9 Chapter Nine
The International Court of Justice (ICJ)

Purview of the International Court of Justice

The International Court of Justice (ICJ) is the principal international judicial body of the United Nations. The two major roles of the ICJ are 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

Application of the Interim Accord of 13 September 1995 — The Former Yugoslav Republic of Macedonia v. Greece - 2008

This is a historical case. For the purposes of the simulation, in accordance with AMUN rules and procedures, please note that the historical timeline for this case will stop at 1 December, 2011. Any and all updates to this case after 1 December, 2011 will not be relevant to the AMUN simulation, nor considered in hearing of case.

On 17 November 2008, the former Yugoslav Republic of Macedonia (Macedonia) instituted proceedings before the International Court of Justice against the Hellenic Republic (Greece) when Greece objected to Macedonia's April 2008 application to join the North Atlantic Treaty Organization (NATO). In its application instituting proceedings, Macedonia asks the International Court of Justice to recognize that Greece has violated the "binding obligation under international law" it undertook with the signing of the United Nations Interim Accord on 13 September 1995 to not object to the application by or membership of Macedonia in "international, multilateral and regional organizations and institutions" of which Greece was already a member. In its application, Macedonia requests that the Court order Greece to immediately "comply with its obligations under Article 11" of the Interim Accord and "to cease and desist from objecting in any way, whether directly or indirectly" to its membership in the North Atlantic Treaty Organization and "any other international, multilateral and regional organizations and institutions" of which Greece is a member. Macedonia brings this case to the Court to preserve the ability of an independent State to exercise its rights as such, which includes pursuing membership of international organizations.

This case stems from a centuries-old naming dispute, the vestiges of which can be traced to antiquity and the Roman conquest of Greece. In more recent times, in the aftermath of the Second World War, the People's (later Socialist) Republic of Macedonia was established as a federal entity within the Federal People's Republic of Yugoslavia. With its declaration of independence from Yugoslavia on 8 September 1991, the Socialist Republic of Macedonia took on the constitutional name of the Republic of Macedonia. Throughout this time, Greece stridently opposed the use of "Macedonia" in this Republic's name, concerned that it presaged a claim on Greece's coastal region of Macedonia. Greece continued to express opposition to the use of "Macedonia" in this new Republic's name in Macedonia's application to the United Nations, the European Community, and a number of other international organizations. On 7 April 1993, the United Nations Security Council (Resolution 817) recommended the admission as a member of the United Nations "this State being provisionally referred to for all purposes within the United Nations as 'the former Yugoslav Republic of Macedonia.'" In its recommendation, the President of the Security Council specifically articulated that the use of the former Yugoslav Republic of Macedonia "merely reflected the historical fact that it had been in the past a Republic of the former Socialist Federal Republic of Yugoslavia." The Security Council fully considered this designation only temporary until the final settlement of the naming dispute with Greece. The United Nations General Assembly agreed to the recommendation the following day in Resolution 225. In the face of heightened tensions between Macedonia and Greece over the continuing naming dispute, both nations signed the United Nations Interim Accord (Interim Accord) on 13 September 1995. Signed to formalize bilateral relations between Macedonia and Greece, the Parties committed to continuing negotiations on their naming dispute under United Nations auspices. In the intervening time, under Article 11 of the Interim Accord, Greece agreed not to object to the application by or the membership of Macedonia in international organizations of which Greece was a part, as long as Macedonia submitted its applications for membership under the reference name provided for in the United Nations Security Council Resolution 817.

In April 2008, Macedonia submitted an application to join NATO using the reference name stipulated according to Resolution 817. In response, Greek Permanent Representative Ambassador John Mourikis wrote in an official diplomatic communication: "in view of the failure to reach a viable and definitive solution to the name issue, Greece was not able to consent to the Former Yugoslav Republic of Macedonia being invited to join the North Atlantic Alliance." Greece stated that the resolution of the "name issue" was an "essential precondition" for Greece's acceptance of Macedonia's membership in NATO. Membership in NATO requires the consent of all existing members, resulting in an effective veto of Macedonia's application.

In its application before the Court, Macedonia stipulates that it acceded to its obligations under the Interim Accord on 13 September 1995 by submitting its application for membership in NATO with the designation "the former Yugoslav Republic of Macedonia." Macedonia highlights the finding of the Arbitration Commission of the Conference on Yugoslavia which took the view: "the Republic of Macedonia has, moreover, renounced all territorial claims of any kind in unambiguous statements binding in international law; that the use of the name 'Macedonia' cannot therefore imply any territorial claim against another State." Furthermore, Macedonia points out that it has secured membership in a number of "international, multilateral and regional organizations and institutions" including: the Organization for Security and Co-operation in Europe; the Council of Europe; the Organization for the Prohibition of Chemical Weapons; the European Charter for Energy; the Permanent Court of Arbitration; and the World Trade Organization. Its application for membership in the North Atlantic Treaty Organization should be treated no differently.

Macedonia asserts that both the Statute of the Court and the Interim Accord provide jurisdiction in the case. According to Article 36 of the Statute of the Court, "the jurisdiction of the Court comprises all cases which the Parties refer to it and all matters specifically provided for…in treaties and conventions in force." Furthermore, according to Article 21 of the Interim Accord, "any difference or dispute that arises between the Parties concerning the interpretation or implementation…may be submitted by either of them to the International Court of Justice."

In response to Macedonia's application instituting proceedings before the Court, Greece responds that this case is based on nothing more than an effort by Macedonia to lodge this case before the Court in order to have the Court "usher the fully-qualified [former Yugoslav Republic of Macedonia] into the organizations it seeks to join, implicitly deciding on its eligibility in place of the Member States whose collective function this is." With Greece's decision to reject Macedonia's application for membership in NATO, Greece was fulfilling its duties as a Member of NATO. Greece points to Article 22 in the Interim Accord which "expressly preserves from the operation of the other provisions of the Interim Accord, including Article 11(1), 'the rights and duties resulting from bilateral and multilateral agreements already in force that the Parties have concluded with other States or international organizations.'" If the Court found in favor of Macedonia, it would be adjudicating upon the conduct of a NATO Member State acting as an independent State and independent Party to an international, multilateral and regional organization and institution. Greece refers the Court to its 1948 Advisory Opinion in which the Court found that it "could not examine the internal processes of a member State which lead to a decision on a question of membership" of States to the United Nations. In this case, while the conditions for joining the United Nations are relatively open, the North Atlantic Treaty Organization requires "considerable commitments on the part of acceding States." Finally, Greece accuses Macedonia of acting "repeatedly in disregard of the Interim Accord" when, after admission to "international, multilateral and regional organizations and institutions," the 'former Yugoslav Republic of Macedonia' "reverted back to its 'constitutional' name." If the Court allows Macedonia to move forward in this manner, it "would have the result of overriding the agreed process of [name] settlement and further undermining the Interim Accord."

Greece rejects Macedonia's stipulation of jurisdiction for the International Court of Justice in this case. This present case hinges on an attempt to adjudicate the "name issue" – which, as stated in Article 5 of the Interim Accord, falls outside the jurisdiction of the Court. Furthermore, Greece points to Article 22 of the Interim Accord, which states that the Accord "does not infringe on the rights and duties resulting from bilateral and multilateral agreements already in force that the Parties have concluded with other States or international organizations."

In successfully adjudication this case, the Court must consider two competing and fundamental claims. First, does the International Court of Justice have jurisdiction to consider the Application submitted by Macedonia to seek redress in the manner outlined above? Second, if the question of jurisdiction is properly found, does the action taken by Greece – prompting the Application filed by Macedonia – fall within the prerogatives of an independent State operating in due course with its obligations and responsibilities as a member of "international, multilateral and regional organizations and institutions" or does this action merely reflect the latest clash in a long-standing and intractable disagreement regarding the "name issue" between Greece and Macedonia?

Questions to consider include the following:

- Does the United Nations Interim Accord impose a binding obligation under international law upon its Parties?
- Both Parties point to different and conflicting Articles in the Interim Accord as the controlling language that should govern the ruling by the Court on the dispute between the Parties. Once presented with the facts of the case, which Article do you believe contains the controlling language in this case?
- Provided that it is generally accepted that an independent State's actions as a sovereign nation are universally respected with very few exceptions, whose argument regarding the exercise of state prerogative do you find most compelling?

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UN Documents

S/RES/817
S/RES/845
S/2008/346

ADDITIONAL WEB RESOURCES

www.icj-cij.org/homepage/index.php – International Court of Justice

SOVEREIGNTY OVER PEDRA BRANCA/PULAU BATU PUTEH, MIDDLE ROCKS AND SOUTH LEDGE — MALAYSIA V. SINGAPORE - 2003

This is a historical case. For the purposes of the simulation, in accordance with AMUN rules and procedures, please note that the historical timeline for this case will stop at 1 May, 2008. Any and all updates to this case after 1 May, 2008 will not be relevant to the simulation, nor considered in hearing the case.

On 9 May 2003, a Special Agreement entered into effect between Malaysia and the Republic of Singapore (Singapore) through which the Parties asked the International Court of Justice to resolve a long-standing territorial dispute over an island formation at the entrance to the South China Sea consisting of Pulau Batu Puteh (Pedra Branca) and two additional features, Middle Rocks and South Ledge ("the three features"). Under this Special Agreement, both Parties accede to this Court's jurisdiction to resolve their dispute. In their case before the Court, each nation points to several sources to justify their claim of sovereignty over the three features. On these merits, the Court must determine whether Malaysia or Singapore has sovereignty over the three features, individually or collectively.

Malaysia claims the right of sovereignty over Pulau Batu Puteh (Pedra Branca) due to numerous factors – the clearest being that the island of Pulau Batu Puteh (Pedra Branca) lies less than eight nautical miles from Malaysia while its distance from Singapore is over 25 nautical miles. Malaysia points to four additional elements that together justify its original title of sovereignty over Pulau Batu Puteh (Pedra Branca). First, in the Crawford Treaty, signed in 1824, the Sultanate of Johor (the predecessor state to Malaysia) ceded to Britain "in full sovereignty and property" Singapore and the islands lying within ten geographic miles (11.52 US miles) of its coast. Pulau Batu Puteh (Pedra Branca) falls outside this range. Second, in 1844, the British sought the permission of the Sultanate of Johor for the construction of a lighthouse on Pulau Batu Puteh (Pedra Branca). Finished in 1854, this is the same lighthouse used in Singapore's claim of sovereignty over this island. Had the British recognized Pulau Batu Puteh (Pedra Branca) as part of the territory the Sultanate had ceded to them in the 1824 Treaty, the British would not have sought the Sultanate's permission for the lighthouse's construction. Third, international law does not recognize that the construction and operation of a lighthouse establishes the sovereignty of the operating nation over the land occupied by the lighthouse – regardless of how long the arrangement may persist. Finally, Singapore did not assert the prerogative of sovereignty over Pulau Batu Puteh (Pedra Branca) in a territorial waters boundary settlement in 1927 or in a later agreement in 1973. In fact, before the mid-1990's, Singapore produced no map indicating Pulau Batu Puteh (Pedra Branca) was a part of Singapore.

Furthermore, Malaysia asserts that Singapore's claims of sovereignty over Middle Rocks and South Ledge is invalid because it dates from 1993 and is not based on any form of governmental activity, but rather their relative proximity to Pulau Batu Puteh (Pedra Branca). Conversely, Malaysia states that it has actively exercised their sovereignty over the three features both in the context of Malaysia's control over the wider range of islands in the region and the use of Malaysian maritime areas in the grant of oil concessions and other bilateral treaties of delimitation. As such, according to Malaysia, if the Court fails to recognize Singapore's claim of sovereignty over Pulau Batu Puteh (Pedra Branca), this court cannot justify Singapore's claim over the Middle Rocks and South Ledge islands.

Singapore submits its claim of sovereignty over Pedra Branca (Pulau Batu Puteh) by highlighting that, in the context of this dispute, Singapore is the successor in title to the United Kingdom. Further, over a period of 150 years, Singapore has administered Pedra Branca (Pulau Batu Puteh) as part of its territory without any protest or challenge by Malaysia until the publication of a map the "Territorial Waters and Continental Shelf Boundaries of Malaysia" in 1979 that included the island with Malaysia's territorial waters.

Singapore asserts its claim of sovereignty with several additional points. First, Singapore points to the succession of actions and events surrounding the planning, construction, operation and maintenance of the Horsburgh Lighthouse on Pedra Branca (Pulau Batu Puteh) as evidence that Singapore effectively and peacefully exercised State authority after taking possession of the island. Second, Singapore highlights Malaysia's recognition of Singapore's sovereignty over Pedra Branca (Pulau Batu Puteh), both expressly by Malaysia's official acts and implicitly by Malaysia's persistent silence in the face of Singapore's acts of sovereignty, such as the number of official maps published by the Malaysian government which expressly recognized Pedra Branca (Pulau Batu Puteh) as part of Singapore. Third, in a letter dated 21 September 1953, the Acting State Secretary of Johor declared to the Colonial Secretary of Singapore, that "the Johore Government does not claim ownership of Pedra Branca" (Pulau Batu Puteh). Singapore insists that such a disclaimer is legally binding on Malaysia and must be given effect. Fourth, Singapore insists that Middle Rocks and South Ledge are minor geographical features found very near to Pedra Branca (Pulau Batu Puteh) and must belong to the State adjudicated to have sovereignty over Pedra Branca (Pulau Batu Puteh).

At its core, this case requires the Court to make a final determination as to the competing claims of territorial sovereignty advanced by both parties to this case. In successful adjudication of this case, the Court must consider to what extent international law and the past actions (or inactions) of the participating parties provide the controlling precedent as they relate to the ability of a nation to successfully assert a claim of territorial sovereignty.

Questions to consider include the following:

- Both Parties to this dispute point to the actions of predecessor entities that remain binding on present nations. To what extent should the actions of predecessor entities bear on this Court's decision making?
- According to international law and custom, the claim of national sovereignty often depends on past actions by a State. Which Party's past actions demonstration a greater claim of national sovereignty?
- Do you consider Pulau Batu Puteh (Pedra Branca) and the two additional features, Middle Rocks and South Ledge ("the three features") to be one inclusive unit or three separate and distinct

geographic entities? How does that affect your consideration of each Party's claim of sovereignty?

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Additional Web Resources

www.icj-cij.org/homepage/index.php – International Court of Justice

Armed Activities on the Territory of the Congo — Democratic Republic of the Congo v. Uganda - 1999

This is a historical case. For the purposes of the simulation, in accordance with AMUN rules and procedures, please note that the timeline for this case will stop at 1 December, 2005. Any and all updates to this case after 1 December 2005 will not be relevant to the simulation, nor considered in hearing of the case.

In 1997, President Laurent-Desire Kabila deposed Zairean dictator Mobutu-Ssese Seko, and came to power with the assistance of the Ugandan and Rwandese militaries. Following his ascent to power however, Kabila was unable to remove Ugandan and Rwandese troops from the Congo. In August of 1998, the Congo alleged that Ugandan forces invaded and then captured and occupied Congolese towns and territory in direct defiance of Kabila's decision that Rwandese and Ugandan forces should leave the Congo. The Congo further alleged that Uganda recruited, funded, trained, equipped, and supplied armed Congolese groups opposed to the Kabila government.

As a result, on 23 June 1999, the Democratic Republic of the Congo ("the Congo") instituted proceedings against The Republic of Uganda ("Uganda") in respect to a dispute concerning "acts of armed aggression perpetrated by Uganda on the territory of the Democratic Republic of the Congo, in flagrant violation of the United Nations Charter and of the Charter of the Organization of African Unity." The Congo bases its case on the armed aggression it has faced by Uganda and asserts that it has exhausted its efforts to secure a peaceful solution before bringing the matter to the International Court of Justice ("the Court").

The Congo submitted three claims in its application to the Court. First, that Uganda had violated various principles of international and customary law by its military and paramilitary activities against the Congo. Second, that Uganda had violated its human rights obligations and failed to prevent human rights abuses perpetrated by persons under Uganda's control. Third, that Uganda violated conventional and customary law by exploiting and pillaging Congolese resources.

Uganda responded to the claims of the Congo with three affirmative defenses. First, through 11 September 1998, the Congolese government consented to the presence of Ugandan troops in the Congo, as well as to their Safe Haven capture of several Congolese towns. Second, from 11 September 1998 through July 1999, Ugandan forces in the Congo acted in justifiable self-defense. Third, that after July 1999, the Congolese government had consented to the presence of Ugandan soldiers in the Congo by virtue of the Lusaka Agreement, which had been signed on 10 July 1999, by the Congo and Uganda as well as others, calling for a ceasefire in the Congo.

Uganda filed three counter-claims alleging first that the Congo had acted inconsistently with the prohibition on the use of force under Article 2(4) of the UN charter and under customary international law, as well as in violation of the nonintervention norm. Second, that Congolese attacks on the Ugandan diplomatic personnel and premises, as well as on Ugandan nationals, were inconsistent with the Congo's obligations, particularly under the 1961 Vienna Convention on Diplomatic Relations. Third, the DRC violated the terms of the Lusaka Agreement.

The Congo asserts that the Court has jurisdiction in this case because the Congo (formerly Zaire) had previously recognized jurisdiction in a declaration from 8 February 1989. The declaration stated that in "accordance with Article 36, paragraph 2, of the Statute of the International Court of Justice: The Executive Council of the Republic of Zaire recognizes as compulsory ipso facto and without special agreement, in relation to any other State accepting the same obligation, the jurisdiction of the Court in all legal disputes...." Uganda accepts the jurisdiction of the Court by citing Article 80 of the Rules of the Court in filing their counter-claim.

The Congo requests that the court declare that Uganda has committed: acts of aggression contrary to Article 2 (4) of the Charter; repeated violations of the Geneva Conventions of 1948 as well as their protocols of 1977; deliberately violating the provision of Article 56 of the Additional Protocol of 1977 by taking forcible possession of the Inga

hydroelectric dam; violating the Convention on International Civil Aviation and the Hague Convention for the Unlawful Seizure of Aircraft and the Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation by shooting down a Boeing 727, property of Congo Airlines, and causing the death of 40 civilians; and reparations for all damage inflicted upon them as a result of the armed activities.

Uganda requests that the Court declare the request of the Congo relating to activities or situations involving the Republic of Rwanda be declared inadmissible; that the allegations that Uganda is responsible for various breaches of international law be rejected; that the counter-claims presented are upheld; and to reserve the issue of reparation in relation to the counter-claims for a subsequent stage of proceedings.

Questions to consider include the following:

- Does the Court have jurisdiction in this case?
- What other Decisions from the Court may influence this case?
- Was the Ugandan military action in violation of the UN Charter?
- Did Uganda violate human rights and international humanitarian laws?
- Does Congo have the right to claim violations of territorial sovereignty if Ugandan troops were welcomed by a former President of Congo?

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Statute of the International Court of Justice

The United Nations Charter

The Charter of the Organization of African Unity

Universal Declaration of Human Rights

The Geneva Conventions of 1949

The New York Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The Montréal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation

The Lusaka Agreement