

[Translation by the Registry]

**APPLICATION INSTITUTING PROCEEDINGS BY THE REPUBLIC OF HONDURAS  
AGAINST THE FEDERATIVE REPUBLIC OF BRAZIL**

1. The Republic of Honduras has the honour to submit a dispute to the International Court of Justice, pursuant to Article 36, paragraph 1, of the Statute and Article 38 of the Rules of Court. This dispute between the Republic of Honduras and the Federative Republic of Brazil relates to legal questions concerning diplomatic relations and associated with the principle of non-intervention in matters which are essentially within the domestic jurisdiction of any State, a principle incorporated in the Charter of the United Nations.

**The facts**

2. In June 2009, the President of the Republic of Honduras, José Manuel Zelaya Rosales, took the initiative of consulting the Honduran people with a view to reforming the Constitution by means of the convening of a constituent assembly. The purpose of this reform was to allow the President of the Republic to exercise more than one term of office, contrary to Articles 4, 42 (5), 237, 373 to 375 and others of the Political Constitution of 1982. Article 4 expressly provides that *“The form of government is republican, democratic and representative. It is exercised by three powers: Legislative, Executive and Judicial, which are complementary, independent, and not subordinate to each other. Alternation in the exercise of the Presidency of the Republic is obligatory. Violation of this norm constitutes a crime of treason against the Fatherland.”* (Annex 1.)

3. On 29 June 2009, a judge of the Criminal Division in Tegucigalpa ordered the immediate arrest of Mr. José Manuel Zelaya Rosales on suspicion of crimes against the “form of government”, treason against the Fatherland, abuse of authority and the usurping of powers to the detriment of the public administration and of the State of Honduras (Annex 2). Mr. Zelaya first travelled to other neighbouring countries in Central America, then returned secretly to Tegucigalpa, where he took refuge in the Brazilian Embassy, with an indeterminate number of Honduran citizens, on 21 September 2009.

4. The President of Brazil, Mr. Luis Inazio Lula da Silva, and the Brazilian Minister for Foreign Affairs have wrongly stated that the arrival of Mr. Zelaya and the group accompanying him at the Mission occurred without their prior knowledge. These statements have been categorically denied by Mr. Zelaya himself, who has indicated that “this was a personal decision taken in consultation with President Lula and Chancellor Amorim, and the [Brazilian] chargé d’affaires in Tegucigalpa” (Annex 3).

5. Since that date, Mr. Zelaya and his group have been using the premises of the Brazilian Embassy as a platform for political propaganda and thereby threatening the peace and internal public order of Honduras, at a time when the Honduran Government is making preparations for the presidential elections which are due to take place on 29 November 2009.

6. The Brazilian diplomatic staff stationed in Tegucigalpa are allowing Mr. Zelaya and his group to use the facilities, services, infrastructure and other resources in order to evade justice in Honduras, and to conduct illegal activities against the lawful and legitimate Government of Honduras by calling for insurrection by Honduran nationals against the constitutionally established authority.

7. Honduras expressed its concerns to Brazil in Note Verbale No.022-DSM of 22 September 2009 (Annex 4). Brazil has not seen fit to reply to that Note. Honduras is consequently filing this Application and reserves the right under Article 41 of the Statute of the Court to submit a request for the indication of provisional measures, with a view to putting an end to the disturbance that is being caused.

### **Grounds of the claim**

8. Article 2 (7) of the Charter of the United Nations states that nothing contained in the Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State. The régime governing the election of the President of the Republic, the performance of his office and the end of that office, as provided for in the Honduran Constitution of 1982, are solely within Honduran jurisdiction. The same is true of electoral rules and of judicial proceedings. Brazil, a Member of the United Nations, can find no support in the enforcement measures provided for in Chapter VII of the Charter, for the simple reason that Honduras is not subject to any such measure. The ending of Mr. Zelaya's office as President of the Republic, which took place in accordance with the constitutional provisions in force through the intervention of the legislative and judicial authorities of Honduras, is a matter falling solely under the domestic law of Honduras. This question lies outside the scope of international law.

9. Honduras is at present actively preparing for the presidential election in accordance with the Constitution and the laws of Honduras and has maintained the timetable established during the Zelaya presidency. This shows that the matter is one which is strictly internal to Honduras falling under Article 2 (7) of the Charter, permitting of no intervention by a third State. The electoral process is taking place according to democratic and constitutional rules, with all their accompanying safeguards. There is no legal reason supporting intervention, be it by commission or omission, by foreign diplomatic missions in Tegucigalpa, let alone the attempt to shield individuals of Honduran nationality from obligations arising under domestic law. Brazil has not even informed Honduras of the number of persons it is accommodating in its Mission, their identities or the basis on which it is allowing them to stay there. The democratic carrying through of the electoral process to completion is an extremely important goal of the Government of Honduras, which can in no case forgo pursuing it to its conclusion.

10. Brazil is using the premises of its Mission in Tegucigalpa for purposes completely alien to the provisions of the Vienna Convention on Diplomatic Relations, having entered into force on 24 April 1964, and in particular Article 3 thereof.

11. Moreover, Article 41 of that Convention provides that all persons enjoying privileges and immunities, those persons being of Brazilian nationality in this instance, have "the duty . . . to respect the laws and regulations of the receiving State. They also have a duty not to interfere in the internal affairs of that State", Honduras in this instance.

12. In no way are Brazil's actions justifiable under the American Convention on Diplomatic Asylum, signed at Caracas on 28 March 1954, to which Brazil has been a party since 25 June 1957. Honduras is a signatory to the Convention.

## **Jurisdiction of the Court**

13. In accordance with Article 36, paragraph 1, of the Statute, the Court has jurisdiction pursuant to Article XXXI of the American Treaty on Pacific Settlement, signed on 30 April 1948 and, under the terms of Article LX thereof, officially called the “Pact of Bogotá”, ratified without reservation by Honduras on 13 January 1950 and by Brazil on 9 November 1965.

## **The claim**

14. Honduras respectfully requests the Court to adjudge and declare that it has jurisdiction to adjudicate the dispute between Honduras and Brazil and that the Application of Honduras is admissible.

15. Honduras respectfully requests the Court to adjudge and declare that Brazil does not have the right to allow the premises of its Mission in Tegucigalpa to be used to promote manifestly illegal activities by Honduran citizens who have been staying within it for some time now and that it shall cease to do so. Just as Brazil rightly demands that the Honduran authorities guarantee the security and inviolability of the Mission premises, Honduras demands that Brazil’s diplomatic staff stationed in Tegucigalpa devote themselves exclusively to the proper functions of the Mission and not to actions constituting interference in the internal affairs of another State.

16. While the primary purpose of this Application is to secure a declaration that Brazil has breached its obligations under Article 2 (7) of the Charter and those under the 1961 Vienna Convention on Diplomatic Relations, the Government of Honduras reserves the right to claim reparation for any damage resulting from the actions of Brazil, of its Mission, and of the Honduran persons sheltered by it in the Mission.

17. Pursuant to Article 31 of the Statute of the Court and Article 35, paragraph 1, of the Rules of Court, the Republic of Honduras gives notice of its intent to exercise the power to choose a judge *ad hoc*.

18. Honduras reserves the right to amend and supplement the terms of the present Application.

19. Honduras reserves the right to file a request for the indication of provisional measures should Brazil not immediately put an end to the disturbance caused to internal order in Honduras.

## **Annexes**

1. Article 4 of the Political Constitution of the Republic of Honduras of 1982.
2. Order by a judge of the Criminal Division in Tegucigalpa dated 29 June 2009.

3. Communiqué from the Honduran Ministry of External Relations dated 24 September 2009.
4. Note Verbale No. 022-DSM from Honduras dated 22 September 2009

The Hague, 28 October 2009

*(Signed)* Julio Rendón BARNICA,  
Ambassador of the Republic of Honduras in The Hague  
Agent of the Government of the Republic of Honduras

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