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

Democratic Republic of the Congo v. Uganda: Dispute Over the Armed Activities on the Territory of the Congo

The current ICJ proceedings stem from the 1998 invasion of the Democratic Republic of the Congo (DRC) by Burundi, Rwanda and Uganda. However, the root of the conflict comes from earlier actions by all involved parties. The diversity of actors and interests embroiled in the five years of the Congolese civil war has created a significant barrier to understanding the legal parameters in the case. The DRC, a wealthy nation with abundant natural resources and a breeding ground for rebel groups, attracted the attention of its neighbors for reasons of economic gain, internal security and political manipulation.

Rwandan and Ugandan interests in the Congolese government led to their assisting Laurent Kabila, leader of a major rebel group, in his 1996 overthrow of dictator Mobutu Sese Seko. Kabila's assumption of power did not lead to a decrease in raids by rebels based in Zaire as had been hoped, but heightened the hostilities as Kabila moved to counter the foreign influence in the newly renamed Democratic Republic of the Congo. The Rwandans, Ugandans and Burundians responded with increased support for other rebel groups in the resource-rich eastern region and Kabila called in troops from allied Zimbabwe, Namibia and Angola to secure the area, thereby escalating the situation into a regional conflict. It is estimated that nearly two million people have died as a result of the fighting, and there are countless cases of human rights abuses.

Throughout this conflict, the United Nations has acted to limit the level of the conflict. In 1999, the UN brokered a cease-fire and withdrawal agreement in Lusaka, Zambia. As a result, nearly 3,400 UN troops have been placed in Congo to oversee the execution of the Agreement. The Lusaka peace plan also called for an inter-Congolese dialog between all the parties in an effort to institute a stable government. The cease-fire was short lived and movement toward withdrawal has been halfhearted. In 2000, the Security Council adopted Resolution 1304, condemning the conflict and calling for an end to the destruction of the DRC. Meanwhile, the ICJ made an Order for provisional measures to diffuse the situation and protect the Congolese from further abuses. In an attempt to put on economic pressure, a UN report came out in late 2001 focusing on the exploitation of the reserves of natural resources in eastern Congo, calling for a ban on their export, and demanding an investigation into the parties involved.

In the current proceedings before the ICJ, the DRC is requesting the Court to adjudicate in its favor against Uganda for acts of aggression, thereby forcing Ugandan troops to vacate the eastern section of the DRC and giving the DRC the right to seek reparations for damages inflicted during the conflict. Uganda contends that the Court lacks the jurisdiction to hear the case due to the similar interest by the Security Council, and that they are fulfilling their responsibility by continuing to follow the requirements of the Lusaka Agreement. Both sides have submitted their claims and counter-claims.

Questions to consider while deliberating this matter include:

- Is the current case admissible to the ICJ within the context of the Rules of the Court?
- How do the Lusaka Agreement and the steps taken by both sides to fulfill the Agreement affect the actions of the Court?
- Does the DRC have a right to compensation for the acts taken by Uganda?

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Vick, Carl. "UN Group Urges Ban on Imports from Congo." *Washington Post*, 24 Nov 2001.

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2001/24, Press Release, 10 Oct 2001
2000/24bis, Press Release, 4 Jul 2000
2000/24, Press Release, 1 Jul 2000
2000/23, Press Release, 30 Jun 2000
2000/20, Press Release, 21 Jun 2000
2000/18, Press Release, 19 Jun 2000
99/45, Press Release, 25 Oct 1999
99/34, Press Release, 23 Jun 1999
Application, Armed Activities on the Territory of the Congo (*Democratic Republic of the Congo v. Uganda*)
SC/RES/1304 (2000)

Additional Web Resource:
www.icj-cij.org/icjwww/idocket/ico/icoframe.htm

Liechtenstein v. Germany: Dispute Over the Reparation of Property Stemming from World War II

This dispute centers around a certain painting that was on loan to the city of Cologne, Germany from the Historic Monument Offices in Brno, Czech Republic, which had been previously owned by Liechtenstein nationals prior to WWII. The painting, along with several other pieces of property, had been seized by Czechoslovakia in 1945 through a series of laws that confiscated all German and Hungarian public and private property within its territory for the purposes of expropriation. These laws were known as the Benes Decrees. Although only directed towards German and Hungarian nationals, the Czech government extended that definition to include any person they considered to be of German or Hungarian decent. This included nationals of Liechtenstein, even though the country was neutral during the war.

Until 1998, this issue had been in dispute between the Czech Republic and the Principality of Liechtenstein. No compensation was ever awarded to the Principality for the property. However, when the painting left the country on loan to Germany, Prince Hans Adam II seized the opportunity to regain the property using the vehicle of the German courts, which were generally favorable toward such issues.

However, in January 1998 the German Federal Constitutional Court (the Supreme Court of Germany) issued a surprise ruling, which stated that the property in question was "to be treated as German-owned assets outside Germany, which had been seized for the discharge of war-related debts." This ruling was not appealable and binding on all of Germany. In addition, the German government supported the court's ruling. Liechtenstein immediately protested to the German government for two years following the ruling, but was denied compensation.

Prior to this dispute, Liechtenstein and Germany had been in agreement that the disputed property was not subject to any of the treaties or accords that proceeded WWII for the reparation of war debts or crimes committed by the Nazis. With the German high court ruling, Liechtenstein now claims that Germany has placed all such property under this umbrella and in so doing has violated the Principality's sovereignty and international law by refusing to pay any sort of compensation for the lost property to Liechtenstein. In June 2001, the Principality of Liechtenstein filed a motion against the Federal Republic of Germany in the International Court of Justice for violation of international law regarding property rights and violation of its national sovereignty.

Liechtenstein: The Principality's position is that it is owed compensation for its property from Germany. In its filing with the ICJ, the Principality of Liechtenstein asserts the following as the basis for its application:

"(a) by its conduct with respect to the Liechtenstein property, in and since 1998, Germany failed to respect the rights of Liechtenstein with respect to that property;

"(b) by its failure to make compensation for losses suffered by Liechtenstein and/or its nationals, Germany is in breach of the rules of international law."

Liechtenstein accordingly requests the Court "to adjudge and declare that Germany has incurred international legal responsibility and is bound to make appropriate reparation to Liechtenstein for the damage and prejudice suffered." Liechtenstein further requests "that the nature and amount of such reparation should, in the absence of agreement between the parties, be assessed and determined by the Court, if necessary, in a separate phase of the proceedings."

As a basis for the Court's jurisdiction, Liechtenstein invokes Article One of the European Convention for the Peaceful Settlement of Disputes, signed at Strasbourg on 29 April 1957.

Germany: For its part, Germany is likely to argue that the Court has no jurisdiction to hear the case and that the case should be immediately dismissed. The basis for this rationale is that:

- Based on ICJ precedent, any rulings regarding the determination of the rights and obligations of a third party state must include the consent and representation of that state. This is known as the "third party rule." In this case, this would be the Czech Republic, which is absent from these proceedings. Germany would have to show that any ruling by the Court would, in fact, involve the determination of rights and obligations of the Czech Republic.
- Based on Article 27(a) of the European Convention for the Peaceful Settlement of Disputes, the Convention does not apply to "disputes relating to facts or situations prior to the entry into force of this Convention as between the parties to the dispute." The case in question has its origins in 1945, seven years before the Convention was signed. Further, Liechtenstein ratified the Convention in 1980 and cannot claim to invoke its power to any issues that originated prior to that time.
- The Czech Republic is not a party to the European Convention for the Peaceful Settlement of Disputes and can therefore not claim to acknowledge the Court's jurisdiction in this case.
- The Czech Republic was an Allied power during WWII and was originally the one who seized the property.

There have been no UN resolutions dealing specifically with this topic. Most international disputes regarding property are referred to the ICJ. Past ICJ rulings have primarily dealt with territorial disputes and fishing rights. In such cases, the Court has relied upon its own interpretation of existing

treaties, in accordance with international law, as a framework for its decisions. All international treaties are required to be registered and filed with the UN by all Member States under Article 102 of the UN Charter.

Treaties and accords that might be considered in this case are:

- Luxembourg Agreement, 1952
- The Convention on the Settlement of Matters Arising out of the War and the Occupation, 1952
- The Settlement Convention, 1955
- European Convention for the Peaceful Settlement of Disputes, 1957
- German-Czech Declaration, 1997

In addition, Germany has instituted many laws to compensate victims of the Nazi regime that might also be considered. Primary among them is the Federal Law for the Compensation of the Victims of National Socialist Persecution, 1956, and the Federal Restitution Law of 1957.

Questions to consider while deliberating this matter include:

- Is this case dealing with sovereignty, reparations or property rights?
- Does the Court have jurisdiction to decide this case and if so, on what issue?
- How will this case affect international opinion of the parties involved?
- Can this case set a precedent within the ICJ?

Bibliography:

www.liechtenstein-icj-case.de/en/index.htm - Comprehensive web site on the issue published by Liechtenstein

www.asil.org/insights/insigh73.htm - Excellent overview of the case and how each side is positioned

www.germany-info.org/relaunch/info/archives/background/ns_crimes.html - Specific information on German war reparations

www.germany-info.org/relaunch/index.html - Information on Germany and its policies

www.icj-cij.org/icjwww/idecisions.htm - A list of all cases brought before the ICJ

untreaty.un.org/English/art102.asp - Article 102 of the UN Charter requiring the registration of all treaties with the UN

www.icj-cij.org/icjwww/ipresscom/ipress2001/ipresscom2001-14_20010601.htm - Liechtenstein's formal filing with the ICJ

www.icj-cij.org/icjwww/iwhats.htm - ICJ web site

Spain v. Canada: Fisheries Jurisdiction Case

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 publically 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 Exclusive Economic Zone. A country's EEZ is roughly defined as the area extending 200 nautical miles out from the nation's coast line. The flora and fauna of the sea, however, do not correspond conveniently to the boundaries carefully carved out by international treaty. Fishing populations may straddle a border, living partially in the EEZ of one country and partially in international waters. Without conservation efforts 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 1970's and 80's 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 Organization (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 the 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 scope of the bill was set out by the Canadian Minister of Fisheries and Oceans, who said "the legislation gives Parliament of Canada the authority to designate any class of vessel for enforcement of conservation measures. The legislation does not categorise 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 their 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 this simulation, the parties and justices are to assume that 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 be determined 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 for 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 while deliberating this matter include:

- Was it a violation of international law to board the *Estai*?
- Can domestic law apply to foreign vessels in international waters?

Bibliography:

www.oceanlaw.net/texts/nafo.htm -- Text of the Convention on Future Multilateral Co-Operation in the Northwest Atlantic Fisheries

www.oceanlaw.net/cases/fishj3.htm -- Links to the documents filed in the original case, also links to other resources such as press communiques

www.oceanlaw.net -- Guide to international fisheries law.

www.csmonitor.com -- Search for "*Estai*"

www.icj-cij.org -- Official page of the International Court of Justice