

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

NICARAGUA V. COLOMBIA: TERRITORIAL AND MARITIME DISPUTE

In 2001 the Republic of Nicaragua (Nicaragua) requested adjudication by the International Court of Justice (ICJ) to resolve a dispute with the Republic of Colombia (Colombia) over several Western Caribbean islands and the delimitation of the maritime boundary. The application is similar to a related case filed by Nicaragua against Honduras in 1999, which also sought the determination of a maritime boundary in the Caribbean.

Spain granted independence to all of Central America in 1821, including many islands in the Caribbean. Immediately thereafter the Federation of Central America (also known as the United Provinces of Central America) was formed, claiming sovereignty over the disputed islands. In 1838, the Federation of Central America was dissolved from within after years of civil war, with each member state asserting state sovereignty.

In 1928, Nicaragua, under the alleged occupation of United States forces, signed the Barcenas-Esguerra Treaty with Colombia. In this treaty Colombia recognized Nicaraguan sovereignty over the Mosquito Coast in exchange for Nicaragua recognizing Colombian sovereignty over the islands in dispute. The Nicaraguan government rejected the Barcenas-Esguerra Treaty in 1980, claiming that the islands were geographically and historically part of Nicaragua.

Nicaragua has accused the Colombian navy of interfering with Nicaraguan fishermen in the disputed area. On numerous occasions the Colombian navy has put to chase fishing trawlers that have been granted fishing rights, and seized fishing vessels that are in the disputed territory. Additionally, Nicaragua has banned both Honduran and Colombian fishing trawlers from Nicaraguan waters.

Colombia has held San Andres and Providencia Islands and their associated keys since the nineteenth century, when both Nicaragua and Colombia gained independence from Spain. The islands are located 300 km from Nicaragua and 580 km from Colombia and are part of a chain claimed by Colombia that reaches to within 450 km of Jamaica. The island chain lies on the edge of the Central American continental shelf, a bountiful fishing area.

In 1986 Colombia and the Republic of Honduras (Honduras) signed the Lopes-Ramirez Treaty assigning rights to resources in the Caribbean and which also implicitly recognized Colombian sovereignty over the disputed territory. To preserve their claims over the disputed territory Nicaragua filed a case against Honduras in the ICJ. This case is has yet to be decided by the Court.

Questions to consider from your government's perspective on this issue include:

- Does the International Court of Justice have jurisdiction over this dispute?
- What role does customary international law play in establishing sovereignty over the disputed islands and determining a maritime boundary?
- What was the effect of the independence from Spain on the sovereignty of the islands?
- Is the Barcenas-Esguerra Treaty of 24 March 1928 a valid bilateral treaty?
- What is the definition of occupation under international law?
- Is the Lopes-Ramirez Treaty valid?
- What impact does the 1958 Convention on the Continental Shelf have on this case?
- What impact does the 1982 Convention on the Law of the Sea have on this case?

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Legal Documents:

- Treaty on Treaties
- 1982 Law of the Sea



1958 Convention on the Continental Shelf
Pact of Bogota
Barcenas-Esquerria Treaty of 24 Mar 1928
2 Aug 1986 Lopes-Ramirez Treaty Honduras and Colombia (ratified – 30 Nov 1999)

UN Document:

ICJ Docket. www.icj-cij.org/icjwww/idocket/inicol/inicol-frame.htm

Additional Web Resource:

www.cia.gov/cia/publications/factbook/reference_maps/pdf/central_america.pdf (a detailed regional map that includes the areas in conflict)

BENIN V. NIGER: FRONTIER DISPUTE

From the time that the Republic of Benin (Benin) and the Republic of Niger (Niger) gained independence, they have disputed their 165-mile mutual boundary along the Niger and Mekrou rivers. The main question revolves around possession of a series of islands situated on the river.

In 2001 Benin brought proceedings to the International Court of Justice (ICJ) with the sole purpose of reacquiring l'Ete island and 13 other islands on the Niger and Mekrou rivers. Benin, or Dahomey, historically was a French colony dating back to 1893, the year it gained official status as a colony of France. For over 60 years Benin transitioned from the position of a colony, to a member of the French Union, to an autonomous member of the French Community, and finally became a sovereign state. Niger followed a similar path. In late 1900, it became a military territory in French West Africa, followed by becoming a member of the French Community, and ultimately gaining independence.

The alignment of the boundary between Benin and Niger was delimited by a French Statute of 27 October 1938. This statute delimited the boundary as being "On the northeast, along the Niger to its junction with the Mekrou. On the northwest, by the boundary between Dahomey and the colony of Niger [which from the junction of the two rivers had been determined previously to follow the Mekrou southward]." It is worth noting that Benin and Niger had a concurrent boundary at this time from Togo to Nigeria, due to the realignment of colonial borders in 1932. France again redrew the boundary lines in 1947 returning them to their original lines. Most international maps show the disputed territory as belonging to Niger, but Benin's claim harkens back to the 1938 French Statute as evidence that some of the islands do indeed belong to Benin.

Historically, the islands at the center of the dispute have been populated by sedentary citizens of Benin. Periodically they encountered nomadic peoples of Niger, who then settled on various islands in the disputed territory. The most recent conflict over the islands occurred on the island of l'Ete, when Benin attempted to build an administrative building, and Niger allegedly sent troops to prevent the construction. This case highlights a problem that many former colonies try to solve, colonial powers repeatedly redrawing boundaries causing conflicts with now sovereign neighboring states. Fortunately, in this situation, both parties have committed to a peaceful settlement of the dispute underlined throughout international law.

In 2001, Benin and Niger held bilateral negotiations in an attempt to solve the dispute. These negotiations failed to produce any results, and at that point both parties signed the Cotonou Agreement of 11 June 2001. This agreement, which came into

effect on 11 April 2002, set forth the creation of a Special Panel of the International Court of Justice to arbitrate the case. In addition, the agreement removed the titles of "Applicant" and "Respondent" from the parties to the dispute, putting both parties on equal ground for the arbitration. Both parties will present their arguments in a manner set forth by the Court, and ultimately agreed to abide by the decision of the Special Panel.

In June 2004, the parties to the dispute were rewarded a United Nations Trust Fund for their commitment to pacific settlement, with each party being awarded a monetary incentive to continue the arbitration program. The \$350,000 (USD) reward comes with the explicit condition that the money is strictly used to defray the expenses incurred in taking a dispute to the International Court.

The advocates and justices should treat the ICJ session at the 2004 AMUN conference as being a session of the Special Panel. To allow for maximum participation, the 5 judge panel will instead be replaced by a full seating of the court. The justices will then outline the manner the advocates will present their arguments, within the Rules of the Court, during the first session of the 2004 AMUN ICJ.

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2002/41, Press Release, 20 Dec 2002. The Court Forms a Special Chamber to Deal with the Case.

2003/35, Press Release, 27 Oct 2003. Special Chamber Holds its First Public Sitting on Thursday 20 November 2003.

C5/CR 2003/01, Oral Pleadings, 20 Nov 2003. Public Sitting of the Chamber held on Thursday 20 November 2003, at 10 a.m., at the Peace Palace.

Charter of the United Nations, Chapter VI.

Statute of the Court, Articles: 36, 37 Section 6, 38, 40, 60. www.icj-cij.org/icjwww/ibasicdocuments/ibasictext/ibasicstatute.htm

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General Act on Pacific Settlement of Disputes. (1928)



CROATIA VS. SERBIA AND MONTENEGRO: APPLICATION OF THE CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE

The fall of the communist system in the former Yugoslavia, accompanied by the elections of ultra-nationalist parties in the former republics, yielded a stage set for violence. The separation of Croatia and Slovenia in 1991 from Serb-controlled Yugoslavia initiated four years of bloodshed that killed thousands and displaced hundreds of thousands of Serbs, Croats, and Muslims of the region. Slobodan Milosevic, on trial before an international tribunal for the crimes of Genocide, led the forces of the Federal Republic of Yugoslavia to create a "Greater Serbia". Croatia comes before the Court accusing Serbia and Montenegro of aiding and abetting, as states, in the crimes of Genocide.

The political discord between the Croats and the Serbs is historical. With the creation of the state of Yugoslavia from the remnants of the Hapsburg Empire in the wake of World War II, the two groups engaged in a political struggle within the state system as two competing national groups. This struggle continued at a low level during the period of communist rule and Soviet domination. In 1988, the Serbs finally secured control of government in the post-Tito Yugoslavia with the majority of votes for the Yugoslav presidency. By late 1990, Croatian Serbs had declared a separate "Republic of Serbian Krajina" and, in 1991, began the violent rebellion.

By 1992, the rebels controlled a large part of the newly formed Republic of Croatia, which had been recognized by the United States and the European Union, and a cease-fire agreement was reached. The Serbian controlled areas remained occupied until 1995, when the Republic of Croatia liberated some of the territory through Operation Flash. The Republic of Croatia met with the rebels to negotiate a peaceful settlement of the conflict, which did not materialize. Croatia enacted Operation Storm following the failed negotiations. Consequently, Operation Storm liberated most of the remaining rebel-controlled areas. In 1996 the Republic of Croatia and the Federal Republic of Yugoslavia reached an Agreement for Normalization of Relations. Subsequently, Croatia regained control of the remainder of its territory.

The UN was not silent during this period of violence. Following the 1992 peace agreement, the UN created a peace-keeping mission to help stabilize the region (UNPROFOR). The General Assembly also produced two resolutions condemning the violence. GA resolution 47/121 (18 Dec 1992) recognized the genocide by the Federal Republic of Yugoslavia and GA Resolution 49/630 (1995) condemned the ethnic cleansing by the Serb-Croats. Croatia brings this case before the International Court of Justice to contest the Yugoslav response to its duties to repay for the destruction of Croatia during the violence. The Republic of Croatia contends that Serbia and Montenegro are responsible for the actions of the Serb-Croats, because they aided and supported rebels who were fighting for their state's ends, and should be bound by the Agreement for Normalization of Relations to pay for the damage done by those rebels.

To understand the ramifications of the actions of the rebels, it is important to understand the definition of genocide, as defined by the Convention on the Prevention and Punishment of the Crimes of Genocide. Does the de facto control of the Croatian rebels by the Federal Republic of Yugoslavia (Yugoslavia) exist, and does it in-turn create legal liability for their actions by Yugoslavia? Were the rebels fighting for the political goals of Yugoslavia, or did they have their own agenda for a sep-

arate state? Does this effect the perception of the responsible party in international law?

Questions to consider from your government's perspective on this issue include:

- Does the International Court of Justice have jurisdiction over this dispute?
- Do the actions during the conflict constitute genocide as undelined in the Convention on the Prevention and Punishment of the Crimes of Genocide?
- When did the Republic of Croatia become a sovereign state?
- What effect does the recognition of The Republic of Croatia have on the legal aspects of the case?
- What is the legal definition of internal conflict?
- Is there a legal differentiation between the national and state groups involved in the case? How will this effect the dispute before the court?

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Treaty Providing for the Renunciation of War as an Instrument of National Policy

Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field

Geneva Convention Relative to the Treatment of Prisoners of War

Geneva Convention Relative to the Protection of Civilian Persons in Time of War

Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty

Resolution on Definition of Aggression

Protocol Additional to the Geneva Conventions of 12 Aug 1949, and Relating to the Protection of Victims of International Conflicts (Protocol I)

Protocol Additional to the Geneva Conventions of 12 Aug 1949, and Relating to the Protection of Victims of International Conflicts (Protocol II)

Convention on the Prevention and Punishment of the Crime of



Genocide
Universal Declaration of Human Rights
Convention Relating to the Status of Refugees
Standard Minimum Rules for the Treatment of Prisoners
Convention on the Rights and Duties of States
Vienna Convention on Succession of States in Respect of
Treaties
Vienna Convention on the Law of Treaties
Protocol Relating to the Status of Refugees

UN Documents:
A/RES/47/21
A/RES/49/695

Additional Web Resources:
www.icj-cij.org
www.un.org/law

