



INTERNATIONAL COURT OF JUSTICE

Zurich Model United Nations

7 May 2017

AERIAL HERBICIDE SPRAYING

(Ecuador v. Colombia)

Present: President Lodovica Bellora, Vice-President Sarah Burns, Judge Florian Schweighofer from the Federative Republic of Brazil, Judge Cécile Schluép from the French Republic, Judge Ozan Kokuludag from the Republic of Uganda, Judge Hannes Löbner from the United States of America.

between

the Republic of Ecuador,
represented by Noël Coenraad and Eleftheria Lolou;

and

the Republic of Colombia,
represented by Mark Schmelter and Seraina Wäspi.

THE COURT,
composed as above,
after deliberation,
delivers the following Judgment:

Summary of the trial

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 European 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. Fumigation, or the aerial spraying of coca crops from planes and helicopters with chemical herbicides, is an important part of *Plan Colombia*. 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. Colombia was acting to stop a drug epidemic within its own borders 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, the vegetation and the animals. 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 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.

Statement of the facts

ECUADOR:

1. Roundup ULTRA, Monsanto, 2000

https://www2.hawaii.edu/~defrenk/pdflecturenotes/HORT_481_Lab_HANDOUTS/herbicide_labels_proj1/Roundup%20Ultra%2010%2012%2001.PDF

This report shows how much glyphosate (41%) and unknown ingredients (59%) are in the toxic mixture which is sprayed near the border to Ecuador. This report is important because it shows that the many ingredients used are still not known due to trademark issues.

2. Chemicals Used for the Aerial Eradication of Illicit Coca in Colombia and Conditions of Application, 2002, US Department of State; Bureau of International Narcotics and Law Enforcement Affairs (INL)

<https://www.state.gov/j/inl/rls/rpt/aeicc/13234.htm>

This second report is significant because next to mentioning the composition of the mixture sprayed in Colombia, it offers instructions on the use of this herbicide.

3. Plan Colombia: An Analysis of Effectiveness and Costs, Daniel Mejía, Universidad de los Andes, May 2015. Center for 21st Century Security and Intelligence Latin America Initiative

Next to outlining the main goals of Plan Colombia, this analysis offers an overview of cost-effectiveness relations and argues that manual eradication is more effective than aerial spraying and also has less side-effects.

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- 4. Report on Verification Mission, "Impacts in Ecuador of fumigations in Putumayo as part of Plan Colombia,"** October 2002. The Center for International Policy's LATIN AMERICAN SECURITY PROGRAM

https://adamisacson.com/files/old_cip_colombia/02121301.htm

This report observes that the health of people living in the border countries deteriorated with the first fumigations at the beginning of the 2000s.

- 5. Glyphosate Monogram,** October 2016. Pesticide Action Network (PAN). Dr. Meriel Watts, Dr Peter Clausing , Dr Angelika Lyssimachou, Dr Gesine Schütte, Dr Rina Guadagnini, Dr Emily Marquez.

<http://pan-international.org/wp-content/uploads/Glyphosate-monograph.pdf>

This global knowledge bank is a summary or a databank of 600 non-governmental organisations which share information on the benefits, risks, and effects of the use of pesticides. It is valuable due to its neutrality and its high reliability. This report has found that glyphosate can be used efficiently when killing off unwanted plants but they come with a high risk of health effects.

- 6. Ecuador Gets Colombia's Drift— Aerial Eradication of Coca Crops on the Border.** Sandra G. Edwards, June 2004. Washington Office on Latin America

http://www.mamacoca.org/docs_de_base/Fumigas/WOLA_%20Sandra_Edwards_Ecuador_Gets_Colombias_Drift_June2004.pdf

Colombia recognises that fumigation does drift over to Ecuador as they agree to a 10km buffer zone. The report offers insight into the development of the development of the border area and its people. Health damage such as irritated eyes and skin sores on humans has been observed as well as environmental damage, such as all the fish in ponds dying.

COLOMBIA:

- 1. World Drug Report 2016**

Source: UNODC

http://www.unodc.org/doc/wdr2016/WORLD_DRUG_REPORT_2016_web.pdf

The annually released report of the United Nations Office on Drugs and Crime gives an overview of the world wide situation regarding problems with drugs. It shows that of the three main countries cultivating coca bush, Colombia has shown the strongest decrease in the total area under coca bush cultivation (-58 %) since the peak of 2000.

- 2. Environmental effects of illicit drug cultivation and processing**

Source: UNODC

https://www.unodc.org/pdf/andean/Andean_report_Part2.pdf

The Report underlines the effects illicit drug cultivation has on the environment in Colombia and Ecuador, namely widespread deforestation around their border.

- 3. Plan Colombia: A progress report**

Source: Foreign Affairs, Defense and Trade Division

<https://fas.org/sgp/crs/row/RL32774.pdf>

The report by the government of Colombia discusses the reduction in cocaine production and trafficking they have achieved.

4. Human Health and environmental risks from the use of glyphosate formulations to control the production of coca in Colombia: Overview and conclusions

Source: K.R. Solomon ET AL; Journal of Toxicology and Environmental Health, Part A, 72.

<https://www.odc.gov.co/Portals/1/Docs/pecig/estudiosInv/HumanHealthAndEnvironmentalRisks.pdf>

New data showed that drift from eradication spraying is minimal and that relatively small buffer zones, ranging from 5 to 120 m. The observations do not fulfill all of the criteria for causality, suggesting that if glyphosate spraying has any influence on micronucleus, this is small and not of biological significance.

5. Arias v. DynCorp

Source: United States Court of Appeals for the District of Columbia Court

[https://www.cadc.uscourts.gov/internet/opinions.nsf/3D456AD12FD74FC885257CE8004F4D90/\\$file/13-7044-1495244.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/3D456AD12FD74FC885257CE8004F4D90/$file/13-7044-1495244.pdf)

Court dismissal of all claims for crop damages due to failure to provide expert testimony demonstrating “general causation”. The substance in question has to be capable causing the particular injuries complained.

6. Evaluation of the effects of glyphosate on human health in illicit crop eradication program influence zones

Source: US Department of State

<https://www.state.gov/j/inl/rls/rpt/aeicc/57013.htm>

An evaluation by the U.S department of State illustrating the difficulty to indicate the effect of aerial spraying due the influence of alternative factors.

7. Human rights impacts of oil pollution

Source: Business and Human Rights Resource Centre

<https://business-humanrights.org/en/human-rights-impacts-of-oil-pollution-ecuador-22>

A report concerning the effects of oil pollution and the local population in the same areas as Ecuador claimed is impacted through Colombia’s aerial spraying efforts.

8. Promoting healthy and sustainable potato production

Source: Grupo Faro Organization

<http://www.grupofaro.org/vozsocial/pdf/Hazardous%20Pesticides.pdf>

Research indicating that northern provinces of Ecuador use pesticides in their farming techniques that are responsible for health and environmental damages they are suffering from, in contrast to aerial spraying.

9. International Narcotics Control Strategy Report

Source: United States Department of State

<https://www.state.gov/documents/organization/268025.pdf>

Report explaining the reasons for the recent surge of coca plantations in Colombia.

Legal ground

1. 1992 Convention on Biological Diversity

This Convention was signed by both parties and is significant in such way as both parties agree to conserve their unique nature. Ecuador accuses Colombia of neglecting article 5 of this convention which states that contracting parties should directly or through international organisations cooperate in areas beyond national jurisdiction for the conservation of and sustainable use of biological diversity.

Article 5 of the Convention obliges the parties to cooperate in matters of mutual interest. According to Ecuador, Colombia has not done so.

2. 1997 Convention on non-Navigational Uses of International Watercourses

As the border between Colombia and Ecuador is a river, aerial fumigation affects not just the surrounding plant and human life but also poses a threat to the fresh water supply and the marine life.

Ecuador accuses Colombia to have broken Article 8 of the named Convention.

3. THE RIO DECLARATION ON ENVIRONMENT AND DEVELOPMENT (1992)

Both sides signed this declaration to uphold their natural diversity. Ecuador uses this evidence to accuse Colombia for harming nature not just on their territory but also on the Ecuadorian side of the border.

Ecuador claims that Principles 17 and 18 were disregarded by Colombia.

4. ILC 2001 Articles on Prevention of Transboundary Harm from Hazardous Activities

Ecuador claims that Colombia is harming these articles as Colombia is not taking any precautionary measures and is not informing Ecuador about the spraying.

5. CONVENTION ON ENVIRONMENTAL IMPACT ASSESSMENT IN A TRANSBOUNDARY CONTEXT 1991

Ecuador used this to show that they “invested” in nature in the affected areas. They underline the importance of natural reserves amongst other projects.

6. United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988

This Convention affects the advantages and disadvantages of aerial fumigation, as well as listing different methods to combat the drug problem. Article 14 paragraph 2 is claimed to be harmed by Colombia.

7. International Covenant on Civil and Political Rights 1966

Ecuador accused Colombia of having violated and robbed the indigenous people living in the affected area and therefore having breached Article 27 of the named covenant.

Claims before the international Court of Justice

THE CLAIMS OF ECUADOR

Considering the above mentioned facts, Ecuador respectfully requests the Court to adjudge and declare that:

1. Colombia has violated Ecuador's rights under international law by failing to take all appropriate measures to prevent significant transboundary harm caused by aerial fumigation in the vicinity of Ecuadorian border;
2. Colombia has violated the human rights granted by the ICCPR of Ecuadorian residents adversely affected by aerial fumigation;
3. for the above mentioned reasons Colombia shall 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 shall indemnify Ecuador for any loss or damage caused by its aerial fumigation.

COUNTERCLAIMS OF COLOMBIA

Considering the above mentioned facts, Colombia respectfully requests the Court to adjudge and declare that:

1. by conducting aerial fumigation operations Colombia did not breach any of its international obligations and in the alternative, that the disputed Colombian conduct were performed in the state of necessity;
2. Colombia did not violate its obligations under the ICCPR;
3. Ecuador is therefore not entitled to any remedies.

The Merits of Each Claim

It has been established that there is drift from the air fumigation over the border to Ecuador. Furthermore, it is also debatable whether studies conducted on the health of Ecuadorian people near the border are directly to be connected to the glyphosate sprayed by Colombia, the pesticides used in Ecuador or still repercussions from the oil-spillage in the 90s. With respect to Ecuador claim that aerial herbicide spray being used by Colombia is causing transboundary harm, the Court finds that there is no substantial evidence to support the claim that there has been harm done to Ecuadorian human health, property and environment. After an exhaustive review completed by the Court on the toxicity and usage of aerial herbicide spray, glyphosate, the Court determines that there is little evidence to support Ecuador that glyphosate causes significant harm in any capacity to the human health, property and environment of Ecuador. Multiple international organizations have completed investigations on the effects of glyphosate and recognized the risk it places on individuals and the environment.

The respondent breached international law in the past by not informing the applicant of its fumigation plans and therefore hindering the applicant in taking appropriate countermeasures. The Court recognises that air fumigation has been a vital part in diminishing the number of coca plants in their country.

The Position of the Parties

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. According to Ecuador, its government has made several attempts since Plan Colombia commenced to reconcile the transboundary dispute with Colombia.

The Republic of Ecuador comes to court to discuss the following matter: the alleged aerial spraying by Colombia of toxic herbicides at locations near, at and across its border with Colombia.

The Republic of Colombia agrees that some drift of glyphosate to the Republic of Ecuador takes place, yet does not believe that it is a high enough concentration to prove a correlation between the damages to the population and environment. They stress that it is within their sovereignty to fumigate herbicides by plane on their side of the border. Especially as it is of vital importance in the fight against drugs and the peacebuilding process with the FARC. They are not willing to stop such a successful measure on what they call the speculation that there has been drift to Ecuador that causes actual harm.

The Republic of Ecuador states that this claim is not just about health and environment, but also about the state sovereignty.

Decision

The Court observes that the Republic of Colombia has not abided to the ILC 2001 Articles on Prevention of Transboundary Harm from Hazardous Activities it was Colombia's responsibility to inform Ecuador about possible risks of the toxic mixture it was spraying. It has failed to do that and has therefore breached international law.

The Court orders the followings:

First, the Republic of Colombia is obliged to provide the exact composition of the fumigation pesticide to the Republic of Ecuador. If Colombia is not willing or able to do so, they are not allowed to continue using the before mentioned pesticide;

Second, continued research and publication on the long-term effects of the use of glyphosate for the purpose of coca eradication;

Third, in line with principle 21 of the Declaration 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. The Court stresses the importance of a sufficient information exchange between the applicant and respondent, especially concerning future spraying schedules;

Fourth, for future spraying the respondent is obliged to follow the guidelines provided by the manufacturer, including but not limited to flying within altitude.

Fifth, in line with 1992 Convention on Biological Diversity, the applicant and respondent are advised to more transparent cooperation in order to grant a well-functioning vegetation and preserve natural habitat.

The Court has seen much evidence that shows a possible correlation between the drift of herbicides across the border, but not sufficient to act as grounds for financial compensations to the applicant or an order to stop aerial fumigation in the border area between the applicant and respondent.

Signed by: President Lodovica Bellora, Vice-President Sarah Burns, Judge Florian Schweighofer from the Federative Republic of Brazil, Judge Cécile Schluép from the French Republic, Judge Ozan Kokuludag from the Republic of Uganda, Judge Hannes Löbner from the United States of America.