



International Court of Justice

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Topic: Ecuador v. Colombia



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Letter from the Chair

Dear Delegates,

I am stoked to welcome you to BearMUN 2023's International Court of Justice committee.

Our compelling case examines complex questions of state sovereignty, environmental stewardship, and international law in "Aerial Herbicide Spraying: Ecuador v. Colombia." In representing your nations on this issue, you shoulder a profound responsibility - to parse tangled arguments, interrogate vague principles, and synthesize nuanced solutions. There are no easy answers here, only trade-offs between national security and ecological impacts, self-determination and human health. But, I am confident this exceptional group of delegates is more than capable of rising to the challenge.

Though new to the American circuit, I have long nurtured a passion for diplomacy and civil discourse through conferences since high school. My most recent conference was VICS at the University of Virginia, simulating the United Nations Office of Outer Space Affairs through which I had dynamic group discussions with individuals from across the country – MUN has helped me meet some of my best friends. My first foray into the North American circuit was with UCBMUN last year. As an Assistant Crisis Director for the UC Regents committee, I gained invaluable insight into the passion and creativity delegates invest in their roles.

A little background: I'm an International student in my sophomore year studying Economics and Data Science. On campus, I work part-time in facilities and am involved in several business organizations – Financial Education Association at Berkeley, Core Consulting Group, and Global Investors at Berkeley, to name a few.

I joined UCBMUN last year and can vouch for what everybody calls their "community". Outside of MUN, I enjoy playing basketball, graphic designing, and taking part in case competitions. I like listening to music, from Joji to The Beatles - you name it! I also like to say that I am a food fanatic – I love exploring new vegan restaurants and pizzerias in and around the Bay Area.

My goal as your chair is to create a respectful and insightful exploration of both countries' perspectives on the legal and ethical nuances of this dispute. Please don't hesitate to reach out to me with any questions at any point in time. I look forward to vigorous, thoughtful debates on how to resolve this complex case. Let's have a great committee!

Sincerely,
Tavishi Bagaria
Co-Chair, International Court of Justice



Committee History

The International Court of Justice (ICJ) is the principal judicial organ of the United Nations (UN). It was established in June 1945 by the Charter of the United Nations and began work in April 1946. The seat of the Court is at the Peace Palace in The Hague (Netherlands)¹. The ICJ's primary function is defined in Article 2(3) of the UN Charter, which states, "All members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered."² The Statute of the ICJ is included as part of the UN Charter in Article 92, which states that "the International Court of Justice...shall function in accordance with the annexed Statute, which is based upon the Statute of the Permanent Court of International Justice and forms an integral part of the present Charter."² Furthermore, all States party to the UN Charter are automatically party to the ICJ as well.

The ICJ is composed of fifteen judges elected for nine-year terms. The experience and background of a judge can greatly shape his approach towards cases. Thus, in order to ensure the diversity of opinions on the Court, no more than one national of any single state can serve on the Court at once. The ICJ has a twofold role: to settle, in accordance with international law, legal disputes submitted to it by States (contentious cases) and to give advisory opinions (advisory procedures) on legal questions referred to it by duly authorized United Nations organs and specialized agencies⁴. Despite having no binding force, the Court's advisory opinions nevertheless carry great legal weight and moral authority. They are often an instrument of preventive diplomacy and help to keep the peace. In their own way, advisory opinions also contribute to the clarification and development of international law and thereby to the strengthening of peaceful relations between States⁴.

The concept of peaceful dispute arbitration at the international level is an idea that has prevailed throughout history. At the end of World War I, the international community founded the League of Nations, the first permanent international security organization with the primary goal of maintaining world peace. Under Article 14 of the Covenant of the League of Nations, an international court, the Permanent Court of International Justice (PCIJ) was established. The PCIJ significantly advanced the concept of international law, as it was the first permanent international judicial body to be governed by its own Statute and Rules of Procedure. The PCIJ had powers to provide binding decisions on disputes between states as well as to give advisory opinions to League organs. After issuing rulings in 29 contentious cases and 27 advisory opinions, however, it was dissolved in 1946 following World War II².

Following World War II's conclusion, many international leaders expressed a desire for a new international court's creation to arbitrate disputes. At the San Francisco Peace Conference, a decision was made to create ICJ which would function similarly to its predecessor PCIJ but instead serve newly formed UN rather than the now-defunct League Of Nations¹⁰.



With regard to cases, the ICJ has two types of jurisdictions: contentious and advisory. Under contentious jurisdiction, the ICJ can hear disputes regarding matters of international treaties and conventions in force, general provisions of law, and international custom. Contentious decisions are binding and can only be issued between two states. Private entities such as individuals, non-governmental organizations, and corporations are not covered under the Court's jurisdiction. The Court can issue a binding decision if the concerning states have accepted the ICJ's contentious jurisdiction in one or more of the following ways:

1. **Special Agreement (compromise):** After a dispute has arisen, two states can enter into a bilateral special agreement in which both states agree to have the ICJ hear the dispute.
2. **Jurisdictional Clause:** Treaties will sometimes have jurisdiction clauses that confer any disagreement over the treaty's interpretation or implementation directly to the ICJ. The Court derives this power from Article 36 of the Statute, which states that its jurisdiction "comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force."⁴
3. **Compulsory Jurisdiction:** Article 32(2) of the ICJ Statute, the "Optional Clause," allows states to make a unilateral declaration recognizing "as compulsory ipso facto and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes."² States may, at any time, declare that they accept the Court's jurisdiction, and thus, when a dispute arises concerning that state, then it has a legal obligation to respond to the suit. It is important to note that not all states have accepted the Court's compulsory jurisdiction and those who have accepted it can do so with reservation.

After the Court delivers a judgment on a contentious case, both states are legally bound to implement the decision. In the event that a state fails to implement the provisions of the judgment, the Court can bring the matter to the UN Security Council for enforcement.

As for advisory jurisdiction, the ICJ can issue advisory opinions on legal questions if asked to do so by the UN General Assembly, Security Council, or any other specialized UN Agency. Unlike contentious rulings, advisory opinions are not binding. This does not mean that advisory opinions do not have any effect. In fact, their consultative nature makes them widely respected and oftentimes influential in decision making by other UN agencies.



Committee Procedure

Delegates in the ICJ will represent the Judges of the court. While each Judge comes from a unique country, Judges in the ICJ do not represent the policies of their states of origin. It means that delegates should decide their opinion based on international law and personal beliefs.

This committee will stimulate the Court deliberations session of the case, and not the hearings section. Although we aim to make our committee function as closely to the traditional Model UN committee as possible, the structure of our committee will still be quite different.

In addition to the case's information found in this guide, the committee will begin with speeches by Lawyers from both parties, arguing their perspectives (the Lawyers will be BearMUN staffers). After, there will be a Q&A session with the Lawyers, where Judges can ask questions to both parties that will help them formulate their opinions. There will be hearings approximately at every committee session to which the judges will have to update their "findings" accordingly.

Debate will consist of moderated and unmoderated caucuses. The debate will be divided into subtopics of the larger case at hand. Each subtopic will culminate with writing "**findings**," which are equivalent to working papers in typical Model UN. At the end of committee, the final decision of the Court consists of all findings that were passed, organized into a single document. Debate will run as follows:

1. Judges will debate on setting the agenda to whichever topic they believe is most pressing. A procedural vote will then be held to determine the topic.
2. Discussion of the topic will begin with Judges' stating their initial views of the topic.
3. Between moderated debate and unmoderated caucuses, Judges will discuss specifics of the topic, including discussion of both the situation itself and the legal basis behind their opinions. They must write their findings during this period, in groups ("blocs").
4. Judges will submit their findings to the dais. The dais will review the findings as they are submitted. Judges can then motion to present their findings. Presentation will include a Q/A.
5. Findings will be debated on after they are presented, in both moderated debate and unmoderated caucuses. The dais encourages Judges to collaborate to resolve any conflicting clauses during this time.
6. Judges will move into voting procedure on the revised findings. All findings that pass by a majority will be included in the final decision.

This procedure will be repeated for all subtopics. Keep in mind that Judges may submit findings or amendments to findings relating to subtopics that were already debated on, at any stage of committee. After all subtopics have been covered, the dais will reread the full final decision to the court. The Court will then move into a final voting procedure on the final decision.

Memorial of the Republic of Ecuador



Chapter 1: Introduction

1. On 31 March 2008, Ecuador instituted proceedings against Colombia at the International Court of Justice (ICJ) to protect its rights under international law regarding Colombia's aerial spraying of herbicides near their shared border.
2. Ecuador is deeply concerned the spraying has caused serious damage to people, crops, animals, and the environment on the Ecuadorian side of the frontier. Despite repeated efforts to negotiate an end to the spraying, talks with Colombia have failed.
3. Ecuador's objectives are to establish Colombia's responsibility for past actions and ensure Colombia complies with its international obligations in the future.
4. Ecuador's Application relies on the Pact of Bogotá and the 1988 UN Drug Convention as bases for the Court's jurisdiction.
5. The dispute involves important issues of sovereignty, human rights, indigenous rights, and environmental protection under international law. Ecuador aims to ensure Colombia respects all its international legal obligations.
6. The aerial fumigations by Colombia since 2000 have caused extensive, long-lasting, and widespread harm to Ecuador's people, environment, and indigenous communities in the border area.
7. Colombia has carried out the sprayings in blatant violation of its obligations under international law and various conventions shared by both countries. These relate to human rights, the environment, and indigenous peoples' rights.



8. Ecuador emphasizes it remains committed to combating illegal drugs but believes Colombia must comply with international law and prevent harm to its neighbors.
9. Ecuador has been guided by the ICJ's past jurisprudence on issues of sovereignty, human rights, and the environment. The Court now has an opportunity to address indigenous rights as well.
10. Following the Court's approach, Ecuador relies on evidence from a range of sources to establish the facts, including witnesses, UN reports, scientific studies, and Colombian government sources.
11. This evidence shows the aerial sprayings have had a devastating impact on Ecuador's protected environment, wildlife, and local communities dependent on that environment.
12. The populations in the affected areas have suffered both immediate and long-term damage to their health, crops, livelihoods, and culture. Indigenous peoples are especially impacted.
13. Colombia's actions have affected the basic needs and social fabric of border populations in Ecuador. The environments they rely on have been severely endangered and damaged.
14. While supporting anti-drug efforts, Ecuador believes Colombia has pursued them without regard for the rights of others and Ecuador's sovereignty.
15. Ecuador asks the Court to find Colombia responsible for past violations of international law from the sprayings, and order measures to prevent future harm to Ecuador.
16. The goal is a peaceful resolution consistent with international legal principles that will protect Ecuador's rights, people, and territory.



Chapter 2: Statement of Facts

Aerial Spraying of Glyphosate Herbicide

- Since 2000, Colombia has conducted aerial spraying of glyphosate herbicide along the Colombia-Ecuador border as part of its illicit crop eradication program.
- The sprayings have taken place near and, at times, across the border, affecting people, crops, and the environment within Ecuador's sovereign territory.

Impact on Ecuadorian Populations

- The most affected Ecuadorian populations live in rural border communities largely inhabited by indigenous and Afro-Ecuadorian people dependent on local agriculture.
- Ecuador alleges that Colombia's sprayings have damaged legal crops, livestock, and fish farms on which these populations rely for food and livelihoods.
- There is evidence of resulting skin rashes, infections, diarrhea, vomiting, and other health problems associated with glyphosate exposure among exposed populations.
- The aerial spraying of glyphosate has had a detrimental impact on biodiversity in environmentally protected areas and national forests in Ecuador near the border.

Glyphosate Spray Reaching Inside Ecuador

- Independent studies and Ecuador's own data indicate that the glyphosate spray has reached as far as 10-12 km inside Ecuador, specifically affecting the provinces of Esmeraldas, Carchi, and Sucumbíos

Failure to Prevent Drift and Give Notice

- Ecuador contends that Colombia failed to take adequate measures to prevent the drift of the herbicide during aerial spraying operations, resulting in the deposition of toxic substances on Ecuadorian territory.
- Additionally, Ecuador argues that Colombia did not provide sufficient notice to Ecuador, impeding its ability to protect the border populations from the harmful effects of the sprayings.

Negotiation Attempts

- Before resorting to litigation, Ecuador made sustained efforts to negotiate with Colombia over a period of eight years to find a mutually acceptable solution to the issue, but these attempts were unsuccessful.



Aim of Litigation

- Ecuador aims to hold Colombia responsible for environmental and human rights treaty violations resulting from the uncontrolled aerial sprayings over Ecuador's territory.
- Ecuador seeks to ensure that Colombia complies with its international legal obligations and takes necessary measures to prevent further harm to Ecuador and its population.

Ecuador's location and population

- Ecuador is a small country of approximately 14 million people located on the northwest Pacific coast of South America. It is bordered to the north by Colombia, with which it shares a land border of 717 kilometers, and to the south and east by Peru.

Ethnic diversity

- Ecuador's population is ethnically mixed; it is composed of indigenous peoples, Caucasians, mestizos of mixed indigenous-Caucasian descent, and Afro-Ecuadorians. According to the United Nations, the country is home to 14 officially recognized indigenous nationalities that together make up as much as 30 percent of the total population. These indigenous communities play a vital role in the life of Ecuador, and some of their populations have been disproportionately affected in a negative way by Colombia's aerial spraying.

Natural environment

- Ecuador's natural environment is also diverse. Indeed, it has the world's highest concentration of biological diversity. This natural wealth is particularly great in the northern regions bordering Colombia, the area in which Colombia's aerial spraying has occurred, much of which consists of dense tropical ecosystems untouched by humankind.

Settlements along the border

- The settlements along the border are inhabited almost entirely by poor subsistence farmers and indigenous communities, including the Kichwa, Awá and Cofán peoples, many of whom continue to reside on their ancestral lands located in the area that is sprayed by Colombia.

Aerial spraying since 2000

- Since 2000, life along the northern border with Colombia has changed dramatically because of Colombia's actions. That year, the Government of Colombia intensified its controversial aerial spraying of chemical herbicides as its principal means of attempting to reduce the illegal cultivation of coca plants, the raw material used to produce cocaine. The increased aerial fumigations by Colombia have been concentrated



in Colombia's southernmost provinces, Putumayo and Nariño, which together make up the Respondent State's border with Ecuador. In Nariño Province alone, the area aerially sprayed with herbicides increased over 600 percent from 6,442 hectares in 2000, to 36,275 hectares in 2007.

Ingredients and concentration levels

- The specific ingredients and concentration levels of the chemical spray mixture have never been revealed by Colombia. Colombia has persistently refused to disclose the formulation of the individual ingredients of the spray mixture. What is known is that the herbicidal compound contains a glyphosate-based product whose capacity to kill plants is fortified by other chemicals known as surfactants or adjuvants. The spray has been designed to meet one goal – killing coca plants. It is, however, equally lethal to all plants. It cannot and does not discriminate between illicit and licit plants; nor does it distinguish between the two sides of an international frontier. Wherever it falls, the spray kills – that is its purpose.

Effects on human and animal life

- In addition to their effects on plants, the chemicals in Colombia's spray mixture are widely recognized to cause damage to human and animal life.

The First Joint Scientific Commission and Colombia's Continued Failure to Provide Information: 2003-2004

A. Faced with the growing evidence of harm to humans, animals and plants in border areas of Ecuador, representatives of the Ecuadorian and Colombian governments met at Ecuador's initiative on 26 February 2003 and agreed to create a joint scientific commission to evaluate the effects of the fumigations.

B. The proposed commission was to be an interdisciplinary working group composed of technical experts from the Parties' Ministries of Environment, Health, Agriculture and Foreign Affairs.

C. Complaints from the border continued to pour in. In response, on 10 April 2003, Ecuador's then-Foreign Minister, Dr. Nina Pacari Vega, wrote the Colombian Ambassador in Quito to encourage Colombia to move promptly to appoint its members of the commission.

D. At the same time, she sent a draft of a proposed Memorandum of Understanding in which the Parties acknowledge the need to eliminate illicit coca crops and other plants used in the manufacturing of narcotic substances, elimination that must be carried out by



each one of the Parties within the limits of their respective territories and based on procedures compatible with the protection of human health and the environment.

E. Colombia did not respond to the proposed Memorandum of Understanding for more than five months. In the interim, beginning in May 2003, it carried out another round of aerial sprayings along the border between Putumayo Province in Colombia and Sucumbíos Province in Ecuador. As before, Ecuador received no advanced notice.

F. When Colombia finally responded to the proposed Memorandum of Understanding, its answer was negative. In a 23 September 2003 note from the Colombian Foreign Ministry to the Ecuadorian Ambassador in Bogotá, Colombia rejected the idea of a buffer zone stating that the establishment of an aspersion-free strip along the common border, as proposed by Ecuador, is unacceptable to Colombia for multiple reasons.

G. Curiously, even as it rejected the idea of a buffer zone, Colombia expressly acknowledged that it was bound to observe the precautionary principle enshrined in the 1992 Rio Declaration on the Environment and Development.

H. The same day that Colombia rejected Ecuador's proposed Memorandum of Understanding, it sent another note identifying its participants in the joint scientific and technical commission first discussed seven months earlier. Although the commission had originally been conceived as an inter-agency undertaking of top scientists, the Colombian delegation was dominated by members of its law enforcement community. Of the 13 members of Colombia's team, nine came either from the national police or the National Anti-Narcotics Agency.

I. The special joint scientific and technical commission met for the first time on 14 October 2003 in Bogotá. At that meeting, the Ecuadorian delegation formally requested information concerning existing environmental impact studies pertaining to the fumigations, the locations of aerial spray events, epidemiological studies, and any other information relevant to the impacts of the spray on human and animal health, and on the environment. The Colombian delegation agreed to provide the information requested.

J. On 23 October 2003, Ecuador's then-Minister of Foreign Affairs reiterated these requests for information, including specifically requesting an environmental impact assessment.



K. Very little of the information Ecuador sought was provided by Colombia. On 12 November 2003, the Colombian Foreign Minister sent Ecuador four documents of limited scope, none of which was an environmental impact assessment.

L. Noting the continued failure to provide an environmental impact assessment, Ecuadorian Foreign Minister Zuquilanda wrote to his Colombian counterpart, Ms. Carolina Barco, on 21 November 2003 reiterating Ecuador's request for an EIA.

M. By return note dated 15 December 2003, Foreign Minister Barco replied that no such document existed, stating that after consultations, none of the competent entities reported having in their possession the document entitled 'Environmental Impact Assessment conducted prior to sprayings of Glyphosate'.

N. Instead of an EIA, Colombia sent a significantly more limited document that was not a substitute for the environmental impact statement that Ecuador had long been seeking.

O. On 14 January 2004, Colombia sent Ecuador an additional document entitled "Environmental Risk of the Herbicide Glyphosate" obtained from DNE. Even if Colombia considered this report to be an EIA, it is a wholly inadequate assessment of the risks of the aerial spraying program.

P. The second meeting of the special joint Scientific and Technical Commission took place on 9 February 2004 in Quito. In response to Ecuador's request, the Colombian delegation agreed to provide all available information about prior fumigations, including mission parameters like flight paths, altitude, wind and other factors, but it never did so.

Q. The Ecuadorian delegation also once again reiterated its longstanding, unsatisfied request for evidence that a proper

The Second Joint Scientific Commission and the Collapse of Negotiations: 2007-2008

- In January 2007, the presidents of Ecuador and Colombia agreed to create a new bi-national scientific commission to study the health impacts of the aerial spraying program.

- The first meeting of the commission took place in April 2007 in Quito. The delegations disagreed on the purpose and methodology. Ecuador wanted to focus on human health impacts and the precautionary principle. Colombia stated the purpose was only to examine technical issues of spray drift.



- Ecuador requested the precise chemical formulation used in the spraying, but Colombia refused to provide it, stating it was an internal matter.
- Colombia claimed it had conducted an environmental impact study but did not provide a copy to Ecuador despite agreeing to try to obtain it.

- In May 2007, the UN Special Rapporteur on the Right to Health visited the Ecuador-Colombia border and concluded the aerial spraying was damaging to health and should be halted based on the precautionary principle.

- At a meeting later in May, Ecuador called for suspending spraying near the border based on the precautionary principle, but Colombia refused, stating the effects were not grave.

- The positions of the two countries remained far apart, with Colombia refusing to provide key information requested by Ecuador or accept the need to apply the precautionary principle.

- In July 2007, after two unsuccessful meetings of the bi-national scientific commission, Ecuador stated it was considering bringing the aerial spraying issue before the ICJ. Colombia called this idea "absurd."

- Later in July, Ecuador declared the diplomatic process exhausted after 7 years of failed efforts to reach an agreement with Colombia.

- In early 2008, Colombia's foreign minister asked how litigation could be avoided. Ecuador said it required a binding agreement from Colombia to halt spraying within 10km of the border and pay compensation for past harms.

- Colombia rejected these demands. It offered only to pay compensation for "real and ascertainable damages" through an unspecified mechanism, and to emphasize manual eradication near the border while continuing aerial spraying.

- Ecuador stated Colombia's position was fundamentally the same and that the diplomatic route was finished.

- In March 2008, with the diplomatic process stalled, Ecuador filed its Application instituting proceedings before the ICJ.



Chapter 3: Statement of Law

4.1 The Court's jurisdiction in relation to Ecuador's Application is based upon:

4.1.1 Article 36(1) of the Court's Statute,

4.1.2 the 1948 American Treaty on Pacific Settlement, usually referred to as the "Pact of Bogotá", and

4.1.3 the 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances ("1988 Narcotics Convention").

4.2 Article 36(1) of the Court's Statute provides that:

- "The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force."

4.3 In the present case the "treaties and conventions in force" relied upon by Ecuador are:

4.3.1 the 1948 Pact of Bogotá and

4.3.2 the 1988 Narcotics Convention.

4.4 Ecuador's actions in referring this dispute to the Court are premised on the obligation of States to settle their differences through peaceful means, as reflected in Article 33 of the United Nations Charter, which provides that:

"The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice."

The Pact of Bogota



The Pact of Bogotá was adopted on 30 April 1948, by 21 members of the Organization of American States. At the present time fourteen states are parties to the Pact of Bogotá. Colombia and Ecuador signed the Pact on the day it was adopted.

4.5.1 Colombia ratified the Pact on 14 October 1948;

4.5.2 Ecuador ratified the Pact on 3 March 2008 and deposited its instrument of ratification four days later.

4.5.3 Colombia has made no declaration or reservation in relation to the Pact.

4.5.4 At the time of signature, Ecuador entered a reservation with respect to Article VI of the Pact, which is of no relevance to this case.

4.6 The purpose of the Pact of Bogotá was to put in place a unified system for the peaceful settlement of disputes.

4.6 Article XXIII of the original 1948 OAS Charter called for the creation of a special treaty to establish the procedures for addressing international disputes, so that “no dispute between American States shall fail to definitively settle within a reasonable period of time”.

4.7 The Pact of Bogotá established these procedures, as reflected in its preamble.

4.8 Under Article I of the Pact of Bogotá, the parties reaffirmed their pre-existing commitments to “refrain from the threat or the use of force, or from any other means of coercion for the settlement of their controversies, and to have recourse at all times to pacific procedures”.

4.9 Article XXXI of the Pact of Bogotá provides for the jurisdiction of the Court to settle certain international disputes. It provides:

-There can be no question but that the case submitted to the Court by Ecuador falls squarely within the requirements of Article XXXI of the Pact.

4.9 The case relates to a longstanding “dispute” concerning the effects of Colombia’s aerial spraying programme, and it is of a “juridical nature”.

4.10.2 The resolution of the dispute requires the Court to interpret treaties and to address a range of questions of international law.



4.10.3 There can be no doubt that the facts alleged by Ecuador would, once established by the Court, constitute breaches of numerous international obligations owed by Colombia to Ecuador, and would give rise to questions regarding the nature and extent of the reparation owed by Colombia.

4.10 Article VI of the Pact provides that the dispute settlement procedures set out in the Pact “may not be applied to matters already settled by arrangement between the parties ... or which are governed by agreements or treaties in force on the date of the conclusion of the present Treaty.”

4.11.1 The subject matter of this dispute is the legality of the aerial spraying that has been conducted by Colombia since 2000.

4.11.2 It is plain that Article VI cannot preclude the Court’s exercise of jurisdiction in this case: the matters raised by Ecuador which establish the subject matter of the dispute have not been “settled by arrangement between the parties” and they are not “governed by agreements or treaties in force” in 1948.

4.11 The Court has, by now, a well-established jurisprudence in relation to the Pact of Bogotá, and a number of cases are pending before the Court in which Article XXXI of the Pact has been invoked as a basis for jurisdiction.

4.13 There is no other basis upon which Colombia might object to the Court’s jurisdiction.

4.13.1 As described in Chapter III, sustained efforts made by Ecuador over many years to resolve the dispute by diplomatic means were not successful.

4.13.2 Article II of the Pact of Bogotá encourages parties to resolve controversies “by direct negotiations through the usual diplomatic channels” and recognizes that where these are unsuccessful the parties to the Pact “bind themselves to use the procedures established in [the Pact]”.

4.13.3 Moreover, the Pact of Bogotá generally, and the terms of Article XXXI in particular, impose no temporal limitation on the Court’s exercise of jurisdiction.

4.13.4 For its part, the Court has consistently adopted the position -- following the approach adopted by its predecessor, the Permanent Court of International Justice -- that acceptance of the jurisdiction of the Court will have a retroactive effect unless this is specifically excluded by the terms.



The 1988 Narcotics Convention

- Ecuador and Colombia are both parties to the 1988 UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.
- Article 32 of the Convention provides that any dispute relating to the interpretation or application of the Convention that cannot be settled through negotiation or other peaceful means may be referred to the ICJ by any party to the dispute.
- The dispute brought by Ecuador relates to the interpretation and application of the Convention, specifically Articles 2 and 14.
- Article 2 requires parties to carry out their obligations in a manner consistent with principles of sovereign equality, territorial integrity, and non-intervention.
- Article 14 requires parties to take measures to eradicate illicit drug cultivation in a manner that respects human rights and protects the environment.
- Ecuador argues that Colombia's aerial spraying near the border violates its sovereignty, harms the environment, and threatens human rights, in contravention of Articles 2 and 14.
- Therefore, the subject matter of the dispute falls within the scope of the Convention, enabling the ICJ to exercise jurisdiction under Article 32.
- Neither Ecuador nor Colombia has made reservations to the dispute settlement provisions that would preclude the Court's jurisdiction.

Violations of International Law

- Colombia's aerial spraying near the Ecuadorian border has caused significant harms to Ecuador in violation of international law.
- Ecuador is seeking a declaration from the ICJ that Colombia's actions violated its international obligations.
- Ecuador also wants an order requiring Colombia to cease its unlawful actions and not repeat them.
- In addition to declaratory relief, Ecuador is entitled to reparations from Colombia to "wipe out the consequences" of the illegal acts.



- At this stage, Ecuador is identifying the types of injury suffered, including harm to: human health, indigenous peoples' rights, property, crops, animals, and the environment.
- Ecuador will provide detailed evidence quantifying the damages in the next phase of the ICJ proceedings.
- The principle is established in international law that states responsible for internationally wrongful acts must provide full reparation for the injury caused.
- The forms of reparation Ecuador is seeking include declaratory relief, guarantees of non-repetition, and compensation for damages.



Submissions

On the basis of the facts and law referred to above, Ecuador requests the Court to adjudge and declare that:

1. (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;
2. (B) Colombia shall indemnify Ecuador for any loss or damage caused by its internationally unlawful acts, namely the use of herbicides by aerial dispersion, and in particular:
 1. (i) death or injury to the health of any person or persons arising from the use of such herbicides;
 2. (ii) any loss of or damage to the property or livelihood of such persons;
 3. (iii) violation of the human rights of such persons;
 4. (iv) violation of the special rights of indigenous peoples;
 5. (v) environmental damage or the depletion of natural resources;
 6. (vi) the costs of monitoring to identify and assess future risks to public health, human rights and the environment resulting from Colombia's use of herbicides; and
 7. (vii) any other loss or damage;
3. (C) Colombia shall
 1. (i) respect the sovereignty and territorial integrity of Ecuador;
 2. (ii) respect the human rights of Ecuadorian nationals;
 3. (iii) respect the special rights of indigenous peoples in Ecuador;
 4. (iv) take no action to harm the natural environment in Ecuador;



5. (v) forthwith, take all steps necessary to prevent, on any part of its territory, the use of any toxic herbicides in such a way that they could be deposited onto the territory of Ecuador; and
6. (vi) prohibit the use, by means of aerial dispersion, of such herbicides on or near any part of its border with Ecuador.

Counter-Memorial of the Republic of Colombia



Chapter 1: Introduction

1. Colombia argues that the ICJ does not have jurisdiction over all of Ecuador's claims:
 - The Pact of Bogotá cannot give jurisdiction over matters already governed by other treaties like the 1988 UN Drug Convention.
 - The 1988 Convention does not impose independent obligations on human rights or the environment. Rather, it requires taking measures to eradicate drug cultivation while respecting human rights and the environment.
 - There is a dispute over interpretation of the 1988 Convention, giving the ICJ jurisdiction.
2. Colombia argues some of Ecuador's claims are inadmissible:
 - Ecuador's claims on behalf of Colombian nationals are inadmissible. The ICJ can only hear claims brought by states on behalf of their own nationals.
 - It is unclear whether Ecuador is bringing claims on behalf of its own nationals only or also Colombian nationals. Ecuador must clarify who it is bringing claims on behalf of.
3. Colombia denies Ecuador's allegations of human rights violations.
4. Colombia argues its fumigation program complies with the 1988 Drug Convention's obligations to take measures to eradicate illicit drug crops.
5. Ecuador makes claims on behalf of various groups affected by the spraying, including:



- Ecuadorian populations, people, and communities in the border region
 - Indigenous peoples
 - Farmers
 - Local inhabitants and populations
6. Ecuador seeks compensation for harms to these groups, including:
- Death or injury to health
 - Loss of or damage to property or livelihoods
 - Violations of human rights
 - Violations of the rights of indigenous peoples
 - Environmental damage
7. However, Ecuador's claims are contradictory regarding who exactly it is bringing claims on behalf of:
- Some passages imply claims on behalf of all individuals affected, including Colombians.
 - But Ecuador also disclaims bringing claims on behalf of Colombians.
 - Yet Ecuador submits evidence from some individual Colombians.
8. International law prohibits a state from bringing claims against another state for compensation on behalf of the latter's own nationals.
9. So there is uncertainty about who exactly Ecuador is claiming on behalf of and the scope of its compensation claims.



Chapter 2: Comments on the Ecuadorian Memorial's Statement of Facts

1. Colombia's position is that there is no reliable evidence that any of the damage alleged by Ecuador has actually occurred or is attributable to aerial spraying.

1.1 The burden of proof is on Ecuador as the applicant to prove damage to its territory and causation.

1.2 If the harm alleged had actually occurred due to spraying, there would be clear forensic and expert evidence. But no such definitive evidence has been submitted.

1.3 This is confirmed by several considerations:

1.3.1 The spraying program is Colombia-wide, using the same methods everywhere. If drift into Ecuador caused harm, even greater damage would be expected within Colombia itself. But this has not occurred.

1.3.2 The spray mixture of commercially available chemicals is incapable of causing most of the harms alleged, according to independent scientific studies.

1.3.3 Ecuador itself initially acknowledged, based on field evidence, that no harm were proven.

1.3.4 For most of the relevant period, there has been no spraying within 10km of the border. Limited missions in other periods cannot explain the alleged scale of damage.

1.4 Reliability of Ecuador's affidavit evidence is questionable. In parallel US litigation, injury claims by named witnesses were withdrawn as fabricated.

In conclusion:

- Ecuador's anonymous affidavits do not prove what happened years ago.
- Causation is not established by mere allegations. Independent proof is lacking.
- Scientific studies refute Ecuador's claims of serious health impacts.
- Local health problems are due to endemic poverty and coca cultivation, not spraying.
- Proper forensic evidence is required to establish alleged harms. Ecuador has not produced this.
- There is no convincing evidence that the harms alleged by Ecuador were actually caused by aerial spraying, for several reasons:
- The spraying uses the same methods across Colombia, so if drift caused harms in Ecuador, even greater damage would be expected within Colombia itself. But this has not occurred.
- Independent scientific studies show the spray mixture cannot cause most of the harms alleged by Ecuador.



- Ecuador itself initially acknowledged, based on field evidence, that no harms from spraying was proven.
- For most of the relevant period, there was no spraying within 10km of the border, so limited missions could not explain the alleged scale of damage.
- Ecuador's anonymous affidavits alleging harms lack reliability and causation has not been established.
- Injury claims by named witnesses in parallel US litigation were withdrawn as fabricated.
- Mere allegations without independent proof do not show aerial spraying caused the health problems.

There are very good alternative explanations for the harms alleged by Ecuador, unrelated to aerial spraying:

- Endemic poverty and coca cultivation in border regions, not spraying, likely cause local health problems.
- Ecuador's attempt to recast claims in human/indigenous rights terms does not strengthen a failed claim of transboundary environmental harm.
- Colombia assessed and continued to assess the spraying program, acted lawfully, and cooperated with Ecuador, contrary to Ecuador's assertions.
- Colombia's assessments complied with its laws and have been validated by international reports.
- Colombia investigated possible impacts and shared information, but was not obliged to accept Ecuador's opposition to spraying.
- Colombia has not asserted any right to overfly Ecuador for spraying operations.

Initial Engagement and Information Sharing

- In 2000, after Ecuador expressed concerns, Colombia provided information on the spray program, including details on the glyphosate herbicide mix, spray equipment, environmental controls, and monitoring procedures.

- Colombia shared copies of environmental studies and risk assessments conducted for the program.

- Colombia informed Ecuador when spraying operations would take place near the border and invited Ecuadorian officials to observe spray missions.

Border Area Suspensions

- From 2000-2002, Colombia voluntarily suspended spraying within 10 km of the Ecuador border in response to concerns. This was costly for Colombia's eradication efforts.



- In 2005, Colombia again voluntarily suspended spraying within 10 km of the border for over 6 months as a good faith gesture.

Binational Commission

- In 2001, Colombia agreed to Ecuador's request to form a binational commission to monitor spray impacts.

- Colombia facilitated the commission's work by providing funding, office space, and logistical support.

- However, Ecuadorian delegates often did not attend scheduled meetings, hampering the commission's effectiveness.

Testing and Monitoring

- Colombia offered to allow Ecuador to conduct water, soil, and foliage tests on the Colombian side of the border to verify glyphosate levels and impacts.

- Ecuador declined these offers to directly monitor and test within Colombia's territory.
Later Information Sharing:

- In 2003, Colombia provided Ecuador with copies of the full Environmental Management Plan for the spray program.

- Colombia informed Ecuador when the CICAD study was initiated in 2004 and invited Ecuador to participate, though it had no obligation to involve Ecuador in a study of its own territory.

- In 2006, Colombia invited Ecuador to join the follow-up CICAD II study, though Ecuador declined.



Chapter 3: Statement of Facts

Geographical Sectors

- Pacific sector: Low-lying coastal plain with heavy rainfall supporting rainforests. Major population centers are the port cities of Tumaco, Colombia and Esmeraldas, Ecuador. Tumaco is an important economic hub and fishing port. Esmeraldas has oil refineries, shipyards, and timber processing.
- Andean sector: Mountainous terrain. Agriculture focused on fruits, vegetables, sugarcane, grains. Ipiales, Colombia is a key trading town near the border. Tulcán, Ecuador is a commercial and transportation center.
- Amazonian sector: Tropical rainforests, major rivers like Putumayo and San Miguel. Economies based on conservation, agroforestry, and illicit crops. Rural populations with lack of services.

Populations

- Mixture of indigenous peoples, Afro-Colombians, mixed race mestizo populations. High poverty levels, especially in Ecuadorian provinces of Sucumbíos, Carchi, Esmeraldas.
- Public services, roads, healthcare lacking in remote Ecuadorian communities. Internal displacement of Colombians escaping violence.

Economies

- Pacific economies based on fishing, mining, agriculture (cocoa, corn, plantain, shrimp). Illicit crops are also grown.
- Andean economies focused on diverse fruits, vegetables, grains, sugarcane. Trade and transportation key.
- Amazonian livelihoods from conservation, agroforestry. Illicit coca cultivation increased in the 1990s.

Illicit Crop Cultivation Trends

- Dramatic rise in coca cultivation in the 1990s, especially in the Colombian Pacific region.
- By 2000, the Putumayo department accounted for 30% of global coca production.
- Under Plan Colombia starting in 2000, illicit cultivation decreased.
- By 2008, Putumayo's share dropped to 5.8% of global coca.



Chapter 4: Statement of Law

- The aerial spraying program in Colombia has not violated human rights in Ecuador, or the rights of its indigenous peoples.
- Article 14(2) of the 1988 Convention does not purport to impose independent obligations as regard fundamental human rights or indigenous rights. Rather, it is concerned with imposing an obligation upon States to adopt measures to prevent illicit cultivation of plants containing narcotic or psychotropic substances, subject to the qualification that such measures respect or take into account the considerations mentioned.
- Moreover, the obligations derived from human rights instruments invoked by Ecuador are the exclusive responsibility of the states parties to those instruments to individuals falling within their own jurisdiction. They do not apply to the case of alleged injury in Ecuador as a consequence of the aerial spraying program carried out by Colombia within its own territory.
- What Ecuador's materials do show is the serious responsibility attributable to it due to its abandonment and neglect of the communities – among them, indigenous communities – residing in the border area with Colombia in the provinces of Sucumbíos, Carchi and Esmeraldas. This situation has deteriorated further due to the oil exploration and exploitation activities that have long been carried out in these areas.
- For the reasons already given, however, the issue of remedies does not arise. It is a sufficient answer to Ecuador's claims for the Court to hold that neither has significant harm been proved, nor has it been proved that any such harm was caused by aerial spraying. Colombia has exercised due diligence in the prevention of transboundary harm. That being so, there can have been no failure to respect human rights or the rights of indigenous people in Ecuador. Ecuador's claims relating to assessment, cooperation, consultation and the provision of information likewise fail.



SUBMISSIONS

For the reasons set out in this Counter-Memorial, Colombia requests the Court to adjudge and declare that the claims of Ecuador, as set out in the Memorial of 28 April 2009, are rejected.

Colombia reserves the right to supplement or amend the present submissions.



Character List

Awn Al-Khasawneh (Jordan)
Ronny Abraham (France)
Raymond Ranjeva (Madagascar)
Rosalyn Higgins (United Kingdom)
Gonzalo Parra-Aranguren (Venezuela)
Bernardo Sepúlveda Amor (Mexico)
Thomas Buergenthal (United States)
Mohamed Bennouna (Morocco)
Sir Kenneth Keith (New Zealand)
Leonid Skotnikov (Russia)
Peter Tomka (Slovakia)
Bruno Simma (Germany)
Shi Jiuyong (China)
Abdul G. Koroma (Sierra Leone)
Hisashi Owada (Japan)



Research and Preparation Questions

1. What precedents existed in international law regarding transboundary environmental damages? How analogous were they to the specifics of this case?
2. Did Colombia violate any specific treaty obligations or norms of international environmental law? Which treaties or customary law would be most relevant?
3. What level of scientific certainty regarding harm should be required to establish wrongfulness? What is the ICJ's history in similar fact-intensive environmental cases?
4. Ecuador argued the spraying damaged crops, particularly yuca, plantain, and rice. What evidence and damage estimates did they present regarding these effects on cross-border farming?
5. The spraying involved the herbicide glyphosate. What do the studies and risk assessments say specifically about glyphosate's effects on humans and wildlife in an aerial spraying context along the Ecuador-Colombia border area?
6. What do the specific bilateral agreements between Ecuador and Colombia say regarding notification, consultation, and environmental impacts on border areas? Did Colombia violate any of these treaty obligations?
7. What international guidelines or best practices exist regarding aerial eradication programs? Did Colombia's program align with accepted standards?



Sources

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