Chapter VII.
The International Court of Justice

The International Court of Justice currently has three cases on its docket, as described below. Additional cases may be added by the AMUN Secretariat, or at the recommendation of any participating delegation and the Secretary General. If cases are added, background information will be distributed to all delegations participating in the cases as either judge or advocate . Please note that this background is intended only as a brief outline of the issues to be argued before the Court. Significant legal research will be required of the Representatives involved in cases before the Court, either as Advocates or Judges. Representatives should refer to the *AMUN Rules and Procedures* Handbook, *Chapter IV The International Court of Justice* for detailed information on preparing for ICJ cases.

Background Research

Nauru v. Australia (1989): Dispute on the rehabilitation of an island nation after colonial mining

The Republic of Nauru hereinafter "Nauru" sought adjudication by the International Court of Justice ICJ in with the intention of settling a dispute with the Commonwealth of Australia hereinafter "Australia" regarding the "rehabilitation of certain phosphate lands worked out before Nauruan independence." Since both States agreed to the compulsory jurisdiction of the Court without any relevant reservation, the rendered judgment by the justices in this case is understood to be final and binding upon both of the parties to the dispute.

Nauru, a modest island in proximity to Australia's northeastern coast, was annexed by Germany in as the "Imperial German Protectorate of the Marshall Islands" and established as such by the Anglo German Convention of April . By , extensive phosphate deposits were discovered on Nauru and on nearby Ocean Island, which occasioned the German Jaluit Gesellschaft company to commence ninety four years of mining operations on Nauru in . Additionally, by consent of the Imperial Chancellor Germany formed a partnership with the United Kingdom on December to enable strict exploitation of the phosphate deposits on both Nauru and Ocean Island.

Australia, which had occupied Nauru after the First World War, expressed a desire after the war to annex Nauru from German possessions in the Pacific Rim in order to gain control over the phosphate deposits. At the Versailles Convention of victor States principal victor States after World War I were the United States, the United Kingdom, France, and Italy , however, it was agreed that Nauru, along with other German colonies, would be placed under the Mandate system pursuant to Article of the League of Nations' Covenant. As stipulated under the Covenant, the Mandatory undertook to "promote to the utmost the material and moral well being and the social progress of the inhabitants of the territory subject to the present Mandate." The mandate for Nauru was established December and "conferred" to the United Kingdom as for its administration by the League.

Subsequently, the British, in response to Australia's desire to obtain partial control over Nauruan phosphate deposits, signed an agreement with the governments of Australia and New Zealand on July with the express intention of allowing the mining of the phosphate deposits on Nauru. A Board of Commissioners was created, consisting of three members one appointed by each Government in whom title to the phosphate deposits would be vested. These States were thus granted priority access to Nauruan phosphate deposits, at a price which was to be set no higher than was necessary to cover the costs of mining and administration. Nauru argues, however, that this tripartite agreement was in violation of the confirmed Mandate for Nauru from League's Council. Nauru claims that this was specifically in direct violation of Article of the established Mandate, wherein the thirteenth provision "binds itself each government party of the Agreement not to do or to permit any act or thing contrary to or inconsistent with the terms and purpose of this Agreement," thus establishing a priority over all other purposes.

The Agreement was ratified by the legislative branches of each state Australia, New Zealand and the United Kingdom, but this was subject to the provisions of Article of the Covenant of the League of Nations. Moreover, approved amendments to the Agreement in stipulated that governing power with respect to the territory of Nauru was vested in the Government comprising the three powers with powers of legislation and disallowance vested exclusively in that Government. Contrary to this, the Australian parliament had been the major drafter of all legislation for Nauru from to without formal consent from the United Kingdom or from New Zealand; thereby effectively rendering Australia as the governing state of the island.

Furthermore, after Japanese occupation of Nauru during the Second World War, Australian forces retook the island in , bringing Nauru under the trusteeship system established by the UN Charter. The Trusteeship Agreement under the Charter did not vary much in

comparison to the League's Mandate system, since all three governments party to the Agreement on Nauru continued their administrative authority over the island as the joint Authority of the Territory, while the actual, day to day administration was vested in the Government of Australia. However, according to Nauru's Application to the ICJ, for Australia to fully administer the region, all three governments party to the Trusteeship Agreement had to recognize Australia as the actual administrator of Nauru. This was not agreed upon until November , when all three governments party to the Agreement proclaimed Australia's actual governing authority. Thus, the trusteeship system formalized Australia's recognition as the sole administrator and authority over the island in until Nauruan independence on January . This did not, however, extend Australia's authority to the phosphate industry including the operations, ownership and control of that industry ; phosphate royalties; or the ownership and control of phosphate bearing land, as stipulated by Article a of the Agreement; the latter superseding the Agreements of and .

Given Australia's historical concern since World War I, when the Nauruan people sought greater control over the phosphate industry they agreed to give precedence to the partner governments. This took the form of Nauru Island Phosphate Industry Agreement November dealing with the arrangements for the future operations of the industry. This agreement required that phosphates be supplied exclusively to the partner governments and assumed Nauru of liabilities with respect to the phosphate industry.

The current dispute arises from Nauru's claim that, from until July , the benefit by the Nauruans from phosphate was much lower than it should have been because all three governments, but principally Australia, procured the real benefit of phosphate mining. This was done in such a way that Australia's agricultural sector profited from its massive excavation operations, rendering approximately one third of the island completely useless for habituation, agriculture, or any other purpose unless and until rehabilitation was carried out. Thus, Nauru claims that Australia, as independent administrator of the island under the Trusteeship Agreement, accelerated the potential exhaustion of the phosphate in order to ensure that it was mined out before the British Phosphate Commissioners concession expired in . This was done without any mention of legislative nor contractual provisions for the rehabilitation of those lands. Nauru further argues that the government of Australia has failed to make adequate and reasonable provision for the long term needs of the Nauruan people, and in particular has not restored the island of Nauru to a reasonable level for habituation by the Nauruan people as a sovereign nation. This contradicts the principles of the Trusteeship Agreement which requires the Administering Authority to ensure that, if any conflict arises between the needs of the inhabitants and the expansion requirements of the phosphate industry, the needs of the inhabitants must take precedence. This is contrary to the BPC's view, supported by the Administering Authority, that there was no obligation to pay phosphate royalties to the Nauruan people nor to replant trees, or otherwise to restore the land to a cultivable state.

Although Nauru fully accepted responsibility in respect of land mined subsequently to July , it claims that prior to that date it had not received the net proceeds; thus, Nauru contends that the three Governments should bear responsibility for the rehabilitation of land mined prior to July . This is in order to seek what was, in the opinion of the Nauruan people, a just settlement of their claims, contrary to the Australian contention of a just settlement provided by the comprehensive Phosphate Agreement concluded prior to Nauruan Independence that cleared the Partner Governments of any responsibility for the rehabilitation of Nauru.

In thinking about this case, justices should consider reviewing the tripartite ordinance that set out the terms for mining leases to be concluded with the Nauruan landowners. These terms avoided any reference to compensation or rehabilitation. Germany, prior to the First World War, had set a precedent by creating provisions for compensation to the Nauruan landowners for the reduced value of their lands as a result of mining; thus putting into question Australia's administration in relation to the UN trusteeship system and international customary law as a whole. This occurred when Australia failed to comply with applicable international standards in respect to the preparation for and transfer of control and administration of territory by a predecessor. In addition to the evidence displaying the decay of Nauruan soil due to extensive mining by Australian authorities, justices should determine the possible breaches committed by Australia of the UN Charter, the Universal Declaration of Human Rights and the International Bill of Rights. The relief sought by Nauru implies a declaration by the Court that Australia has incurred an international legal responsibility and restitution or other appropriate reparation to Nauru for the damage and prejudice suffered should be forthcoming. The claim refers to Australia's alleged failure to comply with international standards recognized as applicable in the implementation of the principle of self determination in the UN Charter, and its alleged abuse of its rights over the Territory of Nauru and with respect to the Nauruan people, and, by reason of its improper and arbitrary conduct as Administering Authority in Nauru, allegedly engaging in acts of maladministration wrongful under international law.

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Additional Web Resources:

www.countrywatch.com search for "Nauru," with particular emphasis on the Economy

www.un.org, "United Nations Treaty Series"

Hungary v. Slovakia (1994): Dispute over the finishing of treaty obligations

The Hungarian People's Republic Hungary and the Czechoslovak People's Republic Czechoslovakia entered into the Treaty of September concerning the construction and operation of the Gabcíkovo Nagymaros System of Locks and Dams Treaty . Under the Treaty, the system of locks was to be situated between Bratislava, Slovakia then, Czechoslovakia , and Budapest, Hungary, with a total distance of kilometers. The intention of this system was to obtain a high utilization of the area's water resources. In accordance with the agreement, a Joint Contractual Plan was created to provide the construction, financing, technical specifics, and management of the works on a joint basis in which both parties would participate in an equal measure.

In , Hungary requested that both parties slow down the work being done on the project and to postpone commencing the operation of power plants associated with the project. The timetable was altered once more when both parties agreed to accelerate the progress of the project by a Protocol on February . Then, on May , the Hungarian Government bowed to intense internal pressure from environmental activists and decided to suspend the works at one site pending the completion of various studies, which were estimated to finish by July . The Hungarian portion of the project was again postponed until October , and then abandoned on October .

As a result of the postponements of the project by Hungary, the parties entered into negotiations to resolve the problems with the Treaty. As a precaution, Czechoslovakia also investigated alternative options to the project. One option created was labeled Variant C. Variant C was a method of maximizing the use of the Danube River in the event that the Treaty was not going to be fulfilled by both parties. Because of the continued postponements of the Treaty, the Czechoslovakian government then enacted Variant C in November . On May the government of Hungary effectively canceled the Treaty by sending a Note Verbale to the Czechoslovakian government, the government in turn began further work in Variant C later that year.

The Republic of Slovakia became a state in January of and in the Republic of Slovakia filed suit in the International Court of Justice against the Republic of Hungary. Both parties agreed upon the jurisdiction of the Court, thus there was no question of jurisdiction for this case. In , an agreement was signed which implemented a temporary water management regime for the Danube River between the parties. Under this agreement the parties involved set a date to expire pending the first judgment of the court in . The International Court of Justice released its decision; because of this the water management agreement was officially void. The judgment stated that the parties involved were both in violation of the Treaty. Hungary was in violation of international law because it had not canceled the Treaty when it had canceled work on its section of the project, and did not invoke the entitled negotiations with Slovakia as provided for in the Treaty. Slovakia was found to be in violation of international law insofar that it began the operation of its section of the project unilaterally in when, as stated above, it also should have entered into negotiations with Hungary. Also in the Court's judgment the parties must begin negotiations to decide the modalities of the judgment.

In the parties entered into negotiations to resolve the dispute, as ordered by the Court. Then in September, Hungary postponed the negotiations pending elections in Slovakia. In response to this delay, Slovakia petitioned the International Court of Justice to resolve the dispute. In the time that has passed since the postponement and petition, negotiations have been sporadic and unsuccessful, with minor agreements being made, but with no consensus as to the final state of the Treaty.

Questions to consider while deliberating this matter include:

- Did Hungary have the right to postpone and then cancel the Treaty?
- Was Slovakia a successor under the Vienna Convention on Successive States, and did that make it party to the Treaty?
- Did Slovakia have the right to begin its own project, Variant C?
- Do any of the parties to the Treaty have rights to compensation?

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"Breakthrough in Hungaria Slovak Dam Talks." *Slovakia Daily Surveyor*. May . www.slovensko.com

UN Documents:

Budapest Treaty of September

Convention of August Concerning the Regime of Navigation of the Danube

The Law of State Responsibility

Vienna Convention of on Law of Treaties

Vienna Convention on Successive States

Additional Web Resources:

www.icj cij.org, International Court of Justice

www.ramsar.org/key_elc_draft_e.htm

memory.loc.gov/frd/cs/hutoc.html

www.slovakia.org/history gabcikovo.htm

www.slovensko.com

Nicaragua v. Honduras (1999): Dispute over the maritime boundaries of two nations

This conflict began in November when the Honduran Congress ratified the Caribbean Sea Maritime Limits Treaty, which grants Colombia sovereignty over a section of the Caribbean. The Nicaraguan government believes that the treaty, also known as the Ramirez Lopez treaty, unjustly encroaches on , square kilometers of its maritime border. Honduran ambassadors in Managua said that the treaty was being ratified, after four years of discussions, because Honduras believed that Nicaragua and Jamaica were planning a claim on the disputed territory, which includes the islands of San Andres, Providence and Serranilla Key.

The tensions rose in December with rumors of military troop movements near the Honduran/ Nicaraguan border, which both parties denied. In response, Honduras and Nicaragua signed an agreement in March limiting the patrol of the contested Caribbean waters and military presence along their border until the dispute could be heard by the International Court of Justice. Nevertheless, since the signing of the treaty, there have been naval incidents in the disputed area. In February , Nicaraguan military officials accused two Honduran naval vessels of entering Nicaraguan waters and opening fire at a Nicaraguan patrol boat. The Honduran response was that a Nicaraguan patrol boat was about to detain a Honduran fishing vessel in Honduran waters. Similarly, in December of the same year, the Honduran Navy seized the Nicaraguan vessel "Mister Kerry," which it alleges was in Honduran national waters.

The situation has achieved international attention as a serious threat to the region's stability and economic unity. The issue stems from the land boundary as created by the Arbitral Award from His Majesty the King of Spain on December . Both nations brought the issue of their land boundary before the ICJ in where the Award was found "valid and binding." Additional international assistance was garnered from the Interamerican Peace Commission of the Organization of American States OAS , which aided in determining the final details associated with the Arbitral Award. The shortcoming of this agreement was that it left the issue of maritime delimitation considerably vague.

After the increase in tensions, the OAS again stepped in to support a peaceful resolution to the conflict. Nicaragua and Honduras requested their assistance in brokering the March agreement. This agreement sought to establish a military exclusion zone in the disputed area of the Caribbean Sea as a means to ensure the security of fishermen and communities in the border area. The United Nations response to the increase in tensions in the region, as described by Secretary General Kofi Annan, was that "the United Nations would step in" if other regional attempts at preventing further violence failed.

As a backdrop to all the international attention to the issue, the Nicaraguan government made application on December to have the ICJ finally resolve the issue of the Nicaraguan/Honduran maritime border. They applied under Article , Paragraph and Article of the Statutes, and Article of the Rules of the Court. Jurisdiction exists, according to Nicaragua, because both Nicaragua and Honduras are signatories to the American Treaty of Pacific Settlement of , also known as the "Bogotá Pact," and because of general norms of International law that were recognized by the Law of The Sea Convention. Believing that the Arbitral Award of defined only the land boundary between Nicaragua and Honduras, Nicaragua maintains that there is no established Caribbean maritime. Honduras claims that the delimitation line runs straight easterly from the mouth of the Coco River, the point defined by the Arbitral Award on the parallel fourteen degrees, fifty nine minutes and eight seconds. Due to the ambiguity, Nicaragua has brought the case before the Court to

finally "determine the course of the single maritime boundary between areas of territorial sea, continental shelf and exclusive economic zone."

Questions to consider while deliberating this matter include:

- Does Nicaragua have a viable claim on the area of concern? Note: Colombia claims that Nicaragua lost its right to the Archipelago of San Andreas under a treaty.
- Does the land boundary created by the Arbitral Award extend into the maritime border?
- What jurisdiction is created in the Bogotá Pact?
- How does the Law of the Sea Convention affect the international legal perspective on the situation?
- What influence does the possibility of the area's being "historical waters" have on the case?

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