



# CHAPTER NINE

## THE INTERNATIONAL COURT OF JUSTICE (ICJ)

### The Purview of the Simulation

The International Court of Justice (ICJ) is the principal international judicial body of the United Nations. The two major roles of the ICJ include developing advisory opinions on matters of international law referred to it by specialized agencies and presiding over legal disputes submitted to the court by Member States. Only Member

States may submit cases to the Court, and the Court is only considered competent to preside over a case if the both States have accepted the jurisdiction of the Court over the dispute. The ICJ does not preside over legal disputes between individuals, the public, or private organizations.

**Website:** [www.icj-cij.org](http://www.icj-cij.org)

### BELGIUM V. SENEGAL: QUESTIONS RELATING TO THE OBLIGATION TO PROSECUTE OR EXTRADITE

In February 2009, Belgium began proceedings before the International Court of Justice against Senegal claiming that a dispute exists between the two countries because of Senegal's non-compliance with regard to its obligation to prosecute Hissène Habré, the former president of Chad, or to extradite him to Belgium to enact criminal proceedings. Belgium also submitted a request for provisional measures, citing its need to protect its rights pending the court's ruling on the merits of its application.

Belgium asserts that Senegal, where Mr. Habré has been exiled since 1990, has repeatedly ignored requests to prosecute the former Chadian President for crimes against humanity and acts of torture. Given this history of negligence, Belgium asks that Senegal extradite Mr. Habré. Belgium's requests to the Court are based, in part, on complaints brought in Belgian courts by a Belgian national of Chadian origin and various Chadian nationals.

In January of 2000, Mr. Habré was indicted in Dakar for "crimes against humanity acts of torture and Barbarity." The Dakar Court of Appeal eventually dismissed this indictment in July of that year, on the grounds that "Senegalese courts cannot hear acts of torture committed by a foreigner outside Senegalese territory regardless of the nationalities of the victims."

In 2005, Senegalese authorities detained Habré in compliance with an international arrest warrant issued by Belgian authorities. The relevant Senegalese court concluded that it had no jurisdiction over the case, since, insofar as extradition is concerned, Habré has the protection of sovereign immunity as head of the state of Chad when the alleged crimes were committed.

Belgium argues that under international law, Senegal's failure to prosecute Mr. Habré, and the subsequent failure to extradite him to Belgium to answer for his crimes, violates the UN Convention Against Torture, specifically Article 5, paragraph 2; Article 7, paragraph 1; Article 8, paragraph 2; and Article 9, paragraph 1. Belgium asserts that Senegal's failure to extradite Mr. Habré to answer for his crimes also violates Senegal's obligations under customary international law to punish crimes against international humanitarian law and treaty law.

Senegal argues that it should be allowed to continue its efforts to try Mr. Habré in Senegal. As evidence of its good-faith efforts to do so,

Senegal points to alterations in its constitution and domestic laws in 2008 to permit the prosecution of crimes against humanity, war crimes, and torture, regardless of where the acts occurred. Senegal also submitted that Mr. Habré's immunity as a head of state was revoked in 1993, shortly after he arrived in the country, while noting that the immunity still holds as regards extradition. Senegal has also made attempts to remove the case to the African Union.

Senegal reminds Belgium that the trial of Mr. Habré will involve many hundreds of witnesses scattered across the world and will be prohibitively expensive; accordingly, Senegal is in the process of seeking funding from a variety of sources. Senegal maintains, however, that it is determined to try the case, and that Belgium's request to move toward extradition is depriving Senegal of its rights to try the case under the Convention against Torture. Senegal argues that the Court lacks jurisdiction over the case since there is no legal dispute over the Convention against Torture; Senegal admits that the Convention obligates it to try Mr. Habré. Senegal has also made statements saying that it will not allow Mr. Habré to leave its territory while there was a present case pending before the court.

As a result of the discrepancies in interpretation and the overturned case in Senegal, Belgium asks that the court find four things:

1. That the court has jurisdiction to hear the dispute between Belgium and Senegal regarding Senegal's compliance with its obligation to prosecute or extradite;
2. Belgium's Application is admissible;
3. Senegal is obligated to bring criminal proceedings against Mr. Habré;
4. Senegal's continued failure to prosecute will legally obligate Senegal to extradite Mr. Habré to Belgium so that he can answer in Belgian courts.

In addition to their request to the court for extradition, Belgium filed a request for the indication of provisional measures, formally requesting the court to "indicate, pending a final judgment on the merits" requirements that the Respondent take "all the steps within its power to keep Mr. Habré under the control and surveillance of the judicial authorities of Senegal so that the rules of international law with which Belgium requests compliance may be correctly applied." On 28 May 2009, the Court rejected Belgium's request, finding that the potential prejudice to Belgium's rights was not significant enough to justify provisional measures in the face of Senegal's assurances to continue surveillance of Mr. Habré.

Questions to consider include the following:

- What, exactly, are Senegal's and Belgium's rights and obligations under the UN Convention Against Torture?
- Do the facts in this case meet the requirements provided for in the Statute of the ICJ for the indication of provisional measures?
- What is the basis of the Court's jurisdiction over the merits of this case?
- What, if any, is the legal basis for extradition if the state in which the defendant is found is currently attempting to try him within that state?

## Bibliography

Bassiouni, M. Cherif and Edward M. Wise, *Aut Dedere, Aut Judicare: The Duty to Extradite or Prosecute in International Law*, 1995.  
UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

## UN Documents

The Statute of the International Court of Justice  
ICJ Application Instituting Proceedings Belgium v. Senegal  
Press Communiqué No. 2009/26  
Press Communiqué No.2009/21  
Press Communiqué No.2009/22  
Press Communiqué No.2009/16  
Press Communiqué No.2009/14  
Press Communiqué No. 2009/13

## Additional Web Resources

<http://www.icj-cij.org/docket/index.php?p1=3&p2=3&code=bs&case=144&k=5e> – Questions Relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)  
<http://www.haguejusticeportal.net/eCache/DEF/10/167.html> - The Hague Justice Portal

## ECUADOR V. COLOMBIA: AERIAL HERBICIDE SPRAYING

On 31 March 2008, Ecuador instituted proceedings in the International Court of Justice in an effort to resolve an ongoing dispute between Ecuador and Colombia regarding Colombia's consistent and targeted program of toxic herbicide aerial spraying. At issue in this case are three fundamental claims. First, is the International Court of Justice the appropriate venue to address the grievances Ecuador has brought against Colombia? Second, to what extent, if any, must a nation take responsibility for the direct and/or indirect effect of its actions when the effect crosses international boundaries? Finally, to what extent must these effects be proved before the acting nation can be held responsible and/or liable?

Ecuador argues that Colombia's aerial spraying of toxic herbicides at locations "near, at, and across its border with Ecuador" have 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 further asserts that repeated efforts to resolve the conflict bilaterally have been rejected by Colombia. Ecuador cites Article XXXI of the American Treaty on Pacific Settlement, known as the Pact of Bogota, to justify these proceedings. In the Application to Institute Proceedings, Ecuador also

claims that the ICJ has jurisdiction in accordance with the provisions of Article 32 of the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

Ecuador submits three claims to this Court for adjudication. First, Ecuador claims Colombia has violated its obligations under international law by causing or allowing the deposit of toxic herbicides on Ecuadorian territory, causing damage to human health, property, and the environment. Second, Ecuador claims that Colombia, as the responsible party, must take financial responsibility for any loss or damage to human life, property, or the environment. Finally, Ecuador asks this Court to compel Colombia to respect the sovereign and territorial integrity of Ecuador by immediately ceasing the aerial herbicide spraying campaign so that Ecuador incurs no further damages to human health, property, and the environment. Ecuador asserts that the Colombia aerial dispersion program has caused anguish and concern among the populations and settlements in the Ecuadorian border area, given their aforementioned first claim. Furthermore, Ecuador claims that the program has generated increased migration of undocumented Colombians to Ecuador and the displacement of Ecuadorians from that area into the country's interior.

Colombia's program of aerial dispersion of a toxic herbicide is part of a comprehensive plan to eradicate illegal crops. Colombia is targeting illegal coca growers that supply drug trafficking organizations that export the drug as far as the United States and Europe. Colombian aerial dispersion is a part of Plan Colombia, an effort by the Colombia Government that includes ending drug trafficking in Colombia. This program is supported by the United States as a way to prevent drug trafficking into the United States. Colombia authorizes flights that spray high concentrations of glyphosate or Roundup, though the flights remain at least 10 km from the Ecuador border. In response to concerns that aerial dispersion was harmful to Ecuador, Colombia temporarily suspended spraying in the area bordering Ecuador in January 2006. Furthermore, Colombia allowed the United Nations to conduct a study to determine the potential effects of the aerial dispersion campaign on health and the environment near the border of Ecuador. Colombia further agreed to consider the results and determine the appropriate measures to adopt. The preliminary study identified the need for additional studies in April 2006. Dismissing Ecuador's continuing health and environment concerns by citing an Organization of American States study determining the harmlessness of the chemicals used in its aerial dispersion campaign, Colombia resumed its aerial dispersion campaign near the Ecuador border on December 11, 2006. Colombian officials stressed the move as sovereign in nature, compelled by "the inescapable need to eradicate illicit crops" that formed "an essential aspect of the fight against the global drug problem." For the Colombian government, the aerial dispersion campaign is a national security issue that is part of the effort to combat drug-related terrorism financing.

For its part, Colombia asserts that the ICJ lacks jurisdiction to entertain this case because Ecuador has pursued this case in other forums, namely in a series of bilateral talks and three scientific commissions since 2000. One of the bilateral scientific commissions found in favor of Ecuador, while the other two adjourned without conclusion. Colombia further suggests that US involvement in the matter makes the issue one more appropriately addressed under the auspices of the Organization of American States.

Questions to consider include the following:

- Is the International Court of Justice the best forum for these parties to find redress?
- To what extent, if at all, must a nation take responsibility for the direct or indirect effect of its actions when the effect crosses transnational boundaries?
- To what extent must these effects be proved before the acting nation can be held responsible or liable?
- Is the ICJ the proper forum to weigh the right to environmental integrity against the right to pursue security and drug control measures along one's borders?

## Bibliography

- “Environment and Human Health Assessment of the Aerial Spray Program for Coca and Poppy Control in Colombia,” Inter-American Drug Abuse Control Commission (CICAD) of the Organization of American States, Washington, D.C.; 31 March 2005.
- Organization of American States, “Note from the Ministry of Foreign Affairs of Ecuador on the Resumption of Spraying of Glyphosate and Auxiliary Substances in a Boarder Area Near Ecuador,” No. 4-2-312/06, 20 December 2006.
- Organization of American States, “Statement by the Minister of Foreign Affairs of Ecuador, Francisco Carrion Mena, to the OAS Permanent Council,” Washington, D.C., 9 January 2007.
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- “Plan Colombia: A Progress Report,” Congressional Research Service, The Library of Congress. 22 June 2005.

## UN Documents

- ICJ Press Release, No. 2008/5  
Application Instituting Proceedings,” No. 4-4-3/08, 31 March 2008.

## Additional Web Resources

- <http://www.icj-cij.org/docket/index.php?p1=3&code=ecol&case=138&k=ee> – Aerial Herbicide Spraying
- <http://www.haguejusticeportal.net/eCache/DEF/9/285.html> - Hague Justice Portal

## GEORGIA V. RUSSIAN FEDERATION: APPLICATION OF THE INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION

This case concerns one of the many controversies surrounding the newly independent states created by the dissolution of the Soviet Union. Georgia is one of these states. Two regions of Georgia, South Ossetia and Abkhazia, are subjects of significant territorial controversy. Although Georgia claims these regions as part of its sovereign territory, they are under the de facto control of local governments claiming sovereign statehood. With the aid of the Russian military, South Ossetia and Abkhazia have been in intermittent conflict with Georgia since the dissolution of the Soviet Union. Open military hostilities between Russian and Georgian forces in these territories ended with a peace agreement in 1992, which permitted Russian peacekeepers to remain in the contested territories.

The tensions between the regions again came to a head in 2008. On 7 August 2008, Georgian military forces entered the territory of South Ossetia, allegedly in response to a buildup of Russian military forces. On 8 August 2008, military forces from the Russian Federation invaded South Ossetia. A brief armed conflict occurred over the course of the next five days until a cease-fire was negotiated between the Russian and Georgian presidents. The Russian forces had expelled the Georgian military from all of South Ossetia and Abkhazia and had also pressed into Georgian territory. Later that month, only six months after many Western states recognized Kosovo as an independent state, Russia officially recognized South Ossetia and Abkhazia as independent states.

Georgia alleges that Russia's actions throughout the 1990s, and especially in the war of 2008, included the following acts, among others: dislocation of ethnic Georgians from their homes, killing of civilians, and refusal to allow ethnic Georgian refugees to return to their homes. Georgia claims that these acts of violence evidence a consistent and protracted pattern by the Russian government of the ethnic cleansing of these territories in violation of the Convention on the Elimination of All Forms of Racial Discrimination (CERD). Russia's actions are specifically alleged to have violated Articles 2 and 5 of the Convention. Both Georgia and Russia are parties to CERD without reservation (Russia is a party by succession, as the USSR was a party to the treaty, and Russia assumed the USSR's treaty obligations).

The Georgian government considers South Ossetia and Abkhazia to be independently administered territories within the overall sovereignty of Georgia, yet remains concerned about the rights of significant numbers of ethnic Georgians living in these territories. Georgia claims jurisdiction under Article 22 of CERD, which permits either party to a CERD dispute to refer the dispute to the ICJ under certain circumstances.

Russia's main point is that this case is not an issue of racial discrimination but of military aggression and self-determination. On the merits of the case, Russia argues that the principle of self-determination, embodied in the UN Charter and various international conventions, permits the separatists in South Ossetia and Abkhazia—both majorities—to secede from the state of Georgia. Russia also claims that the obligations of Articles 2 and 5 of CERD do not apply extraterritorially but are instead obligations only required of a state within its own sovereign territory. Additionally, Russia claims that the 2008 war began as a result of Georgian aggression in the contested territories, and that characterizing Russia as the aggressor in the war is a political response related to Georgia's expressed intentions to join the North Atlantic Treaty Organization (NATO).

Russia also contests the jurisdiction of the Court, arguing that the issues in controversy do not fall within Article 22 of CERD because they are not questions involving the application or interpretation of the treaty. Russia also notes that for the approximately 20 years of its independent existence, Georgia has failed to mention violations of CERD in Georgian-Russian relations or any Georgian communications with the UN or the Committee on the Elimination of All Forms of Racial Discrimination. Russia claims that referral to the ICJ is indicated in Article 22 of CERD as a last resort, utilized only after all other measures provided for under CERD (including referral to the Committee and negotiation between the parties) have been exhausted.

By a vote of 8 to 7, on 15 October 2008, the Court promulgated an order of provisional measures directing both Russia and Georgia to cease acts violating CERD and allow for humanitarian assistance in the contested territories. The Court noted that it has a basis for jurisdiction sufficient to order provisional measures but reserved a final determination on jurisdiction and on the merits of the case. This final determination is now before the Court.

Questions to consider include the following:

- How should the Court resolve the conflict between self-determination and territorial integrity?
- What is the scope of the Court's jurisdiction under Article 22 of the CERD?
- What is the scope of a state's obligations under the CERD?

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## UN Documents

ICJ Press Release 2008/23

ICJ Press Release 2008/35

International Convention on the Elimination of All Forms of Racial Discrimination (with special attention to Articles 2, 5 and 22)

## Additional Web Resources

<http://www.icj-cij.org/docket/index.php?p1=3&p2=1&code=GR&case=140&k=4d> – Application of the International Convention on the Elimination of All Forms of Racial Discrimination