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Aerial Herbicide Spraying (Ecuador v. Colombia), 2013

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ABSTRACT

The Aerial Herbicide Spraying in 2013 case was associated with Ecuador and Colombia; it distinguished the two countries' relations as unfriendly. Provoked by Colombia's anti-drug aerial spraying which utilizes the spraying of herbicide over coca plantations along the border region between Colombia and Ecuador, the cross-border conflict raised critical concerns over the effects of herbicide drift on the environment and on people's health in Ecuador. Ecuador accused spraying as causing health problems to the nationals and the environment as well, taking the row to the international level and the Organization of American States (OAS). This case had the possibilities of resolving some very fundamental questions that concern the effects of environmental degradation, health complications, sovereignty, and diplomatic relations and yet the case was withdrawn from the International Court of Justice (ICJ) due to a settlement. This also contained a decision of a 'no spray' zone extending for a distance of 10km from the border of the two nations and a payment of \$15 million which was to be made by the Colombian government to the government of Ecuador. Although the settlement stopped the ongoing controversy, the dismissal of the case from the ICJ failed to set a very crucial precedent in the international environmental law especially when dealing with transboundary pollution and the question of national security as a valid defense for violating environment and human rights. The case could have illuminated as to how much the environment could be damaged in international law and also the necessity of defense in relation to drug related violence. Therefore, the settlement's practicality was useful for both nations, though more complex challenges remain concerning the principles of international law involving transboundary pollution.

Keywords: ICJ, Border, Settlement, Colombia, Ecuador, Human rights.

I. INTRODUCTION

In 2013 Aerial Herbicide Spraying dispute between Ecuador and Colombia was an important moment in the long-standing tension between the neighboring countries. Starting from Colombia's anti-drug campaign that included the eradication of coca crops by air spraying along the Colombia-Ecuador border, the issue of the herbicides' effects on the ecosystem and health

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came up. The USA's Plan Colombia arose with the intention of fighting illegal crop cultivation, but the unforeseen impacts of herbicide drifting across the border the Ecuadorians became very concerned about. Ecuador argued that the herbicides had an ill effect on its citizens and the environment, and the conflict with the US administration got aggravated. The conflict resulted in Ecuador lodging a complaint against the launch and urging international mediation to be talked about in the Organization of American States (OAS). The Aerial Herbicide Spraying Case, was eagerly anticipated as a decision that would either "challenge an international drug ring that has terrorized Colombia for decades, or address human rights and environmental issues presented by a neighboring state." However, what was hoped to be a strong decision by the International Court of Justice (ICJ) was not to be: the case was removed from the ICJ's list on September 9, 2013, following a settlement agreement between both states that included a ten-kilometer no-spray buffer zone along the Ecuadorian-Colombian border.

II. FACTS

Colombia has spent decades combating and eradicating illegal coca fields. To comprehend Ecuador and Colombian positions on aerial pesticide spraying, it is necessary to place the matter in perspective. The Revolutionary Armed Forces of Colombia (FARC) is one of the prominent guerrilla organizations in Colombia battling for economic, social, and political dominance. The FARC derived significant income by charging farmers who cultivate illegal drug crops. Colombia has historically been a major producer of coca and poppy, accounting for more than 55% of global production in 2008. Although Colombia has used aerial pesticide spraying since the 1980s, large-scale aerial fumigation began in 2000 as part of the US-funded "Plan Colombia" to cut off the supply of funds to guerrilla organizations such as the FARC. Aerial pesticide spraying is concentrated in the southwest areas of Putumayo and Nariño, bordering Ecuador's northern provinces of Esmeraldas, Carchi, and Sucumbíos, home to the Awá indigenous people. The dispute was a result of the off-target effects of this fumigation (such as the drift of herbicides into neighboring Ecuador), in addition to the opinions regarding the responsibility of countries that are not the cause of the problem. Ecuador, located alongside Colombia's northern frontier, has raised notable health and environmental worries regarding the utilization of these pesticides in its people and environment. In the case presented by Ecuador, the harm to their farms, water sources and the wellbeing of the people were caused by the aerial spraying. Other reports arose where Ecuadorian residents in the nearby border also displayed adverse health effects like skin rashes and respiratory problems. Further, the controlled herbicide spray was suspected to damage other crops negatively, leading to an economic loss for Ecuadorian farmers. The escalation of tensions increased when Ecuador accused Colombia

of invading their territory and ignoring the transboundary environmental and health problems. Ecuador resorted to international mediations, bringing this to the Organization of American States (OAS) and other institutions of such nature.

III. ISSUES

In the aerial herbicide spraying controversy, between Ecuador and Colombia in 2013, there are some central problems that are very important in the ecological, health, diplomatic and sovereignty concerns.

1. **Environmental Impact:** Aerial glyphosate spraying on the large scale inevitably drifted to Ecuadorian territory, due to the chemical spill. This increased environmental concern regarding water bodies, soil, and the ecosystems as the herbicides could be contaminated and possibly endanger biodiversity and disrupt the balance of the local ecosystems.
2. **Health Concerns:** The health effects of herbicides have proven to be the gist of the problem. In response, reports of the adverse health effects of Ecuadorian citizens surfaced, including skin inflammation and respiratory problems. The most enduring issue around the border, in the health effects of herbicide exposure among most impacted citizens, would take center stage of the controversy.
3. **Sovereignty:** Ecuador objected to Colombia's conduct, and said that the aerial spraying was illegal because it violated the principle of territorial integrity. Bordering herbicides as a violation of Ecuador's territorial integrity and disrespect of its internal affairs was seen by many as an interference.
4. **Diplomatic Tensions:** The dispute caused nervousness in bilateral relations between the two neighboring states. Ecuador claimed that Colombia's response was not adequate to the issues presented and Colombia did not engage in a dialogue to find a resolution. Therefore, the case illustrated the problems of dealing with bi-lateral relationships when one's actions create immediate and negative consequences for the other side. as a violation of Ecuador's territorial integrity and disrespect of its internal affairs was seen by many as an interference. Ecuador had made many attempts to engage with Colombia on the problem of aerial pesticide spraying and its effects on Ecuadorian territory. The Ecuadorians made multiple attempts to reach a deal, but Colombia continuously refused.² These attempts began in 2000, soon following the start of spraying. They

² Diplomatic Note VRE 32759, sent from the Ministry of Foreign Affairs of Colombia to the Embassy of Ecuador in Bogotá (23 Sep 2003), Memorial of Ecuador, Vol. II, Annex 48 <http://www.icj-cij.org/docket/files/138/17542.pdf> . (visited 7th February 2024).

include requests for information on the herbicide's composition, notice from Colombia before to spraying,³ manual spraying, a conference to assess the impacts, and a ten-kilometer exclusion zone along the border.⁴ Each of these attempts resulted in either a denial or no answer.

5. Economic Consequences: The herbicide drift too adversely affected Ecuador, turning it into a victim of the economic situation of the NAFTA countries. The illegitimate crops influenced the legitimate ones, thus causing financial ruin to the farmers. This dispute brought to light the requirement of an economic analysis of anti-drug strategies which could lead to tremendous losses and other collateral damages to the legal farming activities.
6. International Mediation: The country of Ecuador asked for a solution from the international community and some of the organizations it addressed were the Organization of American States (OAS). This also highlights the significance of transnational mediation and collaboration in resolving transboundary environmental issues and environmental disagreements between sovereign nations.

IV. JUDGMENT

Ecuador withdrew the Aerial Herbicide Spraying Case from the ICJ list after both sides reached an agreement. Colombia did not publicly accept guilt, but decided to pay \$15 million to Ecuador to stimulate economic activity along the country's borders. Furthermore, a ten-kilometer exclusion zone was established along the Ecuador-Colombia border, inside which no aerial fumigation was permitted. The agreement also established a joint committee to ensure that no herbicides drifted into Ecuador from Colombia beyond the exclusion zone. Based on the commission's conclusions, the agreement calls for a gradual reduction in the size of the exclusion zone. The deal fully and totally settles all of Ecuador's claims against Colombia. This may be viewed as a victory for Ecuador. But what would the outcome have been had the case proceeded before the ICJ? In this respect, it should be noted that Colombia neither prepared or delivered an Environmental Impact Assessment to Ecuador, nor did it not notify Ecuador prior to spraying. The State refused to inform Ecuador of the exact ingredients of the herbicide spray⁵

³ Diplomatic Note 12437-47 SP/DGA/DTANC, sent from the Ministry of Foreign Affairs of Ecuador to the Embassy of Colombia in Quito (24 July 2000), Memorial of Ecuador, Vol. II, Annex 36, <<http://www.icj-cij.org/docket/files/138/17542.pdf>> (visited 2nd February 2024).

⁴ Diplomatic Note 55416/2001 - GM/SOI/SSN, sent from the Ministry of Foreign Affairs of Ecuador to the Ministry of Foreign Affairs of Colombia, 2 July 2001, Memorial of Ecuador, Vol. II, Annex 41, <<http://www.icj-cij.org/docket/files/138/17542.pdf>> (visited 6th February 2024).

⁵ Memorial of Ecuador (Ecuador v Colombia), April 2009, Vol. 1, at [2.38], <<http://www.icj-cij.org/docket/files/138/17540.pdf>> (visited 8th February 2024).

and evidently did not use “all means at its disposal” to avoid transboundary environmental harm. This is clear in view of its choice of a non-selective herbicide, the fact that its chosen dispersal method is recognised to be extremely inaccurate and imprecise, and considering the occasions upon which the aircrafts flew into Ecuadorian air space. As a result, it is said that if the case had progressed, the Court would have ruled in favor of Ecuador, ruling that Colombia had breached international law and so owed Ecuador damages.

V. ANALYSIS

As there is no judgment to reason in this case, the researcher explains here about how the judgment would develop and what potential it would have. The case had the potential to finally "clarify the issue of the level of environmental damage from atmospheric forms of pollution that is actionable under international law" and thus become an important precedent in the international environmental law jurisprudence of the International Court of Justice (ICJ) due to the competing concerns demonstrated in the case between environmental and human rights protection on the one hand, and the necessity of facilitating the efforts of States to eradicate trade in illicit drugs on their territory on the other. An aspect of Colombia's defense would have likely included that "the drug trade and guerilla activity created a situation of necessity that demanded a response and excused their procedural and substantive internationally wrongful acts." A ruling in this case would have also further expanded the scope of the necessity defense.

An argument that the herbicide spraying was merely one of the defensive reactions to the terrible and urgent situation of the drug trade and guerillas residing in its limits, could be Colombia's likely defensive strategy. The contention would be that the measures, although resulting in environmental harms, were the only feasible and proportionate response to an aggressive danger, and could set a precedent within international law that broadens the scope of the necessity defense. This case may have yielded the groundbreaking verdict that set a standard for future cross-border environmental disputes as it would determine the border of state's actions for its internal security threats, which may result in transboundary environmental harm. While the environment, human rights and the security issues which are too dangerous to be ignored are all crucial aspects of international law, the complexity of the problems that span beyond the national borders further shows how challenging it is to solve them. With the case, the prospect existed for a considerable advancement within the expanding body of the case law of the balancing between the environmental law and the national security concerns of the states in the international context.

The Case's Effect on Transboundary Disputes and Environmental Law

1. **Advancement in International Environmental Law** - The ongoing dispute between Ecuador and Colombia in aerial herbicide spraying in 2013 could develop considerably the field of international environmental law by addressing an important issue, i.e.: the level of environmental damage caused by atmospheric pollution under international legal frameworks. The case had the power to lay down a standard that would expressly state the exact roles of states in preventing and alleviating the cross border environmental damage. The ICJ ruling could have paved a way to sharpen the criteria for assessing how states' actions may cause environmental damage and clarified the boundaries of such harm when national security concerns are considered.
2. **Necessity Defence and State Sovereignty** - The case that was presented was a chance to delve into the area and the possibility of expanding the necessity of defence in international law. The example could have shown what Colombia did through delving into the claim that emergencies created by drug trade and guerrilla activities justified international wrongful acts of procedural and substantive types in the case. This should establish legal principles that will allow states to exert sovereignty while at the same time deal with cross-border matters ultimately guiding the intricate relationship between domestic security and international legal responsibilities.
3. **Transboundary Environmental Dispute Resolution** - The dispute brought into focus the intricacies associated with resolution of trans-boundary environmental disputes. Study the clash of interests of environmental protection, human rights, and national security necessities, the case might have contributed to creation of efficient mechanisms for disputes settlement that spread along national borders. It could have pointed out the significance of international cooperation, diplomatic dialogue, and the role of international organizations in preventing and settling conflicts caused by actions whose effects are transboundary.

VI. CONCLUSION

While it is encouraging that Ecuador and Colombia were able to come to an agreement, the problem of transboundary pollution and environmental impact remains unaddressed under international environmental law. If the case had been decided, the International Court of Justice (ICJ) would have had the opportunity to weigh the relative importance of international law when deciding whether to support the war on drugs or take action to stop environmental damage and breaches of human rights caused by transboundary contamination. It makes sense that Ecuador

would have wanted to get a quick resolution by negotiating an arrangement with Colombia outside of court. However, the advantages to the world community could have been higher had the ICJ been given the chance to rule on the matter. Ecuador may have difficulties with the settlement as it allows for the reduction of the ten-kilometer exclusion zone to two kilometers in a span of two years.⁶ This might mean that Ecuador is effectively dealing with the same issues that they were ten years ago, making whatever progress that has been accomplished so far meaningless. In contrast, an ICJ ruling would have been legally binding on both sides, and Ecuador could have taken the case to the UN Security Council to have the ruling enforced if Colombia had refused to abide by it.⁷ If Colombia refuses to abide by the settlement, Ecuador will eventually have few options for retaliation and this option will be closed in the absence of a ruling. Even though both parties' benefit from the claim's resolution, it is debatable whether Ecuador and the advancement of international environmental law would have profited from the clarity and legal certainty that an ICJ written ruling would have offered, had the case been permitted to proceed. It is therefore argued that the withdrawal of the Aerial Herbicide Spraying Case from the International Court of Justice's list should be seen as a missed opportunity for international environmental law.

⁶ Agreement between the Republic of Ecuador and the Republic of Colombia, 9 September 2013, <<http://cdn.ipsnoticias.net/wp-content/uploads/2013/10/Acuerdo-glifosato-Ecuador-Colombia.pdf>> (visited 12th February 2023).

⁷ Article 94 (2), Charter of the United Nations.