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U.S. Urges Judge to Dismiss Suit On Agent Orange Use in Vietnam

By WILLIAM GLABERSON

The Justice Department is urging a federal judge in Brooklyn to dismiss a lawsuit aimed at forcing a re-examination of one of the most contentious issues of the Vietnam War, the use of the defoliant Agent Orange.

The civil suit, filed last year on behalf of millions of Vietnamese, claimed that American chemical companies committed war crimes by supplying the military with Agent Orange, which contained dioxin, a highly toxic substance.

The suit seeks what could be billions of dollars of damages from the companies and the environmental cleanup of Vietnam.

In preparation for legal arguments scheduled for today in United States District Court in Brooklyn, Justice Department lawyers filed a brief last month that described the suit as a dangerous threat to the president's power to wage war and an effort at a "breathhtaking expansion" of the powers of federal courts.

Though the case drew little attention when it was first filed, it has become an important test of the reach of American courts, drawing worldwide interest and setting off a fierce debate among international-law experts.

"The implications of plaintiffs' claims are astounding," the government's filing said, "as they would (if accepted) open the courthouse doors of the American legal system for former enemy nationals and soldiers claiming to have been harmed by the United States Armed Forces" during war.

One of the plaintiffs' lawyers, Constantine P. Kokkoris, said in an interview that the

Justice Department's argument was misplaced because the government had not been sued in the case. He said the lawsuit raised questions about the conduct of the corporations that were limited to their supplying what he called contaminated herbicide.

The chemical companies argue that they produced Agent Orange following government specifications and that its use in Vietnam was necessary to protect American soldiers. They have long argued that there is no clear link between exposure to Agent Orange and many of the health problems attributed to it.

The judge, Jack B. Weinstein of Federal District Court in Brooklyn, said last year that the case, a class action on behalf of what could be four million Vietnamese, faced many legal hurdles.

But during a hearing in March he said it raised important issues and "has to go forward seriously," suggesting that it might eventually need to be decided by the United States Supreme Court.

He asked from the bench whether precedents concerning the treatment of makers of Zyklon B, the hydrogen cyanide gas used in Nazi death camps, might be applicable to the claims against the companies that supplied Agent Orange to the military.

After World War II, two manufacturers of Zyklon B were convicted of war crimes and executed.

Agent Orange was widely used in Vietnam, often to clear jungle that American officials said gave the enemy cover. Its use was discontinued in 1971. But it has survived as a confounding legal issue.

In 1984, after years of court battles, seven American chemical companies paid \$180 million to settle a class action suit by American Vietnam veterans who claimed that it caused cancer, birth defects and other health problems.

Judge Weinstein, who also presided over those cases, said in a series of controversial rulings at the time that the veterans would have had grave difficulty proving a link between their health problems and Agent Orange. Some scientists say the link would be easier to prove today.

Because of the federal government's sovereign immunity, it was not part of the 1984 settlement and was not named as a defendant in the new suit on behalf of the Vietnamese.

Thousands of pages of legal arguments have been filed in preparation for today's arguments, including experts' opinions and friend-of-the-court briefs.

International law experts have weighed in on both sides on the central issue, whether Agent Orange should be considered a "poison" that was barred during warfare by international law.

George P. Fletcher, an international law professor at Columbia University, wrote on behalf of the Vietnamese that "in warfare it is permissible 'to stand and deliver'-- to look the enemy squarely in the eye and shoot him -- but not to look the other way and then use dioxin" to poison his food, land and water.