

**PUBLIC APPEAL OF INTERNATIONAL LAWYERS CONCERNING
THE RESPONSIBILITY OF THE UNITED STATES TOWARD VIETNAM
FOR THE SPRAYINGS OF AGENT ORANGE/DIOXIN**

In view of the following facts:

During a period of ten years, to prevent the forest and undergrowth from concealing the hiding places and deployment of the adversary, to destroy harvests, and to incite the rural population to flee the countryside, the United States Air Force sprayed 72 million litres of herbicides on a total area of nearly two million hectares of forest and rice fields. These herbicides included 41,635,000 litres of "Agent Orange" which contained dioxin, a substance one million times more toxic than the most powerful natural poison known at the time, and whose harmful effects are such that, during the Second World War, President Roosevelt prohibited the U.S. Army from using it, and concerning which U.S. Senator Nelson in August 1970 declared in Congress: "It is not impossible that our country has dropped a delayed-action bomb that will reverberate on the affected populations with consequences that will only be possible to evaluate in a distant future."

Highly stable, dioxin tends to remain in the environment. The concentrations are extremely important in soils, in sediments as well as in animal fodder, thus contaminating the food chain. Seventeen years after the spraying of defoliants stopped, they were still found in fruits and vegetables cultivated in soils contaminated during the conflict. The "Stellman Report" estimated the number of potential or "silent" victims to be 4,800,000, not counting victims poisoned later, due to the processes of the food chain. The victims – past, present and future – thus number in the millions. It is indisputable that the families of Agent Orange victims have experienced an abnormally high number of stillbirths; children suffering from malformations and monstrous deformities, and that the second and third generations have not been spared. Even people who are not visibly injured are suffering from dermatological and psychiatric problems.

Considering that the Congress of the United States in 1991 passed the "Agent Orange Act", authorizing a commission to study the issue; that after recognizing the fact that the danger posed by dioxin had been underestimated ten years earlier, it declares that the substance was "a hormonal deregulator which has serious effects on the reproduction system of the foetus during its development, on the brain and on the immune system"; that in 1966 the U.S. National Institute of Health established a link between exposure to Agent Orange and "ten diseases (sarcoma, lymphoma, leukaemia, Hodgkin's disease, cancers of the respiratory tract and prostate, multiple myelomas, type 2 diabetes, delayed-onset cutaneous porphyria, acute and subacute neuropathic diseases).

Taking into account the terrible ecological consequences of the sprayings: 43% of cultivated areas were poisoned; 60% of the hevea plantations and 36% of the mangrove forests were destroyed, the restoration of which will require more than one

hundred years; water resources were polluted on a massive scale and the entire food chain was poisoned for many decades. Finally, 6250 square kilometres of land in southern Vietnam remain unsuitable for agriculture.

1/3

Considering that the U.S. Constitution makes it impossible to hold the government responsible for acts of war perpetrated by the U.S. forces, 70,000 U.S. veterans affected by Agent Orange, and later their organizations, in 1979 initiated legal proceedings to demand compensation from the firms that had manufactured the "Agent orange"; and also considering that the firms preferred to settle the lawsuit by paying 180 million dollars into a fund for compensation to ex-serviceman suffering from dioxin.

Considering that, on 31 January 2004, the Association of Victims of Vietnam and five individually named victims also initiated legal proceedings in the United States against the manufacturing firms. That lawsuit was rejected by the courts, but is currently under appeal.

Considering that in January 2006, a South Korean court issued a judgment of liability against the firms Dow Chemical and Monsanto, and ordered them to compensate 6800 South Korean victims.

Considering, however, that these legal actions can benefit only those in whose names they are conducted, and by extension to a "class action", but do not provide for any compensation to Vietnam *per se*, for the total accumulated damage resulting from turning entire areas into deserts for an unknown length of time, or for the moral offence and the social costs to the State for current and future births involving malformations or serious illness.

That, under article 21 of the Paris Accord, the United States declared that it "will contribute to erase the wounds of the war and to the reconstruction of the Democratic Republic of Vietnam", but now states that its commitment was limited.

That the United States asserted, in particular, that the Geneva Protocol only prohibited the use of asphyxiating gases and "similar" substances, and that the herbicides could not be classified as "similar".

That, however, preliminary documents of the Geneva Protocol as well as the interpretations of the U.S. authorities of that time show that the aim of the text was to forbid the use of any kind of gases and that the U.N. General Assembly confirmed this interpretation in its resolution 2603 A (XXIV) of 16 December 1969, in which it declares that it is contrary to the generally accepted rules of international law as they are stated in the Protocol signed in Geneva on 17 June 1925, to use in international wars : a) all chemical agents of war... due to their direct toxic effects on humans, animals or plants.

That if, in the 1960s and 1970s, the United States, Australia, Portugal, the United Kingdom and the Netherlands maintained a narrow interpretation of the Protocol, namely that it did not apply to defoliants, herbicides, or to anti-riot gases such as teargas.

It remains that when the United States ratified the Protocol on 10 April 1975, it declared that it renounced first use of herbicides and anti-riot gas in time of war, except:

- with regard to herbicides,

"Under regulations applicable to their domestic use, for control of vegetation within US bases and installations or around their immediate defensive perimeters";

2/3

In other words, the U.S.A. did not dispute the fact that herbicides are chemical weapons nor the illegality of their employment in the event of war. It should also be noted that, upon submitting its documents of ratification, the U.S.A. included reservations that were in no way related to the definition of chemical weapon:

- for the Geneva Protocol of 1925

" The protocol will cease to be obligatory for the Government of the United States with regard to the use of asphyxiating, toxic and other gases, and to all liquids, materials or machines similar to those mentioned in the Protocol." (April 10, 1975)

- for the Convention of Paris of 1993

" ... provided that with regard to the appendix on the implementation of the Convention and its verification, any sample taken in the United States within the framework of the Convention shall for the purpose of analysis be transported to a laboratory located outside of the territory of the United States." (April 25, 1997)

In any event, since whatever is used in war against an adversary in order to inflict injury or damage, whether upon humans or only upon materials, that which is used is by definition a weapon – if not by nature, then by intent. And if that which is used is a chemical, it is a chemical weapon.

But especially and in any case, those who cause injury have a duty to rectify the damaging consequences.

By the mere fact of having sent C123 planes to spray defoliants on the forests of a foreign country in violation of its territorial integrity, and in so doing having caused damage and destruction contrary to the Humanitarian Law, whatever the *modus operandi* constitutes an illegal act by which the United States has made itself responsible for the consequences and is obligated to rectify them.

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3/3

**Petition concerning the responsibility of the United States toward Vietnam
for the totality of the damage caused by Agent Orange/dioxin**

In reference to the expert opinion of several leading authorities on international law from various nations of the world, we the undersigned support their appeal to the United States to rectify or provide thorough compensation for the injuries inflicted upon generations of the Vietnamese people, which have resulted from the spraying of toxic substances on Vietnam by the U.S. Air Force.

Initial endorsers

For the International Association of Democratic Jurists: Jitendra Sharma, President (India); Jeanne Mirer, Secretary-General (USA); Juan Roigt Plans, Treasurer (Catalonia); Clea Carpi da Rocca, President of the Association of American Continental Jurists (Brazil); Josif Gavril Chiuzaiban, President of the Union of Romanian Jurists; Ibrahm Essemblali, Secretary-General of the Union of Arab Lawyers; Roland Weyl (France); vice-presidents Mohamed Bentoumi (Algeria), Josip Geron (Bulgaria), Akhtar Hussain (Pakistan), Fabio Marcelli (Italy), Osamu Niikura (Japan); adjutant secretaries-general Jan Fermon (Belgium), Ferriol (Cuba), Raji Sourani (Palestine), Dao Uc (Vietnam), Lee Wok (South Korea).

For Droit-Solidarité (France): Sophie Thonon, President; Niri Albala, Jamil Banabdallah, Wassim Benhassine, Raplh Benarrosh, Marcel Berge, Jean Jacques Dulong, Elsa Galaup, Ourida Gherab, François Kaldor, Raymond Mérat, Monique Picard-Weyl, Adeline et Olivier Prouteau, Jean Veyssière, France Weyl.

