city's outskirts, there is an enormous air force base, a US-funded installation from which spray planes departed for the surrounding countryside. Guaviare has produced coca since the 1970s when it became the first area of the country to experience aerial fumigation of coca crops. Cultivation has continued since then, to the point where Guaviare is one of the country's main cultivation regions. Once Plan Colombia began it became one of the most heavily fumigated regions of the country. In May 2015 GDPO researchers visited the region, interviewing local officials, church leaders, activists, community leaders, rural farmers and coca cultivators. The purpose was to better understand the reasons for coca cultivation and to discover the attitude of the local population to fumigation operations. Without exception, the testimonies taken considered the source of the problem to be the lack of government assistance to the region, particularly the unwillingness to improve the local infrastructure. When we asked if officials had visited their communities to discuss the myriad problems they faced, we received the astonishing answer: 'You are the first'. There is little if any contact with the government. Visits from the national government are even more rare. For many of the isolated communities, the state is represented by military; soldiers in their villages, and airplanes and helicopters passing by overhead. Traveling into the countryside in a 4x4, we saw the implications of the neglect first hand. The roads were dirt paths better suited to motorbikes. During a short downpour the tracks turned to sludge, the 4x4 struggled and the already sluggish pace slowed. In one area a home-made bridge over a small river disappeared as the water level rose. The impact on livelihoods is severe: these conditions greatly increase the cost of transport to market and make locally produced goods uncompetitive.



All the farmers we spoke with had little income and survived with basic amenities. They produced food crops for subsistence, enough to provide for themselves plus whatever they could sell in the local market. Schooling was provided thanks to community initiative, healthcare was almost non-existent except back in the city. Many communities lacked electricity. Everyone we spoke with was in agreement: fumigation was not the right way to reduce cultivation. In fact, many said, it had kept the price high and encouraged cultivation. Many described to us their skin and respiratory problems and the way the chemical killed legitimate crops and polluted the rivers. A farmer told us that one local community had once occupied a field in protest, whereupon a plane passed over and sprayed them regardless, sending them running, rushing to clean of the chemicals recently deemed carcinogenic by the World Health Organisation. Farmers questioned why the planes did not fly in the early morning, when winds are low, but instead at all times, increasingly the likelihood of drift. Local leaders pointed out that in a region where land concentration is high and there are issues surrounding land titles, the



RIVER CROSSING IN GUAVIARE - CLICK IMAGE FOR VIDEO

displacement caused by fumigation was playing into the hands of the local resource wealthy, who could step in and buy the land at low prices. Another outcome was what one activist called the 'belts of misery' made up of newly displaced that now rim San Jose, the capital. In different communities farmers expressed anger at the money being spent on sending out a spray plane and an accompanying helicopter, and questioned why these resources could not be used to improve the roads, to make viable products other than coca, which they said was a last resort, one which, on top of crops like rice and yuca, provided just enough to get by.

There was a palpable sense that people were tired and overwrought by the hounding of fumigation and were looking for real alternatives to coca; they were also resentful of the fact that while they struggled to survive and were targeted, the middle-men were making enormous profits and not being pursued with anywhere near the same energy. In the case of Alternative Development (AD) projects that had been tried, although there were minor successes, the majority of interviewees expressed disappointment at the results. The programmes were too short term and not sustainable. Moreover, they said, AD did nothing to solve the infrastructure problem. A government initiative to support the cultivation of rubber trees was considered unrealistic: it took too long to begin seeing the results - the trees take years to reach majority - and did not address their basic problem of day-to-day survival. In the city, activists and church representatives built on these criticisms. Perhaps the defining problem in the region, facing all the small agricultural producers in the country, is the lack of a market for their goods. Even if the infrastructure was improved, it was feared that local products would not be able to compete with foreign goods. The governor of Guaviare explained to us that while his administration had tried to help rural areas, the available funds were meagre. Assistance from the central government had been poorly directed. Like many regions of the country, government initiatives are often military-led, and have a counter-insurgency objective. The abiding feeling as we left San Jose was the grinding frustration of people who feel left behind, stigmatised, and forced into a situation in which they are pressured to break the law in order to survive.

A SPECIFIC PLAN

The nature of US support to Colombia has for decades remained in its essentials unchanged. Alongside political and diplomatic support, aid has been directed overwhelmingly to the military and police, bolstering a repressive government while combating insurgent groups and, as a corollary, stifling domestic dissent. The justification has shifted as required – against Communists, then against ‘narco-guerrillas’, and then ‘narco-terrorists’ after September 11th 2001 when drug-related talk faded and the already overt counter-insurgency aims of the aid were more openly exposed. Through the 1990s aid to the Colombian government, which at the time had by far the worst human rights record in the hemisphere, rose steadily. Between 1989 and 1995, the U.S. provided \$322 million in military aid to Colombia, ‘nearly all on a grant (give-away) basis,’ Human Rights Watch (HRW) reported in 1995, noting also that aid had ‘gone to units implicated in serious human rights violations, a fact the United States is aware of but has not made public’. Furthermore, ‘U.S. arms sales to Colombia not only continue unimpeded, but are expected to reach a record level’, which they did in the following years. Much of the aid, it was pointed out, simply went back to the US as arms purchases (‘\$73 million in FY 1992, \$45 million in FY 1993, \$88 million in FY 1994, and \$31 million in FY 1995.’)⁸⁶ HRW also noted:

As U.S. presidential campaign rhetoric turned to drugs, the Clinton Administration notified Congress of its intention to sell twelve Black Hawk helicopters, twenty-four M60 machine guns, 920,000 rounds of 7.62MM (M80) ammunition, and related items to the Colombian army, worth \$169 million. At a hearing on the proposed sale, administration officials admitted that the Colombian army was under no obligation to use the aid only to fight drugs. When Rep. Lee Hamilton (D-Indiana) asked if helicopters could be used “100 percent for counterinsurgency” if the Colombian army wished, Assistant Secretary of State for International Narcotics Matters Robert Gelbard

answered: “Theoretically, they could.” Though some legislators expressed reservations, Congress did not block the sale.

HRW noted that US aid had been granted to Colombian military units connected to paramilitaries and involved in grievous human rights abuses. The report recognised the guerrillas had a relationship with the drug trade, but argued that this fact ‘cannot be used to ignore – or covertly support – the Colombian military’s campaign against political dissent.’ A few years earlier, HRW had argued that the Colombian military’s human rights record should make them ineligible for aid and, likewise, Amnesty USA has since 1994 been calling for a suspension of arms sales and military aid, to no avail.

Over the course of the 1990s, the FARC had been increasing its territorial control. Towards the end of the decade, with peace negotiations in process, US military aid spiked, reaching \$305 million in 1999. Similar aid, justified as counter-narcotics assistance, had been flowing to other Latin American countries through the 1990s. In 1997, the Washington Office on Latin America (WOLA) produced a report titled *Reluctant Recruits; The US Military and the War on Drugs*, which found: ‘Despite the end of the Cold War and recent transitions towards more democratic societies in Latin America, the United States has launched a number of initiatives that strengthen the power of Latin American security forces, increase the resources available to them, and expand their role within society – precisely when strong civilian elected governments are striving to keep those forces in check.’⁸⁷

At the end of the 1990s, the Colombian President approached the US government with a proposal for funding to be directed towards economic development and reform – referred to as a ‘Marshall Plan’ for Colombia. The Clinton administration transformed the proposal away from development and reform into a security package – what became known as Plan

Colombia. The Plan comprised an initial \$1.3 billion in funding (\$860 million of which was earmarked for Colombia), and was supposed to run for 5 years. In reality, the funding has continued since then under different names with superficial changes, remaining concentrated on bolstering the security forces, and eventually reached over \$7 billion between 2000 and 2012, overwhelmingly as military and police support.⁸⁸ Plan Colombia therefore represented the continuation of a well-established trend in Latin America: the supply of aid to the military and police, justified publicly as counter-narcotics.⁸⁹ Officials have occasionally been forthcoming regarding why ‘counter-narcotics’ rhetoric was useful in securing the aid. The former Deputy Assistant Secretary of State for Western Hemisphere affairs, Charles Gillespie, said at the time of Plan Colombia’s creation, ‘The clear recognition was that for a whole host of reasons, the best way to package this was as narcotics because in today’s budget climate in the U.S. that’s what sells; that’s one of the few areas in which Democrats and Republicans can achieve some sort of agreement.’⁹⁰ In a similar vein, former U.S. Army War College professor, Donald E. Schulz, wrote: ‘In U.S. government circles, where counter-narcotics aid is widely viewed as a way to combat the insurgency “through the backdoor”, the calculation is that if we were candid about what we were doing the political opposition would be so great that U.S. aid to Colombia would be greatly reduced.’ The result, noted a 2001 study by the International Consortium of Investigative Journalists: ‘The Clinton administration sold its policy as an intensification of the drug war, pure and simple’.

In the initial round of Plan Colombia funds, aid to the military and police accounted for 80 per cent of the total money; with 71 per cent of this going to the military and 29 per cent to the police. In both cases, the largest proportion of the money went on upgrading air capabilities. The primary ‘counter-narcotics’ element of the plan was aerial fumigation,

while only 9 per cent of the initial funds were earmarked for Alternative Development initiatives; an additional 9 per cent was shared equally between judicial reform, human rights and support for the internally displaced population.⁹¹ It was clear from the beginning that whatever drug-related policies or initiatives would emerge from the new funding they would be marginal to the primary aims. The main thrust of Plan Colombia was aid for the security forces accompanied by the construction of military bases, and stipulations that Colombia undertake further economic restructuring. On the latter point, this included widespread privatisation, market reforms and a commitment to end the provision that foreign oil companies needed to cooperate with state-owned Ecopetrol, at the time highly profitable and also, under the Plan, committed to undergo restructuring. Occidental Petroleum, a potential beneficiary of such changes, was a major lobbyist in support of the ‘counter-narcotics’ package. (Between 2002 – 2004 the US designated \$99 million to protect the Cano Limon-Covenas pipeline; over 40 per cent of the oil transported via the pipeline was considered to be owned by Occidental Petroleum).⁹² The supposed counter-narcotics plan contained within it economic policies that would exacerbate the causes at the heart of illicit drug cultivation, but this has largely been ignored, and for commentators and analysts these facts have not undermined official claims of concern with drug production in Colombia.

The military bases justified under the Plan were installed in key strategic regions and the main FARC strongholds.⁹³ Included also in the Plan were funds for bases and radar sites outside of Colombia. Aside from militarisation, the Plan implied a massive taxpayer subsidy to the US arms industry, members of which had lobbied heavily for the initiative and were duly rewarded. For example, three new Colombian ‘counter-narcotics’ brigades costing a total of \$600 million were created with the funding, and a large part of this money went on the

purchase of 63 helicopters and, where appropriate in relation to the transfer of older airframes, upgrade kits manufactured by two US companies, Bell and Sikorsky, both of whom had lobbied congress for two years prior to pass the Plan.⁹⁴ Citing a report by the US Government Accountability Office, the *Washington Post* pointed out in 2007 that '70 per cent of the money allotted to Plan Colombia never leaves the United States. It is used to buy U.S.-built helicopters and other weapons for the military, and a large chunk is paid to the security firm DynCorp.'⁹⁵

Describing Plan Colombia before it came into effect, Alma Guillermoprieto, a journalist with the *New Yorker* and an astute commentator on Latin American affairs, wrote that 'The Clinton administration is proposing an escalation in United States foreign aid to Colombia so large that it will predictably alter the course of domestic politics and internal violence in that country.'⁹⁶ The prediction was correct, and the funding may have been vital in convincing the Colombian government not to continue with the peace negotiations that were taking place in the late 1990s and ended in 2002. The US role in the country changed considerably: within a few years, the embassy in Bogota was the largest in the world, containing the largest number of US law enforcement and intelligence officials, and by 2006, there were 25 US agencies operating in the country. Colombia's military also underwent an organisational and doctrinal change, and at Washington's behest took a key role in 'counter-narcotics' operations, previously, and generally, the remit of the national police. The military also grew drastically, from 152,000 members in 2000 to over 276,000 by 2011. By 2010, Colombia had the highest spending on the military, as a proportion of GDP, in Latin America. The extensive militarisation that emerged thanks to Plan Colombia opened the door for the Uribe administration, and the policies that resembled those of a police state: intelligence services spying and threatening opposition; extensive links to para-military forces at the highest

level of government; a system of a million paid informants operating around the country; grievous human rights abuses by the military; and the stigmatisation of opposition activists as guerrilla sympathisers, all accompanied by a deepening of the economic policies that are behind the country's vast gaps in income and land distribution.

LESSONS LEARNED

By the time Plan Colombia began, the experience of US-backed fumigation in the Andean region left no doubt as to the likely effects of the new fumigation push. The 1989 Andean Initiative, also primarily a police and military aid programme, involved aerial fumigation of marihuana plants by Colombia forces. On the ground, legitimate as well as illegal crops were destroyed by the herbicide, farmers were forced off their land and moved deeper into the Amazon, and there were reports of environmental damage and detrimental effects on the health of the effected local population. Farmers protested in response, but no change in policy was forthcoming. Coca cultivation grew over the period and the Initiative was considered a failure in counter-narcotics terms.⁹⁷ Under pressure from the Clinton administration, fumigation was again ramped up between 1994 and 1998 by Colombian President Samper, this time focused on coca crops. Samper had been the subject of scandal after his links to the drugs trade, and those of his administration, were revealed publicly, and almost in penance he announced he would eradicate coca cultivation in the country with a fumigation drive. The impact was the same: displacement of both the local population and coca cultivation to more remote areas, and reports of detrimental effects on human health and the environment. In 1996 a quarter of a million campesinos went onto the streets to protest against the policy. Again, in counter-narcotics terms fumigation was considered a failure: between 1994 and 1998, three times as many hectares

were fumigated as had existed in 1994. By 1998, double the amount of hectares were considered to be under cultivation compared with four years earlier (approximately 45,000 hectares compared to 101,000 hectares).⁹⁸ Discussing these developments at the time, Colombian analyst Ricardo Vargas concluded: 'Illicit crops have a growth dynamic totally independent of forced eradication actions, and as a consequence the policy is mistaken.' US officials claimed the problem was not the policy but the herbicide, which they said was not potent enough. Working through the statistics Vargas demonstrated that a more effective herbicide would have made little difference given the rate of growth. Regardless, he wrote, 'Washington insisted, against all logic, in ignoring this certainty.' In 1999, the US Government Accountability Office reported that coca cultivation had increased by 50 per cent following two years of extensive spraying.⁹⁹ The GAO also pointed out that between 1990 and 1998 the US government had spent \$625 million on fumigation in Colombia with no net reduction in 'processing or exporting refined cocaine.'¹⁰⁰ All of this was known and understood before the renewed, aggressive fumigation drive under Plan Colombia.

After fumigation under Plan Colombia began, the expected outcomes were again immediately clear. Following operations in the Putumayo region on the border with Ecuador, journalist Garry Leech reported:

With 62,000 acres of coca destroyed, the politicians and generals in Washington and Bogota are calling Plan Colombia's initial fumigation campaign a success. But on the ground in Putumayo, Colombia's principal coca growing region, people watched in horror as the deadly mist drifted down and stuck to everything in sight. Their food crops turned brown, wilted and slowly died. Their children and animals became sick. If death didn't come at the hands of the guerrillas, the paramilitaries or the Colombian army, it fell out of the sky.

The fumigation campaign began on December 19. For the next six weeks, U.S.-supplied helicopters swooped down almost daily to unload soldiers whose mission was to prevent attacks by leftist guerrillas and right-wing paramilitaries. The aerial spraying dumped an estimated 85,000 gallons of the herbicide glyphosate onto Putumayo's coca fields from an altitude of 100 feet. The fumigation campaign in Putumayo utilized two of the three U.S.-trained anti-narcotics battalions and 15 of the 60 helicopters that are part of the \$1.3 billion aid package approved by Congress last year.¹⁰¹

Four years later, a group of NGOs, following an observation mission to the region reported:

Far from strengthening the local government and democracy as is set out in the objectives of Plan Colombia, four years of continuous fumigations have left in Putumayo a humanitarian, food security and economic crisis without precedent. The information collected by the mission in this department is summarised in the following impacts: fumigation of alternative development projects, non-compliance of pacts and projects between campesinos and the national government; abandonment in the face of a humanitarian crisis; paralysis of the local economy, multiple difficulties for the local government to support development strategies. Replanting in certain areas and displacement of crops towards Narino and the South of the department.¹⁰²

In terms of cultivation, the fumigation operations under Plan Colombia have displaced coca cultivation throughout the country and around the region, and have also moved routes and associated violence to new areas, most notably Central America. In 2015, Daniel Mejia, a Colombian economist at the University of Los Andes and head of an independent advisory committee formed by the Ministry of Justice, discussing more than a decade of intense fumigation since the beginning of Plan Colombia, concluded:

*Overwhelming evidence indicates that aerial spraying campaigns have little to no effect on reducing coca cultivation, but rather have produced high direct costs and negative secondary impacts on human health, the environment, and the political capital of the state. Instead, it is the interdiction of cocaine and cocaine-processing facilities that together seem to have had significant effects on cocaine production and trafficking and even coca cultivation.*¹⁰³

According to available data cultivation of coca in Colombia has decreased since 2000, as has cocaine production, while at the same time the number of families involved in the trade has reportedly increased. As the 1990s demonstrated, there is little relationship between fumigation and a decrease in cultivation. A number of factors contributed to another recent reduction observed since 2007, among them the relocation of cultivation to Peru, greater interdiction and manual eradication operations, and a slowing in demand for cocaine, thanks in part to the growing use of synthetics and other drugs in Europe and the US. According to the latest data, cultivation has again jumped recently.¹⁰⁴ In May 2015, a US Office on National Drug Control Policy report claimed the number of hectares under cultivation in Colombia had grown 39 per cent between 2013 and 2014. According to a United Nations Office on Drugs and Crime (UNODC) report released a couple of months later, cultivation had risen 44 per cent (from 48,000 to 69,000 hectares).¹⁰⁵ Speaking with the press, the Colombian Justice Minister acknowledged the figures demonstrated the failure of eradication, noting that ‘After spraying 1.5m hectares in the past 12 years, the total reduction of coca crops was just 12,000 hectares.’¹⁰⁶

A lively debate has taken place over the utility of hectares and street price as appropriate indicators of success. But it is clear, for example, that less hectares is meaningless if new technologies can increase productivity. It is important to recognise that any discussion of the efficacy of fumigation is misleading: it neglects to include the socio-economic factors behind cultivation and the role of the US and Colombian governments in exacerbating these factors - in the recent discussion over increased cultivation, the disastrous impact of the FTA on rural livelihoods has been unmentioned. The debate tends to accept the focus on attacking poor farmers, when the most efficient methods of reducing drug use are known, understood and often ignored.¹⁰⁷ Through the cold lens of the cost-benefit discussion, a fumigation policy that destroyed all coca cultivation in Colombia and left thousands of rural families with no survival options would be considered a success; analogous to the ‘successful’ opium poppy ban in Afghanistan in 2000 that drove poor rural farmers into destitution and exacerbated a humanitarian crisis.¹⁰⁸ Occasional conflicting rhetoric aside, Washington and Bogota have historically been in agreement: it is not a problem that rural farmers are desperately poor; but it is a problem that they engage in illegal activity in order to survive.

As elsewhere, the facts on the ground have not led to a rational reassessment of policy or a search for other methods - a fundamental issue if reducing cultivation was the main objective. Instead, the ‘failing’ policies have been escalated over time, and US officials have done their best to put a positive spin on the revelatory statistics. What might fumigation have achieved for the US and Colombian governments? And why has it been useful to outsource the policy of fumigation to a private company?

PRIVATISED CHEMICAL WARFARE

One outcome of fumigation, well understood by policy planners in Bogota and Washington, was that it would lead to the displacement of the local population. Not only in the Andean region but around the world, fumigation, forced eradication and bans on cultivation have repeatedly impoverished the effected people, often forcing them to move to new areas in search of a livelihood. The creators of Plan Colombia openly acknowledged this eventuality: the text of the agreement included a few sentences mentioning the need to assist those who would be displaced once operations began. Under the Plan, spraying took place primarily in areas of FARC activity, and while minor funds for Alternative Development were included, these funds would not be granted to areas of FARC control; although the guerrilla movement had, as noted, been requesting Alternative Development initiatives. Between 1999-2007, 24.1 per cent of the hectares fumigated in Colombia were in Putumayo and the region received 23 per cent of the total funds for Alternative Development. However, in other areas of FARC influence the figures did not correspond in the same way: in Guaviare, where 18 per cent of total hectares had been fumigated, only 0.2 per cent of total Alternative Development funds were handed out; for Caquetá the split was 13 per cent and 2 per cent; and for Narino 16 per cent and 4 per cent.¹⁰⁹

Writing in *El Espectador*, Colombia's second largest daily, the columnist and well-known author Alfredo Molano Bravo recently considered fumigation within the context of the government's broader objectives:

The aspersion – as they refer to it in order to disguise the aggression – is also a sister weapon of paramilitarism, one which seeks to displace farmers and settlers. The thesis of “taking the water from the fish” – to remove the support of the campesinos from the guerilla – is the fundamental strategy of a war against an insurrection.

The paramilitaries did it with massacres. Fumigation does it by ruining crops, not just coca but also the produce that allow farmers to feed themselves: yuca, plantain, rice. Moreover, areas that have nothing to do with coca are also devastated as the poison “drifts”, which is to say, it is dispersed by the wind. Viewed correctly, fumigation is a new means to remove farmers from colonised areas they have settled in search of a livelihood; Catatumbo, Meta, Guaviare, Magdalena Medio, Perijá, San Lucas, Urabá, bajo Cauca. Terrorised, the settlers have been expelled from their original lands. ... What the paramilitaries do on one side, fumigation completes on the other.¹¹⁰

By displacing communities from areas coveted by monoculture or resource extraction enterprises, fumigation has allowed the companies to move in, purchase the land and begin operating. As mentioned above, these tendencies should be considered within the context of a wider Colombian government policy of refusing to provide services in certain remote areas; a policy that has often, by creating hardship, forced communities to leave strategic or resource-rich areas. One aim of fumigation, it seems reasonable to infer, has been to remove the population from strategic or FARC controlled areas, to 'drain the sea' in counter-insurgency terminology. In 1992, during a fumigation drive, the chief of the Colombian police alluded to the reasons fumigation might have been considered a success. The policy, he said, had worked because it meant farmers were 'obligated to return to their place of origin,' and he went on to explicitly frame fumigation in counter-insurgency terms: 'Up to now 1040 hectares have been fumigated [which means] the guerrilla groups operating in the zone have therefore not received a little over 5 billion pesos.'¹¹¹ Perhaps the most important fact, one that explains the continued use of fumigation despite all the criticisms, was pointed out by Amnesty USA: 'The security forces' counter-insurgency strategy is largely

based on the premise that those living in conflict areas are part of the enemy, simply because of where they live'.¹¹²

The way the policy is carried out supports the argument. Spray planes have been found to violate recommendations relating to speed and altitude at which herbicide should be dispersed; by flying higher, it is more likely the herbicide will drift and destroy adjacent legitimate crops. Pilots have also not been restricted to flying early in the morning when winds are lower and drift less likely. Perhaps most striking, there has been an almost total lack of official concern with the impact of fumigation on the affected population, legitimate crops and the environment, and a refusal even to acknowledge that such outcomes occur. Official public investigations, when they have been launched, have been widely criticised for their lack of scientific credibility. Government bodies themselves have for years been warning of the likely health risks and the herbicide has been used in ways that even the manufacturers consider improper; the US corporation Dow Chemical, when they were made aware of how it was to be used, refused to supply the herbicide Paraquat to the Colombian government over fears of subsequent legal issues. The Colombian government has chosen to keep secret the specific composition of the herbicide being sprayed, which is understood to be made up of the glyphosate-based herbicide. The original product was Roundup Ultra produced by Monsanto, plus a binding agent, considered to be the commercial product Cosmo-Flux, although the Colombian government later began procuring the herbicide from different sources.¹¹³ The suspicion is that the combination is a far more potent mix than is conventionally used, but the secrecy impedes independent scientific inquiry. Viable reports and studies have for decades been demonstrating the effect of spraying on the population; with some justification a Colombian Health Minister once referred to the use of glyphosate in aerial spraying as an 'experiment on human beings'.¹¹⁴ The victims

have received little from the State. The José Alvear Restrepo Lawyers Collective, quoting official figures, pointed out that between 2001 and 2007 'of the 6,429 complaints that were processed by anti-narcotics authorities [for damage of licit crops caused by fumigation] only 33 of the claimants were compensated for the harm caused. In other words, only 0.5 per cent of the claimants, which discouraged many of the affected persons from going through this procedure.'¹¹⁵

The Ecuadorian government, its citizens living near the border affected by the drifting chemicals, has launched its own revealing studies, and in 2013 was even awarded a \$15 million dollar settlement from the Colombian government after a legal complaint reached the International Court of Justice.¹¹⁶ But it took a WHO statement in March 2015¹¹⁷ confirming that glyphosate could potentially cause cancer in humans before the Colombian government was forced, by order of the Constitutional Court and the Health Ministry, to take the decision to suspend fumigation using glyphosate to the national body responsible for counter-narcotics policy.¹¹⁸ A subsequent vote in May led to the passing of a motion to suspend fumigation with glyphosate, but not before a transition period of 5 months. Local NGOs took advantage of the decision to mobilise support for an end to fumigation of any kind - not just using glyphosate - and a radical change in what is called drug policy. Soon after the Colombian Minister of Defense announced alternative herbicides were being tested, although this took place without consulting the National Council for Pesticides, the body that should take the lead in determining the health and environmental impact of any substitute. The President suggested the focus would shift to interdiction operations against cocaine laboratories, following the money trail (both of which have been proven to bear fruit), financial and technical assistance to switch to alternative crops (a problematic process considering the difficulties faced by farmers in immediately eliminating coca

cultivation in order to qualify for assistance)¹¹⁹ and ‘as a last resort’, manual eradication¹²⁰ – a less harmful but still violent form of coercion. In any case, the 5-month transition period signified the first time that the government has openly admitted that it has deployed a carcinogenic chemical against elements of its own population. In October 2015, after much talk of a new approach and hope among many that the use of glyphosate would be stopped completely, the government announced its decision: from now on the chemical would be sprayed manually by hand, including perhaps ‘fogging’ the herbicide on the ground.¹²¹

The majority of commentators and analysts are in general agreement that fumigation, along with the collection of policies that fall under the rhetoric of a war on drugs, has been an expensive failure.¹²² Officials, however, have often expressed a different understanding. Pentagon spokesperson James Gregory, for example, once described the policies pursued in Colombia as among the US government’s ‘most successful and cost-effective programs’, adding that, ‘By any reasonable assessment, the U.S. has received ample strategic national security benefits in return for its investments in this area.’ Colombia is today presented by US officials as a model for countries like Afghanistan and Mexico to follow.¹²³ Since Plan Colombia began, officials have tended to be more open about the genuine objectives. Consider for example, the statement of David T. Johnson, the Assistant Secretary for International Narcotics and Law Enforcement Affairs at the Department of State, made at the Subcommittee hearing cited above:

For my part, I think it is important to look at the objectives beyond the contract itself. For example, in Colombia, for reasons which I am sure made a great deal of sense at the time, the original objective was focused on the amount of coca under production and cocaine exiting Colombia. Strides have been made in that area, but the original objective which was set, which was cutting it by 50

percent by a year certain, was not met. On the other hand, if you look at the strategic objective that we had of changing Colombia from a state under threat to one which is an exporter of security, we have done extremely well there. And I think that by any measure the efforts that have been made through these contracting mechanisms have made a fundamental contribution to that, particularly by providing the ability of the Colombian state to reach into areas which it was previously not able to and were ungoverned.¹²⁴

The exchange that followed between Johnson and Senator Claire McCaskill is worth quoting at length:

Mr. Johnson:

I think the amount of cocaine and the amount of cocaine production and the area under cultivation and the yields have, in fact, declined, and the decline has been significant. But it has not by any means been what was originally projected or sought as a goal. It has played, according to our evaluation and according to the Colombians, a significant role in allowing them to extend the rule of law and to deprive the FARC of a means of livelihood and sustenance.

Senator McCaskill:

OK. As you look at that, have there been ongoing attempts over the last decade since the strengthening of the rule of law has worked well, maybe not as well as the original plans to diminish the amount of production, were resources shifted from eradication and trafficking work to rule of law?

Mr. Johnson:

I would broaden it beyond “rule of law,” and I think it has to do with really the extension of the ability of the Colombian state to govern, to provide governing services, not just....

Senator McCaskill:

Governance and rule of law.

Mr. Johnson:

Including rule of law, but I think if you focus exclusively on that, you miss a big part of the issue.

Senator McCaskill:

Well, I guess I am confused. You think the counternarcotics budget and the amount of money spent on contractors for counternarcotics in Colombia is what strengthened governance and the underlying rule of law?

Mr. Johnson:

I think it played a major role in providing the space for the other programs to work. I do.

Senator McCaskill:

OK. And that has worked?

Mr. Johnson:

We believe that it has substantially worked.¹²⁵

The facts suggest the officials are correct: the 'counter-narcotics' aid has modernised and expanded the army and police to unprecedented levels, the economic reforms have been enacted by the national government to the benefit of foreign investors, regardless of the impact on the domestic population, and fumigation has effectively displaced people from strategically important areas (important either because of a FARC presence or resources to be exploited). And in order to carry out a policy that takes as its target the weakest and most vulnerable, that achieves counter-insurgency goals under the guise of counter-narcotics, and that causes damage to human health and the environment, Washington has turned to unaccountable private mercenaries.

The nature of the Dyncorp's involvement in Colombia is possibly the paradigmatic example of the problems, and perceived benefits, of outsourcing state policy to a private company. The impunity, the lack of accountability and relative publicity compared to regular soldiers, have all facilitated the continuation

of a policy that has caused enormous damage to people and the environment. And this impunity is not only protecting contractors from prosecution following abuses, but also from the potential ramifications of carrying out the policy itself, which, given its impact on the ground, could be a violation of International Humanitarian Law (IHL). Attempting, unsuccessfully, to introduce a law to restrict the involvement of PMSCs in Colombia and the region, US congresswoman Jan Schakowsky stated: 'The key word here is accountability. If this is a valid mission we're on, it seems to me that to have it shrouded in secrecy . . . is a very dangerous process.' Dangerous, but, as discussed, also useful.

A legal analysis by Morgan Landel of the Open Society Institute, in which it is argued that the activities carried out by DynCorp does constitute a violation of IHL, runs through the disastrous impact of fumigation on the ground - on humans and the environment - and the inefficacy of fumigation in terms of counter-narcotics. It states: 'The government's failure to recognize that this policy has not provided the desired effects of either eradicating coca cultivation or ending the armed conflict, and its consequent failure to stop the policy, is a continuing violation of the principle of proportionality.' There is, writes Landel, 'clear evidence that the aerial fumigation program has caused injury to civilian life, damage to property, and has brought no clear military advantage.' Regardless, 'The government has ignored this evidence and continued its program.' Landel concludes that 'through its aggressive aerial fumigation program, Colombia violates various rules and treaty provisions relating to IHL. Particularly in relation to the impact of fumigations on human health, Colombia violates its obligations under Articles 4 and 13 of AP2 and Rules 7-10 of the ICRC customary international law handbook. It also violates principles against indiscriminate attacks and the principle of precaution.'¹²⁶ Contractors, it is clear, are heavily involved in the Colombian conflict, but, so the legal

argument goes, using contractors means the Colombian civil war - in which the US provides enormous military assistance to one side - is not internationalised.

If IHL were applied, it is likely the activities carried out by DynCorp employees would make them unlawful combatants under the laws of armed conflict pertaining to the use of mercenaries. In any case, the Colombian government is obligated to protect and promote the human rights of its own population. Yet in order to carry out fumigation operations, the Colombian State has openly violated the Constitution, including the stipulation that indigenous groups have the legal right to pre-consultation before the policies are carried out in indigenous reserve zones, and has refused to adhere to the 'principle of precaution', which demands a policy be ceased if there is reasonable suspicion it causes damage to the public and/or the environment - in spite of the evidence demonstrating fumigation's harmful effects. According to the Jose Alvear Restrepo Lawyers Collective, the fumigation programme - and Dyncorp's engagement within it - represents a violation of, among others, the right to food and work, to health and life, and to a healthy environment (see the endnote for the full list).¹²⁷ The Colombian government's own Office of the Human Rights Ombudsman has argued:

[I]n the fight against [illicit] substances, emphasis has been placed on the criminal policy to the detriment of the protection of other constitutionally protected rights, including: (a) the principle of positive differentiation through which the State must provide special protection to the most vulnerable population (minors, internally displaced persons, members of ethnic groups, and the rural population); (b) the rights to health, food, food security, public health, and, therefore, life and a dignified life; (c) the right to not be displaced and, in the case of forced migrations, to be assisted by the State; and (d) the protection and conservation

*of the natural environment, natural resources, and areas protected for ethnic, ecological and cultural reasons, as a part of the principle of sustainable development and the recognition of Colombian multiculturality.*¹²⁸

The UN Special Rapporteur on The Use of Mercenaries as a Means of Impeding the Exercise of the Right of Peoples to Self-Determination noted as long ago as 1994 that the responsibility and culpability for any such violations should go beyond the PMSC employed to enact the policy:

*In the analysis of mercenary activities, responsibility does not end with the commission of the criminal act or with the identification and isolation of the agent. The mercenary has been determined to be merely the last link in a chain, in which his recruitment and his subsequent commission of the criminal act are but the execution of an act which has been conceived, planned, organized, financed and supervised by others, whether they are private groups, political opposition organizations, groups which advocate national, ethnic or religious intolerance, clandestine organizations, or Governments which, through covert operations, decide on illegal action against a State or against the life, liberty, physical integrity and safety of persons, and involve mercenaries in that action. Accordingly, responsibility extends to all those who take part in the criminal act, which, in its final phase, is executed by the mercenary agent.*¹²⁹

There is little doubt that DynCorp is carrying out a US government policy aimed at achieving long-held strategic goals. The company's own lawyers have even alluded to this fact. During the process of the legal complaint made against the Colombian government by the government of Ecuador, the defence team representing DynCorp referred to the fumigation operations as 'a product of a complicated balance of U.S. national security and foreign policy objectives' and went on to state:

*Any disruption through this litigation of the aerial eradication of illicit drug crops in Colombia will undermine national security by depriving the United States of a key weapon in its arsenal for stemming the flow of illicit narcotics into this country and by allowing international terrorist organizations in Colombia to continue reaping huge profits from drug trafficking with which they will target US interests and American lives.*¹³⁰

The Colombian government has, when forced, also been open on this topic. The legal analysis by Morgan Landel, cited above, discusses an illustrative case in 2003 in which complaints of detrimental health effects caused by fumigation actually reached a court in the capital, and a class action ruling ‘ordered the government to stop aerial fumigations in order to carry out further tests in relation to rampant health problems in specific areas’:

The court found that aerial fumigations were a risk to human health and that exposure could cause cancers and other illnesses, although this had not yet been proven conclusively. The appellate court overturned this decision on the basis that Colombia should be able to defend itself against the guerrillas and paramilitaries. The appellate court did not deal with the issues related to health, but instead took the view that the state was entitled to continue its actions because the growth of coca plants was a threat to state security.

This conclusion of the court, supported by the government at the time, has obvious implications for the role of DynCorp employees who are, in the eyes of both the court and the government, engaged in activities designed to attack the guerrillas and the paramilitaries (although the evidence demonstrates they are far more concentrated on the former than the latter). The significance for claims DynCorp is carrying out a ‘counter-narcotics’ policy are obvious; as are the benefits for the policy’s architects. Given the facts reviewed, it is evident why a US State Department official

should find it useful respond to criticisms that DynCorp employees in Colombia are no-more than mercenaries with the retort: ‘Mercenaries are used in war. This is counter-narcotics.’¹³¹

CONCLUSIONS

It is a remarkable fact that, in spite of the evidence, counter-narcotics is widely considered the defining element of and motivation for Plan Colombia, and of US policy in Colombia in general. Fumigation is regularly criticised by commentators and analysts on tactical grounds - unsustainable and short-term, expensive and ineffective - but seldom because it is a form of chemical warfare targeted against a specific segment of the rural poor. While proclaiming efforts to address illicit drug production, Washington has simultaneously used the notion as a justification to assist the Colombian government in crushing dissent, armed or otherwise. Washington has also pushed economic reforms in Colombia that have gradually destroyed domestic agricultural production and caused stagnation in rural areas - the very conditions at the core of coca cultivation. To provide a thin cover for their objectives, US and Colombian officials have conflated fighting the FARC with fighting drug production. And the Colombian government has gone further, condemning the ‘narco-cultivators’, who, like the FARC, are an organisation that needs to be confronted with force. The falsities and the double standards in these comments, and in Washington’s ‘counter-narcotics’ operations in Colombia, are easily exposed by the consideration of the most minimal context.

In practice, while fumigation is generally seen as solely a counter-narcotics intervention, it must also be regarded a means of attaining counter-insurgency goals. Additionally, it should be seen as a symbolic action: an attempt to show something is being done to confront the drug trade, regardless of how ‘ineffective’ or ‘counter-productive’ it is proven to be, and

regardless of what the wider policies in the country suggest. It is no coincidence that the drug-related policies pushed by Washington in Latin America - fumigation, interdiction and harsh repression of users - require modernised and oversized police and military forces and purchases of US-made planes, helicopters and other related materiel. It is, therefore, understandable that while analysts speak of misguided policies, officials express satisfaction with the situation in the country. There are plausible reasons why officials should not consider fumigation a failure, and why they should promote and expand a 'failing' policy. And in doing so, the benefits of outsourcing are obvious. The contractors carrying out the fumigation policy in Colombia operate above the law and below the radar. They have, for years, been employed to undertake activities that have caused serious harm to people and the environment, that in effect constitute a form of chemical warfare in places where the Colombian military and the US government see people as 'part of the enemy, simply because of where they live'.

Following the World Health Organisation's classification of glyphosate as potentially carcinogenic in humans, aerial fumigations were suspended as of October 2015.¹³² DynCorp's role in such operations is therefore in limbo. As noted above, there have been discussions surrounding the use of a new herbicide, the adoption of which could herald a return of aerial fumigation. The limitation of the discussion to a 'new molecule' is a worrying trend. A fundamental change is needed in approach if genuine counter-narcotics efforts are to take place. But if objectives stay as they

are, it is understandable that the US should be committed to using contractors to carry out 'counter-narcotics' operations across the globe. In 2011, the Counter Narco-Terrorism Program Office (CNTPO) within the Pentagon 'announced a \$3 billion contract for U.S.-funded anti-narcotics operations around the world, including Afghanistan, Pakistan, Colombia, and now also Mexico.'¹³³ The kinds of contracts offered show that the differences between what constitutes counter-narcotics, counter-terrorism and support for allied security services are practically indistinguishable.¹³⁴ 'CNTPO's rise,' commentators noted, 'underscores an emerging trend in private security contracting: a move into some of the most sensitive missions the military performs.' As has been the case in Colombia, outsourcing sensitive missions will allow them to be undertaken with minimal oversight and zero accountability, and for congressional limits to be sidestepped. Meanwhile, the inevitable victims will be left with no recourse, and the public kept largely in the dark as to the policies carried out in their name.

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- 124 Committee on Homeland Security and Governmental Affairs, United States Senate (2010)
- 125 *ibid*
- 126 M. Landel (2010), 'Are Aerial Fumigations in the Context of the War in Colombia a Violation of the Rules of International Humanitarian Law?' *Transnational Law & Contemporary Problems*, Vol. 19, 491
- 127 The lawyer's collective lists the violations as follows: The enterprise DynCorp has incurred in different

types of conduct classified as crimes in **Colombian Criminal Code**:

- Homicide of protected person (Article 135 of the Colombian Constitution) of some of persons exposed to the spraying, especially children from indigenous communities. This crime has been aggravated due to the promise of remuneration, profit motives, and taking advantage of the victims' defenselessness.
 - Injury to protected persons (Article 136 of the Colombian Constitution), affecting the health of thousands of persons exposed to fumigation.
 - Use of illicit means and methods of wars (Article 142), since prohibited means and methods of war, leading to unnecessary suffering and loss or superfluous harm, have been used in the development of the armed conflict.
 - Acts of terrorism (Article 144), since excessive attacks against the civilian population have been carried out in the development of the armed conflict.
 - Destruction of the natural environment (Article 164), since methods conceived to cause extensive, long-lasting and grave damage to the natural environment have been employed in the development of the armed conflict.
 - Forced displacement (Article 180), since the population deprived of food and subjected to fumigations has had to abandon their territories.
 - Violation to the freedom of work (Article 198), since the free exercise of the rights to work has been disrupted or impeded through violence.
 - Damage to natural resources (Article 331), since natural resources have been harmed, which goes against current national environmental legislation and international environmental principles.
 - Environmental contamination (Article 332), since air, soil, and water has been contaminated, putting at risk human health as well as fauna, forest, flower and hydrobiological resources.
 - Conspiracy to commit a crime (Article 340) through its mercenary activity, aggravated by the fact its motivation lies in provoking forced displacement, drug trafficking, and providing arms to paramilitary groups.
 - Terrorism (Article 343), since the population exposed to this mercenary and anti-narcotics activity has been kept in a state of fear and terror for many years.
 - Contamination of water (Article 371), since water has been contaminated that is meant for human consumption in the populations exposed to the fumigations.
 - Undermines national integrity (Article 455), since this activity has subjected Colombia to partial foreign domination when the interests of other countries has been facilitated.
- DynCorp benefits from the violation of fundamental rights of the Colombian population, caused by the perverse policy of the fight against drugs in Colombia: Right to life (Article 11), Right to not be subjected to cruel treatment (Article 12), Right to Peace (Article 22), Fundamental rights of children

to life, physical integrity, health, balanced diet, and recreation (Article 44), Right to health and environmental protection (Article 49), Right to work (Article 53), Right to a healthy natural environment (Article 79), Prohibition of the use of chemical weapons (Article 81).

DynCorp has also committed grave breaches to **International Humanitarian Law**.

- Breach to the principle of distinction between combatants and non-combatants. (By attempting to attack the finances of the Colombian guerrilla, this enterprise has directly attacked the civilian population.)

- Principle of proportionality, since this enterprise has exceeded indispensable methods in the pursuit of subjecting the enemy, even affecting the civilian population with dangerous chemical elements.

- Principle of limitation in the means of combat, as a corollary to the previous principle.

Moreover, the enterprise DynCorp executes a deliberate violation of **human rights**, formulated and controlled by the US government and approved by the Colombian government:

Right to life (Article 4 of the American Convention), Right to personal integrity (Article 5 of the American Convention), Rights of children (Article 5 of the American Convention), Right to private property (Article 5 of the American Convention), Permanent Peoples' Tribunal Session on Colombia Hearing on Biodiversity Humanitarian Zone, Cacarica February 24 to 27, 2007 ACCUSATION AGAINST THE TRANSNATIONAL DYNACORP Prepared by the José Alvear Restrepo Lawyers' Collective, *Corporación Colectivo de Abogados 'José Alvear Restrepo*.

128 José Alvear Restrepo Lawyers' Collective (2007)

129 UNHCR COMMISSION ON HUMAN RIGHTS, Fiftieth session, Report on the question of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, submitted by Mr. Enrique Bernales Ballesteros, Special Rapporteur, pursuant to Commission resolution 1993/5 <http://webcache.googleusercontent.com/search?q=cache:DbUPVbDg6LYJ:www.unhcr.ch/Huridocda/Huridoca.nsf/TestFramef672064f027a7e6280256732005842ae%3FOpendocument+&cd=1&hl=en&ct=clnk&gl=uk&client=safari>; It should be noted that there is an ongoing debate regarding the tension between the UN human rights framework – including as it pertains to indigenous rights – and the policy of aerial eradication. On this, see with reference to DynCorp see, 'Spraying Crops, eradicating people, *Cultural Survival*, <https://www.culturalsurvival.org/publications/cultural-survival-quarterly/spraying-crops-eradicating-people> See also, for example, D. Barrett, (2010) 'Security, development and human

rights: Normative, legal and policy challenges for the international drug control system,' *International Journal of Drug Policy*, 21, D. Barrett, R. Lines, R. Schleifer, R. Elliott and D. Bewley-Taylor (2008), *Recalibrating the Regime: The Need for a Human Rights-Based Approach to International Drug Policy*, Beckley Foundation Drug Policy Programme, https://www.hrw.org/sites/default/files/related_material/beckley0308exec.pdf and OHCHR, Human Rights and Drug Policy - Crop eradication http://www2.ohchr.org/english/bodies/cescr/docs/ngos/IHRA_Colombia44.pdf

130 José Alvear Restrepo Lawyers' Collective (2007)

131 J. Bigwood (2001)

132 See <http://colombiafumigations.tni.org/> Also see Talking Drugs, New US Law Targeting Drug Producers Raises Concerns in Colombia <http://idpc.net/alerts/2015/11/new-u-s-law-targeting-drug-producers-raises-concerns-in-colombia>

133 A. Fierros (2011), Selling the Drug War for \$3 Billion? How the Pentagon Will Privatize an International War on Drugs, *Huffington Post*, 7 December, [http://www.alternet.org/story/153363/selling_the_drug_war_for_\\$3_billion_how_the_pentagon_will_privatize_an_international_war_on_drugs](http://www.alternet.org/story/153363/selling_the_drug_war_for_$3_billion_how_the_pentagon_will_privatize_an_international_war_on_drugs)

134 According to the contract offer, the mandate of the CNTPO is 'to disrupt, deter, and defeat the threat to national security posed by illicit trafficking in all its manifestations: drugs, small arms and explosives, precursor chemicals, people, and illicitly-gained and laundered money.' The US Magazine *Wired* reports: According to CNTPO, oversight for its contracts are themselves outsourced to an Army Contracting Command outfit in Huntsville, Alabama. CNTPO 'provides all contracting support for this effort, with 10 contracting officers/contracting specialists and legal/policy review of all contracts and task orders,' CNTPO's statement reads, with 'program management and customer support requirements' provided by CNTPO itself. That's 10 bureaucrats to review billions of dollars in private security contracts, spent all over the world. A member of the Wartime Contracting Commission, created by Congress to stop war profiteering, came away from an interaction with CNTPO concerned about that level of oversight. 'The overriding consideration tends to be helping the military with their mission,' says Commissioner Charles Tiefer, a law professor at the University of Baltimore who interviewed CNTPO officials about the Afghanistan police contract. 'Economies for tight supervision of private security activities take a back seat.' See S. Ackerman (2011), 'Pentagon's War on Drugs Goes Mercenary', *Wired Magazine*, 22 November <http://www.wired.com/2011/11/drug-war-mercenary/>

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The Global Drug Policy Observatory aims to promote evidence and human rights based drug policy through the comprehensive and rigorous reporting, monitoring and analysis of policy developments at national and international levels. Acting as a platform from which to reach out to and engage with broad and diverse audiences, the initiative aims to help improve the sophistication and horizons of the current policy debate among the media and elite opinion formers as well as within law enforcement and policy making communities. The Observatory engages in a range of research activities that explore not only the dynamics and implications of existing and emerging policy issues, but also the processes behind policy shifts at various levels of governance.

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