



# 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)

### Spain v. Canada - Fisheries Jurisdiction Case (Historical)

On 9 March 1995, Canadian officials forcibly boarded and took control of the vessel *Estai*. The *Estai*, a trawler flying the Spanish flag, was fishing in international waters just beyond the border of Canada's Exclusive Economic Zone (EEZ) in the North Atlantic. The vessel was towed to Canada, where it and the ship's master were charged with violations of Canadian law. Canadian officials claimed that they found illegal catch and gear aboard the *Estai*. Spain responded by sending a war ship to international waters just outside Canada's EEZ, triggering Canada's positioning of its war ships just inside their EEZ and publicly warning Spanish ships away from the international waters of the North Atlantic. A standoff ensued when Spain subsequently sent fishing boats to the area under the protection of a Spanish gunboat. On 28 March 1995, the Spanish government filed an application with the International Court of Justice regarding the incident.

The over-fishing of the North Atlantic has long been a concern for those nations whose economies are heavily reliant on fishing in that area. Each nation has dominion and control over their EEZ. A country's EEZ is roughly defined as the area extending 200 nautical miles out from the nation's coastline. The flora and fauna of the sea however, do not correspond conveniently to the boundaries carefully carved out by international treaties. Fishing populations may straddle a border, living partially in the EEZ of one country and partially in international waters. Without conservation in international waters, coastal communities found that the stocks of fish in their EEZ's were being affected by over-fishing taking place in international waters. During the 1970s and 80s, the stocks in the North Atlantic became dangerously depleted and the international community addressed the issue via the International Convention for the Northwest Atlantic Fisheries, which was then replaced by the 1978 Convention on Future Multilateral Co-Operation in the Northwest Atlantic fisheries, which created the North Atlantic Fisheries Organizations (NAFO).

The NAFO pledges international cooperation and consultation with respect to the fisheries resources of the Northwest Atlantic for the purpose of exploring and exploiting, conserving and managing these resources. Canada was an original signatory to the Convention, while Spain became a participant by virtue of its admission to the European Economic Community in 1986. Article XVIII of the Convention allows for reciprocal rights of boarding and inspection of vessels, and the NAFO Commission is charged with allocating fishing quotas for the regulated area. There is however, an objection procedure. A country may object to a fishing quota allocated it by the NAFO, thus drastically raising the amount of fish they extract from the region.

Canada believed that NAFO members were misusing the objection provision of the Convention to over-fish the area. In response, the Canadian Parliament enacted Bill C-29. The score of the bill was set out by the Canadian Minister of Fisheries and Oceans, who said "the legislation gives [the] Parliament of Canada the authority to designate any class of vessel for enforcement of conservation measures. The legislation does not categorize whom we would enforce against. The legislation makes clear that any vessel fishing in a manner inconsistent with good, widely acknowledged conservation rules could be subject to action by Canada." The *Estai* was boarded and towed under this provision.

This matter was brought before the court in 1995. Canada objected to the Court's jurisdiction based on their filing of an exception to the acceptance of the Court's jurisdiction. The Court found that it did not, in fact, have jurisdiction over Canada and therefore the case was dismissed. For the purposes of the AMUN simulation, the parties and justices are to assume both sides have accepted the jurisdiction of the Court and review the merits of the case.

Spain has asked the Court to declare that the Canadian legislation does not to apply to Spain. In May 1995, the European Community and Canada reached an agreement relating to the NAFO; a portion of this agreement was the removal of Spain and Portugal from the list of countries to which Bill C-29 was to be applied. Canada now argues that there remains no issue before the Court on which to rule, as the parties have resolved the matter through diplomatic channels. Spain presses for the Court to review the applicability of a Canadian law governing its conduct in international waters.

Questions to consider on this issue include:

- Was it a violation of international law to board the *Estai*?
- Can domestic law apply to foreign vessels in international waters?
- How does the Law of the Sea Treaty, agreements of the North Atlantic Fisheries Organization and other relevant treaties apply and interact with national law in this case?

### Bibliography:

- Clayton, Mark, "Canada Reels In a Deal With EU Over Fish Take," *Christian Science Monitor*, 17 April 1995.
- De La Fayette, Louise, and Malcolm D. Evans, "The Fisheries Jurisdiction Case (Spain v. Canada), Judgment on Jurisdiction of 4 December 1998," *The International and Comparative Law Quarterly*, July 1999.
- Farnsworth, Clyde H., "North Atlantic Fishing Pact Could Become World Model" *The New York Times*, 17 April, 1995.

## UN Documents:

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Convention on Future Multilateral Co-Operation in the Northwest Atlantic Fisheries, 1978

United Nations Convention on the Law of the Sea; Provisions of the Convention Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks

Vienna Convention on the Law of Treaties, 1969

## Additional Web Resources:

[www.nafo.int/](http://www.nafo.int/) - North Atlantic Fisheries Organization

[www.oceanlaw.net](http://www.oceanlaw.net) – Internet Guide to International Fisheries Law

[www.un.org/Depts/los/convention\\_agreements/convention\\_agreements.htm](http://www.un.org/Depts/los/convention_agreements/convention_agreements.htm) - UN Law of the Sea, Conventions and Agreements

## Republic of the Congo v. France - Certain Criminal Proceedings in France

On 9 December 2002, the Republic of Congo filed an application with the ICJ to begin proceedings against the Republic of France to annul the investigation and prosecution measures being taken by French authorities against Congo for crimes against humanity and torture. Implicated in Frances' allegations were Congo's president, Mr. Denis Sassou Nguesso, and the Minister of the Interior, Mr. Pierre Oba. Also implicated was General Norbert Dabira, who held the position of Inspector General of Congo's armed forces. Congo asserted in their application that the President was requested as a witness and a warrant issued, which Congo found to be unacceptable, alleging an abusive application of universal jurisdiction and a failure to respect government officials' immunity from criminal proceedings.

The grounds for French domestic jurisdiction were stated to be universal jurisdiction, customary international law in regard to the charges of crimes against humanity, and French domestic code. This provides that France claims extra territorial jurisdiction in cases where the offense is contained within an international convention to which France is a party - such as the United Nations Torture Convention. Congo asserted that France was violating the principle of sovereignty, citing international law, which states: "the principle that a State may not, in breach of the principle of sovereign equality among all members of the United Nations...exercise its authority on the territory of another State".

Congo further suggests that by France issuing a warrant to examine the President as a witness in the criminal proceedings, France was in direct violation of the principle of diplomatic immunity. The Congolese characterized diplomatic immunity of a Head of State as "an international customary rule recognized by the jurisprudence of the court."

Also in its application, Congo indicated that it sought to find the jurisdiction of the Court with the agreement of France. This request was pursuant to the Rules of the Court which need the agreement of both parties regarding jurisdiction so that the ruling is applicable. Under its statute, the Court has no jurisdiction unless both states have consented to it. When Congo filed its application, it acknowledged

that the requisite jurisdictional basis for a case against France was lacking, but the "consent of France will certainly be given." Thus the Court forwarded the application to France. France consented to the request made by the Congo.

France did point out in reply, that its consent to jurisdiction was only in relation to the application filed by the Congo, and not to be thought to apply outside of the specific case at hand. Congo requested that the criminal proceedings be immediately suspended following the proceeding motions. Following the agreement by both sides to proceed in the case, the ICJ put on the list the case *Republic Of Congo v. Republic of France* and set the date for opening arguments the 28 April 2003.

Charges brought by Congo against France seem to stem from the ruling in a previous case, *Democratic Republic of Congo (DRC) v Belgium*. This case, much like the current one, challenged the legality of Belgian law concerning universal jurisdiction, and raised broader concerns about the jurisdiction of national courts over international crimes, especially if they are committed outside the territorial boundaries of the court in question. Though the Court decided that the Belgium warrant for the DRC Foreign Minister infringed upon the diplomat's immunity, the decision resolved little, and never settled the issue. Congo's filing of this application re-introduces the idea of international legal jurisdiction.

Questions to consider on this issue include:

- How do we interpret both the clause concerning immunity and the ruling in DRC v. Belgium?
- How do rulings in national criminal courts affect the sovereignty of other nations?
- Should the Court rule in favor of The Congo in regard to the legal precedent set out in DRC v Belgium, namely that it upheld the Foreign Minister's immunity while in office?
- How much weight do international rulings actually carry when it comes to specific instances of crimes against humanity and torture, as suggested by France in their case against certain individuals from the Congo?

## Bibliography:

Bekker, Peter H.F., "Prorogated and Universal Jurisdiction in the International Court" *The Congo v. France*, *ASIL Insights*, April 2003 <http://www.asil.org/insights/insigh103.htm>.

"Congo Fury at Death Probe," *BBC News*, 11 Jan 2007, [news.bc.co.uk](http://news.bc.co.uk).

Fox, Hazel, "The Resolution of the Institute of International Law on the Immunities of Heads of State and Government," 51 *International and Comparative Law Quarterly*, 119 (2002)

Roth, Kenneth, "The Case for Universal Jurisdiction," *Foreign Affairs*, Sep Aug 2001, [www.foreignaffairs.org](http://www.foreignaffairs.org).

## UN Documents:

Arrest Warrant of 11 April 2000, Democratic Republic of the Congo v. Belgium, Summary of the Judgment of 14 February 2002 Statute of the International Court of Justice with special attention paid to chapter 2.

United Nations Charter

United Nations Convention on Jurisdictional Immunities of States and Their Property, 2004

Vienna Convention on Diplomatic Relations, 1961

## Additional Web Resources:

[web.amnesty.org/pages/uj-index-eng](http://web.amnesty.org/pages/uj-index-eng) – Amnesty International page on Universal Jurisdiction  
[www.globalpolicy.org/intljustice/universal/univindex.htm](http://www.globalpolicy.org/intljustice/universal/univindex.htm) - Global Policy Forum page on Universal Jurisdiction  
[www.icj-cij.org/docket/index.php?p1=3&p2=3&code=cof&case=129&k=d2](http://www.icj-cij.org/docket/index.php?p1=3&p2=3&code=cof&case=129&k=d2) - All documents regarding the case Republic of the Congo v. France

## Costa Rica v. Nicaragua - Proceedings Instituted by Costa Rica against Nicaragua

Costa Rica and Nicaragua came to a bilateral agreement regarding the San Juan River in The Treaty of Limits, in 1858. While the Treaty of Limits grants sovereignty over the San Juan to Nicaragua, Costa Rica claims that it also grants them certain “important rights,” among these: the perpetual right of free navigation for commercial purposes; the right of Costa Rican boats to touch river banks where there is common navigation (without paying any dues); the right to navigate the river pursuant to Article II of the Cleveland Award; the right to navigate in official boats for supply purposes; and the right of non-interference where Costa Rica is entitled navigation of the San Juan River. Further international agreements between the two countries regarding this matter include the ruling of the Central American Court of Justice in 1916 and Article IV of the Agreement Supplementary to Article IV of the Pact of Amity, 1956.

The San Juan River forms an outlet of Lake Nicaragua on the Nicaragua-Costa Rica border and issues from the southwest end of the lake at San Carlos, the river passes El Castillo reaching the Caribbean Sea at An Juan del Norte (Greytown). To the right, it receives the San Carlos and Sarapiquí rivers. Near its mouth, it forms three main arms: the Juanillo (in the north), the San Juan proper and the Rio Colorado (in the South).

On 29 September 2005, Costa Rica submitted an Application Instituting Proceedings to the International Court of Justice (ICJ). In it, they cite a number of alleged violations of their rights of Navigation in the San Juan River. They claim the government of Nicaragua “imposed a number of restrictions on the navigation of Costa Rican boats and their passengers on the San Juan River.” Specifically: “[i]mposing charges on Costa Rican boats and passengers, requiring checkpoints at Nicaraguan military posts along the San Juan, prohibiting official Costa Rican supply boats to navigate the river, imposing timetables for river navigation, and limiting free moorage.” Costa Rica’s Application to the ICJ also notes a resolution passed in the Nicaraguan General Assembly imposing a 35% tax on Costa Rican goods if Costa Rica brought this matter to the ICJ.

Costa Rica seeks a ruling from the International Court of Justice that would order a stop to the Nicaraguan restrictions on the navigation of the San Juan River. Additionally, Costa Rica has asked the court to order reparations for economic hardship suffered as a result of the restrictions. Additional reparations have been requested for any unlawful punitive sanctions imposed by Nicaragua as a result of the dispute.

Costa Rica’s claim of ICJ jurisdiction is derived from the declarations of acceptance of the court’s jurisdiction made by Costa

Rica in February of 1973 and by Nicaragua in September of 1929; and additionally the Tovar-Caldera Agreement signed between the Parties on 26 September 2002. Under the Tovar-Caldera Agreement, both States agreed to a three year standstill period, during which Nicaragua maintained legal status while Costa Rica refrains from initiating action before the ICJ. Costa Rica claims that this period was ultimately unsuccessful in resolving the dispute over Costa Rica’s navigational rights in the San Juan River.

The ICJ set the deadline for Memorials and counter memorials, in its order dated 29 November 2005, the Court fixed 29 August 2006 as the time-limit for the filing of a Memorial by Costa Rica and 29 May 2007 as the time-limit for the filing of a Counter-Memorial by Nicaragua.

Questions to consider on this issue include:

- Does the ICJ have jurisdiction in this matter?
- Do the alleged Nicaraguan restrictions on navigation of the San Juan River constitute violations of the Treaty of Limits and other agreements signed by both countries?
- Can the Court recognize unlimited navigational rights to Costa Rica and still uphold the sovereignty of the San Juan River held by Nicaragua?

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“Central American River Row,” *BBC World Service*, 1 Oct 1998, [www.bbc.co.uk](http://www.bbc.co.uk).  
Coughlan, Geraldine, “Costa Rica Takes Dispute to Court,” *BBC News*, 4 Oct 2005, [www.news.bbc.co.uk](http://www.news.bbc.co.uk).  
“Courts & Tribunals: International Court of Justice (ICJ) Fixes Time-Limits for Filing of Initial Pleadings in the Dispute Regarding Navigational and Related Rights (Costa Rica v. Nicaragua)”, *Jus Cogens*, 7 Dec 2005, [www.juscogens.net/juscogens](http://www.juscogens.net/juscogens).  
“World Briefing Americas: Nicaragua: Envoy Recalled In River Spat,” *The New York Times*, 1 Oct. 2005.

## UN Documents:

Cleveland Award 1858  
International Court of Justice Press Release 20/2005  
International Court of Justice Press Release 25/2005  
Pact of Amity, 1949; Article IV of the Agreement Supplementary to Article IV, 1956  
Tovar-Caldera Agreement, 2002  
Treaty of Limits, 1858

## Additional Web Resources:

[www.juscogens.net/juscogens/2005/week49/index.html?3bff5550](http://www.juscogens.net/juscogens/2005/week49/index.html?3bff5550)  
– Jus Cogens information on the Costa Rica v Nicaragua case  
[www.icj-cij.org/docket/index.php?pr=651&p1=3&p2=1&case=133&p3=6](http://www.icj-cij.org/docket/index.php?pr=651&p1=3&p2=1&case=133&p3=6) – ICJ page on the Case  
[internationalwaterlaw.org/caselaw.html](http://internationalwaterlaw.org/caselaw.html) – International Water Law Project