INTERNATIONAL COURT OF JUSTICE (ICJ)

ARTICLE ON THE COURT'S CASE

THE INTERNATIONAL COURT OF JUSTICE'S CONTENTIOUS CASE ON THE AERIAL HERBICIDE SPRAYING (ECUADOR *V.* COLOMBIA): POLITICAL AND JURIDICAL OUTLOOKS

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1. Introduction

When we consider the international outline of the debates regarding human rights, it is clear to realize how acute the arguments concerning narcotics have been to the subject, not only considering its illegal trade, but also the disease of drug addiction and its consequences to society.

With these challenges in mind, the majority of countries worldwide are pursuing different methods to fight the problem. Whether approaching drug consumption, drug distribution or drug trade, what is for sure is the will of controlling the situation. One of the different ways of tackling the problem is seeking to diminish the production of drugs as a first procedure. In Latin America, world's leader in production, several countries are using this methodology since it blocks the very beginning of the drug cycle. Colombia is among these countries, being the world's leader in production of coca leaves since 1996 (Central Intelligence Agency [CIA]). It will also be the core country in this research paper being the target of an application by Ecuador, in 2008, in the International Court of Justice concerning this subject.

In Colombia's last attempt to tackle the escalade of narcotic related issues in the country, Bogotá decided to re-launch a series of unarmed flights with the objective of spraying, with noxious herbicides, drug crops in a region close to the border with Ecuador. This area represents more than 75% of the drug crops planted in the country (CIA). Although they had already been spraying the crops since the second half of the 1980s, the consequences of this recent decision, such as the assumed further damages on the Ecuadorian environment and people, led Quito to apply to the court.

In order to fully understand the aspects and motivations this case involves, it is necessary to present a series of factors, political analysis, legal aspects and doctrines which are of utmost importance towards any appraisal of the subject. It deals with a significant blast of residual and micro subjects that need to be underlined and can be easily divided in two categories: the political and the juridical dimensions.

The first embodies several elements structured in a line of thought that thoroughly matches a political approach towards the subject. In this sense, it is necessary to show, firstly, how the problem of drugs affects the lives of the people and dynamic of a society afflicted by this situation. Both social and economic consequences of addiction and drug trade in general will be delineated. After this global context is unveiled, it becomes necessary to display the specific conditions of Colombia and Ecuador regarding the matter. More specifically, which set of internal circumstances, linked to the narcotics, led these countries to this unique and conflictive status. A fraction of the whole scenario has the involvement of the *guerrillas*, which will be also presented.

After we scrutinize some of these internal set of affairs that are relevant to the case, it is important, then, to comprehend the causes and reasons that made these arrangements a significant disturbance when considering the history of peace among the countries in South America. The region suffered, throughout last century, with authoritarian regimes in the majority of its countries – including Brazil, Argentina, Chile, Uruguay, Peru and Ecuador. If not labeled as authoritarian, these countries endured disturbed times with fragile democratic institutions. On this matter, although most of these countries found their paths towards the consolidation of democratic regimes, nowadays it is possible to grasp several indications of authoritarian revivals,[1] mostly in Venezuela, Bolivia and Ecuador. These evidences are not coincidences since they all have origins in neo-socialist

[1] Ultimately, this can be attested by several happenings that demonstrated a lack of respect with democratic institutions by authorities in countries such as Bolivia, Venezuela and Ecuador (Johnson, 2006). In 2007, for instance, Venezuelan authorities closed a popular television network, the RCTV (BBC News, 2006). In 2006, Bolivia's President Evo Morales signed an act to nationalize the exploration of undersoil natural resources. That caused an incident where the Bolivian army took charge of Petrobras facilities in 2006.

ideologies deeply supported with populist attitudes of their higher representatives.

The current government of Colombia, however, is perhaps the epitome of the opposite ideology within South America. This, alongside with the eerie relationship of Caracas with the *guerrillas*, also exposes key factors to a thorough political comprehension of the case.

The second dimension, the juridical one, is deeply related to the issues of sovereignty, human rights and environmental law, which represent, probably, the three major challenges for International Law nowadays, since the comprehension of the extension and applicability of the concept of sovereignty in its strict sense has been suffering several modifications with the recovery and expansion of the scope of application and comprehension of human rights and environmental law.

Furthermore, this case between Ecuador and Colombia might be considered as unique, especially when taking into account that it presents entirely new issues to the International Court of Justice. The ICJ will have to acknowledge the fundaments of International Law in order to seek a solution to the dispute, which imposes to the Court the obligation to mediate conflicting interests and determine that one fundament, that constitutes the matter, might has an utter importance to International Law the others already acknowledged in the case..

However, beyond such issues that will be worked forward, the present case, as well as several others among South American states which are being held before the International Court of Justice, may indicate a weakening of regional integration, pointing to the need of recasting the available regional ways to solve regional conflicts or, perhaps, the construction of new local mechanisms.

Nevertheless, there is no doubt that the decision that will be taken in the case, whatever its content may be, will have an enormous impact within International Law; either confirming the increasing importance that human rights and environmental law are acquiring throughout the years, or pointing to the need for a less limiting interpretation of the principle of sovereignty. Nevertheless, there is no doubt that this decision will not have the power to solve regional conflicts; such a resolution will be not achieved by any international court, but, due to its political nature, which enter in the legal field only due to the impossibility of

political solutions, these conflicts will only be solved through regional dealings as well as through solidarity and cooperation among South American states.

2. The Political Aspects of the Case

2.1. Narcotic Drugs

> Drugs destroy lives and communities, undermine sustainable human development and generate crime. Drugs affect all sectors of society in all countries; in particular, drug abuse affects freedom and development of young people, the world's most valuable asset. Drugs are a grave threat to the wealth and well-being of all mankind, the independence of States, democracy, the stability of nations, the structure of all societies, and dignity and hope of millions of people and their families (United Nations [UN], 1998, chapter V, section A, draft resolution I, annex).

As pointed by the United Nations Office on Drugs and Crime [UNODC] (2008a, p.3), drugs are "chemical substances that affect the normal functioning of the body and/or brain." There are legal drugs such as nicotine, alcohol and the medicines prescribed by doctors or sold in pharmacies, and illegal drugs, those harmful enough to be considered eligible to control by the authorities in a determined country. Most of these types of drugs are also the subject of several international treaties and conventions such as the 1961 Single Convention on Narcotic Drugs, the 1971 Convention on Psychotropic Substances and the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. In accordance with these documents, we shall refer to the illegal drugs, from this point further, as narcotic drugs.

As all types of drugs, the narcotics can be natural,[2] semi synthetic[3] and synthetic.[4] However, this sort of categorization is not the most adequate to the goal in range, being the distinction between Opiates, Central Nervous System Depressants, Central Nervous System Stimulants, Hallucinogens and Cannabis (UNODC, 2009a) the appropriate differentiation method for our usage since the current production in Colombia is basically of Coca plants (Central Nervous System stimulants) and Cannabis.

[2] Consumed directly after harvest.

[3] Chemical manipulations of substances extracted from natural materials.

[4] Created entirely by laboratory manipulation.

2.1.1. Opiates

Opiates is the term that describes any of the narcotic alkaloids that come from the opium poppy plant (Papaver Somniferum) such as heroin, methadone, morphine, codeine and opium.. The opiates depress the central nervous system being used therapeutically as painkillers and cough suppressants. Recreatively, mostly as heroin, they are used as euphoriants for it relieves users' tension, depression and anxiety, as they feel detached from emotional or physical pain. The short term effects of heroin include drowsiness nausea, vomiting, constricted pupils, apathy and inability to concentrate. It is a very addictive drug being the users subject to quick physical and psychological dependence. The long term effects are even more severe and range from massive weight loss and chronic apathy to death from overdose. The withdrawal symptoms of the abrupt quitting of opiates are also very damaging: cramps, diarrhea, tremors, panic, chills and sweats, nausea and vomiting. However, those are not the most severe effects of heroin abuse. The unhygienic injecting of the drug may cause hepatitis, HIV and AIDS as well as the wider diffusion of these diseases by other methods.

2.1.2. Central Nervous System Depressants

The Central Nervous System Depressants includes barbiturates, nonbarbiturate depressants and benzodiazepines. They can be used therapeutically as anxiolytics, hypnotics, anesthetics and anticonvulsants. Barbiturates and benzodiazepines are used recreatively as to produce similar effects of alcohol and heroin intoxication such as relaxation and euphoria. The side effects, though, are harsh: respiratory depression, lowered blood pressure, fatigue, fever, unusual excitement, irritability, dizziness, poor concentration, sedation, confusion, impaired coordination, impaired judgment, addiction, and respiratory arrest which may lead to death. Barbiturates, specifically, have a high rate of overdoses since the user usually develops quick tolerance to the drug which makes the difference between an effective dose and a lethal dose increasingly smaller.

2.1.3. Hallucinogens

The Hallucinogens is mescalin, Lysergic Acid Diethylamide (LSD) and phencyclidine. These drugs cause subjective changes in perception, thought, emotion and consciousness. Unlike the other types of illegal narcotic drugs, the hallucinogens do not cause reactions of just boosting familiar states of mind, but rather cause the user to have experiences that are different from those of ordinary consciousness. Other effects are related to strong changes in mood, thought and senses in addition of feelings of sociability and empathy. When taken these drugs can produce on the user delusions and distorted perceptions that can permanently shift the user's perception of depth, time, colors, sounds and touch. In the long run, LSD users also may suffer wide emotional effects such as fear of losing control, insanity, fear of death and despair.

2.1.4. Cannabis

C*annabis* refers to a homonymous genus of flowering plants that are used to produce drugs that display the highest rates of prevalence globally (UNODC, 2009a). The principal psychoactive component of the C*annabis*' drugs is the delta-9-tetrahydrocannabinol (THC) present in different concentrations in each form of production and usage of C*annabis*. The consumption of marijuana,[5] hashish[6] and hash oil[7] can make the users feel euphoric and pleasurably relaxed as well as to increase one's sense of sight, smell, taste and hearing (UNODC, 2009a). Although it depends on the quantity of consumption, cannabis may shorten attention span, modify perceptions of time and space, compromise motor coordination and heighten pulse rate in short term. In high doses, the users may have sharpened their perceptions of sound and color as well as feel anxiety and panic. The long term usage of the drug may develop psychological dependence to the point where the users start to lose interest in all their other activities and relationships. Finally, C*annabis* smoking carries the same series of risks of those linked to cigarette

[5] Marijuana is the name addressed when the drug is consumed in the herbal form, that being the leaves, flowers and stalks of the plant, mainly *Cannabis sativa.*

[6] Hashish is the name of the drug derived from the resin of the Cannabis plants.

[7] Hash oil is the liquid form of the Cannabis drugs and is fabricated with the usage of solvents such as butane and isopropanol.

smoking, such as bronchial and cardiovascular problems and respiratory cancers. Because its side effects are considered to be lower than the ones linked to other types of narcotics, the usage of C*annabis* is very popular worldwide. According to UNODC (2006a), in 2004, 162 million people used the drug, about 4% of world's population, and 22.5 million used it on a daily basis (0.6%).

2.1.5. Central Nervous System Stimulants

Finally, the Central Nervous System Stimulants which are, after C*annabis*, the most popular illegal narcotic drugs in the world, mainly cocaine, its sub products and amphetamine-type stimulants (ATS).[8] These drugs can be natural, like the consumption of the leaf of the coca plant (*Erythroxylum coca*); semi-synthetic, such as the coca paste, cocaine and crack cocaine; or completely synthetic substances, such as the amphetamine-type substances. The ATSs are commonly found in the form of pills of powder. In this category is placed Ecstasy, the most common variety of ATS. These drugs stimulate a feeling of physical and mental well being that usually raises the empathy levels of the users and make them feel more sociable. The users also experience a temporary increase of energy although followed by delayed hunger and fatigue. In short term, ATSs can cause the body to ignore distress signals such as dehydration, exhaustion and dizziness, besides shifting body's ability to regulate temperature. Furthermore, the usage of ecstasy can cause severe damage to liver and kidneys as well as leading to convulsions and heart failure.

The consequences of the consumption of cocaine are slightly different from those of the usage of ATS. It can make users feel extremely exhilarated and euphoric and also experience a temporary rise of alertness and energy. The short term effects of the drug include faster breathing, increased body temperature and heart rate, and loss of appetite. The users may have erratic and sometimes violent behavior under the drugs' effect, as well as to have seizures, convulsions, strokes, cerebral hemorrhage and heart failure under excessive doses. The long term usage of the drug causes a vast number of health issues that can be linked to the method

[8] Accordingly to UNODC (2009b) cocaine potential of production in 2008 was of 850 mt and between 270 mt and 620 mt of ATS.

of ingestion of the drug: sniffing it severely damages nose tissue, smoking it can cause respiratory problems, whilst injection can lead to infectious diseases and abscesses. Regardless of the way the drug is taken, other long term side effects include heavy physical and psychological dependence, malnutrition, weight loss, apathy, disorientation and paranoiac behavior.

2.2. Narcotic Burden

As it is of notice, the use of drugs can cause severe psychological and physical damages to its users. According to UNODC (2009c), in 2008 there were about 200,000 deaths worldwide due to drug abuse. This data clearly demonstrates the large proportion of the drug-related health problems, whether for the addicts or to the rest of society burdened with the high costs of treating the issue.

The situation does not seem better when we tackle the conditions that surround the addicts, their family and the community. The disintegration of the family seems to be related, in some extent, to problems of substance abuse, once an addict's family has to bypass several health and social-economic disturbances, such as the costs of treatment, theft, symptoms of withdrawal and recurrence and peaks of aggressive behavior by the addict (Toro, 1995). In addition, this problem may also trigger a cultural change in the affected societies' values as it can transform families from an asset into a burden when one accounts having an addict in the family. Another complex consequence towards the family is the influence that one relative may have over the others (Kandel, 1973), for instance an addict's older sibling whose attitudes might be mimicked by the younger ones, therefore setting them in the same disastrous path.

Apart from these social consequences of drug issues, there can be pointed out economic consequences of significant importance. Firstly, in some countries, the percentage of the illegal narcotics bulk in the GDP is considerable since, due to legal restrictions concerning the illegal origins of it, the money generated from the gross profit of this market is almost thoroughly reinvested within the country, therefore making the illegal drug trade market an increasingly higher part of a country's economic scenario. Another issue is related to the costs of drug abuse in

society. For example, Australia and Canada calculated in 1992 the costs of substance abuse at 0,4% and 0,2% of their GDP respectively (UNODC, 1998). These costs were split into reduced productivity caused by premature death or illness, costs of the justice system, costs of the health care system and costs with customs and police. It is yet possible to add to these numbers the costs related to health care caused by the spread of diseases related with the sharing of needles by users and specific programs focused on solving the problem.

From another point of view, it is possible to link the issue of abusive usage of illegal substances with setbacks in employment and productivity. Individuals who have problems with drugs, also have lower rates of productivity and higher rates of unemployment. This also means that, not only will people sometimes face situations where they will professionally have to relate to users under influence of drugs but also that, they will have to work harder to balance the addict's lack of productivity (UNODC, 1998).

2.3. Drug Trade

Of all the consequences of drug related issues observed in society, the escalade of violence threatening public safety and its outcomes in international level, are definitely the ones government authorities and population have guarded best interest in. Whether in major cities like Rio de Janeiro, Brazil, or Bogotá, Colombia, or smaller ones along the international drug trade route, this problem has massive impact on people's lives and local government's institutions.

The international drug dealers are, nowadays, the utter representatives of the organized crime, a particular type of conglomerate that has its single operational rules which are completely oblivious of the rule of law and that are based on violence for its imposition and perpetuation (Ciment & Shanty, 2007). Empirically, it is possible to confirm these characteristics by examining drug traffic controlled areas in Brazil, Colombia and Ecuador. The key difference of this specific sort of organized crime in these countries is the attractiveness of drug trafficking and the correlated criminal activities among the poor population;[9] those countries

[9]There is a large bibliography that tackles this connection between poverty and criminality, specifically drug related criminality. The reading of "Africa & the drugs trade" (1999) by C. Allen

display higher rates of poverty than others afflicted with the same issues.[10] This determines a different kind of violence used by these criminal groups since their units are poorly educated and usually loyal to the organization due to the gains achieved through being part of the organization.

As pointed by Ciment & Shanty (2007), the organized crime has a pyramid-shaped structure of power and action. The drug related version of it, though, tends to make way for alliances with networks and cell-type structures (Geffray, 2002). This latter type of structure, by focusing acceptance on a level of skill or functionality rather than nationality, tends to be more transnational than other criminal organizations.[11] By being more transnational, they benefit from different forms of law enforcements in different countries and the lack of it in their boarders.

This looser peripheral distribution of action and power within these organizations also spread and somehow contaminate further layers of society than the already mentioned, reaching sometimes prestigious sections of these countries' societies, many times, those connected with the political spheres of that country. This so-called 'contamination' grows out of an ongoing process of "State criminalization" (Geffray, 2002, p.1), a term derived from activities undertaken by members of the state that are severely grave. The traffickers, due to the need of eluding the severity of the law, have "[v]arious means of neutralizing the law [that] can then be used, as a result of which a number of officials renounce the exercise of their duties in the struggle against drug traffickers while retaining their position. These officials' act of renunciation, coupled with their failure to relinquish their office, is at the very core of the corruptive transaction" (Geffray, 2002, p.1). In this sense, the trafficking leaders tend to approach the state the same way, by both

in the *Review of African Political Economy*, "Perverse integration drug trafficking and youth in the *favelas* of Rio de Janeiro" (2000) by Alba Zaluar in the *Journal of International Affairs* are highly recommended for the matter.

[10]One could point out that countries, such as Afghanistan and Pakistan, have higher poverty rates than the countries mentioned, what is precisely the truth. The matter is that these countries whether have a complete lack of juridical and executive institutions or, the profiteers from these activities do not rely on violence to maintain their status, in both senses, not characterizing these activities as organized crimes.

[11]It is possible that nationality itself might be considered an attribute with the specific goal of opening targeted markets, corrupting legal authorities or yet managing a V.I.P. contact list.

relinquishing the exercise of its responsibility towards drug traffic and keeping their chairs.

These considerations made possible to raise the point of the political legitimacy of states that by any reasons or motives contribute with drug trafficking, whether by being corrupted or by renouncing their duties in fighting the problem. The money originated from these activities does not solely serve to raise the wealth of the drug traffickers but also to search for ways to keep the organization running, including the corruption of authorities. As a matter of fact, the drug trafficking controlled by the FARCs[12] led this movement to create, support and supply parties and political groups in Colombia, Ecuador and Venezuela. This effluence of funds may also trigger a shift in people's perception of legitimate authority in their lives. It seems precise, then, to characterize this as a clientelist legitimacy that is susceptible of causing the collapse of any institution (Geffray, 2002).

Finally, "[o]rganized, internationally-based drug traffickers with vast financial resources pose a serious threat to the stability and security of the international community. They operate without concern for national boundaries, and individual nation-states are often ill-equipped to prosecute and punish perpetrators" (McConville, 2000, p. 3).

As cited before, the regulation of drugs has been subject of international multilateral agreements since 1912, with the International Opium Convention concluded in The Hague. And although both the 1961 Convention on Narcotic Drugs and the 1971 Psychotropic Substances Convention sought to recognize international trafficking as an international crime, it was only in the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances that this recognition was accomplished explicitly.

It was by that time that the problem of drug trafficking was perceived as an even higher risk to international security. With the end of the Cold War, the common notion of international and regional security became more and more related with perceiving a collective defense of democracy and a stable regional

[12] *Fuerzas Armadas Revolucionarias de Colombia*, in English: Revolutionary Armed Forces of Colombia.

environment through regional integration and political and economical reforms (Hurrell, 1998). This alleged new view of the security issues promoted by an agenda post-cold war helped the establishment of this issue amongst international community.

For all this, the international drug trafficking represents a major threat to international security. Its structure, organization and economic power made it extremely dangerous and hard to engage.

2.4. Colombia

> [Drug crops are] a social problem whose solution must pass through the solution to the armed conflict... Developed countries should help us to implement some sort of 'Marshall Plan' for Colombia, which will allow us to develop great investments in the social field, in order to offer our peasants different alternatives to the illicit crops.[13]

As it is possible to realize, the burden related to the drug problem is heavy and needs reaction. It constitutes a vital part of the reasons why the Colombian authorities decided to tackle the matter fiercely, causing Ecuador to respond by going to the ICJ in 2007. Colombia, as stated before, has been the world's leader coca leaves producer since 1996 (CIA, n.d.), bypassing several obstacles and moments that contributed to the aggravation of the matter.

The cultivation of marijuana started in Colombia at the beginning of the century. The first crops were originated from the Caribbean and by 1930, the coast of Barranquilla, in the northern coast of the country (Hanratty & Meditz, 1988).

The origins of coca production were slightly different. As well as in Peru and Bolivia, the habit of chewing coca leaves was really popular in Colombia, especially among indigenous populations. It is considered a cultural aspect inherent to the local people and due to that, it remains legalized up to the date. As a matter of fact, this question was the main reason of several polarized clashes in society, as the position held by the representatives regarding these crops are considered to be

[13]Andres Pastrana, former President of Colombia during a speech at Bogotá's Tequendama Hotel in June 8, 1988, when he was running for presidency.

very important to the political status in the country, especially since the 1980s when the coca trade dramatically escalated.

The two oldest political parties, the Liberal and the Conservative, founded in 1848 and 1849 respectively, have dominated Colombian political scenario in a fierce rivalry that have often burst into violence, most notably in the Thousand Days War from 1899 to 1902[14] and the conflict called '*La Violencia*,' that began in 1948.[15] It was this last disturbance that started the problem with the *guerrillas*[16] in the country.

By the time 'La Violencia' ended, the civilian armed groups that took part in the conflict, specially the ones with Marxist-Leninist-Maoist orientation, had gained massive support of local population in several regions of Colombia. With the endorsement of the Republic of Cuba and the People's Republic of China, the National Liberation Army (ELN) and the Maoist People's Liberation Army (PLA) were created in 1965. The FARCs had already been running since 1964 although with poor reputation that far.

Over the years, the uprising of the *guerrillas* ended up happening, usually, in regions of difficult access, in the mountains, the most appropriate relieves to support a *guerrilla* warfare. These regions were also where most of the drug crops in Colombia were being cultivated, also because of the difficult accessibility of the region. When the demand for drugs exploded by the end of the 1970s, the drug cartels in Colombia found in the paramilitary groups, which had already been

[14]A civil armed conflict that opposed both parties soon after Colombia changed into a Republic. By the time, the conservatives were accused of fraud in the elections. The Liberals decided to start the war that lasted a little more than two years and caused serious devastation. By the beginning of 1902 the Liberals were forced to lay down their arms and war ended.

[15]The exact dates of this conflict actually constitute a controversy, since some sources consider the beginning as in 1946, when the Conservatives were back into government, and others in 1948, with the death Jorge Eliécer Gaitán Ayala, the leader of the Liberal Party at the time. After the riots caused by the death of Gaitán Ayala, the Liberal Party and the Communist Party joined forces into self-defense groups and *guerrillas* to fight against members of the Conservative Party and against each other. The consequences of 10 years of armed conflict were disastrous with deaths estimated in millions. The conflict only ended in 1958, although in 1953 a heavy amount of the *guerrillas* were already demobilized.

[16]The correct translation of the term, from Spanish, means "Little war". The usage of the word depicts a confrontation between armed civilians against an official state army. The tactics and strategies used by the *guerrillas* comprehend a long range of maneuvers usually dependent of the support of local population and performed by small units of assault. They go from ambushing, repetitive attacks and espionage to propaganda and terrorism (Asprey, 1994)

operating in the region, the source of security they needed in order to maintain the growth of their production.

Throughout the 1970s, Colombia became the main supplier of cocaine to the United States, especially with the withdrawal of the U.S. forces from Southeast Asia after the end of the Vietnam War in 1975.[17] As the demand for cocaine has expanded rapidly in the United States, Colombian production kept pace with the demand (U.S. Bureau of International Narcotics and Law Enforcement Affairs, 2008). In 1978, the Liberal Colombian president, Julio Turbay, began intensive fighting against the illegal drug trade. By late 1977, the United States Drug Enforcement Administration (DEA) started to take action on the matter. They opened a file under the name of 'Medellín Trafficking Syndicate' in what it became the beginning of U.S. real concerns with the Medellin Cartel.[18]

2.5. War on Drugs

The term 'war on drugs' was popularized by Nixon in 1969, though it was nothing but the continuation of drug prohibition policies in America which had been carried on since 1914 (Yates, Chin & Collins, 2005). It was used to give space to several actions, within the boarders of U.S., taken in order to fight the drug problem.

However, the most appropriate usage of the term for the matter presented is the one that links it to the justification of military and paramilitary missions across the globe with the noble goal of fighting the drug issue. There are several examples of these cases such as Operation Intercept[19] in Mexico and Operation Just

[17]It is alleged that part of the U.S. army in Vietnam was responsible for trafficking drugs back to the country during the war (Piper, 1994). This is also shown in the movie "American Gangster" (2007) with Denzel Washington and Russel Crowe, directed by Ridley Scott and based on the true story of the drug dealer Frank Lucas.

[18]The Medellín Cartel was the most powerful drug cartel in Colombia. It operated throughout the 1970s and the 1980s in Colombia, Bolivia, Peru, Central America, the United States, as well as Canada and even Europe.

[19]The Operation Intercept was a measure taken by the USA, in September 21, 1969, in order to combat the drug trafficking in its borders with Mexico. The operation caused the borders between the countries to almost complete shutdown and was considered to be a huge success.

Cause[20] in Panama. These operations generated strong reactions worldwide, causing Washington to slightly change its approach towards the matter by financially boosting the war on drugs on foreign countries. The most acknowledged of these new initiatives was regarding the Plan Colombia.

In 1998, Andrés Pastrana Arango, a Conservative, was elected president. Its administration promoted, at the beginning of 1999, peace talks with the *guerrillas*. Nonetheless, he only gained notoriety when he launched Plan Colombia -- originally 'Plan for Colombia's Peace' -- which intended to be a "set of alternative development projects which will channel the shared efforts of multilateral organizations and [foreign] governments towards Colombian society" (Pastrana & Gómez, 2005, p. 48–51). It was only in a further meeting with U.S. President Bill Clinton that, according to Pastrana & Gómez (2005, p. 115-116), they discussed the possibility of "securing an increase in U.S. aid for counternarcotics projects, sustainable economic development, the protection of human rights, humanitarian aid, stimulating private investment, and joining other donors and international financial institutions to promote Colombia's economic growth."

In order to achieve this goal of having U.S. as a closer partner and supporter of the plan, its drafts were changed several times, what was severely criticized. As stated by several critics, the focus of the program changed, or at least upgraded, from ending violence and achieving peace to combating drug trafficking and strengthening the military (Cooper, 2001). The finest example of that change is the once willingness of Pastrana in achieving peace with the FARCs, being transformed into an approved Plan with several references to combating *guerrillas*.

In this context, Bill Clinton, in early 2000, traveled to Colombia to meet with Andrés Pastrana, announcing the release of the Plan Colombia. The plan forecasted an investment of US$ 7.5 billion (Veillette, 2005) in five years, with the intent of fighting the narcotics trade, promoting Colombian economic development and financing alternative cultures. It is precise to point out though, that the Plan Colombia and its outcomes are considered to be nowadays US prime strategy of

[20]This operation was the codename of the invasion of Panama by the USA that ended up deposing the Panamanian dictator Manuel Noriega. One of the justifications presented by the U.S. to invade the country was the one of combating drug trafficking, since about that time Panama had become a major center of drug money laundering and transit point for the international drug dealers.

defending its interests in South America. With the creation of the Andean Counterdrug Initiative (ACI),[21] in 2002, with the first intent of tackling the spill over of the internal conflict between the Colombian official forces and the guerillas, to a major concern to neighboring countries, and the continuation of the Plan Colombia, the U.S. consolidated its position in South America towards the defense of its principles in the region.

It was also the Plan Colombia that proposed the spraying of noxious herbicides to kill drug crops in the region bordering Ecuador. It was an American private military contractor,[22] the DynCorp International, the responsible for the spraying in the region from 2000 to 2008 .

2.6. Regional Instability

> Do not use with me the cynicism you, nostalgic of the communism, have. Do not use with me the cynicism with which you fool your peoples.[23]
>
> The truth, President Chávez, is that we need mediation against the terrorists not one that legitimizes terrorism [...].The truth president Chávez is that if you are fomenting an expansionist project in the continent, it has no entrance in Colombia.[24]

To what has been the focus of our attention, one remaining subject must be added: the growing political divergences between the South American countries in recent years. Venezuela, Bolivia, Ecuador, Argentina, Paraguay, and to some extent

[21]The ACI was an expansion of the Andean Trade Preference Act (ATPA), signed by the American Department of State in 1991. This act provided to Bolivia, Colombia, Ecuador and Peru duty-free access to a large range of American products. In 2002, with the urge of President G.W. Bush to guarantee the U.S. security, it was decided to expand the ATPA to Brazil, Venezuela and Panama, changing the terms of the act in order to perceive military and financial counternarcotics assistance to these countries (Veillete, 2006).

[22]A private military contractors or security contractors are responsible for providing specialized services or expertise of military nature.

[23]Colombian President Álvaro Uribe to Ecuadorian President Rafael Correa in the twentieth gather of the Rio Group in march, 2007.

[24]President Álvaro Uribe speech in response to Chávez unacceptance of being removed as a mediator in negotiations with Colombia's FARC rebels, in November, 2007.

Brazil and Uruguay have shown traces of leftist[25] conduction of its international and local governmental policies. On quite the contrary, the government of Colombia, especially with the presidency of Uribe, has acted in what one can call right-winged sense of state conduction.

The President of Venezuela, Hugo Chávez, in office for almost twelve years now, can be considered the ultimate exponent of this leftist group in South America. Since the beginning of his first term, Chávez oriented its government policies towards a set of principles, all accounted in his innovative ideology, the 'Bolivarianism', allegedly inspired on Simón Bolivar. Among its objectives is to achieve Venezuelan economic and political sovereignty, participatory democracy, economic self-sufficiency, equitable distribution and the elimination of corruption (Ellner, 2002). It is also important to remind that the Marxist and socialist literature are immensely present in the principles pointed by Chávez.

Another effusive point worth noticing is the strict relationship of the President in office of Ecuador, Rafael Correa and Hugo Chávez. Correa shares some of the same principles of Chávez such as the goal of the Socialist Revolution and opposition to the U.S.[26] Under Correa, Ecuador joined the Bolivarian Alliance for the Americas (in Spanish *Allianza Bolivariana para los Pueblos de Nuestra América*, or ALBA), a regional cooperation organization centered on the values proposed by Chávez. He also backed several speeches and positions adopted by Caracas that were considered of being hazardous to the general population of his country (Weitzman, 2006).

The contrast between the conduction of government between this group of countries and the Presidency of Álvaro Uribe, in Colombia, is enormous. Uribe's main post when he won the presidential elections of 2002 was the fight against the *guerrillas*, especially the FARCs, which are considered by Hugo Chávez, "truly

[25]As to better provide explanation and to simplify the usage of terms further on, we shall align the expressions such as leftist and left, on a political basis, to a type of government that conducts its policies within the principles of strong state intervention on economy and social life, and the fight against U.S. imperialistic manners. The expressions associated with the word right, such as right-winged, right-minded and further, shall be aligned to a type of government that conducts its policies within the principles of free market, democracy, small state and national security.

[26]A tone point, when commenting the comparison between Satan and George W. Bush made by Chávez, Correa said that it was unfair with the devil (Weitzman, 2006).

insurgent forces which have a Bolivarian political project" (CNN.com, 2008). Throughout Uribe's presidency, Colombia closed several Free Trade Agreements, what is considered by Chávez and Correa a bad policy to Colombia itself and the South American continent as a whole.

One more aspect that comes to mind is the support the United States of America has given to Colombia in past years. Being Washington the major target of President Chávez offensive speeches and ideology, it is precise to conclude that both the Venezuelan and Ecuadorian leaders are definitely not pleased with the amount of money, presence and power the U.S. have in Colombia, a boarder country.

These ideological differences have caused a number of small personal conflicts between the Presidents and some diplomatic tensions between the countries. In 2004, for instance, Chávez blamed the government of Colombia of being purposely careless with the help given by paramilitary Colombian forces in the attempt of coup against his government in the same year (BBC Mundo.com, 2004). In several meetings, the three Presidents confronted each other. At one point, in 2010, after a discussion at a Latin American summit on February, 22, Uribe asked Chávez to be a man. Chávez answer was short and sharp: "Go to hell!" (BBC News.com, 2010).

The situation between the three countries yet worsened in 2008, in what it was called the Andean Diplomatic Crisis. On March 1st, 2008 at 00:25 local time in Ecuador, the Colombian Military launched a strike about 2 kilometers inside Ecuador's territory, with the goal of catching the drug lord Luis Edgar Devia Silva (a.k.a. Raúl Reyes) and other FARC leaders that were in the region. The strike caused the death of 20 FARC members, including Raúl Reyes. This was the first time the Colombian Army had killed a FARC leader in combat. They also captured three laptops and several documents that have been helpful to Colombia's fight against the *guerrillas*.

After the strike, President Uribe informed President Correa of the happening about seven hours after and held responsibility for the whole operation. In the same night Correa accused the incursion of being a violation to the human rights and Ecuadorian sovereignty since the attacks were held with advanced

technology and that the rebels were sleeping when bombed, according to Correa. He also classified the happening as a massacre.

On March 2, The Ministry of Foreign Affairs of Colombia denied a violation of sovereignty pledging that they responded in self defense. Yet, Chávez and Correa expelled the Colombian Ambassadors in Caracas and Quito respectively and moved troops to their borders with Colombia. Chávez also closed the boarders with Colombia. In March 7, at a Rio Group meeting in Santo Domingo, after an unrestricted apology by the government of Colombia, all Presidents set the end of the diplomatic crisis.

The strike caused a huge tension between Colombia, Ecuador and Venezuela. According to the Colombian broadcast company RCN, the precise location of Raúl Reyes was discovered with the cross data of telephone calls made by satellite in the region, one of them being between Reyes and the President of Venezuela Hugo Chávez. With the documents apprehended in the operation, the Colombian Police Director Oscar Naranjo, concluded that Reyes had had an encounter with the Minister of Public Security of Ecuador, Gustavo Larrea.

Although the allegations that both Chávez and Correa are connected directly to the FARC have not been proved, Chávez have several times shown respect to the narcotrafficking *guerrilla*. He considers them to be not a terrorist group but an insurgent force that must be respected and that has an ideology close to his own, what is actually true due to the Marxist-Leninist values incorporated by the rebels through time. After the death of Reyes, Chávez asked for a minute of silence on his behalf.

Being or not enthusiasts of the *guerrillas*, Chávez and Correa have other aspects to consider about the matter. As stated before, the organized crime has its ways of criminalizing the state; if not by actually causing it to act in confrontation to the law, but by denying its duties of fighting crime to the utmost resources. The presence of Uribe and his actions in duty against terrorism and International drug trafficking are, at the end, the very opposite type of approach the governments of Correa and Chávez are taking in chair. Therefore it was not a surprise when, less than one month after the crisis ended, on April 4, the Ecuadorian government

applied to the court against Colombia on the herbicide spraying of drug crops, one of the major fronts of Colombian fight against drugs.

2.7. Historical Briefing on the Case

The tension between Ecuador and Colombia is aggravated by the increasing intensity of the interactions across the border between these countries, and by the constant danger of these conflicts spilling over into the Ecuadorian territory. The Plan Colombia strategy predicted a concentration of action in the south of the country, focusing at the Putumayo Department (on the border between Colombia and Ecuador), which was identified as the producer of over 50% of Colombian coca. This diagnosis would justify the focusing of fumigation in this department.

The Colombian government had been spraying drug crops since the 1980s. With little effectiveness, in 2000, Bogotá decided to change the formula in an attempt to quickly kill a large area of crops. In the context of the Plan Colombia, fumigation began to rely on funding from the United States, which wished to reduce the drug supply in their domestic market. The Americans injected US$ 1,300 million into the operation (Llanos, 2009), using helicopters for transportation and training of soldiers involved in the fight against the narcotics trade. Its function was to protect the spraying planes and destroy the laboratories where coca paste was processed.

This new wave of aerial spraying, which was heavier than the previous ones, caused several complaints by the Ecuadorian government and, above all, by farmers living in the border region between Colombia and Ecuador. They alleged that legal crops, such as banana and cassava, were being destroyed. Moreover, they complained of vomiting, hot flashes, intoxication, diarrhea, rashes, red eyes and headaches (Transnational Institute, 2001).

According to a 2006 report released by the State Department of the United States, 171,613 hectares of illicit coca and poppies were fumigated in Colombia. The degree of aerial spraying has increased every year since 2000, with 24 percent more in 2006 than in 2005. Besides the three initial aerial spraying units, funded and supported by the United States, a fourth unit was to be added in 2006, the report notes (Bureau of International Narcotics and Law Enforcement Affairs,

2007). After several complaints by Ecuador (where fumigation is illegal), in December 2005 the foreign ministers of both countries agreed that Colombia would stop spraying within a strip of 10 km along the boarder between them. Nevertheless, in late 2006, the Colombian government resumed spraying in the region what reignited the tension between the countries.

The issue of the causal nexus between the aerial herbicide spraying and the damages caused to the Ecuadorian population, as also to its environment, has a main importance to the case. Each country has strong arguments and reasons to defend or deny the damages caused by the use of glyphosate[27] and Roundup®[28] on the destruction of coca cultures. There are a huge set of arguments, mainly based on human rights violations and legal instruments, which are used by the Colombian and Ecuadorian governments.

The Colombian government states that, bearing in mind the inescapable need to eradicate illicit crops in the country as an indispensable aspect in the fight against the world drug problem (OAS, 2007a), the decision of restart the aerial spraying of the herbicides, in a range of 10km from the common border, is a matter of national security (because includes two important issues, that are the fight against the drugs and against the financing of terrorism), being a internal issue, that couldn't be discussed by an international forum. Besides that, the Colombian authorities defends that they are complying with all the agreements and with all the instruments that deals with the matter, at all levels (global, international, regional and sub-regional levels). When the dispute was raised at the Organization of American States (OAS), the Colombian speech was national and internationally sustained. The restart of the aerial spraying was justified by the Colombian government as a measure to contain the growing of the coca cultures, which happened after the suspension of the aspersions in the Colombian zone of the common frontier, in December 2005, attending the request made by the Ecuatorian government. Intending to attend the interests of the Colombian people, and to honor the international compromises related to the fight against the

[27] Glyphosate is the active ingredient present in the herbicide Roundup®.
[28] Roundup® is a glyphosate-based herbicide, mixed with other chemicals, that potentiates the penetration of the herbicide, produced by the US Company Monsanto.

production of drugs, the Colombian government stated that the spraying must be restarted because no alternatives remained for them (OAS, 2007a). Nonetheless, the Colombian argument states that the aspersions are not the main cause for the contaminations, establishing that what really causes the alleged harms is the illicit culture of coca leaves, which uses chemical inputs, herbicides, insecticides and fertilizers that definitely represent a hazard towards the human and the environment's health (OAS, 2007a). According to the Bureau of International Narcotics and Law Enforcement Affairs (2007) "the Colombian National Institute of Health has not verified a single case of adverse human health effects linked to glyphosate spraying," though, since 1994, there have been many studies that show potential dangerous health impacts of Roundup® on people and wildlife.[29]

The actions taken by the Colombian authorities are sustained by national and international studies (mainly the Program of Eradication of Illicit Cultivation by aerial aspersion using the Glyphosate herbicide - PECIG), that states the safety of the aspersions made by the Colombian government. On the other hand, the Ecuadorian government stresses the effects of the aspersions on the population that lives near the common border, and also the lack of information concerning the formula of the herbicide used by the Colombian Government, since they say that it is an industrial secret and reveal it could turn the actions weaker.

After the 2008 Andean Diplomatic Crisis, in March 31, 2008, the Ecuadorian government decided to apply to the International Court of Justice on the matter.

3. The Juridical Aspects of the Case

> This case concerns Colombia's aerial spraying of toxic herbicides at locations near, at and across its border with Ecuador. 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. Ecuador therefore respectfully requests a judgment of the Court ordering Colombia to (a) respect the

[29]For more information see Williams, G.M., Kroes, R. & Munro, I.C. (2000) *Safety evaluation and risk assessment of the herbicide Roundup® and its active ingredient, glyphosate, for humans. Regulatory Toxicology and Pharmacology*, 31 (2) 117-165 and Romano, R.M., Romano, M.A., Bernardi, M.M., Furtado, P.V. & Oliveira, C.A. (2009). *Prepubertal exposure to commercial formulation of the herbicide glyphosate alters testosterone levels and testicular morphology*. Archives of Toxicology.

> sovereignty and territorial integrity of Ecuador; (b) take all steps necessary to prevent the use of any toxic herbicides in such a way that they could be deposited onto the territory of Ecuador; (c) prohibit the use, by means of aerial dispersion, of such herbicides on or near any part of its border with Ecuador; and (d) indemnify Ecuador for any loss or damage caused by its internationally unlawful acts (ICJ, 2008).

As stated above by the applicant, the case between Ecuador and Colombia is mainly related to acts which, *prima facie*, violated the sovereignty and territorial integrity of Ecuador, causing several damages for human rights and also violating environmental law.

Mainly, the Ecuadorian Government alleges that:

> (...) 13. Aerial fumigations under Plan Colombia officially began in 2000. Early spraying was conducted in Colombia's south-western Provinces of Putumayo and Nariño, which abut the northern Ecuadorian Provinces of Sucumbíos, Carchi and Esmeraldas. Sprayings at the Ecuador border began soon thereafter. In October 2000, for example, the Ecuadorian hamlet of San Marcos in the Province of Carchi, home to the Awá indigenous community, was sprayed, as was the settlement of Mataje in the Province of Esmeraldas. Between January and February 2001, Colombia conducted a weeks-long campaign of heavy spraying along the boundary near the community of San Francisco Dos in the Province of Sucumbíos. Herbicides were sprayed day after day during those two months, with only brief respites. On the days spraying took place, the fumigations were conducted virtually continuously between 6 a.m. and 4 p.m. Clouds of spray mist dropped from the planes, carried with the wind and fell on people, homes, plants and animals (both wild and domestic) in Ecuador, as well as on the San Miguel River which constitutes the border between the two countries in that area.
>
> 14. Immediately after the sprayings, residents in and around San Francisco Dos developed serious adverse health reactions including fevers, diarrhoea, intestinal bleeding, nausea and a variety of skin and eye problems. Children were affected particularly badly. At least two deaths occurred in the days immediately following these initial sprayings — in a community where no similar deaths had been reported in the two preceding years. Other children required transportation to modern medical facilities elsewhere in Ecuador.
>
> (...)
>
> 16. Over the seven years of spraying to date, Colombian aircraft involved in the fumigations have repeatedly violated Ecuadorian airspace. Sometimes, they sprayed herbicides right up to the boundary and then used Ecuadorian air space to turn around to resume spraying on the border. On other occasions, they continued spraying even as they flew into and over Ecuadorian territory, dropping their spray directly on

> people, plants and animals in Ecuador. On those occasions when Colombian aircraft nominally respected Ecuador's territorial integrity, aerial drift resulted in the dispersion of the herbicide into Ecuadorian territory.
>
> (...)
>
> 19. Colombia has refused to disclose to Ecuador the precise chemical composition of the herbicide it is using. In communications, and in press reports, it has indicated that the primary "active" ingredient is glyphosate *(N-phosphonomethylglycine)*, an isopropylamine salt used widely as a weed killer. Glyphosate works by inhibiting the shikimate metabolic pathway common to all plants. It is desirable as a herbicide precisely because of its non-selective, broad-spectrum characteristics. Put directly, it kills virtually any plant (...) (ICJ, 2008).

Requesting, after all, the International Court of Justice to adjudge and declare that:

> (...) (A) Colombia has violated its obligations under international law by causing or allowing the deposit on the territory of Ecuador of toxic herbicides that have caused damage to human health, property and the environment;
> (B) Colombia shall indemnify Ecuador for any loss or damage caused by its internationally unlawful acts, namely the use of herbicides, including by aerial dispersion, and in particular:
>
> (i) death or injury to the health of any person or persons arising from the use of such herbicides; and
>
> (ii) any loss of or damage to the property or livelihood or human rights of such persons; and
>
> (iii) environmental damage or the depletion of natural resources; and
>
> (iv) 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
>
> (v) any other loss or damage; and
>
> (C) Colombia shall
>
> (i) respect the sovereignty and territorial integrity of Ecuador; and

> (ii) 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
> (iii) prohibit the use, by means of aerial dispersion, of such herbicides in Ecuador, or on or near any part of its border with Ecuador; (...) (ICJ, 2008).

However, before considering some of the central aspects related to the case, there is a need to consider the matter related to the Jurisdiction of the International Court of Justice.

3.1. Jurisdiction of the International Court of Justice

Jurisdiction is the power of the International Court of Justice to render, in accordance with international law, a legally obligatory decision in disputes of legal nature which are submitted to it on the basis of consent by states confronting each other in adversary proceedings before the Court. The contentious jurisdiction of the ICJ differs from such courts as the Court of Justice of the European Community in Luxembourg or the Court of Justice of Human Rights in Strasbourg before which, within the respective scope of the Courts' jurisdiction, persons other than states may be parties (Bledsoe & Boleslaw, 1987). No case can be submitted to the International Court of Justice unless both the applicant and the respondent (or generally speaking all the parties) are states.

Contentious jurisdiction of the ICJ must be distinguished from its advisory jurisdiction. The latter comprehends the power to hand down advisory opinions on any legal matter at the request of the United Nations General Assembly, the Security Council, or whatever body may be allowed by United Nations General Assembly to make such a request. Unless a case is settled by the parties at any stage of the proceedings or interrupted by the applicant, with subsequent removal of the case from the Court's list by order of the Court or (in case of discontinuance) of the president, contentious proceedings are brought to a conclusion by the Court's judgment. As far as the parties entitled to appear before the ICJ are

concerned (*jurisdiction ratione personae*[30]), the contentious jurisdiction of the Court covers:

- members of the United Nations;
- states which are not members of the United Nations but have become parties to the Statute of the Court on conditions determined in each case by General Assembly upon recommendation of the Security Council; and
- any other state which has deposited with the Registry of the International Court of Justice a declaration accepting the Court's jurisdiction and undertaking to comply with its decision.

The fact that a state belongs to one of these categories is not enough for the Court to have jurisdiction *ratione materiae*, which in the final resort depends up the parties' consent. This consent may in general be manifested in three ways.

First, the parties may submit an already existing dispute to adjudication by means of a special *ad hoc* agreement.[31] In such cases there is neither an applicant nor a respondent state and, in the official title of the case, the names of the parties are separated by an oblique stroke, as for example, Canada/USA. As ruled by the Court, a defendant state may accept, by an express statement or by implication, the jurisdiction of the Court, even after proceedings have been initiated against it -- a rare situation that has occurred only a few times in the history of the International Court of Justice.

The second mean of consenting to the Court's jurisdiction is through the "optional clause" of Article 36 of the Court's Statute, which emerged as a compromise between countries advocating and opposing the principle of compulsory jurisdiction.[32] Under this system of "quasi-compulsory" jurisdiction, a country may unilaterally allege its acceptance in advance, in relation to any other

[30]Jurisdiction of a judge in a case which has international elements may depend on the whereabouts of the plaintiff or, as in most cases, the defendant. In certain cases, jurisdiction will depend on the whereabouts of the object of the litigation (i.e. real state); in others, jurisdiction will depend on whether or not the defendant is within the territory of the court or is a citizen of that court's nation. In the two latter cases, jurisdiction is said to be by reason of the person, *ratione personae*.

[31]A draft *ad hoc* agreement conferring on the tribunal the power to rule finally on its jurisdiction.

[32]No permanent member of the Security Council remains subject to compulsory jurisdiction except the UK.

state accepting the same obligation, of the compulsory jurisdiction of the Court in all legal disputes concerning any question of international law, the interpretation of a treaty, the existence of breaches of international obligations, or the nature or extent of the reparation (Franck, 1986).

The third possibility is where a treaty contains a compromissory clause[33] granting the ICJ jurisdiction in advance of appearance of particular dispute. Formally, proceedings may be instituted either through notification of a special agreement or by means of an application. In the latter case, the name of the applicant state appears first in the official title of the case and is separated from that of the respondent state by abbreviation v.(versus) as, for example, Ecuador v. Colombia.

Compromissory clauses are found in agreements dealing particularly with the peaceful settlement of disputes or with some other subject matter. The clauses that conferred jurisdiction on the ICJ remain effective provided that the treaty is still in force and the countries concerned are parties to the Statute of the International Court of Justice (Bledsoe & Boleslaw, 1987). There are around 400 bilateral treaties involving about 60 states (and numerous multilateral agreements involving even more states)conferring jurisdiction upon the Court by their compromissory clauses (ICJ, 2010). However, despite the fact that the Statue of the International Court of Justice refers in Article 36 to "matters specially provided for in the Charter of the United Nations" as a basis of the Court's jurisdiction, it is generally accepted that there are no such matters, since recommendations of the Security Council are not legally binding. This apparent contradiction is explained by the fact that the relevant article of the Statute was drafted at a time when it was expected that the United Nations Charter would provide compulsory jurisdiction for the ICJ.

3.2. Pact of Bogota: The Legal Basis of the Court's Jurisdiction

[33]Compromissory clause is one of the clauses of the contract concluded by the parties, by which they agree that, in the event of a dispute arising from that contract, they shall settle it by means of private justice: an arbitral tribunal.

Some treaties or conventions in coercion confer jurisdiction on the Court. It has become a general international practice to include international agreements -- both bilateral and multilateral -- provisions, known as jurisdictional clauses, providing that disputes of a given class shall or may be submitted to one or more mechanisms for the pacific settlement of disputes. Several clauses of this kind provide for recourse to conciliation, mediation or arbitration too; others provide for recourse to the Court, either immediately or after the failure of other means of pacific settlement.

Accordingly, the states signatory to such agreements may, if a dispute of the kind envisaged in the jurisdictional clause of the treaty arises between them, either institute proceedings against the other party or parties by filing a unilateral application, or conclude a special agreement with such party or parties providing for the issues to be referred to the Court. The wording of such jurisdictional clauses varies from one treaty to another (ICJ, 2010).

The American Treaty on Pacific Settlement, or Pact of Bogotá as it is commonly known, was signed on behalf of twenty one American States on April 30, 1948, with reservations by seven of the signatories.[34] It is intended to replace nine agreements which have sometimes been referred to as constituting the inter-American peace system.

As the OAS Charter, the Pact of Bogota obliges High Contracting Parties to resolve disputes between American States by peaceful means and indicates the procedures to be followed: mediation, investigation and conciliation, good offices, arbitration, and finally appeal to the International Court of Justice in Hague, what means that some disputes were actually submitted to this Court**.**

As basis for the Court's jurisdiction, Ecuador invoked the Application Article XXXI of the American Treaty on Pacific Settlement, to which both Ecuador and Colombia are parties.

Colombia has rejected the lawsuit brought by Ecuador, arguing, among other things, that this country never responded to the commitment to indemnify

[34]The Delegation of Ecuador, upon signing this Pact, makes an express reservation with regard to Article VI and also every provision that contradicts or is not in harmony with the principles proclaimed by or the stipulations contained in the Charter of the United Nations, the Charter of the Organization of American States, or the Constitution of the Republic of Ecuador.

the Ecuadorian citizens who had suffered "some damage caused by aerial spraying" (ICJ, 2008)Ecuador, despite having signed the Pact of Bogota in 1948, actually took 60 years to ratify and become a full-party of it. Of course, this hasty adoption of many elements will emerge to defend Colombia. Just to cite one: Article LIII of the Pact of Bogota provides that "This Treaty shall come into effect between the High Contracting Parties in the order in which they deposit their respective ratifications" (OAS, 1948); and, accordingly, could not imply Ecuador by this instrument to sue for acts committed prior to 7 March 2008, the date on which entered into force for that country the Pact of Bogota.

However, Colombia was compelled to recognize Court's jurisdiction. By ratifying the Pact, Colombia has submitted to the Court's jurisdiction on matters such as the one currently before the court. The Court has jurisdiction over the present dispute by virtue of the operation of Pact of Bogotá, Article XXXI, which provides:

> In conformity with Article 36, paragraph 2, of the Statute of the International Court of Justice, the High Contracting Parties declare that they recognize, in relation to any other American State, the jurisdiction of the Court as compulsory ipso facto, without the necessity of any special agreement so long as the present Treaty is in force, in all disputes of a juridical nature that arise among them concerning:
>
> (a) the interpretation of a treaty;
> (b) any question of international law;
> (c) the existence of any fact which, if established, would constitute the breach of an international obligation;
> (d) the nature or extent of the reparation to be made for the breach of an international obligation.

In addition, Ecuador also relies to Article 32 of the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, which provides on Paragraph 2:

> Any such dispute [relating yo the interpretation or application of the Nations Drug Convention] which cannot be settled in the manner prescribed in paragraph 1[the Parties shall consult together with a view to the settlement of the dispute by negotiation, inquiry, mediation, conciliation, arbitration, recourse to regional bodies, judicial process or other peaceful means of their own choice] of this article shall be referred, at the request of any one of the States Parties to the dispute, to the International Court of Justice for decision. (UNDOC, 1988)

Emphasizing the Ecuadorian argument, also there is the Article 14:

> Each Party shall take appropriate measures to prevent illicit cultivation of and to eradicate plants containing narcotic or psychotropic substances, such as opium poppy, coca bush and cannabis plants, cultivated illicitly in its territory. The measures adopted shall respect fundamental human rights and shall take due account of traditional licit uses, where there is historic evidence of such use, as well as the protection of the environment (UNDOC, 1988).

3.3. Juridical Considerations Related to the Case

When considering the central aspects related to this case, it is possible do identify a virtual conflict between principles[35] of International Law that must be analyzed. This conflict can be summarized as follows To what extent the sovereignty, welfare and territorial integrity of a country could be mitigated in order to reach a greater good, namely, the elimination of illegal drug crops and, consequently, the reduction of international drug traffic, to the benefit of public health and security, ensuring the right to development of a state?As stated by the Government of Colombia, it was attempted several times to carry out a bilateral agreement related to the aerial herbicide spraying, however, despite Colombia's insistence, this agreement was never reached (OAS, 2007a). Conversely, the Government of Ecuador insists that they asked for their Colombian neighbors for a written commitment in which would be established that aerial herbicide spraying would not be held in areas less than ten kilometers from the borders between the countries (OAS, 2007b).

In spite of this, the government of Colombia said that would be improper a commitment of this nature, particularly when considering the costs and risks to human lives of a manual eradication program,[36] and also established that such decision is a "sovereign choice of the Colombian Government and, therefore, an internal affair of Colombia" (OAS, 2007a).

[35]According to Dworkin (1977, p. 22), a principle is a "standard that is to be observed, not because it will advance or secure an economic, political, or social situation deemed desirable, but because it is a requirement of justice or fairness or some other dimension o morality."

[36]According to the Deputy Foreign Minister of Colombia, in 2006, "41 Colombians were killed as a result of the explosion of landmines and other explosives used by Revolutionary Armed Forces of Colombia (FARC) in their attempt to stop the drug crops eradication".

But, hypothetically considering that Colombia has the reason when affirming that its government tried several times to carry out a bilateral agreement, is the lack of answer to those efforts by the Ecuadorian Government a conceivable reason to justify the alleged actions done by Colombia, specially the aerial herbicide spraying, since those actions are crucial for the war on drugs and, somehow, they mean the promotion of various rights enshrined in the UN Charter[37] as well as in the Universal Declaration of Human Rights?[38]

The answer is probably 'no'. Despite of the benefits that the aerial herbicide spraying may bring, if it is proven the harmful effects of glyphosate on human health and also on the environment, by no means those actions should continue, since, as established by the Universal Declaration of Human Rights, "everyone is entitled to a social and international order in which the rights and freedoms set forth in this [that] Declaration can be fully realized" (UN, 1948).

In other words, the pursuit/ for human rights realization is inconsistent with the infringement of them, principally when considering that they were mainly established for the individual, which constitutes its *raison d'être,* and, for that reason, he/she cannot be considered as a instrument to achieve them.

Therefore, the conflict between principles mentioned above, if stated upon the question made previously, does not exist, since, as was well said by Ikara (2004), based on the work of Dworkin, principles are related to the consideration of the individual as an end in himself/herself. Thus, in situations like this, where an apparent conflict of principles seeks to determine to what extent the violation of human rights is consistent with the achievement and protection of such rights, the tension does not exist, since there is only one decision that can be taken in such

[37]Although there is lack of consensus among the international community about the scope and value of the real 'right to development,' it is proper to assert that it is a fundamental right and much of its aspects are listed in the UN Charter, especially in its preamble, when it states that one of the goals of the Organization is "to promote social progress and better standards of life in larger freedom" and, for this end, "to employ international machinery for the promotion of the economic and social advancement of all peoples" (UN, 1945). Thus, since the fight against drug trafficking promotes social improvements, such as the reduction of criminal rates and the increasing of rates related to health, it is not possible to reject that, at least indirectly, the war on drugs promotes human rights.

[38] May be cited as an example, Article 3 which states that "everyone has the right to life, liberty and security of person" (UN, 1948).

case, which is the decision establishing the impossibility and illegality of human rights violation regardless the objective pursued.

Some may say that the mitigation of the principles mentioned previously (sovereignty, welfare and territorial integrity) does not correspond immediately to a violation of human rights, and they will be correct; many times, the lessening of those principles, specially the principle of sovereignty, which "has been regarded as overwhelming and unconditional in international law" (Popovski, 2004), may possibly not represent a violation of human rights, but a protection of them.However, this is not the situation if we consider that the harms to the environment, and also to the people, who inhabit the Ecuadorian borders with Colombia, were caused by glyphosate.

Despite the fact that the violations committed by Colombian government (against the principles of sovereignty, welfare and territorial integrity of Ecuador) sought to eliminate drug crops, being those actions an important part of the efforts taken by them to combat drug trafficking -- what, as established before, represents the promotion of human rights--, they have, through those violations, slighted several fundamental rights, taking away any legitimacy that those procedures could have.

On the other hand, considering the theoretical situation in which the glyphosate is not responsible for the damages reported by Ecuador to the International Court of Justice, and also that the Colombian government tried more than a few times to carry out a bilateral agreement -- getting no answer from Ecuadorian government -- the decision related to the legality of the aerial herbicide spraying would be completely different. However, in this case, it appears to exist a real conflict concerning principles, since, *prima facie*, the consideration as to which principle should prevail in this case does not involve human rights violations.

When judging the case according to the premises established above, one could make the following question: is it legitimate to a state to violate the principle of sovereignty when another state, inert, does not take any effort to address situations that directly affects the welfare of that state?

Considering the international law in a state-centric perspective, which means that its existence is based on protecting the rights of states, since they are,

according to this point of view, the main actors in the international arena, the principle of state sovereignty, as declared before, must be regarded as overwhelming and unrestricted, being noticeably illegal any attempt to limit or violate it.

Nonetheless, the respect for states' sovereignty is not, anymore, the only major value of international law, although many states and jurists refuse that understanding. International Law, although still state-centric, does not consider the respect for state sovereignty as its only major value, recognizing, also, the respect for human rights as a chief principle. However, as stated by Popovski (2004), the coexistence between those principles has not been easy, as they more often are confronted than partnered.

According to Cançado Trindade, cited by Taiar (2009, 261), "it is not possible to consider the humanity as a legal entity from the perspective of state; it is imperative to recognize the limits of states from the human perspective."

But this does not mean that a state, after exhausting all means of bilateral negotiation, may act beyond its borders to perform military activities in the territory of others without the authorization of international organizations such as the United Nations. This means that any endorsement granted by the United Nations Security Council for an action like this, for example, must be not considered illegal if all the other ways to resolve the conflict failed.

So it must be for the reason that it is legal for a state, when acting in accordance with the international order, to guarantee its welfare, and, also, it owns sovereignty, what, in this case, when facing all the problems related to drug trafficking, represents the promotion and realization of human rights, since, as stated before, the fight against drugs may represents the creation of conditions favorable to the development of peoples and individuals, what, according to the Declaration on the Right to Development, is the primary responsibility of States (UN, 1986).

In this manner, it is legitimate for a state to avoid other states from preventing him from fulfilling his duties before the international community and towards its own citizens. However, it is not acceptable arbitrary violations of the principle of sovereignty, which must be expressly authorized by United Nations.

Yet, beyond this superficial analysis, we must consider other issues, particularly the strong environmental content of the application submitted by Ecuador, demonstrating their concern in maintaining a healthy natural environment. Despite being addressed separately, the human protection and environmental protection have a strong correlation between them,[39] since, as stated by Cançado Trindade (1993, p. 23), they correspond to the major challenges of our time, affecting, ultimately, the paths and destiny of mankind.

In this sense, nowadays, the interpretation of article 28 of the Universal Declaration of Human Rights[40] must consider the fundamental right of a healthy

[39]As it was stated by Judge Weeramantry, cited by Viñuales (2008, 21), "After the early formulations of the concept of development, it has been recognized that development cannot be pursued to such a point as to result in substantial damage to the environment within which it is to occur. Therefore development can only be prosecuted in harmony with the reasonable demands of environmental protection. Whether development is sustainable by reason of its impact on the environment will, of course, be a question to be answered in the context of the particular situation involved. It is thus the correct formulation of the right to development that that right does not exist in the absolute sense, but is relative always to its tolerance by the environment. The right to development as thus refined is clearly part of the modern international law. It is compendiously referred to as sustainable development. [...] Environmental law in its current state of development would read into treaties which may reasonably be considered to have a significant impact upon the environment, a duty of environmental impact assessment and this means also, whether the treaty expressly so provides or not, a duty of monitoring the environmental impacts of any substantial project during the operation of the scheme. [...] Environmental rights are human rights. Treaties that affect human rights cannot be applied in such a manner as to constitute a denial of human rights as understood at the time of their application. A Court cannot endorse actions which are a violation of human rights by the standards of their time merely because they are taken under a treaty which dates back to a period when such action was not a violation of human rights." (p. 16) Moreover, still according to the Application, when it mentions a Report of the United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, it is stated that: "The Awá have been particularly affected. In all, 3,500 Awás live in Ecuador and 36,000 hectares of the approximately 120,000 hectares of their ancestral territories have been recognized (…). Currently, the region's most serious problem is the aerial spraying of illicit crops on the Colombian side of the border, using glysophate [sic] mixed with other products, under the auspices of Plan Colombia (see the report of the Special Rapporteur on Colombia, E/CN.4/2005/88/Add.2). Damage caused by this practice has affected Ecuador, particularly its indigenous communities, and has given rise to complaints by the Ecuadorian Government and to bilateral negotiations between the two countries. International studies indicate that this practice has negative effects on environmental resources and the health of people and animals. Skin and other diseases, pollution of rivers and aquifers, and other damage have been reported. Furthermore, spraying has been seen as having serious effects on banana plantations and varieties of tuber crops, the local staple. In addition, the population often uses untreated water from the river forming the border between the two countries" (ICJ, 2008, p. 19).

[40]Despite the absence of indications of the legal texts that underlie the application submitted by Ecuador, it shows great concern over the issue of the interrelation between human rights and environmental law, as it is possible to check in the following excerpt: "Ecuador's northern border area has unique characteristics. It is comprised of three distinct geographic zones: the western coastal area, the mountainous Andes in the centre, and the Amazonian jungle to the east. The region is home to communities of indigenous peoples, including the Awá, who continue to live

environment, which was established by the Declaration of the United Nations Conference on the Human Environment (1972), that states:

> Man has the fundamental right to freedom, equality and adequate conditions of life in an environment of a quality that permits a life of dignity and well-being and he bears a solemn responsibility to protect and improve the environment for present and future generations.

More than this correlation between human rights law and environmental law, according to Perrez:

> Despite their separate beginnings, human rights law and environmental law have an important element in common: they are both seen as a challenge to, or limitation on, the traditional understanding of state sovereignty as independence and autonomy. However, while the traditional debate on sovereignty has conceived of human rights and environmental law as limitations on, or eves as threats to, the State's freedom and independence, a more contemporary approach recognizes that protecting both human rights and the environment does not limit the State's sovereignty, but rather provides an expression of this sovereignty (Perrez, 2004, p. 4).

As well pointed by Popovski (2004,), "the sovereignty of States is no longer a simple right to exercise power on a defined territory." More than this, it is "a complex duty to exercise power in an acceptable manner," which includes the duty to protect human rights and also to protect and promote a healthy environment.

This seems to be, somehow, established in the United Nation Declaration concerning the Stockholm Conference of 1972 (Declaration of the United Nations Conference on the Human Environment), when it affirms that:

> States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and 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 (UN, 1972).

Consequently, when the Colombian government defends that the issue related to the aerial herbicide spraying is a sovereign decision, it displays, at least

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according to their ancient traditions and are deeply dependent on their natural environment. Most of the population in the region lives in extreme poverty and relies on subsistence farming of traditional crops like yucca, plantains, corn, coffee and other foodstuffs to survive. As a result, their connection to the land is deep. Infrastructure in these areas is underdeveloped, healthcare is rudimentary and formal education is minimal" (ICJ, 2008).

in relation to this dispute, the defense of a more traditional position on the interpretation of the principle of sovereignty. However, despite the reluctance of a great part of the international community, sooner or later it will be necessary to recognize the impossibility of such an interpretation of the principle of sovereignty, especially when considering the problems that confront humanity today, which are not limited to national borders, making imperative the insertion of solidarity in international relations in order to fight against those challenges.

3.4. Environmental Law and the International Court Of Justice

This case has a special significance for International Law, since it requires the International Court of Justice to rule on matters entirely new for it; for the first time, the International Court of Justice will have to stand on the relationship between sovereignty and environmental law. But this does not mean that there are no precedents that can be related to the case, since it is possible to find some contributions from the International Court of Justice to the issue, and also other contributions from international arbitration tribunals.

The *Trail Smelter Arbitration* was a dispute held in 1931 between the United States and the Canadian governments, related to a lead and zinc smelting industry settled in British Columbia, Canada, from which a huge amount of harmful smoke went down the Columbia River valley, crossing Canadian borders and causing several damages to the environment in the state of Washington, US.[41]

[41]Another case, held in 1957, between Spain and France, concerning the use of the water of the lake *Lanoux*, can be cited. As was stated by the arbitral tribunal: "The Spanish government has also sought to establish the contents of contemporary positive international law [...]. Certain principles that it demonstrates are, assuming it succeeds, without relevance for the issue under review. Thus, assuming there is a principle prohibiting the upstream State from altering the waters of a river in such a way as to seriously harm the downstream State, in any event such principle would not apply in the present case, to the extent that it has been admitted by the Tribunal [...] that the French project does not alter the waters of the river Carol. In fact, States are nowadays perfectly aware of the importance of the contradictory interests involved in the industrial use of international watercourses, and of the need to reconcile them through mutual concessions. The only way to achieve such interest compromises is the conclusion of agreements, on an increasingly comprehensive basis" (Viñuales, 2008, p.21). This case, and also the *Trail Smelter Arbitration*, still according to Viñuales, shows the fact that, at the time, "it was still very much unclear, whether environmental protection was required as such, i.e. for the sole sake of the environment as a common resource, or rather only to the extent another State was damaged by a given conduct. It seems, in fact, very difficult to infer from either one of these cases the idea that the environment has an intrinsic value that must be protected irrespective of whether or not a State is injured."

According to Wood,

> Trail Smelter is revered (…) as the germ from which the entire law of transboundary environmental harm sprang. It is remembered as the earliest articulation of two core principles of international environmental law: that states have a duty to prevent transboundary environmental harm, and that they have an obligation to pay compensation for the harm they cause. Trail Smelter is also remembered for establishing the first international pollution control regime, or at least one of the first (Wood, 2007, p. 637).

The arbitral tribunal's conclusion for the case was that,

> No state has the right to use or permit the use of its territory in such a manner as to cause injury by fumes 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 (Wood, 2007, p. 637).

This conclusion can also be found in some of the International Court of Justice decisions.

According to Viñuales (2008), it is possible to identify two main 'waves' in the International Court of Justice approach related to the International Environmental Law (IEL),

> The first wave covers essentially two contentious cases, namely the Corfu Channel case and the Nuclear Tests case, as well as an important obiter dictum made in the Barcelona Traction case. The main contribution of this was is to be found in the confirmation of previous case-law on transboundary damages as well as in the introduction of the concept of obligations *erga omnes*, potentially applicable to some environmental norms. (…), these two components set the basis in general international law for the protection against environmental damage caused to States and to environment as such, outside the jurisdiction of any State. The second wave is embodied in two contentious cases, namely those concerning Certain Phosphate Lands in Nauru (hereafter Nauru case) and the Gabcikovo-Nagymaros Project (hereafter Gabcikovo-Nagymaros case), which both prompted the constitution of a Special Environmental Chamber of the ICJ, one Advisory Opinion on the Legality of Nuclear Weapons[42] and a number of

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[42]As stated by the International Court of Justice, "The Court recognizes that the environment is under daily threat and that the use of nuclear weapons could constitute a catastrophe for the environment. The Court also recognizes that the environment is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn. 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

> separate/dissenting opinions, particularly those of Judge Weeramantry in aforementioned Advisory Opinion as well as in the context of the Kasikili/Sedudu and the Nuclear Tests II cases. This second wave was important in that it consolidated the previous case-law and pointed a number of interconnections between International Environmental Law, on the one hand, and both boundary delimitation and international humanitarian law, on the other hand. In other words, the first wave prepared was confirmed and extended by the second.

The case related to the Pulp Mills (Argentina v. Uruguay), which was recently judged, and the case concerning the aerial herbicides spraying, presently awaiting to be judged by the Court, may represent a new wave of cases regarding International Environmental Law. It will allow the ICJ to address some of the following questions: "(i) Contents (specific norms) of International Environmental Law; (ii) Enforceability of International Environmental Law; (iii) Relations between treaty and customary International Environmental Law; and (iv) Hierarchy of part of International Environmental Law with respect to other potentially essential interests" (Viñuales, 2008, p. 19), such as, in the present case, the war on drugs and its legitimacy.

As it was stated by the ICJ in the contentious case between Argentina and Uruguay (2010a, p. 67), "The existence of the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States oro f áreas beyond national control is now parto f the corpus of international law relating to the environment". In fact, by reinsuring this principle, the International Court of Justice clearly shows it concerns with environmental law, drawing the initial lines for answering the questions mentioned above.

4. Conclusion

The discussions held on the matter are deep and idiosyncratic. There are enough reasons to back up Ecuador and Colombia, especially considering the two dimensions of the matter presented this far, with political and juridical aspects

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control is now part of the corpus of international law relating to the environment." (ICJ, 1996, p. 241)

that analyzed separated could cause one into thinking about this subject in completely different ways.

The unyielding fight against narcotraficking started in Colombia by Uribe's government is of truly importance not only to Colombia and South America, but worldwide. The drug related diseases are in the urge to become one of the greatest health issues in the whole world, the expenses spent on treating drug addicts and their family can have huge impacts on the economy of the countries afflicted by the problem. The security issue concerning the narcotrafficking also guards a unique spot when examining the case. The organizations and individuals that control the production of narcotic drugs may significantly influence security standards in the region where they focus their actions, and can even have a weight on the political scenario of a country. The narcotrafficking is definitely a core problem and it seems so far, that each attempt to tackle the problem has failed.

Understanding the case under a juridical approach means to take a closer look on the three major themes of debate concerning International Law in the past few years. The application and comprehension of the concept of sovereignty by both sides of the matter and the ICJ is a deep challenge, and so it is the analysis of human rights and environmental law that can be pointed out by both sides.

Therefore, this demand places the International Court of Justice before issues of extreme importance for the international community, which anxiously waits for future decisions, which will surely represent a great contribution to International Law, greatly influencing its development. After all, this is the central role of the court.

5. References

Asprey, R.B. (1994). War in the Shadows: *The Guerilla in History*. New York: William Morrow and Company, Inc.

BBC Mundo.com (2004). *Capituran "paramilitares" en Venezuela*. Retrieved: http://news.bbc.co.uk/hi/spanish/latin_america/newsid_3698000/3698989.stm.

BBC News.com (2006). *Chavez to shut down opposition TV*. Retrieved: http://news.bbc.co.uk/2/hi/americas/6215815.stm

BBC News.com (2010). Uribe, *Chavez in undiplomatic row*. Retrieved: http://news.bbc.co.uk/2/low/americas/8529859.stm

Bledsoe, R. L., & Boleslaw, A. B. (1987) *The International Law Dictionary.* Santa Barbara, C.A., U.S.: Clio Press.

Bureau of International Narcotics and Law Enforcement Affairs. (2007). *International Narcotics Control Strategy Report*. Retrieved:

http://www.state.gov/p/inl/rls/nrcrpt/2007/vol1/html/80855.htm

Bureau of International Narcotics and Law Enforcement Affairs. (2008). *Background notes: Colombia.* Retrieved: http://www.state.gov/outofdate/bgn/c/111571.htm

Cançado Trindade,Antônio Augusto. (1993). *Direitos humanos e meio-ambiente: paralelo dos sistemas de proteção internacional*. Porto Alegre: Sergio Antonio Fabris Editor.

Central Intelligence Agency [CIA]. (n.d.). *The World Factbook: Colombia*. Retrieved: https://www.cia.gov/library/publications/the-world-factbook/geos/co.html

Ciment, J.D. & Shanty, F.G.(2007). *Organized Crime: From Trafficking to Terrorism, volume 1*. Oxford: ABC-CLIO.

CNN.com (2008). Chavez: *Take FARC off terror list*. Retrieved: http://edition.cnn.com/2008/WORLD/americas/01/11/chavez.far

Comisión Científica Ecuatoriana. (2007). *El Sistema de Aspersiones Aéreas Del Plan Col ombia y sus Impactos sobre el Ecosistema y la Salud en la Frontera Ecuatoriana.* Retrieved from:

http://prensarural.org/spip/IMG/pdf/Comision_Cient_fica_Ecuatoriana_ok.pdf

Cooper, M. (2001). Plan Colombia. The Nation 3. Retrieved: http://www.thenation.com/doc/20010319/cooper

Ellner, S. (2002). The ´Radical´Thesis on Globalisation and the Case of Venezuala's Hugo Chávez, *Latin American Perspectives* 29, 6, 88-93.

Franck, T. M. (1986) *Judging the World Court.* New York, N.Y., U.S.: Twentieth Century Fund.

Geffray, C. (2002). Drug Trafficking and the state. In United Nations Educational, Scientific and Cultural Organization (UNESCO), *Globalisation, Drugs and Criminalisation: Final Research Report on Brazil, China, India and Mexico*. Retrieved: http://unesdoc.unesco.org/images/0012/001276/127644e.pdf

Ikawa, D. R. (2004). *Hart, Dworkin e Discricionariedade*. Retrieved: http://www.scielo.br/scielo.php?script=sci_arttext&pid=S0102-64452004000100006#nt57

Hanratty, D., & Meditz, S. (1988). *Colombia: A Country Study*. Washington: GPO for the Library of Congress. Retrieved: http://countrystudies.us/colombia/

Hurrell, A. (1998). Security in Latin America, *International Affairs* 74, 3: 529-546)

International Court of Justice [ICJ]. (2008). *Ecuador institutes proceedings against Colombia with regard to a dispute concerning the alleged aerial spraying by Colombia of toxic herbicides over Ecuadorian territory.* Retrieved: http://www.icj-cij.org/docket/files/138/14470.pdf

International Institute for Strategic Studies. (2008). *Colombia's war in the Andes*. Retrieved: http://www.iiss.org/whats-new/iiss-in-the-press/press-coverage-2008/april-2008/colombias-war-in-the-andes/

Johnson, S. (2006). *Venezuela's New Chokehold on Civil Society*. Retrieved: http://www.heritage.org/Research/Reports/2006/07/VenezuelasNewChokeholdonCivilSociety

Jorge E. Vinuales. (2008). *The Contribution of the International Court of Justice to the Development of International Environmental Law: A Contemporary Assessment.* Retrieved from: http://works.bepress.com/jorge_vinuales/2

Kandel, D. (1973). Adolescent marijuana use: role of parents and peers. *Science*, *181*, 1067-1081.

Llanos, F. (2009). *Business as usual? The War on Drugs and U.S. Military Bases in Latin America*. Retrieved: http://www2.lse.ac.uk/IDEAS/programmes/latinAmericaProgramme/pdfs/base.pdf

McCaffrey, B. (1999). *Crisis in Colombia: U.S. Support for Peace Process and Anti-Drugs Efforts* . Retrieved:

http://books.google.com/books?id=3xKZW00zxeYC&lpg=PP1&pg=PP1#v=onepage&q=&f=false

McConville, M. (2000). A global war on drugs: Why the United States should support the prosecution of drug traffickers in the International Criminal Court. *The American Criminal Law Review*, 37(75).

Organization of American States [OAS]. (1948). *American Treaty on Pacific Settlement – "Pact of Bogotá".* Retrieved: http://www.oas.org/Juridico/english/treaties/a-42.html

Organization of American States [OAS]. (2007a). *Intervención del Viceministro de Relaciones Exteriores de Colombia en la Sesión del Consejo Permanente Celebrada en el 9 de Enero de 2007.* Retrieved:

http://www.oas.org/es/centro_noticias/discurso.asp?sCodigo=07-0002

Organization of American States [OAS]. (2007b). *Intervención del Ministro de Relaciones Exteriores del Ecuador, Francisco Carrión Mena, ante el Consejo Permanente de la OEA*. Retrieved:

http://www.oas.org/es/centro_noticias/discurso.asp?sCodigo=07-0001

Pastrana, A. & Gómez, C. (2005). *La Palabra bajo Fuego*. Bogotá: Editorial Planeta Colombiana

Perrez, F. (2004). *Key Questions Concerning the Human Rights and Environment Debate: An Introduction*. In: United Nation Environment Programme for the Geneva Environment Network. (2004). *Human Rights and the Environment: Proceedings of a Geneva Environment Newtwork Roundtable*. Retrieved:

http://www.environmenthouse.ch/docspublications/reportsRoundtables/Human%20Rights%20Env%20Report.pdf

Piper, M.C. (1994). Final Judgment: *The Missing Link in the JFK Conspiracy*. Washington: American Free Press.

Popovski, V. (2004). *Sovereignty as Duty to Protect Human Rights*. Retrieved: http://www.un.org/Pubs/chronicle/2004/issue4/0404p16.html

Schneider, M. (2008). *Assessing U.S. Drug Policy in the Americas*. Retrieved: http://www.crisisgroup.org/home/index.cfm?id=6353

Toro, M. C. (1995). *Mexico's "War" on Drugs: Causes and Consequences, in Studies on the Impact of the Illegal Drug Trade*. Boulder: Lynne Rienner.

Transnational Institute (2001). *Fumigation and Conflict in Colombia*. Retrieved: http://tni.org/article/fumigation-and-conflict-colombia

United Nations [UN]. (1945). *Charter of The United Nations.* Retrieved: http://www.un.org/en/documents/charter/

United Nations [UN]. (1945). *Declaration of the United Nations Conference on Human Environment.* Retrieved:

http://www.unep.org/Documents.Multilingual/Default.asp?DocumentID=97&ArticleID=1503

United Nations [UN]. (1948). *Universal Declaration of Human Rights.* Retrieved: http://www.un.org/en/documents/udhr/

United Nations [UN]. (1986). *Declaration on the Right to Development.* Retrieved: http://www2.ohchr.org/english/law/rtd.htm

United Nations [UN]. (1998). *Document A/S-20/4 - Report of the Commission on Narcotic Drugs Acting as Preparatory Body for the Special Session of the General Assembly Devoted to the Fight against the Illicit Production, Sale, Demand, Traffic and Distribution of Narcotic Drugs and Psychotropic Substances and Related Activities on Its Second Session*. Retrieved:

http://www.un.org/Docs/journal/asp/ws.asp?m=A/S-20/4

United Nations High Commissioner for Refugees [UNHCR]. (2009). *Información estadística sobre los refugiados y otras personas de la competencia del ACNUR en Ecuador.* Retrieved: http://www.acnur.org/biblioteca/pdf/4188.pdf

United Nations Office on Drugs and Crime [UNODC]. (1998). *Economic and Social Consequences of Drug Abuse and Illicit Trafficking*. Retrieved: http://www.unodc.org/pdf/technical_series_1998-01-01_1.pdf

United Nations Office on Drugs and Crime [UNODC]. (2006a). *Cannabis: Why We Should Care*. Retrieved:

http://www.unodc.org/pdf/WDR_2006/wdr2006_chap2_biggest_market.pdf.

United Nations Office on Drugs and Crime [UNODC]. (2008a). *Get the Facts About Drugs*. Retrieved:

http://www.unodc.org/documents/drugs/getthefacts_E.pdf

United Nations Office on Drugs and Crime [UNODC]. (2009a). *Information About Drugs*. Retrieved: http://www.unodc.org/unodc/en/illicit-drugs/definitions/index.html

United Nations Office on Drugs and Crime [UNODC]. (2009b). *World Drug Report 2009*. Retrieved:

http://www.unodc.org/documents/wdr/WDR_2009/WDR2009_eng_web.pdf

United Nations Office on Drugs and Crime [UNODC]. (2009c). A *century of International Drug Control*. Retrieved: http://www.unodc.org/documents/data-and-analysis/Studies/100_Years_of_Drug_Control.pdf

Veillete, C. (2005). *Plan Colombia: A Progress Report*. Retrieved:

http://www.fas.org/sgp/crs/row/RL32774.pdf

Veillete, C. (2006). *Andean Counterdrug Initiative (ACI) and Related Funding Programs: FY2006 Assistance*. Retrieved:

http://fpc.state.gov/documents/organization/60720.pdf

Weitzman, H. (2006). Rafael Correa: Chavista with a whip hand. *Financial Times*. Retrieved: http://www.ft.com/cms/s/2/23a5e4fa-5732-11db-9110-0000779e2340.html

Wood, S. (2006). *Transboundary Harm in International Law: Lessons From the Trail Smelter Arbitration*, Retrieved:

http://ohlj.ca/english/documents/OHLJ_45_3_Wood_FINAL.pdf

Yates, J.F., Chin, G.J. & Collins, T.A. (2005). A War on Drugs or a War on Immigrants? Expanding the Definition of 'Drug Trafficking' in Determining Aggravated Felon Status for Non-Citizens, *Maryland Law review* 64, 875.