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Aerial Herbicide Spraying (Ecuador v. Colombia)
Olga Kostina, Model United Nations of the Russian Far East

(Ecuador is an applicant and writes a memorial, Colombia is respondent and writes a counter-memorial)

Background

In 2000, Colombia launched an aerial herbicide spraying project called “Plan Colombia,” to eradicate illegal coca and poppy plantations in its frontier areas, financed with assistance from the United States of America. Plan Colombia became of the country’s most crucial governmental programs for combating illicit drug production and trafficking, both within the country and over its borders.

Even though the United States and Colombian governments, along with the assurance that the chemicals used were manufactured in an environmentally approved method, extensively vetted the project, Plan Colombia still caused extensive concern among many for its potential environmental harm. A significant number of environmental experts and non-governmental organizations (NGOs) protested the program, arguing that it would lead to irrevocable ecological consequences in a fragile ecosystem. Despite the protests, the Colombian government proceeded with the spraying campaign.

The nation of Ecuador claims that the spraying and its effects went beyond Colombia’s borders, causing serious damage to Ecuador’s ecology while also becoming a detriment the health of their citizens. Despite Colombia and Ecuador’s bilateral negotiations to find a solution

about the spraying, the two parties have been unable reach a consensus and as a result, Ecuador filed a suit to the International Court of Justice.¹

"Plan Colombia"

Colombia has, for a long time, suffered from the scourge of large scale, illegal coca production and trafficking. Not only is Colombia currently home to a significant portion of the world's illicit coca and cocaine production, but is also a major growing area for opium poppies (*papaver soniferum*) and marijuana plants (*cannabis somniferum*).

In order to deal with illicit drug production, the Colombian government decided to spray coca and poppy plantations using powerful herbicides dispersed from airplanes and helicopters. This strategy involved the use of the herbicide glyphosate, which was thought to insulate the program from public notice, as it produces no smell.

Effects of Aerial Herbicide Spraying on Plants, Animals, and Human Health

The spraying began in the Colombian provinces of Putumayo and Narino and soon carried over to the vicinity of the Ecuadorian border. In late 2000, the Ecuadorian Provinces of Carchi and Esmeralda were allegedly detecting the herbicides presence on their territories. For two months, the herbicides were sprayed on a daily basis from the early morning into the late afternoon. It was not long after that two deaths were reported and many Ecuadorians living in the

¹ "Plan Colombia Aerial Spraying Program –Analysis & Critique of the U.S. Department of State report to congress regarding risk to amphibians and threatened species". Interamerican Association for Environmental Defense <http://www.earthjustice.org/library/references/AIDASprayingCritique122106.pdf>

vicinity of the sprayings were found with symptoms such as diarrhea, intestinal bleeding, and fevers.²

A 2007 study conducted by the Pontificia Catholic University in Quito, Ecuador on twenty four local residents living within three kilometers of the border revealed significant chromosomal damage in comparison to those individuals who lived ten times further away. Such damage poses the risk of cancer and birth defects to affected populations. These individuals also suffered immediate consequences directly following the spraying which included: intestinal pain and vomiting, diarrhea, headaches, dizziness, numbness, burning of eyes and skin, blurred vision, difficulty breathing, and rashes.³

In addition to affecting human health, numerous food crops, including coffee, cocoa, fruit, and corn have been destroyed. In correlation, several animals died and others became severely ill. During the seven-year period, some Ecuadorian provinces were affected by the herbicides, including Esmeraldas, Carchi, Sucumbíos, where people have claims that they have come into contact with the chemicals from the aerial spraying several times.

Composition of Aerial Herbicides

Despite the fact that Colombia has not officially revealed the exact components of its aerial herbicides, experts assert that glyphosate is the main component.⁴ It works by inhibiting a

² "The politicization of fumigations: Glyphosate on the Colombian-Ecuadorian border" Transnational Institute. http://www.tni.org/detail_page.phtml?&lang=en&page=policybriefings_brief20&lang_help=en

³ "COLOMBIA: Studies Find DNA Damage from Anti-Coca Herbicide". Inter Press Service News Agency <http://www.corpwatch.org/article.php?id=14538>

⁴ National Pesticide Information Center- <http://npic.orst.edu/factsheets/glyphogen.pdf>

vital biochemical pathway in plants, resulting in sickly growth, color loss, and wrinkled leaves. Ecuador asserts that glyphosate is harmful for animals, citing laboratory test results showing above average long-term toxicity, genetic damage, and negative influences on reproduction. These laboratory tests also link glyphosate to cases of premature births, and Hodgkin's lymphoma.

Previous Attempts at Conflict Resolution

The government of Ecuador had expressed its anxiety to the Colombian government before the "Plan Colombia" was launched. In July of 2000, Ecuador sent a diplomatic note to the Colombian Embassy in Quito, expressing Ecuador's desire to prevent potential negative effects of the herbicide spraying on the environment and the health of humans and animals. Despite Ecuador's expression of concern, a response allaying these concerns has not been forthcoming from the Colombian officials.

In July 2001, Ecuador sent another request for details about the herbicides being used, the areas to be sprayed in the future, along with those currently being sprayed. The Ecuadorian diplomatic note requested for the herbicides to not be used within 10 kilometers of its border, however, Colombia did not comply with this request.⁵ Within its response, the Colombian government stated that such an action would be unacceptable for the Government of Colombia for multiple reasons, including the fact that forced eradication is accepted as a legitimate method for eliminating the production of illicit crops. Colombia also stated that the program was being carried out based on procedures compatible with the preservation of human health and the

⁵ "American Treaty of Pacific Settlement" <http://www.oas.org/juridico/english/treaties/a-42.html>

environment, in conformity with the *principle of precaution* enshrined in the 1992 *Rio Declaration on Environment and Development*. By the end 2003, both governments agreed to create the *Scientific and Technical Commission* to investigate influence of herbicides in Ecuador. The commission met four times during the following year, but was not able to form a conclusion. In December 2005, the governments commenced negotiations and reached an agreement under which Colombia would stop spraying within the 10-kilometer border, demanded by Ecuador. Subsequently, Colombia violated this bilateral agreement and, in 2006, started spraying again, allegedly within the 10-kilometer border zone.

To solve the problem, another Scientific Commission was created in early 2007, but two meetings later it announced that it could not reach the agreement to settle the dispute. Consequently, Ecuador decided to submit the dispute to the International Court of Justice for a judicial settlement.

In bringing its application to the ICJ, Ecuador argues the following:⁶

(A) Colombia has violated its obligations under international law by causing or allowing the deposit of toxic herbicides over the territory of Ecuador resulting in damage to human health, property and the environment;

⁶ Application of the Republic of Ecuador

<http://www.icj-cij.org/docket/index.php?p1=3&p2=3&k=ee&case=138&code=ecol&p3=0>

(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 and the environment resulting from Colombia's use of herbicides; 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 Colombia's border with Ecuador.

Ecuador states that the International Court of Justice has jurisdiction over this case as a consequence of Article XXXI of the 1948 *American Treaty on Pacific Settlement of Disputes*, also known as the *Pact of Bogotá*, which states:

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.*

Ecuador also calls upon Article 32 of the 1988 *United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* which declares:

Any such dispute [relating to the interpretation or application of the Convention] which cannot be settled in the manner prescribed in paragraph 1 of this article [that is, by negotiation, enquiry, mediation, conciliation, arbitration, recourse to regional bodies, judicial process or other peaceful means of the parties' choosing] shall be referred, at the

request of any one of the States Parties to the dispute, to the International Court of Justice for decision.

Lingering Effects of Aerial Herbicide Spraying Today

Ecuador asserts that the dispersion of air herbicides has adversely affected its people and territory, including a marked reduction of grain crops and food production for goods such as corn, coffee, rice, and ayucca. Such herbicide spraying has also exerted negative consequences on the health of its citizens. Furthermore, Ecuador is fearful about future negative health effects that may arise that have yet to be discovered if these programs are continued. There is also growing concern that it may be too late to stop the damage to both the environment and the people. With DNA damage reported among the Ecuadorian citizens living in the border region, there is not only concerns about damage to the current generation, but it could also lead to serious birth defect or health problems for their children and the future generations of Ecuador.

Points for advocates to consider in their legal briefs:

1. Were the actions of Colombia legal?
2. To what extent is the Colombian government actually responsible for the alleged damage to Ecuadorian property and citizens?
3. State and explain the country's position by citing legal documents.
4. How this case can be regarded from the point of environmental law?

Maritime Delimitation Dispute (Peru vs. Chile)

Olga Kostina, Model United Nations of the Russian Far East

(Peru is an applicant and writes memorial, Chile is a respondent and writes counter-memorial)

Background

Border disputes have long been a threat to the security, stability, and prosperity in Latin America. Chile and Peru have had a long-term contradiction about their sea boundary delimitation; Chile's assert borders along a geographical parallel, which passes by point on which the land border between both countries reaches the seas, while Peru states that such a sea border was never coordinated.⁷

The dispute has its historical roots in the 1879 – 1883 War of the Pacific, in which Peru and Bolivia lost substantial territory to Chile. The contested area, consisting of around 10,280 navigating miles² (35 280 km²) of open sea, contains a very rich fishery. Of particular significance is the rich sea fishing region of approximately 38,000 square kilometers, which Chile continues to consider its own territorial seas. National borders in the area had have been definitively established; these two countries negotiated an agreement, which recognized 24th parallel as the borderline, while it also granted Chile the right to divide export taxes to minerals of the territory of Bolivia between 23rd and 24th parallels. However, Bolivia was afraid of the Chilean confiscation of its coastal area where the Chilean interest groups already operated the mining industry. Peru's interest in the conflict has formulated from its traditional tensions with

⁷ ICJ Case- <http://www.icj-cij.org/docket/index.php?p1=3&p2=1&code=pc&case=137&k=88>

Chile over hegemony on the Pacific coast.⁸

In 1883, Chile and Peru signed the Agreement Ancón, in which Peru transferred the area of Tarapacá to Chile. Peru also had to transfer portions of the areas of Arica and Tacna. They would remain under Chilean control until a later date, when there was to be a plebiscite to solve the question of what nation would provide the control over Arica and Tacna. Chile and Peru, however, were incapable to agree on when to hold plebiscite, and in 1929, both countries signed the Agreement concerning Lima, in which Peru received the area of Tacna, and Chile had control over Arica.

With the objective of protecting, preserving, and using the natural resources existing in the sea adjacent to its national coasts (by means of Supreme Decree No. 781 of 1 August 1947), Peru proclaimed its sovereignty and jurisdiction over a zone between said coasts and an imaginary line parallel to them. Peru also traced on the sea at a distance of 200 nautical miles, measured outward from the geographic parallels. Peru reserved its right to “modify such limits in accordance with supervening circumstances which may originate as a result of further discoveries, studies or national interests which may become apparent in the future.” This is to say that such measurement was made with a provisional character and was therefore subject to modification.

Chile, Ecuador, and Peru proclaimed the Declaration on the Maritime Zone (Annex I) on August 18, 1952, at the First Conference on the Exploitation and Conservation of the Maritime Resources of the South Pacific. Article II of the declaration states that as a "principle of their international maritime policy," each state possesses sovereignty and jurisdiction over the area of

⁸ Royal College of Defense Paper- <http://www.scribd.com/doc/14860631/Maritime-Boundary-Chile-Peru-Dissertation>

sea adjacent to its own territory extending, "not less than 200 nautical miles from the coast." In Article IV the maritime boundaries between the states are proclaimed to be the "parallel of latitude drawn from the point of which the land frontier between the two countries reaches the sea." Both Chile and Peru have ratified the declaration.⁹

On December 4, 1954, Chile, Ecuador, and Peru issued an agreement (Annex II), creating a special maritime frontier zone of 10 nautical miles' breadth on each side of the parallel of latitude, forming the maritime boundary between the respective states. The zone commences 12 nautical miles from the coast of each state. The purpose of the zone is to avoid inadvertent violations of the maritime boundaries by national fishermen. Fishing and hunting within 12 nautical miles from the coasts, however, are to be reserved exclusively for each respective state. Both Chile and Peru have ratified the agreement.

Article 4 of the 1954 Agreement additionally establishes that "All the provisions of this Agreement shall be deemed to be an integral and supplementary part of, and not in any way to abrogate, the resolutions and decisions adopted at the Conference on the Exploitation and Conservation of the Maritime Resources of the South Pacific, held in Santiago de Chile in August 1952." Consequently, this Agreement cannot cancel the fundamental principle contained in the Declaration of Santiago, regarding the rights of the coastal State over the sea adjacent to its coasts up to the minimum distance of 200 miles.

Peru ratified the 1954 Agreement on 6 May 1955, while Chile ratified it only on 16 August 1967, and forty years later on 24 August 2004, Chile also unilaterally ratified it before

⁹ Conference on the Exploitation and Conservation of the Maritime Resources of the South Pacific, Agreements and Other Documents 1952-1966 (English Version). Lima, Peru: General Secretariat, 1967.

the United Nations. In 1980, in the Third Conference of the United Nations on the Law of the Sea, the President of the Delegation of Peru expressed the official position their nation, concerning the issue of maritime delimitation.¹⁰ In accordance with that position, the Peruvian Minister of Foreign Affairs set out the non-existence of an agreement of maritime boundaries between both countries to the Minister of Foreign Affairs of Chile. The Ambassador commissioned for this and underlined that, “the parallel line should be considered as a formula which, despite having fulfilled the express objective of avoiding incidents with seafarers with scant knowledge of navigation, was not adequate to satisfy the requirements of safety to the greater attention in administrating marine resources, with the aggravating circumstance that an extensive interpretation could generate a notorious situation of inequity and risk situation, to the detriment of the legitimate interests of Peru, that would come forth as seriously damaged.”¹¹

In a year 2001, in clear infringement to the Agreement concerning Ancona, which established the border between both states, Chiles entered into the Peruvian territory through the installation of military control over Vigilance, a shore in the north of point where the land border reaches the seas. Peru brought the diplomatic claim to Chile, and after many weeks, Chile removed the military control over Vigilance, but did not recognize the infringement of the Peruvian sovereignty.

On January 26th of 2007, the government of Peru initiated a protest against a disputable establishment of borders by Chile, consisting of a coastal border. According to the Peruvian Ministry for Foreign Affairs, the Chilean legislature confirmed the plan concerning Area Arica-

¹⁰ UNCLOS- http://www.un.org/Depts/los/convention_agreements/texts/unclos/UNCLOS-TOC.htm

¹¹ The translation of “Delimitación Marítima entre el Perú y Chile”, edited by the Ministry of Foreign Affairs on 22 March 2009.

Parinacocha, which did not correspond to the established borders. They also asserted that Chilean law includes a statement, which recognizes the sovereignty of more than 19 000 sq. metres of the land in portion of Peruvian territory (Tacna). According to the Peruvian Ministry for Foreign Affairs, Chile has defined new areas while, "not respecting an establishment of borders of Concordia." The Peruvian government asserts that dispute pertaining to the Chilean plan, which has been presented to the Chilean Constitutional Court, is a part of the proceeding sea dispute, by means of which Chile tried to expand its sea border.

For last 50 years, Peru has supported requirements from the aforementioned, including about 40 000 square kilometres of ocean territory. On the other hand, the Chilean government has asserted that the disputable area is not a coastal site under the name Concordia. However, Chile recognizes an onboard stone Number 1, which is located on the northeast and 200 metres in the country.

Considering, that Chilean law does not recognize the border established by both nations in 1929 agreement, Peru has lodged diplomatic protests against Chile. In this territorial dispute, Chile has tried to change the Pacific border to correspond with a geographical parallel, instead of continuing its national border to the sea, which is recognized and confirmed by Peru. This decision to change the Pacific border would cut off at least 19 000 square metres of the Peruvian territory. However, the possible border dispute has been prevented, when the Chilean Constitutional Court operated on January 26 2007 unconstitutional legislation which Peru interfered on its sea territorial sovereignty.¹² Agreeing with court management, the Chilean government has repeated its position that sea borders between these two nations have not been

¹² GA Report "Oceans and the law of the sea" <http://www.un.org/documents/ga/docs/56/a5658a1.pdf>

considered and formally recognized by the international community. Although, according to the 1952 declaration, the maritime zone of each state is to be bounded by the specific parallel of latitude on which the seaward terminus of the land territory is situated, the agreed-upon parallel of latitude is actually located slightly to the north of the land boundary terminus.

The maritime boundary extends along the 18° 23' 03" parallel of South latitude, which coincides with the parallel of latitude on which the Peru-Chile land boundary marker No. 1 has been placed. Marker No. 1 lies a short distance to the northeast of the Chile-Peru coastal boundary point.² The seaward limit of the maritime boundary is not clearly defined in the declaration. On the attached map the maritime boundary is depicted as extending 200 nautical miles from each coast. Owing to coastal configurations, the Peruvian segment of the boundary

In 1969 the Joint Chilean-Peruvian Boundary Commission established two land alignment towers to aid mariners to establish their position with respect to the maritime boundary. Both towers have been placed on the 18° 23' 03" South parallel of latitude. One tower has been placed 6 meters west of marker No. 1, in Peruvian territory, while the other tower has been placed 1,843.8 meters east of marker No. 1, in Chilean territory extends farther seaward than the Chilean segment. Point C on the map is situated 200 nautical miles from Chile (i.e., from the land boundary terminus that is the nearest point on the Chilean coast); however, this point is approximately 120 nautical miles from the nearest point on Peru's coast. The point on this parallel of latitude 200 nautical miles from Peru (i.e., from Pta. San Juan) is not reached until Point P; this point is more than 360 nautical miles from the land boundary terminus.

The maritime boundary traverses rather deep water; depths reach 2,500-3,000 fathoms (15,000-18,000 feet). Areas of less than 100 fathoms are virtually non-existent along this portion

of the South American coast. The outer limits of the special maritime frontier zone are also not clearly defined because of the coastal configuration. The Peruvian 10-nautical-mile wide zone extends approximately 160 nautical miles farther seaward from the western end of the Chilean zone. The eastern end of the Peruvian special frontier zone is delimited by 12-nautical-mile arcs drawn from the coastline. The nearest Chilean territory to the eastern section of the frontier zone is situated at the land boundary terminus. Article II of the 1952 declaration states that Chile and Peru possess "sole sovereignty and jurisdiction" over the area of sea extending "not less than 200 nautical miles" from their coasts. As stated in the preface to the declaration, the purpose for establishing the zone was to "ensure the conservation and protection of its natural resources...."

Prior to 1952, Peru had declared national sovereignty and jurisdiction over the continental shelf and adjacent sea (Supreme Decree No. 781, August 11, 1947). This decree, however, did not affect "the right to free navigation by ships of all nations" (Article 4). In 1965 Peru implemented a law creating a 200-nautical-mile territorial sea.¹³ Chile currently claims a 3-nautical-mile territorial sea and a 200-nautical-mile "maritime zone" gives it exclusive jurisdiction "necessary to preserve, protect, preserve, and exploit the natural resources and wealth of any kind which may be found over, in or under the said seas."¹⁴

¹³ The United States does not recognize any state's claim to a territorial sea breadth in excess of 3 miles. In the UN Law of the Sea negotiations, however, the United States has expressed its willingness to accept a maximum territorial sea breadth 12 miles within the framework of a comprehensive and acceptable Law of the Sea treaty.

¹⁴ Law of the sea and managing maritime conflicts-
http://www.allacademic.com/meta/p_mla_apa_research_citation/2/1/1/2/3/pages211239/p211239-1.php

Points for advocates to consider

1. How important are the past treaties to determining the current state of the problem and the legal solutions to it?
2. How the maritime boundaries can be delimited in accordance with the United Convention of the Law of the Sea?

Advisory opinion: the legality of use of force in South Ossetia and Abkhazia

Olga Kostina, Model United Nations of the Russian Far East

(States other than Peru, Chile, Ecuador, and Columbia write memorial of advisory opinion)

Background

The current conflict between Georgia and the Russian Federation has its roots in the events of the late 1980s, starting with the rising of the Georgian national movement for independence. This led to a sharp strain in relations between the ethnic Georgians and other ethnic minorities, the Abkhaz and the Ossetians who already attempting to gain independence. In 1989 South Ossetia, already an autonomous region, proclaimed itself as autonomous republic, and a year later an independent state. On 10 December 1990, in response to that, the Supreme body of Georgia abolished the autonomy of Ossetia in general, having divided its territory on six administrative areas of Georgia in an attempt to squash the independence movement.

Political strife quickly exploded into armed conflict, and in 1991 1,000 people died and 2,500 were wounded. In the spring of 1992, after a revolution and civil war in Georgia, military actions against South Ossetia renewed. Under the pressure of Russia, Georgia began the negotiations, which ended on June 24, 1992 with signing of the Dagomys agreement on principles of settlement of the conflict. Dagomys agreements provided creation of special body for conflict settlement with a mixed supervisory commission that includes representatives of four parties; Georgia, South Ossetia, Russia and the North Ossetia.¹⁵

After 1992, South Ossetia became de facto the independent state, and established its own constitution. However the authorities of Georgia still considered it as an administrative unit

¹⁵ International Crisis Group. Georgia-Russia: Still Insecure and Dangerous
<http://www.crisisgroup.org/home/index.cfm?id=6171>

Tshinvalsky region; however, actions to establish control of the resistive region were abandoned. In the 1990s, there was an active process of acceptance of the Russian citizenship by the population of South Ossetia. On July 1st, 2002 a new law on citizenship was introduced in Russia, which allowed former citizens of the USSR to receive Russian citizenship. Russian Ministries of Internal Affairs and the Ministry of Foreign Affairs sent a special staff to actively encourage and process the registration of inhabitants of Abkhazia for Russian citizenship. The result was approximately 220 of the 320 thousand inhabitants of Abkhazia acquiring Russian passports. By the end of July 2002, 60% of the population of South Ossetia were Russian citizens, and by 2006, 80% of the population possessed Russian passports.¹⁶

In February 2006, the Georgian authorities declared that the Russian peacekeepers were allowed to enter into South Ossetia to prevent conflict in zones of interethnic tension, which required visas. This policy created frequent incidents, including the arrests and harassment of many Russian military personnel along the border of South Ossetia because of their lack of appropriate visas. In response, the Russians did not recognize the legality of the Georgian requirements and continued to cycle peacekeepers through the conflict zone. On July 20th, 2006, the Russian Minister of Defense promised to help Abkhazia and South Ossetia in case of the Georgian aggression. This promise included the assurance of military response if Russia perceived an incident as Georgian aggression.

¹⁶ Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)

<http://www.icj-cij.org/docket/index.php?p1=3&p2=1&code=GR&case=140&k=4d>

In the beginning of 2008 there was another spike in the confrontation between Russia and Georgia. On April 20, a Georgian unmanned aerial vehicle (UAV) on a reconnaissance mission was shot down over the Abkhazian conflict zone. According to the Georgian authorities, a Russian Mig-29 fighter shot down the UAV while it was still in Georgian territory; Russia denied Georgian accusations. Later, the Russian Ministry of Foreign Affairs accused Georgia of violating the 1994 Moscow agreement and United Nations resolutions, addressing the status of Abkhazia, by deploying a UAV without authorization, since it could be used for military purposes. Although the incident was referred to and discussed by the UN Security Council, Russia increased a number of peacekeepers in the zone of the Georgian-Abkhazian conflict on April 29th, 2008. This action raised a huge protest from Georgian side of the conflict.

On July 15, Georgia launched joint training operations with United States forces near Tbilisi, called "Immediate Response 2008." Simultaneously, as a response, Russia launched "Caucasus 2008," a military exercise involving 8,000 troops, located not far from the Roki tunnel, which connects Russia and South Ossetia. Despite the fact that the main, stated, goal of these exercises was to train personnel to counter terrorist threats, the Russian Ministry of Defense also stated that it would include training for peacekeeping measures in conflict zones.

At the end of July, violent clashes between Georgian and South Ossetian forces intensified. Three days of constant violence from both sides resulted in several hundred Ossetian civilians fleeing to Russia. The conflict gained new strength on August 7th while the world's attention, and the majority of its leaders, were in Beijing for the Summer Olympics. Georgia's version of these events states that their soldiers opened fire in response to South Ossetian dissidents firing on villages inhabited by ethnic Georgians. At the same time, Georgian forces

were involved in an operation to capture a strategic hill to observe a road connecting Tskhinvali and several Ossetian villages.¹⁷

On the evening of August 7th, Georgian forces started an attack on Tskhinvali, the de facto capital of South Ossetia, and its surrounding regions. The official Georgian reason for the operation was states to be a response to South Ossetian dissidents who had previously attacked Georgian peacekeepers. Later, on August 8th, in response to what the Russians claim was Georgian aggression, regular Russian ground forces moved through the Roki tunnel toward Tskhinvali, where they began to engage elements of the Georgian Army. That day Russian aircraft attacked targets in several villages in Georgia proper, including Gori city and Georgian military airports near Tbilisi. Over the next two days, Russian ground forces grew in number and moved further into South Ossetia. Early in the morning of August 10th, Georgia withdrew its military personnel from Tskhinvali; however, Russian armed forces crossed the administrative border out of the disputed territories and into Georgia.¹⁸ Within three days Russian troops had overcome Georgian defenses and were 45 kilometers west of Tbilisi. At the same time, Russia conducted a separate operation from the west by occupying the strategically important cities of Poti, Zugdidi, and Senaki in western Georgia, along the Baltic coast. Here is where the controversy over the Russian response to the conflict begins.

Instead of just retaking their former positions in the conflicted areas they proceeded to invade Georgia in full. The Russian Black Sea fleet engaged in a skirmish with the Georgian

¹⁷ “Up in flames” report of Human Rights Watch- <http://www.hrw.org/en/reports/2009/01/22/flames-0>

¹⁸“Statement from the Ministry of Foreign Affairs of the Russian Federation,” Ministry of Foreign Affairs of the Russian Federation, 1246-26-08-2008, August 26, 2008
http://www.mid.ru/brp_4.nsf/sps/6E758FAF78A475AFC32574B100545BD9

Navy, which resulted in the loss of several Georgian patrol boats. Russian rockets and attack aircraft destroyed oil infrastructure, including a pipeline, a former aircraft factory, along with shipbuilding and port facilities along the Black Sea coast. Russian paratroopers also seized Georgian military bases and airfields to prevent their continued use in the conflict. These operations ranged hundreds of miles from the disputed territories leading to speculation that there were other motives to the attacks besides safeguarding the de facto independence of South Ossetia.

On August 16th, President Saakashvili and President Dmitry Medvedev signed “Sarkozy plan,” a six-point ceasefire agreement, which was mediated by French President Nicolas Sarkozy. That ceasefire agreement allowed Russian peacekeeping forces to implement some security measures they had before the conflict until the international monitoring would take effect. It further called both parties to stop hostilities and for the withdrawal of all forces to their pre-August 6th positions. Following the plan, the gradual withdrawal of Russian forces began, however, Russia insisted on establishing checkpoints in the villages of Variani and Karaleti to create a “buffer zone.” The final withdrawal of Russian troops from South Ossetia finished in early October, although Russian troops still occupy a village on the border. The European Union launched a mission under the European Security and Defense Policy, but military observers were denied access. On August 26, 2008, the Russian Government formally recognized the independence of Abkhazia and South Ossetia, however, only the nations of Ukraine and Venezuela have followed suit.

Advisory opinion: the legality of use of force in South Ossetia and Abkhazia

The objective of the International Court of Justice with this topic is to provide an advisory opinion on the legality and legitimacy of the use of force by both sides of the conflict.¹⁹ Both sides claim that they were acting in response to a perceived threat to their security, concerning the state of their citizens and to their territorial integrity. Both use that claim to say that they were justified in the use of force; however, questions still remain on the issue. These questions are what the court must address.

1. Did both sides meet the legal and commonly accepted requirements for the legitimate use of force? Address these three criteria in each phase of the conflict.²⁰
 - a. Were there grounds for military retaliation? (Military Necessity)
 - b. Was it a proportional response to the level of force? (Proportionality)
 - c. Did both sides properly identify and avoid unnecessary damage and civilian deaths? (Distinction)
2. Were Georgia's actions against South Ossetian militants, civilians and property in the territory of South Ossetia and Abkhazia legal?
3. Were Russian actions against Georgian troops in South Ossetia and Abkhazia legal?
4. Were Russian actions against Georgian troops, civilians and infrastructure in the territory of Georgia legal?
5. What of the accusations of war crimes made against both sides related to death of civilians and excessive destruction of personal and state property?

¹⁹ International Law and the Use of Force- http://chinesejil.oxfordjournals.org/cgi/pdf_extract/1/1/1

²⁰ Refer to Geneva Conventions and the Hague Conventions