



# CHAPTER NINE

## THE INTERNATIONAL COURT OF JUSTICE (ICJ)

**The Purview of the Simulation:** The International Court of Justice (ICJ) is the principal international judicial body of the United Nations. The two major roles of the ICJ include developing advisory opinions on matters of international law referred to it 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 both States have accepted the jurisdiction of the Court over the dispute. The ICJ does not preside over legal disputes between individuals, the public, or private organizations.

**Website:** [www.icj-cij.org](http://www.icj-cij.org)

### URUGUAY V. ARGENTINA, PULP MILLS ON THE RIVER URUGUAY

On 4 May 2006, Argentina brought action against Uruguay for its alleged breach of regulations contained in the Statute of the River Uruguay, arguing that the planned construction of two paper mills posed a serious threat to the River Uruguay's ecosystem. In mid-2006, construction continued on the two paper mills, which were located on the international waterway between Argentina and Uruguay. While it is agreed that the paper mills have the potential to stimulate the economies of both countries at issue, concern has arisen over the questionable methods used to ensure that both construction and effects from these mills are not harming the surrounding environment and its residents.

Argentina and Uruguay signed the Statute of the River Uruguay in 1975. The purpose of the Statute was to govern use of the River Uruguay and allocate its natural resources between the two countries. By signing the Statute both parties agreed to consult and notify each other before undertaking projects on the River. As part of the Statute, the Administrative Commission of the River Uruguay (CARU) was established to oversee disputes between the two countries over the River Uruguay. Moreover, the Statute also states in Article 60 that any dispute that cannot be mediated by the CARU may be submitted to the International Court of Justice by the either country.

In 2003, Uruguay granted permission to the Spanish company ENCE to begin construction on a pulp mill near the town of Fray Bentos on the River Uruguay. Subsequently in 2005, Uruguay also gave permission to a Finnish company, Botnia, to build a second pulp mill, also situated near Fray Bentos on the River. While both plants are on the Uruguay side of the River they are also about 25 kilometers from the Argentine town of Gualaguaychú, which has approximately 80,000 residents and is a popular tourist attraction. The two mills represented nearly \$1.7 million dollars (US) of foreign investment in Uruguay, the largest it had ever received. The mills were also expected to generate a large economic boost for the Uruguay economy.

Since the decision to allow construction of the mills, Argentina has repeatedly argued that the toxic runoff from the mills would damage the River's ecosystem. Residents in Gualaguaychú argued that their tourist and agriculture industries would be negatively impacted by the runoff from the mills. Protesters began blocking bridges from Argentina into Uruguay, which had a direct impact on the tourism industry in Uruguay. As tensions between the countries increased, the

governments set up a High-Level Technical Group in March 2005 to help mediate the dispute. These negotiations were unsuccessful. After negotiations between the two countries failed, Argentina began proceedings against Uruguay in the International Court of Justice. In its application, Argentina argued that Uruguay "unilaterally authorized . . . the construction of a pulp mill near the town of Fray Bentos . . . without complying with the obligatory prior notification and consultation procedure" contained in the 1975 Statute. The issue before the Court is whether Uruguay violated its obligations under the Statute.

Argentina requested of the ICJ a provisional measure that would require Uruguay to suspend construction on the mills. The Court rejected the request because it felt that Argentina had not successfully argued that there was an immediate threat from the construction of the mills. This decision did not however, address whether or not Uruguay violated its treaty obligations by authorizing construction on the mills before properly consulting with Argentina. The Court's decision that the mills could be built has led to further protests in Argentina.

Uruguay argued in its defense that building the mills should be allowed under its sovereign right to sustainable economic development. Moreover, Uruguay also argued that the mills would utilize the safest and most up-to-date technology. Uruguay has also contended that the Statute does not require that it obtain permission from Argentina to build the mills, but merely requires it to make proper notification of the intent to construct the mills, which Uruguay claims to have complied with.

In November 2006, Uruguay filed a request with the Court that would require Argentina to "take all reasonable and appropriate steps at its disposal to prevent or end the interruption of transit between Uruguay and Argentina, including the blockading of bridges and roads between the two States." The Court also rejected this request.

Questions to consider on this issue include:

- What international laws or treaties, if any, should influence the Court's decision as to whether Uruguay violated its obligations under the Statute?
- How will a decision impact the underlying construction of the mills?
- To what extent must a state be bound by a bilateral treaty if compliance is not in the best interests of the country's development?

## Bibliography:

- Schweimler, Daniel, "Argentines protest against mills," *BBC News*, 30 April 2006, www.bbc.co.uk.
- "Uruguay authorizes start of wood pulp plant near Argentine border," *International Herald Tribune*, 9 November 2007, www.iht.com.
- "Uruguayan Tourism Hurt by Argentine Protests Over Pulp Mills," *Bloomberg*, 16 January 2006, www.bloomberg.com.
- "World Bank to fund controversial Uruguay pulp mill," *Reuters*, 22 November 2006, www.alertnet.com.

## ICJ Case Documents:

- Application instituting Proceedings, Pulp Mills on the River Uruguay (Argentina v. Uruguay), I.C.J. Pleadings (4 May 2006).
- Request for the Indication of Provisional Measures submitted by Argentina, Pulp Mills on the River Uruguay (Argentina v. Uruguay), I.C.J. Pleadings (4 May 2006).
- Written Observations of Uruguay on the Request for the Indication of Provisional Measures of Argentina, Pulp Mills on the River Uruguay (Argentina v. Uruguay), I.C.J. Pleadings (10 May 2006).
- Request for the Indication of Provisional Measures submitted by Uruguay, Pulp Mills on the River Uruguay (Argentina v. Uruguay), I.C.J. Pleadings (30 November 2006).
- Requests for the indication of Provisional Measures, Pulp Mills on the River Uruguay (Argentina v. Uruguay), I.C.J. Orders (13 July 2006).
- Fixing of time-limits: Memorial and Counter-Memorial, Pulp Mills on the River Uruguay (Argentina v. Uruguay), I.C.J. Orders (13 July 2006).
- Request for the Indication of Provisional Measures, Pulp Mills on the River Uruguay (Argentina v. Uruguay), I.C.J. Orders (23 January 2007).
- Fixing of time-limits: Reply and Rejoinder, Pulp Mills on the River Uruguay (Argentina v. Uruguay), I.C.J. Orders (14 September 2007).

## GERMANY V. UNITED STATES, LAGRAND CASE (HISTORICAL, 1999)

This case concerns two German nationals, Karl and Walter LaGrand. On 7 January 1982, the brothers attempted a bank robbery in Arizona during which the bank's manager was killed. Two years later, an Arizona court convicted the brothers of first-degree murder and sentenced them to death. Germany claims the sentence was invalid because Arizona officials did not comply with the Vienna Convention on Consular Relations (VCCR), a multilateral treaty to which Germany and the US are both parties. Jurisdiction is claimed under Article I of the Optional Protocol, which states that any disputes arising from the Vienna Convention are to be settled under the compulsory jurisdiction of the ICJ.

Article 36 Paragraph 1(b) of the VCCR provides that when a national of one country is arrested or otherwise detained by competent authorities in another country, those authorities are required to do two things: first, they must notify the prisoner of his or her right to contact and be represented by counsel from his or her own country and second, if the prisoner so requests, the authority must notify the consular post (point of communication for a state's official legal

authorities) for the national's country of origin. In this case, the relevant "competent authorities" of the detaining state were Arizona law enforcement and judicial officials. Germany claims, and the US admits, that the Arizona officials failed to comply with the notification requirements of the VCCR. Germany only learned of the brothers' detention and pending death sentences in 1992, when the brothers themselves notified the German consular post in Los Angeles after learning of their rights from other sources. Germany contends that if the brothers had been represented by German counsel they would have fared better at trial, while the US contends that this is too speculative of a harm to justify interference with Arizona's criminal justice system.

Karl LaGrand was executed on 24 February 1999. On 2 March 1999, the day before Walter LaGrand's scheduled execution, Germany petitioned the International Court of Justice for "provisional measures of protection" against the United States that would create an injunction to stay the execution until the Court could reach a decision on the merits. The ICJ granted Germany's request, stating that until final decision in the case was made the US "should take all measures at its disposal" to stay the execution. Germany then sought to enforce the provisional measures in the US Supreme Court, which held that the US procedural default rule prevented the brothers from raising the Vienna Convention issue. Despite Germany's diplomatic efforts, the Governor of Arizona refused to stay the execution, and Walter LaGrand was put to death on 3 March 1999.

One of the major conflicts in this case is between the VCCR and the US domestic doctrine of procedural default, which prevents parties to a trial from raising defenses on appeal if they failed to raise them at the initial trial. This doctrine became important to the case when German counsel were not allowed to raise the VCCR violation issue in later federal court proceedings involving the LaGrands. Germany argues that the VCCR should take precedence, especially since the reason the brothers did not claim their rights at trial is because of Arizona's failure to notify of this right.

After Walter LaGrand's execution, Germany changed its claim for remedies since a new trial was no longer possible. Germany demanded a declaration from the ICJ that the US violated the VCCR, reparation from the US, and protocols put in place by the US to ensure that in the future such a situation would be prevented. In legal support of its argument, Germany claims the VCCR confers rights on individuals such as the LaGrand brothers, rights which are enforceable in both domestic and international courts. The United States claims the VCCR confers enforceable rights on states only, not individuals.

Germany also argues in support of the binding power of provisional ICJ rulings, claiming the US violated the Optional Protocol by not complying with the ICJ's provisional measures and staying the execution. The United States counters with the claim that its domestic doctrine of procedural default takes precedence over the VCCR and that the ICJ does not have the authority to rule on Arizona's sovereign right to manage its own criminal justice system. These questions go to the foundation of the Court's powers and purpose. In preparing your research, pay special attention to Article 41 of the Statute of the Court.

In the simulation, the ICJ will preempt history from the time that the Court's simulation begins. History will be as it was written until the moment the Court convenes on 28 March 2000. From that moment

on, however, ICJ participants exercise free will based on the range of all the choices within their national character and the confines of available law.

Questions to consider on this issue include:

- What judicially enforceable rights, if any, do treaties confer upon individuals?
- When the ICJ was created along with the UN Charter, to what extent did the founding Member States intend for provisional ICJ rulings to be binding?
- How can countries strike the appropriate balance between effective ICJ rulings and state sovereignty?
- To what extent should customary international law and other treaties affect interpretation of a treaty provision?
- To what extent should international legal obligations undertaken by a state affect the implementation of its domestic laws? What about the actions of its sub-state political entities such as US states under the federal system?

## Bibliography:

- Cohen, Roger. "U.S. Execution of German Stirrs Anger," *The New York Times*, [www.nytimes.com](http://www.nytimes.com).
- Federal Republic of Germany v. United States, 526 U.S. 111 (1999).
- Kirgis, Frederic L. "World Court Rules Against the United States in LaGrand Case Arising from a Violation of the VCCR." *ASIL Insights*, July 2001, [www.asil.org/insights/insigh75.htm](http://www.asil.org/insights/insigh75.htm).
- Stephens, Tim. "The Right to Information on Consular Assistance under the VCCR: A Right for What Purpose?" *Melbourne Journal of International Law* Vol. 3 No. 1 (2002) [www.austlii.edu.au/au/journals/MelbJIL/2002/](http://www.austlii.edu.au/au/journals/MelbJIL/2002/).
- Tinta, Monica F. "Due Process and the Right to Life in the Context of the Vienna Convention on Consular Relations: Arguing the LaGrand Case." *European Journal of International Law*, Vol. 12 No. 2 (2001), [www.ejil.org/journal/Vol12/No2/sr2.html](http://www.ejil.org/journal/Vol12/No2/sr2.html).

## UN Documents:

- International Court of Justice Press Release 9/1999  
ICJ/566 – Official UN press release about the court's order for provisional measures.
- Statute of the International Court of Justice
- Vienna Convention on Consular Relations
- Vienna Convention Optional Protocol Concerning the Compulsory Settlement of Disputes
- Vienna Convention on the Law of Treaties, Article 31 Paragraph 3(c)
- United Nations Charter

## Additional Web Resources:

- [www.icj-cij.org/docket/index.php?p1=3&p2=3&code=gus&case=104&k=04](http://www.icj-cij.org/docket/index.php?p1=3&p2=3&code=gus&case=104&k=04)
- [www.icj-cij.org/docket/index.php?p1=3&p2=3&code=paus&case=99&k=08](http://www.icj-cij.org/docket/index.php?p1=3&p2=3&code=paus&case=99&k=08)
- [www.nyulawglobal.org/Globalex/Vienna](http://www.nyulawglobal.org/Globalex/Vienna)

## REPUBLIC OF GUINEA V. DEMOCRATIC REPUBLIC OF THE CONGO, DIALLO CASE

This case involves proceedings between the Republic of Guinea on behalf of Mr. Ahmadou Sadio Diallo, a Guinean citizen, and the Democratic Republic of the Congo (formerly known as Zaire). The case is over Guinea's assertion that Diallo, who lived in Zaire for 32 years, was "unlawfully imprisoned by the authorities of that State" and was, "divested of his important investments, companies, bank accounts, movable and immovable properties, then expelled" after Diallo attempted to collect debt owed to him by Zaire. While residing in Zaire, Diallo founded two major companies, Africom-Zaire (a trading company) and Africacontainers (a container transport company). Both companies had contracts with major oil and mineral companies within Zaire and with the government itself. The proceedings came about after Diallo attempted to recover substantial debt owed to him by Zaire Shell, an oil company of which Zaire was a shareholder.

In 1995, after direct negotiation with the company and the state failed, Diallo began to take action through the Zaire court system to collect the debts owed to him. Diallo was able to successfully argue his case in the Congolese court and Zaire Shell was ordered to pay Diallo's company, Africacontainers, \$13 million (US). The court also issued a seizure order against Zaire Shell's bank accounts and property. The decision was upheld through several appellate decisions and was initially honored by the Prime Minister. The Minister of Justice was to oversee negotiations between Diallo and Africacontainers and Zaire Shell to develop a payment schedule.

However, the Prime Minister of Zaire issued an expulsion order against Diallo on 31 October 1995. The order claimed Diallo's "presence and conduct have breached public order in Zaire, especially in the economic, financial, and monetary areas, and continue to do so". On 5 November Diallo was secretly arrested and imprisoned and the Prime Minister revoked the seizure against Zaire Shell's accounts and property. Diallo's plight generated significant attention from the media and international organizations and despite petitions from groups such as *Avocats Sans Frontieres*, he was held for 74 days. After his release, the Prime Minister issued a new expulsion order and Diallo was forced to leave the country by aircraft. The paperwork involved in the deportation was formalized as a refusal of entry notice, and an account of illegal residence.

On behalf of Diallo, the Republic of Guinea requested that the International Court of Justice order Zaire, now the Democratic Republic of the Congo, to make full reparations and public apology to Diallo. Guinea asserts that Diallo's arrest, detention and expulsion were a result of a DRC policy to prevent him from collecting the debts owed. The DRC rejects this allegation, and argues that his detention, expulsion and arrest were the result of his presence breaching public order in Zaire (now DRC). Guinea is arguing on behalf of Diallo by exercising its diplomatic protection, noting that Diallo's rights were violated in the following three categories: his individual rights, his direct rights as the acting partner in Africom-Zaire and Africacontainers-Zaire, and the rights of those companies by substitution.

Questions to consider on this issue include:

- What recourse does a nation or individual have in the ICJ when wronged as a result of internal politics in another state?
- What effect should the Court give to the decision of the Congolese court in favor of Diallo?
- How do international law and treaties influence the obligations that a state has to allow foreign businesses to collect debt upon a judgment?
- Does a state have the right to pursue justice on one of its nationals through the International Court of Justice?

### **Bibliography:**

- “African corruption focus of case at World Court,” *International Herald Tribune*. 26 November 2006, [www.int.com](http://www.int.com).
- “Guinea seeks \$36bn from DR Congo,” *BBC News*, 27 November, 2006, [www.bbc.co.uk](http://www.bbc.co.uk).

### **UN Documents:**

- A/54/4  
A/55/5  
GA/10652  
GA/10523

### **Additional Web Resources:**

- [www.icj-cij.org/docket/index.php?p1=3&p2=3&code=gc&case=103&k=7a](http://www.icj-cij.org/docket/index.php?p1=3&p2=3&code=gc&case=103&k=7a) – ICJ page on the Case