

# 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

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

Malaysia and Singapore are before the ICJ on the question of sovereignty over a number of small islands off the coast of the Malaysian state of Johor. The primary dispute is over an island known as Pedra Branca to Singapore and Pulau Batu Puteh to Malaysia. The island lies in a strategic position near the Singapore Straits and controls access to the South China Sea. With ownership of the island, a government would also gain control of the 200 mile Exclusive Economic Zone (EEZ) around the island. Reassignment of the EEZ would significantly impact the economic balance of the area. The two countries have been in conflict over this strategic location for more than 20 years.

The dispute arose in 1979, when Malaysia published a new map that included the island as Malaysian territory. Malaysia claims Pulau Batu Puteh has been Malaysian territory since 1513, during the Johore Sultanate. However, an Anglo-Dutch treaty gave Britain control over the region in the mid-1800s. The British colonial government built Horsburgh Lighthouse to steer ships safely past the island. The British lost control of the region in 1963 when the Federation of Malaysia was formed. Singapore succeeded the Federation in 1965 and continued to administer the island throughout its transition period. There was no protest by Malaysia until 1979, but the conflict has escalated in recent years with a gunboat standoff in 2002, and general political acrimony on both sides.

Malaysia's case is based strongly on US military maps that consistently showed the island as Malaysian. The Malaysian government also claims that Singapore was merely serving as administrator of the lighthouse, and that this is not sufficient reason to assume ownership rights. Instead, Malaysia argues that it traces its legal ownership rights to the Johore Sultanate, which predates the occupation of the island by the British. Malaysia also claims Singapore has been secretly building on the island to enhance its claim of ownership. Adding to the tensions between the two nations, the Singapore Coast Guard has turned Malaysian journalists on Malaysian marine patrol boats away from the island, prompting an escalation as Malaysian patrol boats entered the waters surrounding the island.

In response, Singapore claims that it has held possession of the island for over 150 years and that possession should determine the sovereignty of the island. With over a century of Malaysian maps showing Singaporean ownership of the island, Singapore believes the time for contesting sovereignty has long past. Singapore has built a radar facility and a helipad on the island to aid in the safety of ships in and out of the Straits of Singapore, and although Malaysia claims recent construction on

the island, there are no signs of any current work being completed on Pedra Branca.

By September 1, 2003, both parties had filed their Memorials and Counter-Memorials. Both countries have until November 25, 2005 to file a reply.

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

- Is it significant that Malaysia did not raise the issue of sovereignty over Pedra Branca/Pulau Batu Puteh earlier than 1991, even though it had been independent since 1963?
- Does possession show ownership of territory? If so, is this acceptable means for determining legal government in a region?
- How might the occupation of Pedra Branca/Pulau Batu Puteh affect the outcome of the case, considering the prior decision in the dispute between Indonesia and Malaysia over Pulau Litigan and Pulau Sipadan?
- Does the union under a colonial power (Great Britain) affect the position of either side?

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### Additional Web Resources:

International Court of Justice Homepage, <http://www.icj-cij.org>



## HUNGARY V. SLOVAKIA - GABCIKOVO-NAGYMAROS PROJECT

On 16 September 1977, Hungary and Czechoslovakia signed a bilateral treaty in which they agreed to build a cross border system of dams on the Danube River. The joint investment was aimed at the production of hydroelectricity, the improvement of navigation on the relevant section of the Danube, and the protection of the areas along the banks against flooding. Work on the Project started in 1978.

Due to economic hardships in Hungary, construction was mutually suspended in 1983. In a Protocol signed on 6 February 1989 the two parties agreed to restart the project at an accelerated pace. As a result of intense environmental criticism of the Project generated in Hungary, the Hungarian Government suspended the works at Nagymaros on 13 May 1989, and again on 21 July 1989. Finally, on 27 October 1989, Hungary decided to abandon the works at Nagymaros and to maintain the status quo at Dunakiliti.

The two parties entered into negotiations surrounding the completion of treaty obligations but were never able to come to an agreement. On 19 May 1992, the Hungarian Government transmitted to the Czechoslovak Government a Note Verbale terminating the 1977 Treaty effective 25 May 1992. Czechoslovakia, succeeded by Slovakia in 1993, continued the construction of the Gabčíkovo dam in accordance with a provisional solution that allowed it to maximize use of the Danube. Hungary instituted proceedings with the court on 23 October 1992, arguing that it had lawfully ceased construction due to necessity, impossibility of performance, a fundamental change in circumstances, and a material breach by Slovakia. Further, Hungary believed that Slovakia had wrongfully continued with construction. Slovakia, on the other hand, argued that Hungary had breached the treaty by failing to construct the dam and that it had acted to mitigate damages.

The Court issued a judgment on 25 September 1997, which held that both Slovakia and Hungary breached their obligations under the treaty on the construction and operation of the Gabčíkovo-Nagymaros System of Locks. The Court found that Hungary violated the treaty by unilaterally suspending and subsequently abandoning the project and that Slovakia violated the treaty by subsequently unilaterally diverting the Danube River after the notice given by Hungary in 1992. The Court also ruled that the treaty is still in effect and that the parties should enter into good faith negotiations to resolve the dispute.

The Court gave the parties six months to negotiate a new solution to generate hydroelectric power while also replenishing the environment. Hungary postponed the negotiations on 5 March 1998 and on 3 September 1998 Slovakia filed a request for an additional judgment from the Court arguing that Hungary had not implemented the 1997 judgment. The parties still have not come to any agreement on a solution.

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

- Is Slovakia a party to the 1977 treaty as a successor to Czechoslovakia?
- How did circumstances change between 1977 and 1992?
- Was it lawful for Hungary to abandon the project?
- Was Slovakia justified in continuing construction on the dam in 1991? How about in 1992?
- Is either party entitled to compensation?
- What effect does Soviet control of Hungary and Czechoslovakia have over the validity of the treaty?

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## UN Documents:

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Convention of 18 August 1948 Concerning the Regime of Navigation of the Danube  
Vienna Convention of 1969 on Law of Treaties  
Vienna Convention on Successive States

## Additional Web Resources:

- [www.icj-cij.org/icjwww/idocket/ihs/ihsframe.htm](http://www.icj-cij.org/icjwww/idocket/ihs/ihsframe.htm) --International Court of Justice Website.  
[www.slovakia.org/history-gabcikovo.htm](http://www.slovakia.org/history-gabcikovo.htm)

## ISLAMIC REPUBLIC OF IRAN V. UNITED STATES OF AMERICA: CASE CONCERNING OIL PLATFORMS (HISTORICAL CASE)

On 2 November 1992, the Islamic Republic of Iran (Iran) brought proceedings against the United States of America (the United States) before the International Court of Justice (ICJ) in regards to the destruction of three off shore oil production complexes owned by Iran. The case arises from acts that occurred during the ground war between Iran and Iraq from 1980-1988.

In 1984 Iraq began attacking oil tankers traveling in the Persian Gulf in an attempt to disrupt Iran's oil trade. These attacks continued and were condemned by the U.N. Security Council on 1 June 1984 (Resolution 552). As a result of these attacks, which Iran alleged were supported by the United States, Iran began attacking neutral ships in the Persian Gulf primarily bound for ports in Kuwait and Saudi Arabia. On 16 October 1987, a Kuwaiti tanker flying a United States flag, the Sea Isle City, was hit by a missile. Although Iran blamed Iraq for the attack, the United States claimed Iran was using oil platforms to attack neutral shipping, and the United States retaliated with strikes against two Iranian offshore oil platforms in the Reshadat complex. As a result of the attack, one platform was completely destroyed and the other was 90 percent destroyed, with this



destruction resulting in the complete stoppage of oil production.

On a separate occasion, in April 1988, the U.S.S. Samuel B. Roberts hit a mine off the coast of Bahrain. The United States asserted Iran had laid the mines. Again, the United States retaliated by attacking two Iranian off-shore oil platforms, destroying both the Nasr and Salman complexes. On 2 November 1992, Iran instituted proceedings against the United States in respect of a dispute "aris[ing] out of the attack [on] and destruction of three offshore oil production complexes, owned and operated for commercial purposes by the National Iranian Oil Company, by several warships of the United States Navy on 19 October 1987 and 18 April 1988 respectfully."

As the basis for the Court's jurisdiction Iran cited the 1955 Treaty of Amity, Economic Relations and Consular Rights between the United States and Iran (the Treaty) signed 15 August 1955, and entering into force 16 June 1957. The Treaty addresses the freedom of commerce and navigation of shipping between the two contracting parties. However, the United States argued that the Treaty provided no basis for the Court's jurisdiction because the Treaty does not apply to questions pertaining to the use of force or self defense.

Iran is asking the Court to hold the United States responsible in conjunction with the aforementioned attacks and to make reparations to Iran for violations of the Treaty in a "form and amount" to be determined by the Court. First, the Court must decide if it does in fact have jurisdiction under the 1955 treaty. If the Court decides it does have jurisdiction it would be the first time the Court has relied solely on a compromissory clause in a bilateral treaty to establish jurisdiction.

The United States is asserting that the Court does not have jurisdiction. However, even assuming the Court does have jurisdiction, the United States is asserting its right to self defense under the UN Charter in relation to the attacks on the Iranian oil platforms. The United States also argues that Iran violated its obligations under the Treaty because Iran engaged in mining and/or missile attacks on United States' ships on two separate occasions. The United States is asking the Court for reparations from Iran.

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

- Does the Court have jurisdiction in this matter? If so, to what extent and on what issue?
- Was the freedom of commerce and navigation guaranteed in the Treaty violated by the United States, Iran, or both?
- Was the destruction of the oil platforms necessary for the United States' self-defense?
- Were the mining and missile attacks against the United States vessels the responsibility of Iran?

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### UN Documents:

- S/Res/598  
S/Res/582  
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### Additional Web Resources:

- [www.icj-cij.org](http://www.icj-cij.org) -- International Court of Justice  
[www.un.org/law](http://www.un.org/law)  
[www.icj-cij.org/icjwww/idocket/iop/iopframe.htm](http://www.icj-cij.org/icjwww/idocket/iop/iopframe.htm)  
[www.asil.org](http://www.asil.org) -- American Society of International Law

