

The Republic of Ecuador

Positions for International Law Commissions

I. Immunity from Prosecution for State Officials and Head of State

Immunity from prosecution for State Officials and Head of State has been an issue throughout history. The Vienna Convention on Diplomatic Relations was signed by the Republic of Ecuador on the 25th of March 1964 and then ratified in 1965, to show our support in promoting the efficiency of diplomatic performance and to contribute to the development of friendly relations among nations¹. The International Law Commission has been effective in creating tribunals to punish government officials who had committed grave war crimes, such as the Nuremberg Tribunal² and the International Military Tribunal for the Far East (IMTFE).³ Such tribunals tried heads of state regardless of their immunity, including the case against Charles Taylor that is currently ongoing in the Special Court for Sierra Leone for his crimes against humanity⁴. However, there have been cases where diplomatic immunity was granted, specifically in the case of *The Democratic People's Republic of Congo vs. Belgium*, in which an arrest warrant was issued against Mr. Abdulaye Yerodia Ndombasi for war crimes, but was revoked due to Belgium's failure to respect immunity from criminal jurisdiction⁵. This has proven to be a recurring problem that the ICC faces in bringing those who commit crimes against humanity to justice.

Ecuador has signed and ratified most international instruments on international humanitarian law, among the most important: the four Geneva Conventions of 1949 and the two Protocols of 1977; the Rome Statute of 1998 that created the ICC; and the Hague Convention of 1954⁶. But even through these documents there are still many issues, such as to what crimes constitute the removal of diplomatic immunity, how sovereignty affects the extraction of those wanted for trial, whether the need for justice overrides the need for peace and many others. Ecuador urges the creation of a new protocol which will define a code of law that incorporates these important documents into one to fully formulate and solve the specifics of diplomatic immunity and the problems that are not properly addressed in the previous documents. The creation of this protocol will be an affirmative definition of immunity that supersedes any previous definitions as well as focusing on giving the ICC proper jurisdiction over those who are being tried. An issue that the ICC is often presented with is the failure of states to give up the individuals who are being called to trial. If included in the protocol, a better defined jurisdiction for the ICC can help to properly bring the accused to justice and to keep heads of state that are being tried for crimes against humanity from being sheltered by their states.

II. Addressing Rights to Shared Natural Resources

Offshore drilling can have devastating effects on the environment and the countries surrounding the body of water in question. Just this past year the oil spill disaster in the Gulf involving the BP Company affected the entire ecosystem of the Gulf as well as the livelihoods of all nations that sit on the shore of the gulf⁷. Offshore drilling is a danger to everyone, not only because of the chance of disasters such as these but also because of the conflict that it can create between nations over the rights of access to resources and properly sharing them. Though some conflicts such as

¹ "Vienna Convention on Diplomatic Relations." United Nations. April 24, 1963.

² "International Humanitarian Law - Principles Nuremberg Tribunal 1950." *International Committee of the Red Cross (ICRC) - Home*. Web. 13 Oct. 2010.

³ "International Military Tribunal for the Far East Charter (IMTFE Charter) - The Faculty of Law." *Forside - Det Juridiske Fakultet*. Web. 13 Oct. 2010.

⁴ "Prosecutor vs. Charles Taylor." *Special Court for Sierra Leone*. Web. 13 Oct. 2010.

⁵ "Arrest Warrant of 11 April 2000 (Democratic People's Republic of Congo vs. Belgium)." *International Court of Justice*. Web. 13 Oct. 2010.

⁶ "Implementation of International Humanitarian Law in Ecuador." Ministry of Foreign Affairs, Trade and Integration, Ecuador.

⁷ "NRDC: Disaster in the Gulf." *NRDC: Natural Resources Defense Council - The Earth's Best Defense*. Web. 14 Oct. 2010.

the one between Norway and the Russian Federation have come to satisfying agreements⁸, others such as the dispute between China and Japan over exploration for natural gas in the East China Sea⁹ and Turkey and Greece over disputes in the boundaries in the Aegean Sea¹⁰ have not been solved. These conflicts are directly caused by a lack of ratification of the United Nations Convention on the Law of the Sea (UNCLOS), as well as poorly defined Exclusive Economic Zones (EEZ) in cases of disputed offshore drilling rights.

These issues of drilling rights and sovereignty over them are also affecting inland areas. The Amazonian region has been polluted due to oil exploration and therefore water contaminations have led to increased risk of fungal infection, abortion, cancer, dermatitis, nausea, and headaches¹¹. The people of Ecuador, Peru, Bolivia and Brazil¹² have all been devastatingly affected by spills in the Northern Amazonian regions including 19 billion gallons of toxic wastewaters, 16.8 million gallons of spilled crude oil and increased health problems developed in people living in the areas surrounding the oil fields¹³. The Amazon Cooperation Treaty which was signed by The Republics of Bolivia, Brazil, Colombia, Ecuador, Guyana, Peru, Suriname and Venezuela was created to promote cooperation and the peaceful development of the Amazon Basin, as well as to avoid the destruction of this important biosphere¹⁴.

The Amazon Cooperation Treaty has brought the nations who have signed it to establish peaceful means of cooperation and to promote initiatives presented by the least developed countries. To combat the issues of Transboundary Aquifers the ILC adopted the Law of Transboundary Aquifers which establishes basic laws among Aquifer states¹⁵. However, Article 7 states that "aquifer States should establish joint mechanisms of cooperation." And in article 9 the Law of Transboundary Aquifers only encourages nations to enter into talks to reach agreements over their Aquifers. Though article 9 does encourage states to take it upon themselves to settle disputes, the Law of Transboundary Aquifers should instead request the nations to bring the matters of their dispute before the International Court of Justice to legally and peacefully come to an agreement on an international platform. The Law of Transboundary Aquifers should also be expanded upon to include an article to address in situations of disputed areas and how they should be approached by the nations involved.

III. Evaluating the Treatment and Protection of Prisoners of War and Unlawful Combatants.

The treatment and protection of prisoners of war and unlawful combatants has been an issue across the globe and poses a grave threat to world peace. The torture and mistreatment of prisoners of war and unlawful combatants is a direct violation of Article 5 of the Universal Declaration of Human Rights that states "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment"¹⁶. The Republic of Ecuador recognizes the Universal Declaration of Human Rights and has signed onto the Geneva Conventions of Genocide, which aimed at preventing prisoners of war from punishment of the genocide crime¹⁷.

The Republic of Ecuador supports the protection of prisoners of war and unlawful combatants and has taken initiative to prevent cruelty toward prisoners of war. In 1995, Ecuador worked with Peru and the International Committee of the Red Cross to peacefully negotiate and return prisoners of war to their governments safely¹⁸. "...the steps taken to improve social rehabilitation in Ecuador, the adoption of a new Constitution, in force since October 2008, and the work done by the Truth Commission, created by executive decree in 2007, to investigate human rights violations and acts of

⁸ "Agreement on Bilateral Maritime Delimitation." *Norway - the Official Site in the United States*. Web. 14 Oct. 2010.

⁹ "China-Japan Boundary Dispute Talks End with No Agreement." *GlobalSecurity.org*. Web. 14 Oct. 2010.

¹⁰ Daly, John C. K. "Greece and Turkey Spar over Offshore Oil Exploration." *The Jamestown Foundation*. Web. 13 Oct. 2010.

¹¹ "Ecuador Oil Exports." TED Case Studies.

¹² "Amazon Rainforest Threatened by New Wave of Oil and Gas Exploration | Environment | Guardian.co.uk." *Latest News, Comment and Reviews from the Guardian | Guardian.co.uk*. Web. 20 Oct. 2010.

¹³ Comparison, By. "Chevron in Ecuador." *Amnesty International USA - Protect Human Rights*. Web. 14 Oct. 2010.

¹⁴ Amazon Cooperation Treaty Organization.

¹⁵ "Draft articles on the Law of Transboundary Aquifers" International Law Commission. United Nations. 2008

¹⁶ The Universal Declaration of Human Rights.

¹⁷ Geneva Convention relative to the Treatment of Prisoners of War

¹⁸ International Committee of the Red Cross

torture.”¹⁹ Ecuador has also taken necessary steps to eradicating cruelty within the borders, creating the Ministry of Justice and Human Rights in 2007.

Ecuador encourages stronger initiatives in combating the unlawful treatment of prisoners of war. The nations of the world must condemn nations identified as using torture and other methods that violate the rights of any individuals. In article 13 of the fourth Geneva Convention it states “Likewise, prisoners of war must at all times be protected, particularly against acts of violence or intimidation and against insults and public curiosity.” This statement should be brought to attention and strongly enforced on the nations who violate it. A law tribune should also be created to bring the individuals who commit the heinous crimes against prisoners of war to justice.

¹⁹ CAT/C/ECU/4-6. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. 20 January 2010.