

CHAPTER VII.

THE INTERNATIONAL COURT OF JUSTICE

The International Court of Justice (ICJ) 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 the ICJ and on preparing for ICJ cases.

BACKGROUND RESEARCH

REPUBLIC OF GUINEA V. DEMOCRATIC REPUBLIC OF THE CONGO: AHMADOU SADIO DIALLO

These proceedings have been instituted by the Republic of Guinea on behalf of one of its nationals, Mr. Ahmadou Sadio Diallo, who had been residing in the Democratic Republic of the Congo (DRC). Mr. Diallo was a businessman who resided for 32 years in the DRC and had established two major companies: Africom-Zaire, involved in trade; and Africacontainers, organizing transport by containers. Both businesses entered into legal contracts with the state of Zaire and the DRC, as well as several major oil and mineral companies in the country. Upon Mr. Diallo's attempt to collect on debts owed him by the partners mentioned above, he was unlawfully imprisoned; his assets, bank accounts, and properties seized; and subsequently he was expelled from the country. The amounts owed to and damages claimed by the Republic of Guinea on behalf of its citizen, Mr. Diallo, are in excess of \$31 billion (US).

Mr. Diallo pursued his debts through the Congolese court system after contracts with the state and with Zaire Shell for scheduled payment were never honored. This final case, filed in 1995, was decided upon first examination in favor of the petitioner, and the bailiff of the court awarded Mr. Diallo over \$13 million (US). He also issued a seizure order against Zaire Shell's bank accounts and property. At first, the Minister of Justice, the Inspectorate General of Courts, and the Prime Minister upheld this decision. However, the Prime Minister subsequently ordered Mr. Diallo's secret arrest on 5 November 1995 and revoked the seizure order against Zaire Shell. Despite the scandal that this caused, and pressure from international groups such as *Avocats Sans Frontieres*, Mr. Diallo was held for 74 days and then given an undated refusal-of-entry form at the airport forcing him to leave. Upon his expulsion from the country, he arrived in Conakry, Guinea with no more than the clothes he wore.

The Republic of Guinea is requesting that the Court order the DRC to make full reparations and a public apology to Mr. Diallo. It claims that this case falls under the Court's jurisdiction because both the DRC and Guinea have accepted compulsory jurisdiction for dispute resolution in 1989 and 1998, respectively. The monetary damages claimed are primarily divided between the state of the DRC, Zaire Shell, Gecamines, Zaire Fina, Zaire Mobil Oil, and Onatra, with a few miscellaneous claims against Citibank Zaire, among others.

Further complicating the matter is the dual citizenship held by Mr. Diallo in both the DRC and the Republic of Guinea, which brings into question the right of the Republic of Guinea to represent him or protect him against the DRC.

The actions of the DRC are charged to be in violation of the following:

- Diplomatic protection
- Article 2 of the Declaration of the Rights of Man and Citizen of 1789

Questions to consider while deliberating this matter include:

- Does the ICJ have the authority to hear this case, given the nature of the violations against a single individual?
- Is the ICJ responsible for single-party suits? What does the case precedent suggest?
- Does the fact of Mr. Diallo's dual citizenship in any way detract from the duty and right of Guinea to represent his interests in the international arena?
- Can the ICJ authorize Guinea to seize any and all Congolese property at hand in lieu of repayment?
- To what extent can the DRC be held responsible for the defaulted payments on the parts of Zaire Shell, Onatra, etc.?

Bibliography:

- UN Press Release GA/L/3159 30 Oct 2000 "Diplomatic Protection is Discretionary"
www.icj-cij.org/icjwww/ibasicdocuments/Basetext/istatute.htm -- Statute of the Court
www.icj-cij.org/icjwww/idecisions/ismmaries/ibtsummary640724.htm -- Case concerning right of Belgian nationals in connection with Spanish corporation
www.icj-cij.org/icjwww/idecisions/ismmaries/ifussummary520827.htm -- Case concerning rights of American nationals in Morocco
www.icj-cij.org/icjwww/idecisions/ismmaries/iukisummary520722.htm -- the Court finds lack of jurisdiction in Anglo-Iran oil company dispute
www.icj-cij.org/icjwww/idocket/igc/igc_orders/igc_application_19981228.pdf -- Republic of Guinea's real-life application to the court
www.un.org/law/ilc/reports/1997/chap8.htm -- International Law Commission, 1997 Ch. VIII Diplomatic Protection



www.un.org/Overview/rights.html -- Human Rights Declaration

www.unodc.org/unodc/terrorism_convention_hostages.html
-- Text of the Hague Convention Against the Taking of Hostages 1979

NEW ZEALAND V. FRANCE: NUCLEAR TESTS CASE (HISTORICAL CASE: 1974)

This dispute stems from the atmospheric testing of nuclear weapons by France in areas in the proximity of New Zealand. In 1963, France moved its nuclear weapons testing operations from the Reggane Firing Ground in the Sahara Desert to the Mururoa Atoll in the Tuamotu Archipelago. The new testing grounds were located 2,500 nautical miles from the North Island of New Zealand. New Zealand closely monitored nuclear tests that were carried out in this area from 1966-1972. On 9 May 1973, fearing fallout as well as radioactive contamination of the surrounding oceanic environment, New Zealand lodged a formal complaint against France to halt the atmospheric tests in the ICJ, *New Zealand v. France* (1974).

Concern over these nuclear tests has been expressed for several reasons. To begin with, depending on the exact location of the tests, the radioactive fallout at times has rendered certain areas of the Pacific Ocean too dangerous to navigate. As a result, navigational over flights had to be restricted for safety purposes, which affected New Zealand's ability to utilize commercial shipping lanes in the area. Additionally, it seemed that some radioactive fallout had landed on the terrestrial territory of New Zealand. What is in dispute, however, is the extent to which that fallout has caused any measurable amount of damage. After having attempted to resolve the dispute diplomatically, New Zealand filed this complaint against France in May 1973, for violations of international law related to New Zealand's sovereignty and its right to navigate the high seas.

Up until now the government of New Zealand has attempted multiple times to make use of diplomatic channels to resolve this dispute. Representatives of New Zealand have brought the French nuclear testing matter up for discussion in meetings of the UN, at the 1972 Conference on the Environment, in addition to several regional forums of the Pacific. Further, both governments have participated in the exchange of a long series of diplomatic notes on the subject. After requests to France to halt testing in the Pacific were rebuffed multiple times, a final letter, of 4 May 1973, was sent by the government of New Zealand noting that, "...the New Zealand Government sees no alternative to its proceeding with the submission of its dispute with France to the International Court of Justice."

New Zealand's legal case rests on five major points. First, New Zealand claims that there is a general restriction against nuclear testing that leads to radioactive fallout. Second, the French testing curtails New Zealand's right to enjoy its territorial environment (terrestrial, maritime, and aerial) uncontaminated from radiation. Third, it is claimed that the entering of French radioactive fallout into New Zealand's territory violates its sovereignty. Fourth, New Zealand argues that the radioactive fallout has caused both physical and psychological harm to

its citizens. Finally, New Zealand claims that the French nuclear testing prevents New Zealand from exercising its freedom of the high seas, including freedom of navigation and over flight, in accordance with the international law of the sea.

As a basis for the Court's jurisdiction, New Zealand invokes: Article 36(1) and 37 of the Statute of the ICJ and Article 17 of the General Act for the Pacific Settlement of International Disputes (Geneva, 1928). Alternatively, New Zealand refers to Article 36 (2) and (5) of the ICJ Statute.

To date, the French Republic has not formally participated in the proceedings of this case. So far, its only action has been to send a letter to the ICJ denying the Court's distinction on the matter. Unlike in many domestic legal systems, the ICJ cannot generally enter default judgement, even in circumstances such as these. Therefore, the case is still currently active.

There has been some UN discussion on the topic of nuclear testing, although nothing binding. Some General Assembly resolutions to consider include 1148, 1252, 1379, 1402, 1578, 1632, 1648, 1762A, 1910, 2032, 2163, 2343, 2455, 2604B, 2661A, 2663B, 2828, and 2943A. Additionally, resolution 3(I) of the 1972 Stockholm Conference of the Environment addressed the issue of nuclear testing.

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

- Treaty Banning Nuclear Weapons Tests in the Atmosphere, in Outer Space and Under Water (1963)
- Treaty for the Prohibition of Nuclear Weapons in Latin America (1967)
- Treaty on the Non-Proliferation of Nuclear Weapons (1968)

Questions to consider while deliberating this matter include:

- What rights do states have against contamination of their territory by radioactive elements? What is the current state of international law regarding nuclear testing?
- Does the Court have jurisdiction to hear this matter?
- If so, how does France's current level of participation in the case affect the case's disposition?
- Can this case set a precedent within the ICJ?

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International Court of Justice, Nuclear Tests Case: Pleadings, Arguments, Documents, Volume 1 (*Australia v. France*) (ICJ, 1978).

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UNEP, UNDP, and Dutch Government Project on Environmental Law and Institutions in Africa, Compendium of Judicial Decisions on Matters Related to Environment: International Decisions Volume 1. UNDP, 1998.

Additional Web Resources:

www.icj-cij.org -- The International Court of Justice

MEXICO V. THE UNITED STATES OF AMERICA: DISPUTE OVER THE CONVICTION AND SENTENCING TO DEATH OF MEXICAN NATIONALS IN THE UNITED STATES

On 9 January 2003, Mexico brought suit against the United States of America in the ICJ, alleging violations of Articles 5 and 36 of the Vienna Convention on Consular Relations of 24 April 1963. The violations center around 54 Mexican nationals who have been sentenced to death in various states. Mexico alleges that the United States failed to inform Mexican nationals of their right to consular assistance in over 50 cases where the death penalty has been imposed. On 5 February 2003, the ICJ's 15 members unanimously ordered that the US should take "all measures necessary to ensure" that none of the Mexican nationals cited by the Court's order be executed until the Court has rendered its full judgment. This issue has reached such a level that it has strained US-Mexican relations.

Article 36 of the Vienna Convention states that the United States is required to notify all nationals of another State detained by authorities of their right to contact a consulate without delay if they so wish. Mexico claims the United States failed to inform 49 of the detained Mexican nationals of their protected right to seek consular advice. In the case of the other four nationals, Mexico claims that notification was not received "without delay." The final allegation stemmed from one case in which a national was informed of his rights only in connection with another capital charge.

Mexico has brought the case to the ICJ claiming there is "extreme gravity and immediacy of the threat that authorities in the United States will execute a Mexican citizen." Mexico states that a previous ICJ case, *Germany v. the United States*, is a prime example that a "meaningful review" is needed before the US executes another foreign national. Likewise, on 3 April 1998, Paraguay brought accusations before the ICJ concerning alleged violations of the 1963 Vienna Convention by the United States. However, Paraguay subsequently withdrew its case on 14 April 1998 following the execution of the national in question by the State of Virginia despite the Court's order on 9 April requesting the United States to take any and all necessary steps to prevent the execution.

The United States does admit to the violation of the Vienna Convention; however, it claims the case does not belong in the ICJ. According to the United States, "competent authorities in the United States had instituted measures providing for review and reconsideration in all such cases, that so far these measures had proved effective and that there was no reason to think that they would not be effective in future cases." The United States also claims Mexico does not have a "foundation in fact or in law and that the requirements for the Court to indicate provi-

sional measures were not met." The United States says Mexico did not satisfy conditions to bring the case before the court.

There are a number of issues to discuss while deliberating this case. One in particular is the precedent set by *Germany v. the United States*. In this case, the United States violated Article 36 and executed a German national without notifying him of his right to contact consular authorities. Because of this incident, the Vienna Convention was amended to apply more stringent regulations. Another pressing issue advocates and justices will wish to consider is the death penalty. The United States claims Mexico brought this issue to the ICJ to protest America's death penalty. By pressing suit on the violations, Mexico, an avid opponent of the death penalty, may be able to overturn 54 death penalty convictions.

Treaties, conventions, and rulings of the ICJ that might be considered in this case are:

- The 1963 Vienna Convention on Consular Relations
 - The UN Charter (which established the ICJ)
 - Statute of the ICJ
 - The ICJ's summary of judgment in (LaGrand) *Germany v. United States of America*
 - Extradition Treaty between the United States and Mexico
- Questions to consider while deliberating this matter include:
- Does the ICJ hold jurisdiction in this particular case, and if so on what issues?
 - Is the United States violating international law by executing foreign nationals?
 - What is the potential impact this ruling has on the death penalty internationally?
 - Is consular assistance a human right?
 - How do the changes in the Vienna Convention on Consular Relations since *Germany v. US* affect the legal conditions under which the precedent is viewed?

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UN Documents:

- 2003/9, Press Release, 5 Feb 2003, Provisional Measures - The Court indicates to the United States of America that it must take "all measures necessary" to prevent the execution of three Mexican nationals, pending its final judgment
2003/7, Press Release, 30 Jan 2003, Provisional Measures - Court to give its Order on Wednesday 5 February 2003 at 3 p.m.
2003/4, Press Release, 22 Jan 2003, Conclusion of the hearings on provisional measures
2003/1, Press Release, 10 Jan 2003, Mexico brings a case against the United States of America and requests the indication of provisional measures
2001/16, Press Release, 27 Jun 2001, Summary of the Judg-



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General List No. 128, 5 Feb 2003, Case concerning Avena and other Mexican nationals: Request for the indication of provisional measures, www.icj-cij.org/icjwww/idocket/imus/imusorder/imus_iorder_20030205.PDF
Declaration of Judge Oda, 5 Feb 2003, www.icj-cij.org/icjwww/idocket/imus/imusorder/imus_iorder_20030205_oda.PDF

Additional Web Resources:

www.asil.org/ajil/agora4.htm -- Article on the role of US federal power in relation to enforcing and requiring compliance with international treaties
www.asil.org/insights/insigh17.htm -- Article discussing the ICJ's order concerning
www.asil.org/insights/insigh75.htm -- Overview of the LaGrand case by the ICJ
www.asil.org/insights/insigh95.htm -- Overview of the cur-

rent *Mexico v. United States* case before the ICJ
www.globalpolicy.org/wldcourt/franck.htm -- Article from the American Journal of International Law on the Global Policy Forum website
www.icj-cij.org/icjwww/ibasicdocuments/ibasictext/ibasic_basisjurisdiction.html -- Information on the basis for the jurisdiction of the ICJ
www.icj-cij.org/icjwww/ibasicdocuments/ibasictext/ibasicstatute.htm -- The Statute of the ICJ
www.icj-cij.org/icjwww/idocket/igus/igusframe.htm -- Links to the LaGrand case: orders, oral pleadings, and summary of judgment by the ICJ
www.icj-cij.org/icjwww/idocket/imus/imusframe.htm -- Links to Mexico's application, the Court's original order, and the oral pleadings before the ICJ by Mexico and the U.S., along with various press releases on the case.
www.icj-cij.org/icjwww/igeneralinformation/icjgnnot.html -- Overview of the functions of the ICJ

