The European International Model United Nations 2014

The International Court of Justice

Aerial Herbicide Spraying Case: Ecuador v. Colombia
Introduction: About the ICJ and the TEIMUN 2014 ICJ Council

The International Court of Justice is the principal judicial organ of the United Nations. Situated in the Peace Palace in The Hague, the Netherlands, the Court is composed of 15 Judges, including a President and a Vice-President. As set forth in the United Nations Charter, the ICJ is competent to review both 'contentious cases' and give 'advisory opinions'. The first occurs when two or more States submit their dispute before the Court for a binding judgment; the latter is a non-binding 'opinion' on a certain legal question, at the request of the UN General Assembly, the UN Security Council, or other qualified UN organization or agency with authorization of the UN General Assembly.

TEIMUN's ICJ simulation aims to raise important and contentious legal issues currently occupying international discussions. We want to engage young lawyers and policy specialists in exciting debates about some of the more controversial aspects of International Law. The aim is to familiarize future professionals with the substantive work, procedure, competences and limits of the Court, and, most importantly, to allow you to experience the exciting international legal profession in the 'legal capital' of the world. As we are always proud to point out, this is the only ICJ simulation where participants are also able to undertake an excursion to the Peace Palace, the seat of the actual Court!

During the conference in July, we will be simulating a model session of the ICJ. Each of the participants will be acting as one of the Courts' 15 Judges and will be asked to rule on numerous legal questions found in the contentious case submitted by the parties. As also stated in the Statute of the Court, Judges are to decide impartially, based solely upon the facts of the case. Although part of the case is based on a real scenario, Judges will only consider the facts that the parties submitted in their compromis and argued before the Court.

The ICJ simulation can be considered special when compared to other committees and councils simulated at TEIMUN: instead of representing a country's position, you will rather be asked to adjudicate on a set of claims brought forth by the parties and argued by the two Advocates on their behalf. Furthermore, the ICJ is special in as much as it features a Registrar, who in our case is given the power to facilitate and guide the discussions. But since we want you to have a truly exciting week in The Hague, we also want you to experience the thrill of advocating: that is why during the proceedings you will all be given a chance to argue for one of the parties!
This year, TEIMUN's ICJ team has worked hard on a case based on real proceedings before the Court, namely on the discontinued Aerial Herbicide Spraying case between Ecuador and Colombia. The case involves interesting legal issues regarding transborder environmental harm, International Human Rights Law and State responsibility. To make the session even more exciting, a fictional scenario has been introduced, which will involve issues of International Consular Law as well as the Use of Force and Self-defence against non-state actors. At the same time, this year's Rules of Procedure will allow for a more dynamic simulation, introducing new challenges for the participants.

The true added value of the TEIMUN ICJ Council are the rigorous debates about International Law. Our previous experience suggests that familiarity with the legal issues at hand is vital in argumentation. We have provided you with a list of suggested readings at the end of the compromis, but we nonetheless advise all participants to undertake further research and come up with new ideas on how to approach the interesting questions in front of you.

On behalf of the entire TEIMUN Staff, we welcome you to TEIMUN 2014 and we look forward to meeting you in July!

Claire Ochieng, Vladimir Grigorescu and Rok Jamnik

Chairs of the ICJ
Aerial Herbicide Spraying (Ecuador v. Colombia)

1. In the aftermath of the tensions brought on by the anti-communist policies of the 1960's, the Colombian liberal and communist parties united into a guerrilla force which would later come to be known as the Revolutionary Armed Forces of Colombia (Fuerzas Armadas Revolucionarias de Colombia – FARC). Lacking the military capacity of the Colombian armed forces, FARC resorted to asymmetrical warfare and took refuge in the more inaccessible areas of the country, among which is the south, along the border with Ecuador.

2. To fund their military operations, FARC carry out a number of illegal practices, one of which is the trafficking of drugs, especially cocaine, produced from their own coca plantations. In order to prevent government crackdowns, these plantations have also been set up in various remote places, one of which is the fertile Amazon basin, along the border with Ecuador.

3. Colombia, in a bid to eradicate drug trafficking, has been using various ways to try and eradicate the coca plant which is the raw material used to produce cocaine. However, in 1999, they intensified the use of aerial spraying of chemical herbicides, making it the principal means of attempting to reduce the illegal cultivation of coca plants along the Ecuadorian border. This was in pursuit of its domestic and foreign policy of waging a “war on drugs” called Plan Colombia. Plan Colombia was being funded by the United States of America which has been providing increasing and substantial amounts of financial aid to the Colombian government in order to destroy the illegal FARC coca plantations.

4. The increased aerial fumigation by Colombia has been concentrated in its southernmost provinces, Putumayo and Nariño, which together make up Colombia’s border with Ecuador. In Nariño province alone, the area sprayed with herbicides increased over 600 percent from 6,442 hectares in 2000, to 36,275 hectares in 2007.

5. After each fumigation, carried out by Colombia around the border region, the local Ecuadorian population reported various adverse symptoms, such as burning, itching eyes, epidermal sores, intestinal bleeding and even several confirmed deaths. Between the year 1999, when the fumigation was intensified, and the first half of 2011, in a bid to seek redress for the injuries suffered, the Ecuadorian
population appealed to the local courts in an attempt to obtain material reparations.

6. The Ecuadorian courts almost unanimously determined that the Colombian state bore full responsibility for the injuries. And yet any case brought before Ecuadorian courts regarding this subject matter was promptly dismissed on the basis of state immunity. Most judgements would state that “although the issue is that of a violation of basic human rights, the law does not allow for such a ruling to be made [by this court].”

7. In a further attempt to obtain reparations, some of the victims submitted their claims to the administrative courts of Colombia. However, the Colombian courts also declined to rule in favour of the victims, citing that “while the Colombian state is committed to the protection of human rights, as guaranteed by its constitution, the courts cannot make a ruling since the alleged offences took place outside their territorial jurisdiction.”

8. Finally, the victims petitioned the Ecuadorian government to attempt a diplomatic solution and to obtain damages.

9. On 24 July 2011, Ecuador’s Ministry of Foreign Affairs sent the first diplomatic note to the Embassy of Colombia in Quito expressing “the concern of the government of Ecuador regarding the upcoming fumigations of coca crops in Colombian territory with toxic and/or biological substances that may cause serious impacts on human health and the environment, with possible repercussions for Ecuador, on the fragile ecosystems of the Amazon region and on the health and livelihoods of local populations.”

10. Ecuador requested information about the fumigations and their potential impacts, asking in particular if Colombia had conducted environmental impact studies before beginning the fumigations and what measures it had taken to mitigate the spraying effects. “The Ministry of Foreign Affairs considers it important and would appreciate receiving information regarding the environmental repercussions of the possible use of toxic and/or biological substances. Of special importance is learning whether environmental impact studies and/or mitigation measures have been planned and carried out before the realization of the aforementioned spraying activities in the areas that may possibly be affected.”
11. However, since the commencement of the aerial fumigation, the specific ingredients and concentration levels of the chemical spray mixture have never been revealed by Colombia and Ecuador has not received a proper environmental impact assessment to date.

12. In December 2011, Ecuador proposed a bilateral meeting to discuss the implementation of Colombia's policy initiative under which the fumigations were being conducted. Colombia rejected the idea summarily, referring to it as inconvenient and inappropriate.

13. Two months later, on 16 February 2012, Ecuador sent another diplomatic note, with fumigations ongoing along the frontier. Ecuador asked Colombia to provide information on the composition of the chemicals used and the areas where the sprayings were scheduled to take place. In particular, Ecuador sought “within the shortest possible time, all the information available regarding the type of substances that are being used in the fumigations, as well as on the specific areas where these operations are being conducted and where they are expected to be conducted in the future.” Yet Colombia again failed to provide the relevant information.

14. On 12 March 2012, the Colombian Foreign Minister wrote a note to the Government of Ecuador about their repeated voicing of concern with regards to the potential adverse effects arising from the execution of Plan Colombia. The note held, inter alia, that “it is worth reiterating that Plan Colombia constitutes the central strategy, adopted by the Colombian Government, to address the serious problems that affect our society, aiming, above all, at the progressive eradication of illicit crops and combating related activities.” Colombia further stated that the Plan was the most effective method of protecting even Ecuador from the effects of drug trafficking and armed conflict.

15. Ecuador, in its reply on 27 March 2012, made it clear that it had no interest in interfering in Colombia's internal affairs and that it is only interested in protecting its own safety and that of its people.

16. At this time, Ecuador has learnt that the spray mixture contains glyphosate-based product and surfactants/adjuvants which have been designed to kill coca plants. Yet this mixture has also been known to kill all plants that it comes in contact with, including crops and agricultural products. When it did not receive a reply, Ecuador
sent another note on 2 July 2012 in which it continued to press its concerns about the aerial fumigation, the reported contents of Colombia's spray mixture and the absence of a risk assessment. In this note, it requested Colombia to apply the chemical formulations at least 10 kilometres from the border with Ecuador in order to prevent the winds from reaching Ecuadorian territory and producing harmful effects on the people and on vegetation.

17. Colombia responded to this note on 14 July 2012 stating that it was aware of the effects that the inappropriate use of herbicides can have and that it was conducting the program in a technical, programmed and controlled way. Colombia further assured Ecuador that it was using products which have been demonstrated to have no harmful effects but it did not provide any substantial support for this claim.

18. Despite all this, Colombia still carried out a new round of fumigations along the border in October and November of 2012 having given Ecuador no notice. Meanwhile the effects of the herbicides continued to be felt among the Ecuadorians and there were continued reports of various adverse effects not only on the local population, but on the environment too.

19. Ecuador is one of only 17 countries in the world designated as “mega diverse” by the World Conservation Monitoring Centre of the UNEP due to its tremendous diversity of ecosystems, including coastal rainforests, Andean peaks and Amazonian rain forests. Possessing one of the world’s highest concentrations of biological diversity, the spraying could cause severe and extensive damage to their environment, and irreparably damage the local flora and fauna.

20. With on-going fumigations in late 2012 and the FARC activity along the border increasing, the FARC fighters have increasingly been reported as trespassing into Ecuador in an attempt to avoid Colombian military.

21. On 11 February 2013, the 19th Special Forces Company “Aguarico”, an Ecuadorian military formation with special training in jungle warfare, was dispatched to the region with general instructions to determine the FARC presence on Ecuadorian territory, search for any illegal coca plantations and, if possible, apprehend any individuals involved in illegal activities.

22. During their searches in the border area, the Special Forces Company was attacked by what appeared to be FARC fighters. The Ecuadorian Special Forces responded to the attack, to which the FARC personnel staged a retreat towards a camp to the
north. Following their orders, the Special Forces Company pursued the guerrilla fighters, all the while crossing into Colombian territory.

23. On the following day, the Ecuadorian Special Forces unit staged an assault on the FARC camp and managed to subdue and capture 20 FARC fighters. The prisoners were later taken back across the border to Ecuador and placed in detention, where they are still presently being kept.

24. Immediately in the aftermath of the operation, there was no indication that the Colombian government was aware of the Ecuadorian activities on its territory.

25. On 15 February 2013, three days after the assault on the camp, the Ecuadorian government notified the Colombian Embassy in Quito about its Special Forces operation and about the individuals Ecuador had detained.

26. In a public press conference on the same day, Ecuadorian Foreign Minister invoked “self-defence against a band of terrorists and criminal mischiefs” as the legal basis for the operation. He further described the actions of the Ecuadorian Special Forces as “necessary in the situation of manifest and persistent Colombian inability to prevent transnational illegal activities emanating from their side of the border.”

27. Immediately following the press conference, Colombian President Juan Manuel Santos called his Ecuadorian counterpart and protested what he described a clear use of force, in violation of the UN Charter. Later that day, when talking to the press, he also described the Ecuadorian operation as “a blatant violation of the territorial sovereignty of Colombia and of international law, including of the fundamental principles of the Charter of the Organisation of the American States.”

28. Hours after the Ecuadorian press conference, the Consular Affairs section of the Colombian Embassy in Quito attempted to make contact with the detainees. Ecuadorian security officials immediately granted the consular staff full access to the detainees, all of which were found to be in good health. 18 of the detainees were Colombian citizens, while 2 had dual Colombian-Ecuadorian citizenship. Ecuador also provided the consular staff with all available information on the arrest and all of the non-classified information about the operation.

29. According to the testimony of the Colombian detainees and from what official records were available, the detainees were notified of the reasons for their arrest immediately upon being brought back onto Ecuadorian soil. Furthermore,
Ecuadorian security forces seized a Military Tribunal within hours of the arrest. During the entire process, none of the detainees requested access to consular assistance.

30. A day after the arrest, on 13 February 2013, the detainees were also notified of the charges raised against them. All 20 detainees were charged with conspiracy to commit terrorism, illegal large-scale trade in narcotics and acts against the security of the state. For the said charges, the Ecuadorian penal code prescribes a maximum sentence of 16 years of imprisonment.

31. Later on the same day, the Colombian detainees were brought before the Military Tribunal that was initially seized of their arrest. At the hearing, the detainees were represented by a team of state-appointed attorneys. For whatever reason, the attorneys had not contacted the Colombian Embassy at that point nor had they raised the issue of consular assistance during the hearing.

32. The Military Tribunal ruled that the detention of the 20 detainees was valid and had confirmed the charges against them. Defence for the detainees claimed that Ecuador does not have jurisdiction since the individuals were apprehended in Colombia and brought back to Ecuador in what was clearly an illegal operation. The Defence further argued that the case should be moved to a civil tribunal. Both claims were dismissed by the Tribunal as irrelevant to its findings.

33. On 15 February 2013, the same day that Colombia was notified of the Ecuadorian operation and two days after the hearing before the Military Tribunal, Ecuador also notified the detainees of their right to consular assistance.

34. In a public statement on 18 February 2013, the Colombian Ministry of Justice expressed its view that Ecuador failed to abide by its international obligations in relation to the 20 detainees. It described the failure of the Ecuadorian government to notify the detainees of their rights to consular assistance, without delay, as “a violation of their human rights and of every rule of due process because the judicial guarantees under international law have not been observed.” According to Colombia, the violations were even more serious due to the severe punishment involved with the charges. The Ministry also challenged Ecuador’s jurisdictional grounds, calling the transfer of the detainees into Ecuador as “an act of illegal abduction that sets a dangerous precedent for the relations between two friendly states.”
35. Amidst increased public pressure, Ecuadorian President Rafael Correa, while being a guest on a national television programme in March 2013, stated that the Ecuadorian government will continue to fight organized criminal activities along its border with Colombia and lawfully act against terrorists on both sides of the border. He also argued that Ecuador will not allow for vile crimes to go unpunished and that Ecuador is well in its right to conduct criminal proceedings against the Colombian detainees according to its national laws.

36. After months of deliberation and amidst increasing tensions on both sides of the border, in September 2013 Ecuador and Colombia had agreed to bring these questions before the International Court of Justice, by way of special agreement under Article 40(1) of the Court’s Statute, and have the Court adjudicate the reciprocally alleged violations of international law.

**Ecuador, the Applicant for the purpose of this application, requests the Court to adjudge and declare that**

a.) Colombia has violated its obligations under International Law by causing or allowing the deposit on the territory of Ecuador of toxic herbicides that have caused damage to human health, property and the environment;

b.) Colombia is responsible for the harm done to the Ecuadorian population and, consequently, is in breach of its obligations under International Human Rights Law;

c.) Ecuador, by crossing into the Colombian territory, acted in exercise of its right to self-defence, with a legitimate aim of stopping transborder illegal activities that Colombia was either unable or unwilling to prevent. Furthermore, Colombia has breached its obligations under International Law by not acting with due diligence to prevent the transborder illegal activities emanating from its territory;

d.) Colombia is not entitled to make claims on behalf of the detainees, and in any event, Ecuador has fulfilled its international obligations by notifying the detainees of their right to consular assistance, and by enabling free communication between the detainees and the Colombian consular officials. Furthermore, Ecuador has full jurisdiction over the crimes that the detainees have been charged with.

**Colombia, the Respondent for the purpose of this application, requests the Court to adjudge and declare that**

a.) Colombia cannot be held liable for the transborder effects of the aerial herbicide sprayings conducted on its territory. Furthermore, Colombia has acted in good faith by
carefully planning the fumigations and providing the government of Ecuador with assurances that the sprayings were not harmful to the environment or the Ecuadorian population;

b.) Colombia cannot be held liable for the damages suffered by the population outside its territory, as it benefits from state immunity. Furthermore, Colombia is under no obligation to provide for any reparations or remedies to Ecuadorian individuals allegedly harmed by its anti-drug operations;

c.) Ecuador, by crossing with its military into the Colombian territory, has violated Article 2(4) of the UN Charter and has infringed upon the Colombian territorial sovereignty. In doing so, Ecuador furthermore unlawfully intervened in Colombia's internal affairs;

d.) Colombia is entitled to make claims on behalf of the Colombian detainees and Ecuador has violated International Law by not informing, without delay, the detainees of their right to information on consular assistance and their right to consular notification. Furthermore, due to the fact that the detainees were unlawfully apprehended and transferred to Ecuador, Ecuador does not have jurisdiction over the crimes which the detainees are charged with.

Ecuador and Colombia both became members of the United Nations in 1945, respectively. Both states have ratified the 1963 Vienna Convention on Consular Relations, the 1966 International Covenant on Civil and Political Rights, the 1969 Vienna Convention on the Law of Treaties, and the 1969 American Convention on Human Rights. For the purposes of this application, both Ecuador and Colombia are considered to have ratified the 1963 Optional Protocol to the Vienna Convention on Consular Relations concerning the Compulsory Settlement of Disputes.
SUGGESTED READINGS:
The Statute of the International Court of Justice (1945).


*Jurisdictional Immunities of the State* (Germany v. Italy, Greece intervening), 2012 I.C.J. 99.


Additional Readings:


