

# CHAPTER VIII.

## 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.

**PURVIEW OF THIS SIMULATION:** The ICJ is the principal international judicial body of the United Nations system. The two major roles of the ICJ include developing advisory opinions on matters of international law referred to the Court by specialized agencies and presiding over legal disputes submitted to the Court by Member States. Only Member States may submit cases to the Court and the Court is only considered competent to preside over a case if the involved States have accepted the jurisdiction of the Court over the issue of dispute. The ICJ does not preside over legal disputes between individuals, the public, or private organizations.

More information is available on-line at: [www.icj-cij.org](http://www.icj-cij.org)

### BACKGROUND RESEARCH

#### *LIBYAN ARAB JAMAHIRIYA V. UNITED STATES OF AMERICA* QUESTIONS OF INTERPRETATION AND APPLICATION OF THE 1971 MONTREAL CONVENTION ARISING FROM THE AERIAL INCIDENT OVER LOCKERBIE (HISTORICAL CASE)

On December 21, 1988, a bomb exploded in the cargo hold of Pan American Flight 103 over Lockerbie, Scotland. The explosion killed 259 people. An investigation traced the terrorist act to two Libyan nationals, Abdelbasset Ali Ahmed Al-Megrahi and Ali Amin Khalifa Fhimah, who allegedly orchestrated the attack. The United States and United Kingdom charged these two individuals and requested that they be surrendered to the United States. The United States, United Kingdom, and France also requested the disclosure of documents, and demanded appropriate compensation from the Libyan government, as they believed Libya was involved in the terrorist act. Due to Libya's alleged participation in the bombing, the United States and the United Kingdom did not feel the suspects would receive a fair and full punishment if they were prosecuted in Libya.

Libya rejected the request and, in accordance with the Montreal Convention, initiated proceedings against the two suspects. Libya also requested legal assistance from the United States and the United Kingdom to continue with a prosecution under Libya's criminal jurisdiction. The United States and the United Kingdom denied assistance, preferring to prosecute the case themselves as well as receive the desired compensation.

In March of 1992, Libya instituted proceedings against the United States in the International Court of Justice to clarify the interpretation of the Montreal Convention regarding the dispute over the Lockerbie aerial incident. This case is considered by some to be one of the most important decisions since the end of the Cold War, as it considers the competence of UN bodies such as the Security Council and their ability to take certain actions through their resolutions. Another issue in this case is the Court's power of judicial review.

Libya is claiming their rights underneath The Montreal Convention of 1971 for the Suppression of Unlawful Acts Against the Safety of Civil Aviation. This treaty was created to prevent attacks against civil aircraft. It provided for means of cooperation between countries involved in an attack and the necessary measures to punish the offenders. Libya has claimed that

the United States of America and the United Kingdom violated obligations under the Montreal Convention that allow Libya to prosecute Libyan nationals held responsible for the attack. Libya has asked the Court to declare that the United States has breached its legal obligations, primarily under Article 5 of the Montreal Convention.

One consideration for the Court is the Security Council's role in passing Resolutions 731 (1992), 748 (1992) and 883 (1993). The validity of Resolution 731 is disputed because interested parties participated in the voting procedure. The dispute fell within Chapter VI of the Charter, and Article 27(3) states that in voting on decisions under Chapter VI, parties to a dispute shall abstain from voting. Nonetheless, the United States, the United Kingdom and France all cast a vote. Resolution 748 imposes sanctions against Libya until the two Libyan officials accused of the bombing are handed over for trial, while Resolution 883 imposes further actions against Libya for failure to surrender the accused.

Other important issues facing the Court are whether Libya has any legal right to try the accused itself or an obligation to cooperate in enforcing American or British law. Libya claims the Montreal Convention allows them to try nationals in their court system while the United States argues that the Security Council's resolutions trump the obligations arising from the Montreal Convention. The Court will thus need to weigh the legal consequences of each party's claims, taking into careful consideration Articles 5(2), 7 and 11 of the Montreal Convention.

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

- Do Security Council resolutions preempt international treaties? What implications does this have on precedence?
- How do Security Council resolutions interact with Chapter VI of the UN Charter?
- Should the Court suspend the sanctions ordered by Resolution 748 until the Court determines that Libya's claims are ill-founded? If the Court suspends these sanctions, how does this affect future resolutions and their ability to shape international law?



## Bibliography:

- Graefrath, Bernhard, "Leave to the Court What Belongs to the Court: The Libyan Case," *European Journal of International Law*, 1993, v 4 n 2, [www.ejil.org/journal/Vol4/No2/art3.html#P13\\_178](http://www.ejil.org/journal/Vol4/No2/art3.html#P13_178).
- Goshko, John M, "The U.S. Sees Libyan Ploy in Jet Bombing: Offer to Turn over Lockerbie Suspects Viewed as Possible Stalling Tactic," *Washington Post*, 25 March 1992, p A31.
- Higgins, Rosalyn, *The Development of International Law through the Political Organs of the United Nations*, 1963.
- Rubin, Alfred P., "The US and Britain Should Take Libya to Court," *Christian Science Monitor*, 2 December 1991, p19.
- Scharf, Michael P., "A Preview of the Lockerbie Case," *American Society of International Law*, [www.asil.org/insights/insigh44.htm](http://www.asil.org/insights/insigh44.htm).

### UN Documents:

#### United Nations Charter

The Montreal Convention of 1971 for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, [www.unodc.org/unodc/terrorism\\_convention\\_civil\\_aviation.html](http://www.unodc.org/unodc/terrorism_convention_civil_aviation.html)

S/Res/731

S/Res/748

S/Res/883

### Additional Web Resources:

[www.icj-cij.org/icjwww/idocket/ilus/ilusframe.htm](http://www.icj-cij.org/icjwww/idocket/ilus/ilusframe.htm) - Application Instituting Proceedings Against the United States

## ROMANIA V. UKRAINE

### PROCEEDINGS INSTITUTED BY ROMANIA AGAINST UKRAINE

Following the end of the Cold War, former Soviet states needed to establish boundaries not only on land but also in the Black Sea. The Black Sea states have attempted to ensure that this vital resource is used equitably by creating the Black Sea Forum for Partnership and Development and the Black Sea Economic Cooperation Pact. In addition to these multilateral efforts, Ukraine and Romania participated in bilateral negotiations regarding treaties that would establish borders and good relations. The Treaty on Relations of Cooperation and Good-Neighborliness between Romania and Ukraine ("Treaty on Relations") entered into force 22 October 1997 and created an obligation for the two states to conclude a treaty on the border regime.

The Additional Agreement of the Treaty on Relations gave a time frame and ground rules for the determination of a single maritime boundary between the two States. Article 4(h) of the Additional Agreement provides that if the two states can not settle on an equitable solution to the Black Sea delimitation within two years, either state can bring the issue before the International Court of Justice (ICJ) provided that the Treaty between Romania and Ukraine on the Romanian-Ukrainian State Border's Regime has entered into force. That treaty was signed on 17 June 2003 and entered into force on 27 May 2004.

In September 2004, Romania submitted its application to the ICJ, requesting the ICJ to establish the continental shelf and exclusive economic zone (EEZ) in the Black Sea in accordance with the principles set forth in the United Nations Convention

on the Law of the Sea (UNCLOS). According to Romania, between 1998 and 2004, 24 negotiations occurred, with no resulting agreement regarding the delimitation of the Black Sea. Romania claimed that the solution proposed by Ukraine was not equitable. In addition, Ukraine opened the Bystraya Canal, which connects the Danube River to the Black Sea, in 2004. Romania considered this Canal to be a violation of the commitments in the Border Regime Treaty and a danger to the unique and fragile ecosystem of the river valley. The discovery of oil reserves in the Black Sea has also hindered the negotiations for an establishment of maritime borders. Both Romania and Ukraine would like to settle this dispute so that they can each exploit the natural resources of the Black Sea.

Throughout the delimitation discussion, Zmiyiny Island, or Serpents' (Snake) Island, located 30 kilometers from the Danube River valley has been an important consideration. The classification of Serpents' Island as a rock (cliff) or as an island has important consequences in international law, and could influence the determination of maritime boundaries. Romania and Ukraine have different viewpoints on this land. Romania claims that it is a rock because no one can live on it without assistance and further, although Ukraine has been purposefully developing it to make it an island. Ukraine, on the other hand, claims that it is an island because it has inhabitants. Furthermore, Ukraine argues that Zmiyiny Island has always been an island since the Greeks built a temple to Achilles there. While Romania would like the continental shelf and EEZ lines to be drawn without regard to Snake Island, because it is only a rock and not an "island," Ukraine would like for the Court to find that Snake Island is an "island" and declare the surrounding areas Ukrainian water accordingly. Under the 1997 Additional Agreement of the Treaty on Relations, Ukraine agreed to legally claim the island uninhabited during maritime border negotiations and remove offensive weapons from it. However, Romania complains that Ukraine has claimed the island as part of its territory during the negotiations.

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

- Has Romania established that the ICJ has jurisdiction in this case? Has Ukraine accepted the ICJ's jurisdiction?
- Is Snake Island a rock or a bona fide island?
- Should the ICJ consider the "special" or "relevant" circumstances of the Black Sea and give Snake Island full, some, or no effect?
- What would be an ideal and equitable continental shelf and EEZ between the two states?

## Bibliography:

Application of Romania to ICJ, 13 September 2004.

ICJ Press Release 2004/31, 16 September 2004.

Kuzio, Taras, "Romania attempts to alleviate border problems with Ukraine," *Ukrainian Weekly*, 20 October 2002, v 42 n120.

Shafir, Michael, "Analysis: Serpents Island, Bystraya Canal, and Ukrainian-Romanian Relations," *Radio Free Europe/Radio Liberty*, 24 August 2004.

### UN Documents:

Treaty on Relations of Cooperation and Good-Neighborliness between Romania and Ukraine

Additional Agreement of the Treaty on Relations

Treaty between Romania and Ukraine on the Romanian-Ukrainian State Border's Regime



*Additional Web Resources:*

www.icj-cij.org – International Court of Justice  
www.un.org/Depts/los/index.htm - United Nations Division for  
Ocean Affairs and Law of the Sea  
www.tomrad.ro/iserpi/ENGLISH.HTM

**ADVISORY OPINION: LEGALITY OF THE THREAT OR USE  
OF NUCLEAR WEAPONS (HISTORICAL CASE)**

This is a historical case. Justices and advocates should focus their research on events on or before the Court's decision, issued in July 1996, and do their research accordingly. While some of the relevant law may not have changed since 1996, arguments and opinions should be based on only what the Court had to consider when it decided the opinion in 1996.

In September 1993, the World Health Organization requested an advisory opinion from the International Court of Justice on whether the use of nuclear weapons in armed conflict would be a violation of international law. Due to significant questions regarding the ability of the WHO to request an advisory opinion, the ICJ delayed its response to the question. On 15 December 1994, concerned that the continuing existence and development of nuclear weapons posed serious risks to humanity, the General Assembly decided to ask the Court to rule on the following question: "Is the threat or use of nuclear weapons in any circumstance permitted under international law?"

The first issue for the Court to decide is whether it should issue a decision. Many states feel it would be improper for the Court to rule on such a issue. Under the ICJ statute, the Court has the discretion to respond or not respond to a request for an advisory opinion. Many states argue that an ICJ opinion would undermine the diplomatic process. Other states contend that the intent of the request is a question of morality rather than international law and should not be decided by the ICJ. There is debate regarding the potential impact of an ICJ opinion on the issue, and what consequences it would have on the global situation in the absence of a diplomatic process.

There are many areas of substantive law that shed light on the legality of the threat or use of nuclear weapons. Article 2(4) of the UN Charter prohibits the threat or use of force, while Article 51 recognizes the state's right to self-defense. There are also a number of conventions that apply to the use of weapons, such as the Treaty on the Non-Proliferation of Nuclear Weapons. Furthermore, international humanitarian law, specifically the Geneva Convention, contains some general principles that might be applicable to the threat or use of nuclear weapons. For example, there is law governing the targeting of civilians and the use of weapons that cause indiscriminate damage.

While the Court may find that the threat or use of nuclear weapons is always legal or always illegal, it may also find that it is legal in some circumstances and not legal in others. There may be a difference between threatening to use weapons and actually using them, and there might be an important distinction between a state that uses a nuclear weapon first and one that responds in like fashion. Thus, the Court not only has a lot of different areas of law to consider, it will also need to speculate as to factual scenarios in which the question might arise.

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

- Is the Court competent to issue an opinion on the case? If so, should it use its discretion to decline?
- What are the circumstances, if any, in which the use of nuclear weapons can be deemed legal?
- Is the threat of use (nuclear deterrence) legal?
- Can current treaties and other sources of international law, which lack specific language on the legality of nuclear weapons be expanded in their scope to include nuclear weapons, for purposes of the Court?
- Is there a moral imperative for nuclear nations to complete all disarmament movements?

**Bibliography:**

Evan, William & Ved P. Nanda, *Nuclear Proliferation and the Legality of Nuclear Weapons*, 1995.  
Ginger, Ann Fagan, "Looking at the United Nations through The Prism of National Peace Law," *UN Chronicle*, Summer 1996, v 36 n 2, p 62.  
Meyrowitz, Elliott L., *Prohibition of Nuclear Weapons: The Relevance of International Law*, 1990.  
Watson, Geoffrey, "The ICJ and the Lawfulness of the Use of Nuclear Weapons," *ASIL Newsletter*, June 1995.

*UN Documents:*

Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction  
Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (biological) and Toxin Weapons and on their Destruction  
Geneva Conventions  
Treaty on the Non-Proliferation of Nuclear Weapons  
UN Charter  
A/Res/49/75 K  
A/Res/46/37 D  
A/Res/45/59 B  
A/Res/36/92  
A/Res/35/152  
A/Res/34/83  
A/Res/33/71  
A/Res/1653

*Additional Web Resources:*

www.icj-cij.org - International Court of Justice  
www.lcnp.org/wcourt/index.htm - The Lawyers' Committee on Nuclear Policy  
disarmament.un.org/wmd - United Nations Department for Disarmament Affairs  
www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/section\_ihl\_nuclear\_weapons - Nuclear Weapons and International Humanitarian Law