INTERNATIONAL COURT OF JUSTICE

Study Guide for Zurich Model United Nations

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May 4th to 7th, 2017

Zurich, Switzerland

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SUBMISSION DEADLINE

Advocates (applicant and respondent) submit Memorial, Stipulations and Evidence List (more details below)

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Saturday 29th of April 2017

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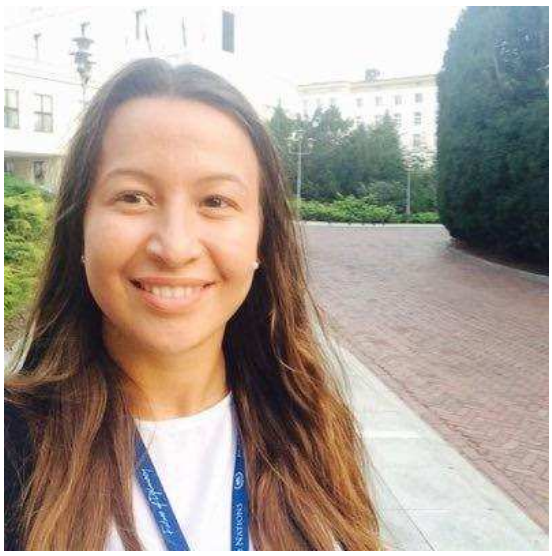
icj@zumun.ch

YOUR CHAIRS

Lodovica Bellora



Lodovica is currently a second year Law student at the University of Milan. She is interested in political and juridical issues both at national and international level and she would like to combine these interests with her studies.

Having started Model United Nations during high school, she has participated as a delegate, judge and chair in several MUNs such as CGS MUN, POLMUN, LIMUN HS and BERLINMUN, where she won the Best Position Paper award. She hopes to transmit her enthusiasm for this project and encourage all judges to take the greatest advantage of it.

She is honored to be Chair of the International Court of Justice at ZuMUN 2017 and she is looking forward to meeting you all in May!

Sarah Burns

Sarah is a third-year law student at the University of Zurich. She joined the university's MUN team during her first semester in fall 2014. Since then she has attended several MUN conferences and was also part of the first and second ZuMUN Organization Committee. Now she takes care of the finances for the university MUN team. She likes MUN because she finds it's a great way to get a taste of world politics and to practice public speaking besides it always being a very social experience.

She is very much looking forward to being one of your chairs at ZuMUN 2017 and hopes to contribute to making it a great memory for you.

INTRODUCTION TO INTERNATIONAL COURT OF JUSTICE

The International Court of Justice is the primary judicial branch of the United Nations. Established in 1945 by the UN Charter, the Court began work in 1946 as the successor to the Permanent Court of International Justice. The Statute of the International Court of Justice and is the main constitutional document constituting and regulating the Court.

Composition

The ICJ is composed of fifteen judges elected to nine-year terms by the UN General Assembly and the UN Security Council from a list of people nominated by the national groups in the Permanent Court of Arbitration. The election process is set out in Articles 4–19 of the ICJ statute. Elections are staggered, with five judges elected every three years to ensure continuity within the court. Should a judge die in office, the practice has generally been to elect a judge in a special election to complete the term. No two judges may be nationals of the same country. According to Article 9, the membership of the Court is supposed to represent the "main forms of civilization and of the principal legal systems of the world". Essentially, that has meant common law, civil law and socialist law (now post-communist law).

There is an informal understanding that the seats will be distributed by geographic regions so that there are five seats for Western countries, three for African states, two for Eastern European states, three for Asian states and two for Latin American and Caribbean states. The five permanent members of the United Nations Security Council always have a judge on the Court, thereby occupying three of the Western seats, one of the Asian seats and one of the Eastern European seats. The exception was China, which did not have a judge on the Court from 1967 to 1985 because it did not put forward a candidate.

Article 6 of the Statute provides that all judges should be "elected regardless of their nationality among persons of high moral character" who are either qualified for the highest judicial office in their home states or known as lawyers with sufficient competence in international law. Judicial independence is dealt with specifically in Articles 16–18. Judges of the ICJ are not able to hold any other post or act as counsel. In practice, Members of the Court have their own interpretation of these rules and allow them to be involved in outside arbitration and hold professional posts as long as there is no conflict of interest. A judge can be dismissed only by a unanimous vote of the other members of the Court.

Judges may deliver joint judgments or give their own separate opinions. Decisions and Advisory Opinions are by majority, and, in the event of an equal division, the President's vote becomes decisive, which occurred in the Legality of the Use by a State of Nuclear Weapons in Armed Conflict. Judges may also deliver separate dissenting opinions.

Types of cases

There are two types of instances where the ICJ can have jurisdiction: request for advisory opinions and contentious cases.

Advisory opinions

An advisory opinion is a function of the Court open only to specified United Nations bodies and agencies. On receiving a request, the Court decides which states and organizations might provide useful information and gives them an opportunity to present written or oral statements.

In principle, the Court's advisory opinions are only consultative in character but they are influential and widely respected. Certain instruments or regulations can provide in advance that the advisory opinion shall be specifically binding on specific agencies or states, but inherently, they are non-binding under the Statute of the Court. This non-binding character does not mean that advisory opinions are without legal effect because the legal reasoning embodied in them reflects the Court's authoritative views on important issues of international law and in arriving at them, the Court follows essentially the same rules and procedures that govern its binding judgments delivered in contentious cases submitted to it by sovereign states.

Contentious Cases

Only States (State Members of the United Nations and other States which have become parties to the Statute of the Court or which have accepted its jurisdiction under certain conditions) may be parties to contentious cases. The Court is competent to entertain a dispute only if the States concerned have accepted its jurisdiction in one or more of the following ways:

- by entering into a special agreement to submit the dispute to the Court;
- by virtue of a jurisdictional clause, i.e., typically, when they are parties to a treaty containing a provision whereby, in the event of a dispute of a given type or disagreement over the interpretation or application of the treaty, one of them may refer the dispute to the Court;
- through the reciprocal effect of declarations made by them under the Statute whereby each has accepted the jurisdiction of the Court as compulsory in the event of a dispute with another State having made a similar declaration. A number of these declarations, which must be deposited with the United Nations Secretary-General, contain reservations excluding certain categories of dispute.[1]

Procedure

Court procedure is set out in the Rules of Court of the International Court of Justice 1978, concerning the advisory opinions and contentious cases. Cases before the ICJ follow a standard pattern. The Ecuador v. Colombia case is a contentious case: a country going after another country for breach of international law. The case is lodged by the applicant that

[1] http://www.icj-cij.org/court/index.php?p1=1&p2=6, consulted on 15.03.2017

files a written memorial setting out the basis of the Court's jurisdiction and the merits of its claim. The respondent may accept the Court's jurisdiction and file its own memorial on the merits of the case.

A respondent that does not wish to submit to the jurisdiction of the Court may raise Preliminary Objections. Any such objections must be ruled upon before the Court can address the merits of the applicant's claim. In addition, objections may be made because all necessary parties are not before the Court. If the case necessarily requires the Court to rule on the rights and obligations of a state that has not consented to the Court's jurisdiction, the Court does not proceed to issue a judgment on the merits.

If the Court decides it has jurisdiction and the case is admissible, the respondent then is required to file a Memorial addressing the merits of the applicant's claim. Once all written arguments are filed, the Court holds a public hearing on the merits.

Once a case has been filed, any party may seek an order from the Court to protect the status quo pending the hearing of the case. The Court must be satisfied to have prima facie jurisdiction to hear the merits of the case before it grants provisional measures. Once deliberation has taken place, the Court issues a majority opinion. Individual judges may issue concurring opinions or dissenting opinions.

HOW DOES IT WORK AT ZUMUN?

In the context of ZuMUN, the ICJ will have to handle a contentious case (Ecuador v. Colombia). The advocates and the judges will work together to come up with a decision. During the simulation, we assume that the Court does have jurisdiction over the case at hand. **Jurisdiction will therefore not be discussed as an issue**. It is the material and legal points that are expected to be debated.[2]

Actors

Applicant

The State introducing an action in front of the Court and calling it to settle a dispute. It consists of a team of 2 advocates which have to defend the interests and positions of the applying State. The team has to prepare a series of documents which have to be sent prior to the simulation (see details and submission dates below).

Respondent

The State against which an action was brought. It consists of a team of 2 advocates which have to defend the interests and positions of the responding State. The team has to prepare a series of documents which have to be sent prior to the simulation (see details and submission dates below).

Panel

The panel is composed of a President, a Vice President (who is also the registrar) and the 7 judges deciding upon the case. Each judge comes from a different Member State, including from the applying and responding States, and has therefore different sensibilities regarding the legal background of origin (common law, roman law, etc.) but does not represent his/her country. Each judge is bound by the law, impartial and independent from his/her country of origin! Within a MUN, the president is the equivalent of the Chair in other committees, ensuring the respect of Rules of Procedures and presiding the conduct of debates. For the vice-president and the registrar, they are the equivalent of 'co-chairs' in other committees.

Note The President and Vice President are also judges, they therefore take active parts in the debates and vote on the decision at the end of the deliberation.

[2] Parts of this section have been inspired by the work of Robert Stern, who kindly accepted the use of his excellent work: "Model International Court of Justice. A Brief written on Trial Procedure for the Model International Court of Justice at The Hague International Model United Nations", June 2014

Main documents

Memorial

The memorial compiles the main arguments of the advocates. It is +/- 2 pages long. The advocates will receive each other's memorial. It generally contains the claim, the main legal arguments (without giving away your pleading strategy) and the actions that the advocates would like the court to take.

Stipulations

It is a special agreement between the two parties on the facts of the case. It is agreed upon and signed by both parties before the conference (bullets points of solid facts mutually understood by both parties, 1-2 pages). The purpose of the stipulations is to advance quickly on the case as the parties know where are the points of contention. This implies that the advocates will have to get in touch well ahead of the submission deadline!

Evidence list

The evidence list is a list of maximum 15 evidences that the advocates want the judges to have. The evidences can be challenged on different ground, especially authenticity and relevance. It is therefore essential that the evidence list presents all the information necessary to identify the source of the evidence. The advocates will have to introduce the evidence packet during their Presentation of evidence and to describe the main content of each evidence.

Evidence packet

The evidence packet is a bundle of documents (numeric and paper version required) with the evidences that the advocates intend to present to support their legal arguments. It must contain a table of content (= the evidence list) and the evidence must be numbered. The Applicant names the evidences using the alphabet (A, B, C) and the Respondent names the evidences using numbers (1, 2, 3). Moreover, every page must be numbered.

Evidence is any piece of tangible information decided to be reliable by the Court. The Advocates present to the Court the evidence they gather and that the Court should take into consideration for taking its decision, both in facts and in law (International treaties, Resolutions, academic articles, newspaper articles, etc.). The other party can either accept the evidence or raise an objection based on authenticity or relevance, which the Court can take into consideration during deliberations. Note that the witnesses' testimonies will become evidence. However, the advocates statements are not evidences.

CAVEAT

No Pleadings filed at the ICJ and no judgments or writings by the ICJ that directly refer to the case (Ecuador v. Colombia) may be used as evidence. You should not use any information related to (attempted) settlement!

Proceedings

The proceedings consist of two phases: the debates and the deliberations. They are governed by the Rules of Procedure. During the debates, the two teams of advocates present their legal arguments to the judges in a convincing way. These debates are divided in different steps. Please note that the timing described hereunder is purely indicative and will be fixed at the discretion of the President.

PART I - Debates

1. Oath

   President opens the session. The judges and advocates take oath.

2. Stipulations read into the record

   The Applicant reads each stipulation (generally 5 to 10) separately. The Respondent is asked if they agree. If so, the President says “so-stipulated”, and that single stipulation is evidence, which can be considered by the judges later on.

3. Oral statements

   Both teams of advocates are allowed to present their arguments concerning the case, for a time determined by the President.

   a. Applicant’s Opening Statement (+-15 min)

      The applicant is expected to present its main arguments, in a structured way and develop what it would like the court to decide.

   b. Applicant’s Presentation of Evidence (+-30min)

      During the presentation of evidence, the advocates read the title of the evidence. The President will ask if opposing counsel have seen the piece of evidence. Then opposing counsel will be asked if there is an objection to AUTHENTICITY or RELEVANCE. Opposing counsel likely will not agree with the truth of the document. The document’s truth or accuracy can be raised later at Closing Argument. The advocates cannot describe how the evidence helps their case. This can be done later in the Closing Argument.

   c. Respondent’s Opening Statement (+-15 min)

      See description for Applicant, applicable for the Respondent

   d. Respondent’s Presentation of Evidence (+-30min)

      See description for Applicant, applicable for the Respondent

4. Weighing of Evidence (+-90 min)

   The Court withdraws in closed session to rate the evidences as high, medium, or low based on their credibility, relevance, accuracy and significance of the evidence. At the discretion of the President, the evidences can be shared between judges, which

will be given +-10 min to examine them. They will talk for 2.5 min on their findings (whether the piece of evidence helps a party or another, whether it is relevant and ultimately how much weight it should be given).

During this time, the advocates are not within the room. They can be advised to finalize the preparation of witnesses.

5. Testimony of witnesses (+-30 min/witness)

   Witnesses are chosen and prepared by the advocates' team in advance. Witnesses cannot be fictional and must be well prepared. They shall undertake oath and should undergo direct examination and cross examination by both parties, and examination by the judges. Objections can be raised by parties during direct and cross examination (Hearsay, Leading Question, Speculation).

   At any time, judges may ask a question to the witness, subject to the approval of the President, by raising their placard. It is however advised to wait for the end of the examination to do so.

   a. Direct examination

      The purpose of direct examination is to make the witness to state facts that will help judges deciding on the case by asking questions. Two basic rules during direct examination: no leading questions and no hearsay. Firstly, during direct examination, advocates cannot ask leading questions. Leading questions are those questions that suggest the answer by the very nature of the question. Secondly, advocates cannot ask hearsay questions. That is: ask a witness about an out of court statement or act allegedly made by someone other than the witness, it is testimony a witness provides that is not based on personal knowledge but is a repetition of what someone else said.

   b. Cross examination

      Cross examination cannot exceed the scope of the direct examination of the witness, it must relate to the questions asked on direct examination.

   c. Repeat direct and cross examination until there is no more questions

   d. Judges' Questions to the witness

6. Questions by judges (+-60min)

   Both teams of advocates are questioned by the judges, who aim at clarifying the issues, the facts and points of law raised in their statements. A follow-up question by one of the judge is only at the discretion of the President. The judges can question advocates on all arguments they made, but can ask any questions which will help the judges to decide.

7. Closing statements (max. 30 min each)

   Each party has the opportunity to speak one last time in order to: address each contention made by the opposing party, re-state their legal arguments and support them with the evidence introduced and/or bring up any new legal arguments.

PART II- Deliberation

Only the judges are taking part in the deliberation, which is a discussion on the outcome of the case.

1. Deliberation

   After hearing the arguments of both parties, the judges discuss and analyze the case in order to determine the correct application of international law, which will be compiled in the judgement. Firstly, judges list together the issues that need to be decided upon. Secondly, they discuss and debate the evidences, facts, points of law, etc. and try to come up with a motivated decision. The judges address the case on the basis of a speakers list and can raise motions for unmoderated caucus, but can never enter into contact with advocates. The judges are however not obliged to raise in order to deliver their speeches/interventions. When the president considers that the deliberations are advanced enough, the panel votes on each issue of the case. A majority of judges must vote in favor of a solution in order for it to pass.

2. Redaction of the judgement and the separate and/or dissenting opinions

   All judges are obliged to participate in the redaction of the judgement, either in the judgement or in a separate and/or dissenting opinion. A specific format must be respected for the judgement, which will be delivered by the Registrar.

3. Delivery of the judgement

   The president reconvenes a session, in presence of both parties, to deliver and read the judgment of the Court.

How to prepare?

Judge

- Get acquainted with the facts and legal issues at hand, especially the Memorials
- Reflect on how your judicial system of origin could influence your reasoning (Caveat: you are an independent and impartial judge, you don’t represent a country!)
- Read some ICJ judgements to get an idea of the writing style and the reasoning of the ICJ

Advocate

- Get acquainted with the facts and legal issues at hand
- Build up strong legal arguments based on international law + predict the other's arguments.
- Draft your Memorial and Evidence list and submit it on time
- Get in touch with the other advocates' team and draft together he Stipulations. Send a draft on the basis of which you can negotiate and discuss.

CASE AT HAND

Ecuador v. Colombia (Aerial Herbicide Spraying)

Introduction

For decades, Colombia has been the world's largest cocaine producer. Since the advent of the War on Drugs, however, the United States as well as some Europeans countries have provided financial, logistical, tactical and military aid to the government of Colombia in order to combat drug production. The most prominent of these efforts is Plan Colombia, introduced in 1999 by President Andrés Pastrana Arango, a seven-billion-dollar initiative to stop drug trafficking and production.[3] Fumigation, or the aerial spraying of coca crops from planes and helicopters with chemical herbicides, is an important part of Plan Colombia[4] Many of these herbicides contain glyphosate, a broad-spectrum systemic herbicide used to kill weeds. There is conflicting scientific data about glyphosate's toxicity. Between 2000 and 2003, Plan Colombia's fumigation program sprayed over 380,000 hectares of coca—the tropical American shrub that is the source for cocaine—which equates to more than 8% of Colombia's arable land.

This plan was heavily supported by the United States and was thought of as some to be the "Marshall Plan of Colombia". Colombia was acting to stop a drug epidemic within its own boarders and acted in a sovereign fashion. However, Ecuador contested that some of the herbicide was crossing the 10 kilometer border and damaging the Health of its citizens. Even though the use of large scale pesticide use is the most efficient way for Colombia to eradicate drugs, Colombia temporarily suspended spraying in the area bordering Ecuador in January 2006. After testing was and the Organization of American states agreed that this spraying was harmless Colombia began spraying again. Despite that, 43,000 hectares were eradicated by hand in 2006 and over the past few years more than 160,000 hectares have been sprayed.

The forced eradication of illicit crops with aerial spraying has been questioned for having a negative social impact and causing environmental damage. According to the Transnational Institute (TNI), an international alternative policy group that produces critical research for progressive policies, "the fact that an increasing crop area is being eradicated - much more was sprayed in 2003 than in 2002 - should be interpreted not as a sign of the policy's success, but as a sign of its failure".

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[3] Bureau of Western Hemisphere Affairs. (2000) United States Support For Colombia. Retrieved on September 23, 2012, http://www.state.gov/www/regions/wha/colombia/fs_000328_plancolombia.html

[4] Corpwatch. (2011). Toxic Drift: Monsanto and the Drug War in Colombia. Retrieved on September 24, 2012, http://www.corpwatch.org/article.php?id=669

According to the government of Ecuador, the aerial herbicides that Colombia has sprayed near Ecuador's border have caused severe harm to its people, property, and environment. The two principal complaints that have been lodged are that:

a) aerial spraying causes adverse human health effects,

b) aerial spraying has destroyed food crops and harmed livestock as well as farmed fish.

The health effects reported include fever, diarrhea, intestinal bleeding, and nausea, as well as skin and eye problems. In addition, agricultural crops and vegetation, including yucca, corn, rice, plantains, cocoa, coffee and fruit, were allegedly devastated in the affected regions. The indigenous wildlife also suffered from health issues and depopulation[5]. According to Ecuador, its government has made several attempts since Plan Colombia commenced to reconcile the transboundary dispute with Colombia. Even joint scientific committees including both Ecuadorian and Colombian officials, which formed in 2003, 2005, and 2007, ended without any resolution.

Historical and factual background to the case

Ecuador states that it has made several attempts to diplomatically solve this dispute. According to Ecuador, when the Government of Panama attempted to mediate the dispute in December 2000, Colombia rejected the proposal. This attitude continued when Colombia denied Ecuador's requests for a 10 km "buffer zone" along the shared border. When Ecuador complained about the damage done by aerial herbicide spraying on its territory in April 2002, Colombia once again expressed its disinterest in negotiations, saying that it would not halt what it considered "an irreplaceable instrument for solving the Colombian conflict and alleviating the danger that it presents to other countries, in particular neighbors." Ecuador proposed a 10 km buffer zone again in July 2003, and was met with rejection by Colombia in a note dated September 23, 2003.[6] On March 31, 2008, Ecuador turned to the ICJ and made an application for the proceeding of this dispute between itself and Colombia. The targets of Plan Colombia are the southern provinces including Putumayo and Nariño, which abut the northern Ecuadorian provinces of Sucumbios, Carchi and Esmeraldas. In its Application, Ecuador acknowledges that the majority of the world's coca is produced by

[5] Lucas, Kinnto. (2000). Plan Colombia's Herbicide Spraying Causing Health And Environmental Problems. Retrieved on September 20th, 2012, http://www.commondreams.org/headlines/101700-01.htm

[6] Esposito, Robert. (2010) THE ICJ AND THE FUTURE OF TRANSBOUNDARY HARM DISPUTES: A PRELIMINARY ANALYSIS OF THE CASE. Retrieved on September 20th, 2012, http://digitalcommons.pace.edu/pilronline/15/

Colombia, but argues that fixing the issue by spraying aerial herbicides near the border of Ecuador is not the solution, and is in fact a violation of Ecuador's rights. It states that "the spraying has already caused serious damage to people, to crops, to animals, and to the natural environment on the Ecuadorian side of the frontier, and poses a grave risk of further damage over time". It further contends that it has made "repeated and sustained efforts to negotiate an end to the fumigations" but that "these negotiations have proved unsuccessful". Ecuador also reaffirms its opposition "to the export and consumption of illegal narcotics" but stresses that the issues it presents to the Court "relate exclusively to the methods and locations of Colombia's operations to eradicate illicit coca and poppy plantations and the harmful effects in Ecuador of such operations" Ecuador requests the Court declare that:

1. 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. Colombia shall indemnify Ecuador for any loss or damage caused by its internationally unlawful acts, namely the use of herbicides, including by aerial dispersion.
3. Colombia shall:
    a. respect the sovereignty and territorial integrity of Ecuador; and
    b. 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
    c. prohibit the use, by means of aerial dispersion, of such herbicides in Ecuador, or on or near any part of its border with Ecuador.

According to Ecuador, the ICJ has jurisdiction in the matter of ecological damage to the Nation of Ecuador due to a clear violation of the Convention on Biological Diversity. The Compromissory Clause, which can be found in Article 36(1) of the ICJ, states that the Court has jurisdiction over "matters specifically provided for (...) in treaties and conventions in force". As well as a basis for the Court's jurisdiction, Ecuador invokes Article XXXI of the American Treaty on Pacific Settlement of 30 April 1948 (officially known as the "Pact of Bogotá"), to which both States are parties. Ecuador also refers to Article 32 of the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

Colombia asserts that it has not violated the sovereignty of Ecuador. It also states that there is no definitive evidence attesting to the toxicity of glyphosate and that aerial fumigation is an essential to stop the illicit drug trade, since it has reduced illicit crop yields. Though the safety of glyphosate is under debate, it has been extensively tested over a period of thirty years and has been used in many countries. Colombia also considers its aerial fumigation efforts to be justified by article XIV, section 2 of the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, which states: "Each Party shall

take appropriate measures to prevent illicit cultivation of and to eradicate plants containing narcotic or psychotropic substances."[7]

Past UN Action

The United Nations Conference on Trade and Development (UNCTAD) has investigated the issue and discovered that cocoa production has increased tremendously, despite this herbicide use, raising the question of its effectiveness. During the United Nations Cocoa Conference held in Geneva on 20 June 2010, the UN points at nations in the Far East, who have reduced their illegal drug black market without environmental harm. Since 2008, the ICJ has convened on several occasions to address this issue, with no substantive change made. Most recently in 2011, the President of ICJ has extended the time limit allotted to file the Rejoinder of the Republic of Colombia in this case.

Jurisdiction and merits of the case

Environmental Law and prevention of transboundary harm

Under customary international law states bear several important obligations in the field of environmental protection. The basic duty is to act in a way, that it does not injure the rights of other States. In the famous *Trail Smelter arbitration case*, the Tribunal noted that: " under principles of international law, as well as the law of the United States, no state has the right to use or permit the use of territory in such a manner as to cause injury by fumes in or to the territory of another or the properties or persons therein, when the case is of serious consequence and the injury is established by clear and convincing evidence."[8] The International Court of Justice confirmed this approach in the *Corfu Channel case*, stating that it is the obligation of every state: "not to allow knowingly its territory to be used for acts contrary to the rights of other states".[9] This view was reiterated also in later cases.[10] In the Advisory Opinion on *the Legality of the Threat or Use of Nuclear Weapons* the Court recognized the existence of the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other states or of areas beyond national control[11].

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[7] Measures to eliminate illicit demand for narcotic drugs. 24/09/2012, http://www.worldpolicies.com/english/us_vienna_erradication.html

[8] Trail Smelter Case, (USA v. Canada), [1941], III R.I.A.A.1905, p.1965.

[9] Corfu Channel Case (UK v. Albania), Merits, ICJ Rep 4 (1949), p.22

[10] Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Judgement, ICJ Rep 168 (2005), §216

[11] Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, ICJ Rep 226 (1996), p.241-242.

The judicial practice was also widely reaffirmed in various international documents, most notably in the *Stockholm Declaration* of 1972.[12]

Principle 21 of the Declaration provides that in accordance with the Charter of the United Nations and the principles of international law, States have the sovereign right to exploit their resources pursuant to their own environmental policies, however, they bear the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states or of areas beyond the limits of national jurisdiction. In 2001 the International Law Commission ("the ILC") adopted the Draft Articles on Prevention of Transboundary Harm from Hazardous Activities ("the Draft Articles").[13] These articles apply to activities not prohibited by international law which involve a risk of causing significant transboundary harm through their physical consequences. Under these articles the state of origin of hazardous activities must take all activity needs to fulfil four basic criteria in order to fall under the scope of the Draft Articles:

1. activity is not prohibited by international law,
2. territory jurisdiction and control,
3. risk of causing significant transboundary harm, and
4. physical consequences.

Necessity

The systemic role of circumstances precluding wrongfulness, both in international investment law and in international law more generally, is neither central nor, at least in the form in which they are currently expressed, likely to be of great practical importance in most cases. But circumstances precluding wrongfulness have played an important role in some international investment disputes, and provide an excellent illustration for how blackletter international law works, particularly in relation to countermeasures and necessity. If these decisions are anything to go by, future developments will be of great interest to both practitioners and academic commentators, and directly touch upon the systemic pulse of international investment law and law of State responsibility.

Several circumstances precluding wrongfulness are known in the customary international law. The International Court of Justice recognized in the *Gab□íkovo - Nagymaros Case* that necessity, as a ground precluding wrongfulness, forms part of customary international law.[14] In the Commentary to the Draft Articles on Responsibility of States for Internationally Wrongful Acts, the ILC defined necessity as being: "the situation of a State whose sole means of safeguarding an essential interest threatened by a grave and imminent peril is to

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[12] Ecuador institutes proceedings against Colombia, The Hague Justice Portal. http://www.haguejusticeportal.net/index.php?id=9086

[13] Draft Articles on Prevention of Transboundary Harm from Hazardous Activities, with commentary, in Report of the International Law Commission, Fifty Third Session, UN Doc. A/56/10 (2001)

[14] Gabcikovo - Nagymaros Project (Hungary v. Slovakia), Judgement, ICJ Rep 7 (1997), §51

adopt conduct not in conformity with what is required of it by an international obligation to another State".[15] For necessity to amount to a circumstance precluding wrongfulness, certain conditions need to be met. The wrongful act must safeguard an essential interest of the acting state against a grave and imminent peril and must not seriously impair an essential interest of the state towards which the obligation existed. Furthermore, necessity may not be invoked:

1. if the international obligation in question excludes the possibility of invoking necessity, or
2. if the state in question has contributed to the state of necessity.

Extraterritorial application of human rights treaties

Traditionally, states were under the obligation to respect the human rights of individuals within their territory and under their jurisdiction. In recent years, however, international courts and tribunals started accepting the extraterritorial application of human rights treaties. The International Court of Justice recognized the extraterritorial application of the International Covenant on Civil and Political Rights. In the case concerning the construction of a wall on the occupied Palestinian territory, the Court stated: "The Court would observe that, while the jurisdiction of States is primarily territorial, it may sometimes be exercised outside the national territory. Considering the object and purpose of the International Covenant on Civil and Political Rights, it would seem natural that, even when such is the case, States parties to the Covenant should be bound to comply with its provisions."[16]

The same approach was also adopted by one of the United Nations Committee, the Human Rights Committee, which reiterated in several cases that a state cannot perpetrate violations of human rights on the territory of another state, which it could not perpetrate on its own territory.[17] General Comment No.31 explains that the article 2 of the ICCPR should be interpreted in a way that requires State Parties to respect and ensure the rights to all persons who may be within their territory and to all persons subject to their jurisdiction. This means that a State Party must respect and ensure human rights to anyone within its power or effective control, even if not situated within the territory of the State Party. In determining whether an individual or individuals were subject to jurisdiction of a state, the judicial practice developed two approaches: the spatial theory of responsibility, which requires that a state breaching its international human rights obligations had an effective control over a territory, and the personal theory of responsibility under which the individual, whose human

[15] Draft Articles on Responsibility of States for Internationally Wrongful Acts, Yearbook of the International Law Commission, 1980, Vol. II, Part 2, p.34.

[16] Legal consequences of the Construction of a Wall on the Occupied Palestinian Territory, Advisory Opinion, ICJ Rep 136 (2004), §107-111

[17] HRC Communication No.52/79 (Saldias de Lopez v. Uruguay), §12.3; HRC Communication No.56/79 (Celiberti de Casariego v. Uruguay), §10.3.

rights have been violated, must have been under control of the agents of a state breaching its international human rights obligations.

Modern doctrinal views offer another approach: the model of positive and negative obligations. This model distinguishes between positive obligations of states to secure or ensure human rights, which extend to preventing human rights violations by third parties, and negative obligations of states to respect human rights, which requires states to refrain from interfering with the rights of individuals without sufficient justification. Under this model, positive obligation is based on a state having effective control over an area, because in the overwhelming majority of situations the state actually needs such control in order to be able to comply with this obligation. On the other hand, the negative obligation to respect human rights is territorially unlimited and not subject to any jurisdiction threshold.

As stated before, the jurisdiction of the ICJ in ZuMUN will be considered as not contested. This means that the discuss will revolve around material and legal aspects of the case (transnational harm, extraterritorial application of human rights etc.). When it will be asked to render a judgment, the Panel of judges can inspire itself from the following questions.

1. What role does ICJ play in determining the legality of Plan Colombia?
2. How should ICJ address aerial herbicide spraying? Should other United Nations organizations (such as UN Human Rights Council) be involved in these efforts?
3. How could the ICJ ruling on this decision affect other nations? To what extent must a nation take responsibility for the impact of its actions when the effect crosses transnational boundaries?
4. Are Colombia's actions justified by their cause, the need to eliminate coca production?

These are not the legal issues that will have to be addressed in the judgement but rather aim at engaging delegates into further reflection.

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