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COMMISSION DES DROITS DE L'HOMME Cinquante-sixième session Point 3 de l'ordre du jour

ORGANISATION DES TRAVAUX

Lettre datée du 4 avril 2000 adressée à la Haut-Commissaire des Nations Unies aux droits de l'homme par le Représentant permanent de la Colombie auprès de l'Office des Nations Unies à Genève*

Le Gouvernement colombien a eu la possibilité d'examiner le rapport sur le Bureau en Colombie (E/CN 4/2000/11) que le Haut-Commissariat a établi pour la cinquante-sixième session de la Commission des droits de l'homme, et qui lui a été transmis au début de février par le Directeur du Bureau à Bogota, M. Anders Kompass.

En conséquence, j'ai l'honneur de vous faire tenir, pour que vous la transmettiez à la Commission, la réponse (voir l'annexe) que le Ministre des relations extérieures a envoyée au Directeur du Bureau en Colombie le 14 mars dernier, dans laquelle il rappelle l'importance que le Gouvernement colombien attache aux activités du Bureau alors que la Colombie connaît une situation complexe en matière de droits de l'homme et de droit international humanitaire; c'est la raison pour laquelle nous attachons un très grand prix aux efforts que nous pouvons déployer en commun pour surmonter les difficultés actuelles.

L'Ambassadeur, (Signé) Camilo Reyes Rodríguez

L'annexe est reproduite telle quelle dans la langue originale et en anglais. Le Gouvernement colombien a communiqué également plusieurs textes juridiques qui peuvent être consultés au secrétariat.

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Annex

REPUBLIC OF COLOMBIA

MINISTRY OF FOREIGN AFFAIRS

DM.7418

Santafé de Bogotá, 14 March 2000

Sir,

The Government of Colombia has had the opportunity to analyse the draft report prepared by your Office for submission to the Commission on Human Rights at its fifty-sixth session, concerning the activities of the Office in Colombia, the text of which was transmitted by you to us on an informal basis in early February 2000.

I would like to reiterate, first and foremost, the importance which the Government of Colombia attaches to the work carried out by the Office under your direction, in view of the difficult situation vis-à-vis human rights and international humanitarian law in our country, for which reason we attach particular importance to the efforts which, through our joint action, we can carry out to overcome the current difficult circumstances.

The aim of the report transmitted to the Government is to help - this is how our authorities see it - through a process of diagnosis, analysis and the formulation of sound recommendations - build and strengthen the foundations for efforts to tackle the very serious problems affecting the life of Colombians and finding solutions to those problems.

We are at one with the essential priorities and concerns set forth in your report, the same priorities and concerns to be found in our "Policy for the promotion, respect and guarantee of human rights and for the application of international humanitarian law", the basic obligation of the national Government and one which we aim to implement to the full, with the cooperation of Colombian society in its entirety.

Allow me to submit to you a series of comments, some of a general nature, others more specific, on the text of your report, which are designed to convey, in a constructive spirit and within the framework of our policy of transparency and cooperation with the international community, our views relating to the analyses made by your Office.

His Excellency Mr. Anders Kompass
Director, Office of the United Nations High Commissioner for Human Rights in Colombia

The text of the report contains certain criteria and assessments, as well as some omissions and inaccuracies, to which the Government of Colombia does not subscribe and which it cannot accept in the form in which they are presented, since, in many cases, they determine the sense of the statements and generalizations which are repeated throughout the document. Accordingly, I would like, by way of introduction, to submit our own position on the general approach followed by the report, with the request that this position be taken into consideration when I refer in more detail to each of its recommendations.

Considerations of a general nature

The considerations which, besides the detailed points contained in the report, have particularly struck the government and State authorities to whom the document was transmitted, inasmuch as they largely determine the conceptual framework for the analysis of the current situation in the country and for the report as a whole, fall under four main headings.

There are four broad categories of considerations which, these shall be analysed with reference, first, to the description given in the report of the peace process conducted by the national Government with the rebel groups, an issue closely related to the assessment which in the report gives of the internal armed conflict and the role which it ascribes to that conflict, the topic dealt with under the second heading.

The scale of drug trafficking and the illicit drug economy - on which the report is almost silent - are the next issue to be assessed, followed by the description provided by your Office of the self-defence groups and its appraisal of the legal status of those groups.

Turning to the <u>description of the peace process</u>, the assessment provided by the report of the process currently under way has markedly little to say about the efforts undertaken to maintain conditions of dialogue and negotiation with FARC, and is also surprisingly unaware of the importance of the process and of the progress made in this area, which is indisputably greater than that made in any previous period in the more than 40 years of internal armed conflict in Colombia.

The report appears to understate - if not to ignore - the high degree of political will that has been mobilized and sustained even amid enormous difficulties, with a view to building a climate of confidence between the parties and to defining the agenda and the mechanisms designed and set in operation to accompany and help strengthen the process, such as the so-called thematic committees and the public hearings.

There is also no mention of the significant and country-wide popular movement calling for peace and an end to the crimes committed by the irregular armed groups.

This tendency to downplay the Colombian peace process and its achievements is all the more unjustified and inexplicable when it is recalled that, in its first report of 1998, the Office gave so much more attention to the unsuccessful attempts at that time to launch a negotiation process, subtitling one of its sections: "Situation in 1997: Electoral process and peace process",

while the 1999 report devoted three paragraphs (30, 31 and 32) specifically to the negotiations which had been initiated at that time.

This imbalance is repeated in the chapter on recommendations, in which the Government, the other actors in the conflict and Colombian society are given only the merest encouragement to continue their efforts to achieve a negotiated solution to the armed conflict, while, in the 1999 report, additional and express encouragement is given to the Government to continue to explore the most appropriate ways of attracting the attention and support of the international community to the peace process.

With regard to the assessment of the internal armed conflict and the role assigned to that conflict, the approach taken by the report is a matter of particular concern. In the first place, the scale of the armed confrontation and the importance which it has for the general situation of human rights is widely underestimated. While the process of the deterioration of the conflict is recognized in the text of the report, its function as the trigger of countless violations of human rights appears not to be mentioned in this context.

In contrast to this description of the internal armed conflict, which is in fact resulting in a disguised campaign of retaliations and reprisals enacted by the protagonists and manifested in the commission of crimes against their supposed or actual rivals in contexts which are distant, in terms of both space and time, from the areas where the clashes are occurring; the armed conflict, regrettably, represents an important and direct source of those violations. A typical example of the kind of effects which it has is the recent phenomenon of systematic murders of members of the security forces and the police, a large number of whom have been killed while they were on leave.

One obvious effect of the armed conflict is to clog up and even to overwhelm the judicial system, resulting, inter alia, in the impunity of offenders and particularly severe outbreaks of violence within the detention centres. In this way, it also helps create a general atmosphere of distrust vis-à-vis the administration of justice and makes people inclined to take the law into their own hands and provide their own armed defence.

Second, the report only tangentially assigns a certain degree of significance to the internal armed conflict, inasmuch as it causes difficulties for the right of access to justice and for respect for such groups as women and ethnic minorities. And yet, in a way that must surely surprise any analyst, it is not considered as a relevant factor with regard to the violations and threats against the right to life.

Third, departing from the format of the previous two reports, the report devotes a subsection, within chapter IV, to the evolution of the armed conflict, in which it gives an extremely negative assessment of the mechanism of the so-called demilitarized zone established under law to promote the peace talks. This assessment, made without any clear and objective context, will confuse any unprepared reader.

The report limits itself to rehashing press reports of alleged murders, hostage-taking, recruitment of children and other restrictions on civil liberties by the rebel movement, without

trying to analyse the decline in attested violations of the right to life by comparison with verified historical averages in the area covered by the demilitarized zone.

What is more serious, however, is that the criticism of this measure, which has a key role in the conduct of the talks held up the present and for the future of those talks, completely disregards their significance for the general furtherance of the peace process, which, at the very least, is a distortion of the picture given to the international community.

In addition, with regard to the scale of drug trafficking and the illicit drug economy, in marked contrast to the two previous reports, there is no mention in the text of the impact of the illicit drug business, the far-reaching consequences of the violent activities of drug trafficking and its constant presence as a structural factor providing an inexhaustible source of economic and financial fuel, not only to large organized criminal gangs but also to the outlaw groups themselves, which derive enormous resources from these activities for their existence, for the recruitment of new members and for their growing arsenals of military and technological equipment.

This absence of any reference to the phenomenon of drug trafficking is, quite honestly, hard to understand. The Government cannot accept it and deplores the omission, in the context of the general situation of human rights and international humanitarian law, of a phenomenon which, with its immense scope, has played, over the last two decades, and continues to play a deleterious role in the general situation in the country.

The Government finds it difficult to reconcile this conceptual vacuum with the requirement that the reports of the High Commissioner for Human Rights should be accurate and comprehensive, particularly since this conceptual omission will of necessity have irreparable consequences, leading to a distorted assessment of the phenomenon of the self-defence groups and the system of specialized justice, specifically conceived as a fundamental means of taking punitive action against the above-mentioned criminal organizations, as shall be explained below.

Finally, with regard to the description of the self-defence groups and the appraisal of the legal status of these groups, the Government would like emphatically to restate its determination to combat these groups with every means at its disposal, as well as its unequivocal decision to dismiss and to prosecute any public servant linked in any manner with their criminal activities, as this is a State policy of the Government of President Pastrana. We would also like to express our categorical and profound disagreement with regard to the general approach taken by the report to these groups and to the details of its description.

The Government's concerns about the manner in which Your Excellency addresses this matter in the report is based on the following specific considerations.

First, the Government of Colombia considers unacceptable the statement that it bears "undeniable historical responsibility for the origin and development of paramilitarism". This statement manifestly contradicts the complex historical context and social and political reality which made possible the emergence of this phenomenon.

As noted in the various analyses of this problem prepared by students and researchers at various academic centres in Colombia and abroad, the conditions favouring the emergence of these self-defence groups are created by a complex combination of interdependent causal factors. Nor can we ignore the important role in their origination played by the drug-trafficking groups which, at the end of the 1980s, set about creating these groups in the Magdalena Medio area in open confrontation with the guerrilla units operating in that area and with the numerous clashes between the various groups for control of the drug-growing areas; we should also note the response of the plantation-owners and rural landowners who sought protection in these groups and contributed to their financing as a means of combating the growing phenomena of kidnapping, "boleteos" and vaccinations carried out by the guerrilla groups as a result of their strategic combat decision, at that time, to double the number of fronts on which they were operating.

Without doubt, further contributory factors were the precarious hold of the State and the weakness of the legitimate institutional system. But to proceed from that to such a sweeping charge of responsibility, without any temporal limitation, by making a rhetorical leap across the void, through a paragraph like the one in question, is quite unacceptable from whatever serious analytical standpoint this problem is considered.

The Government deplores the abandonment of any analytical perspective, as exhibited by this report in this crucial matter. It similarly rejects the explanation which is adduced in support of the argument that the self-defence groups were "protected by law from 1965 to 1989". The law passed in 1965 had as its purpose the establishment of a national militia in a context of relative institutional normality and historical records of homicide rates per 100,000 inhabitants two thirds lower than those to be recorded from 1989 and in the early 1990s.

Furthermore, what resulted in 1989 was not only a declaration of the unconstitutionality of that legislation, but also the criminalization of the activities of the self-defence groups, by making the various types of participation in the formation, promotion and support of, and collaboration with, the said groups' criminal offences. The criminalization of the self-defence groups has since then been a constant in Colombian criminal law.

The Government also wishes to state its non-acceptance of and disagreement with the supposition on which the report bases its charge that the Colombian State bears international responsibility for the practices in violation of human rights and the breaches of international humanitarian law committed by the self-defence groups. Repeating what was stated in your two previous reports, the present report insists on the criterion that the said responsibility is borne by individuals acting "at the instigation, with the consent or with the toleration of the authorities".

As the report recognizes, the provisions of international humanitarian law are fully applicable to the self-defence groups. Insofar as this approach constitutes an unequivocal recognition of the existence of a situation of armed conflict that is not international, particular relevance attaches to the parameters of international responsibility of the States in which a situation of that kind of armed confrontation is attested, as have been determined and described in recent rulings of the ad hoc tribunal established by the United Nations Security Council to try the perpetrators of war crimes and crimes against humanity in the former Yugoslavia.

In fact, the parameters for determining international responsibility borne by States differ, depending upon whether there is a state of institutional normality or, on the contrary, a situation of armed conflict and whether or not this is of an international nature. In accordance with the judgement handed down by the above-mentioned tribunal on 15 July 1999 through its Appeals Chamber, there is a clear necessity to refer to international rules on State responsibility, because humanitarian rules do not provide the criteria for determining the State's responsibility for the activities of individuals belonging to an armed group who are not acting as State organs.

The Appeals Chamber concluded that the specific criterion which was required and applicable for determining responsibility in such cases was that of a degree of control by the State over armed units, which means that it had a "role in organizing, coordinating or planning the military actions of the military group, in addition to financing, training and equipping or providing operational support to such a group" (paras. 137 and 138 of the said judgement), and for the determination of which substantial evidence is required.

In addition, and by way of conclusion, suppositions of responsibility will clearly be different, under international human rights law, international humanitarian law or international criminal law, insofar as the nature, the beneficiaries, the rules themselves which guide those suppositions and the mechanisms for internal and international implementation are different. It is precisely for this reason that we cannot talk in general terms of the obligation of international responsibility of the State - as suggested by the report - without also indicating, in a specific manner, the branch of public international law which applies, as well as the specific and actual situation which is being analysed and which would give rise to the corresponding ruling of State responsibility.

In this context, the Government of Colombia has already indicated, in its comments on the 1999 report, which it reiterates on this occasion as well, that "the criminal actions of self-defence groups may constitute violations of human rights, but only in those cases - which, just because they are isolated, does not mean that they are not of extreme seriousness - where there was omission or active participation by public servants, in respect of whom the competent authorities have never hesitated and will not hesitate to conduct investigations and to impose penalties".

Similarly, the Government rejects categorically the sweeping assertion that "these groups have the support, acquiescence or toleration of State officials and benefit from the lack of an effective response by the State".

By its very scope, this assertion avoids the need to analyse in every situation or case the specific circumstances in which the actions of self-defence groups were observed to lead to the occurrence of violations, which, by some sort of a priori presumption entail the responsibility of the State.

The Government would like to call attention to the rigorous and careful way the Inter-American Commission on Human Rights has dealt with the same issue in its Third Report on the Situation of Human Rights in Colombia, in which an exhaustive examination of the facts under analysis leads up to concise conclusions specifically limited to the cases under scrutiny, without any of the generalizations that appear to inspire the report we are dealing with.

Furthermore, the Government considers that the alleged facts on which the report's general assessment of self-defence groups rests are also far removed from reality.

The supposed support, acquiescence and toleration of State officials criticized in the report are in no way related to any institutional policy or to instructions by any State agency. Quite on the contrary, the actions of self-defence groups have on several occasions been directed against State officials with fatal results and through reiterated threats, against the right to life of many public officials.

Evidence of this is provided by the attack carried out by these groups on a judicial commission which was conducting investigations and proceedings for the extinguishment of ownership in San Carlos de Guaroa in July 1997, on which occasion 15 civil servants were assassinated, including investigators and members of the security forces. This event, it may be recalled, was not mentioned in the 1998 report, although it occurred well within the period elapsed since the Office in Colombia was set up in the country.

Moreover, the armed struggle against them has considerably intensified in the last five years, leading to the shooting of 88 of their members and the judicial capture of 705 more. Between 1995 and 1999, the security forces were involved in 256 armed clashes with those groups. Where this year is concerned, up to 28 February 2000, there were 14 casualties among members of the groups, 46 arrests and the seizure of a great quantity of sophisticated war material. The figures show conclusively the State forces' determination to combat these groups, particularly in view of the fact that, according to official data, there are believed to be around 5,000 members of self-defence groups, compared with a figure of close to 25,000 in the guerrilla forces, which proportionality should be taken into account in any evaluation of overall results.

Conceptual comments

The Government would also like to draw attention to some terminological changes introduced in the latest report compared with earlier reports.

As mentioned already by the Government in its comments submitted in 1998, there were objections to the description used at that time to the effect that human rights violations in Colombia were "serious, gross and systematic", insofar as that constituted a jurisdictional type of assessment and because it did not take account of a situation in which the State was undertaking many courses of action in its efforts to further the promotion and defence of human rights.

The Government notes that the latest report refers to a new pattern of "proliferation, repetitiveness and persistence", which means that the Office has significantly shifted its initial stand. The new version is no doubt in closer conformity with the terms of the mandate of the Office of the High Commissioner in Colombia and its position as observer, which shows that it is worth heeding the Government's comments, and the latter would like to express the hope that a

¹ Some statistical tables are annexed summarizing the results of the struggle against self-defence groups, insurgents and common offenders from 1995 to 1999, and against self-defence groups in the months of January and February 2000.

similar attitude will be adopted with respect to the issues dealt with in this document, once its scope has been assessed and discussed.

The Government, moreover, is puzzled by the term "kidnapping" used to describe the guerrilla's actions without the aggravating circumstance of extortion, and its full inclusion in the category of hostage taking.

The Government also fails to understand that, while Colombia has legally approved the 1997 Ottawa Convention, the use of antipersonnel mines by outlaw groups, which is contrary to international humanitarian law, and which was mentioned in the two previous reports, is not referred to in this one, even though the indiscriminate use of landmines by these groups has not been stopped, or even reduced, in the course of the past year.

The Government would also like to point out that, while earlier reports - with greater methodological thoroughness - drew a distinction among the complaints received by the Office between those that were disregarded, admitted and transmitted to the national authorities, the latest report only mentions an overall number, without giving the breakdown as before; it also refers to events occurring in periods which are not covered by the report.

Final considerations

Having clarified these few questions of concept, the Government would like to highlight that the duration of the Office's operations in Colombia was extended in 1999, by common agreement between the parties, from 12 to 24 months, as well as the opportunity for the Office to enjoy greater independence in managing its own staff, in order to fulfil its mandate more efficiently, which reflects the Government of Colombia's clear wish to pursue further its policy of transparency and cooperation with the international community.

We have also been working together on the conceptual and operational definition of an early warning system, which will allow the authorities to respond in an effective and timely fashion to threats of serious human rights violations or breaches of international humanitarian law. In this respect the Government hopes to adopt practical measures to implement the scheme as soon as possible.

The Government of Colombia wishes to reiterate its interest and commitment in pursuing the general objective agreed between the parties at the time the Office in Colombia was set up, whereby the latter "shall observe the human rights situation with a view to advising the Colombian authorities on the formulation and implementation of policies, programmes and measures to promote and protect human rights in the climate of violence and internal armed conflict prevailing in Colombia, and to enable the High Commissioner to make analytical reports to the Commission on Human Rights. In carrying out its mandate, the Office will focus its activities on cooperation with the Government of Colombia in order to assist in improving the human rights situation and, in conjunction with ICRC, to promote, within the limits of their respective mandates, respect for an observance of human rights and international humanitarian law in Colombia."

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The Government of Colombia therefore hopes that the clarifications and comments offered herewith will be taken into account by the Office when they officially transmit their report to the Commission on Human Rights, with due regard to the climate of trust and cooperation which must exist between the Government and the Office. At the same time, it would like to assure the Office that all measures and recommendations that are likely to improve our situation will be adopted by the Government of President Pastrana, as a means of improving the humanitarian situation in the country.

In this respect, with a view to enabling all the parties to the agreement on the basis of which the Office originated, better to evaluate and discuss in detail both the current situation and appropriate measures for overcoming the negative factors affecting it, I attach a document listing the State's actions and details relating to each of the recommendations contained in the report, in order to facilitate future discussions concerning those recommendations.

Lastly, I must express the Government's surprise at the fact that the report has been disseminated in national and foreign media, to the detriment of the terms of confidentiality and the serious and responsible approach needed in handling this issue. The Government would like to receive an explanation, in view of the fact that, as Your Excellency will recall, a specific request was made for the report not to be distributed until we had had a chance to submit a reply, and until such time as the Office had been able to take official comments into consideration.

Yours sincerely,

(Signed): GUILLERMO FERNANDEZ DE SOTO Minister for Foreign Affairs

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Munitions different	210 170	0	174 777	174 777	-	232 762	232 762		295 759	295 759	38 633	469 319	507 952	1 421 420
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RESULTS OF OPERATIONS AGAINST SELF-DEFENCE FORCES (1 January to 28 February 2000)

Description	EJC	ARC	FAC	Total
Casualties	12	2		14
Prisoners	31	15		46
Deserters	1			1
Rifles	25	13		38
Mortar				
Machine guns		1		1
Sub-machine guns	1			1
Shotguns	4			4
Carbines				
Pistols	10			10
Revolvers	7	1		8
Hand grenades	20	4	i e	24
Rifle grenades	6	1		7
Mortar grenades				
MGL grenades		9		9
M72 rocket launcher		1		1
MGL grenade launcher				
M79 grenade launcher				
Munitions different calibres	4 123	3 886		8 009
Dynamite (kilos)				
Fuses (metres)		1	ļ	
Mines seized	14			14
Dealers	33	50		83
Vehicles	7			7
Flares				
Outboard motors		1		1
Motorcycles	4			4
Fire engine				
Communication equipment	6			6
Computer				
Primers	23			23
Self-defence pamphlets	1			1
Mobiles	1			1
Television sets			ļ	
False registration plates	4			4
Cash jewels				
Planes brought down				1
Money				