



CHAPTER NINE

THE INTERNATIONAL COURT OF JUSTICE

PURVIEW OF THE INTERNATIONAL COURT OF JUSTICE

The International Court of Justice (ICJ) is the principal international judicial body of the United Nations. The two major roles of the ICJ are 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.

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REQUEST FOR ADVISORY OPINION: ACCORDANCE WITH INTERNATIONAL LAW OF THE UNILATERAL DECLARATION OF INDEPENDENCE IN RESPECT OF KOSOVO (IRELAND, IRAN, KOSOVO AND SERBIA) (2008)

This is a historical case. In accordance with AMUN rules and procedures, please note that the historical timeline for this case will stop on 1 July 2010. Any and all updates to this case after that date will not be relevant to the AMUN simulation nor considered in hearing the case.

On 8 October 2008, the General Assembly successfully passed a resolution sponsored by the Republic of Serbia (Serbia) requesting an advisory opinion from the International Court of Justice regarding the legality of Kosovo's 17 February 2008 declaration of independence. Serbia claims that some Member States question the legality of Kosovo's secession and asks that the ICJ hold a further examination on Kosovo's unilateral decision to declare its independence.

This case stems from a long history between ethnic Albanians and ethnic Serbians. Following World War II, the 1946 Yugoslavian Constitution did not recognize an ethnic Albanian nationality nor provide territorial autonomy to Kosovo, a predominantly Albanian region. When the Yugoslavian Constitution was rewritten in 1974, Kosovo was made an autonomous province and federal unit equal to Serbia within Yugoslavia. Amendments to the Serbian Constitution stripped Kosovo's autonomy in 1989. Kosovo's parliament approved these actions.

The 1990s were a period of significant turmoil in the Balkans both during and after the civil war in the Former Yugoslavia. In response to Federal Republic of Yugoslavia President Slobodan Milosevic's continued failure to comply with "the repeated political and humanitarian demands of the UN Security Council in regards to Kosovo," the North Atlantic Treaty Organization (NATO) threatened the use of military force. Following the failure of the Rambouillet Agreement for Kosovar peace and self-governance in 1999, NATO began a bombing campaign in Serbia. This campaign ended with Yugoslavia signing an agreement with NATO. The UN Security Council formalized this agreement in Resolution 1244. That resolution contained provisions

affirming the commitment of all Member States to the sovereign and territorial integrity of Yugoslavia, the right of all refugees to return home, and the basis for a Kosovo solution. This resolution also established the United Nations Interim Administration Mission in Kosovo (UNMIK).

In October 2001, the governments of Yugoslavia and Serbia issued a joint declaration stating that NATO had failed to enforce the terms of Security Council Resolution 1244. Additionally, the Yugoslavian and Serbian Parliaments planned a constitutional charter for a new state of Serbia and Montenegro, which would retain Kosovo within Serbia. In response, Kosovo adopted a resolution rejecting unification proposals, precipitating the return of unrest and hostilities to the region. On 17 February 2008, Kosovo unilaterally declared its independence from Serbia. Kosovo's new constitution went into effect on 16 June 2008. In response, Serbia, through the General Assembly, has requested that the ICJ issue an advisory opinion regarding the unilateral action taken by Kosovo. In its request, Serbia argues that the Court has jurisdiction to hear this action and render an advisory opinion as provided under Article 96 of the United Nations Charter.

Serbia claims that Kosovo's unilateral declaration of independence violates international law. Serbia first claims that Kosovo's secession is ethnically motivated and undermines the authority of the UN by removing its interim administration (UNMIK) as provided for in Security Council Resolution 1244. Second, it is a direct violation of the principles of territorial integrity established and protected by Resolution 1244. Third, Kosovo has been engaged in human rights infractions, such as the ethnic cleansing of Serbians and massacring the non-Albanian population, and does not deserve a UN pronouncement of independence. Finally, Serbia argues that UN support for the independence of Kosovo would establish a precedent equating the arrival of UN peacekeeping forces with the first step in a recognized secession.

Kosovo submits that any opinion by the Court that determines Kosovo's declaration of independence to be illegal would cause additional unrest and more turmoil. Kosovo argues that Serbia has lost the right to govern Kosovo due to repeated and brutal human rights infractions. Additionally, in accordance with the understandings of the Rambouillet conference and Resolution 1244, people should be free to align with their chosen political status. Finally, Serbia was never serious in their offers for the autonomy of Kosovo and the promotion of peace in the region. In fact, Serbia confirmed Kosovo as part of the Serbian state in their 2002 Constitution.

A number of other UN Member States have weighed in on this issue. Some opponents point out that, while the General Assembly may have referred this case to the Court, the Security Council should be the requesting organ of the UN, given its passage of Resolution 1244. As the Security Council has neglected to ask for an advisory opinion, the Court should use discretion and not answer the General Assembly's request.



Proponents advance a number of arguments for the Court to find the unilateral declaration of Kosovo to be in accordance with international law. Foremost is that Kosovo's action is justified by the fundamental human rights abuses and the lack of representation they suffered while a part of Serbia. Proponents argue that, while all citizens of the world possess the right to self-determination within the framework of the existing State, the principle of *Carence de souverainete* (lack of sovereignty) encourages secession when a territory is so heavily misgoverned that self-determination within an existing State is not possible. The placement of UNMIK as a governing body was viewed as recognition of existing misgovernment by Serbia. Proponents further assert that the long history of enmity and distrust between Albanians in Kosovo and Serbia continues to exert a poisoning influence on efforts toward integration.

Opponents of Kosovar independence argue that Kosovo is not in accordance with international law. These proponents highlight the inviolability of the principle of territorial integrity. Within international law, the principle of territorial integrity is seen as being of the utmost importance—a cornerstone to the Charter of the United Nations. According to the Vienna Convention of 1969, territorial integrity should be treated as a “norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted.” Furthermore, the principle of territorial integrity as an internationally recognized norm not only applies between States but also within them. In addition, proponents of a single Serbian state point to the large difference between the rights of the minority group and the right to secession. While all human beings, minority or not, have the right to self-determination, it is an internal right.

Resolution 1244 indicates that any final settlement between Serbia and Kosovo must be the result of a negotiated agreement between the parties or of a Security Council decision. In the view of the opponents of ICJ jurisdiction in this case, the Resolution excludes a unilateral act as a possibility for a final settlement.

The Court will first need to consider its own right to jurisdiction in this case. While the General Assembly may submit issues to the ICJ for an Advisory Opinion, this is traditionally done in reference to the need for legal clarification on some matter before the General Assembly. Since a part of this argument is based in the implications of a Security Council resolution, this may or may not be an issue. If jurisdiction is warranted, the Court must also then take into consideration the two competing fundamental issues of international law represented here: the inviolability of the principle of territorial integrity and the rights of peoples to self-determination. Various treaties and human rights documents speak to these issues. In addition, competing claims of human rights violations may be important in this case.

Questions to consider include the following:

- Given that the General Assembly has asked the Court to provide an Advisory Opinion on an issue regarding which the UN Security Council has passed a Resolution, where does this Court find jurisdiction to consider the merits of this Advisory Opinion?
- How do competing claims of self-determination and territorial integrity/sovereignty apply in this case?
- Given the existence of a Security Council resolution as one source of law, do the provisions of Resolution 1244 affect the

ability of Kosovo to declare independence when combined with other relevant sources of law on self-determination?

- Do human rights issues on either or both sides provide a legal impetus or impediment to a declaration of independence, either alone or in combination with the other legal issues defined here?

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PULP MILLS ON THE RIVER URUGUAY (ARGENTINA V. URUGUAY) (2006)

On 4 May 2006, the Argentine Republic (Argentina) applied to the International Court of Justice to institute proceedings against the Oriental Republic of Uruguay (Uruguay) wherein Argentina accused Uruguay of breaching the Statute of the River Uruguay with respect to the authorization, construction and future commissioning of two pulp mills on the river. Argentina argues that the Court has jurisdiction through the 1975 Statute of the River Uruguay (1975 Statute), which allows the submission of any dispute concerning the interpretation or application of the agreement that cannot be settled by direct negotiations to the International Court of Justice. While Uruguay accedes that the Court has jurisdiction in this matter, Uruguay submits that Argentina's accusations are meritless and require no action by the Court.

Argentina claims that Articles 7 to 13 of the 1975 Statute impose obligations on any party planning to carry out works liable to affect navigation, the regime of the river, or the quality of its waters. These obligations state that either party must provide prior notification to the Administrative Commission on the River Uruguay (CARU) established by the Statute, which shall determine whether the plan might cause damage to the other party. If the notified party does not raise objections or does not respond within an established period, the project initiating party may proceed. However, if the notified party determines that damage may result from a project being carried out under the 1975 Statute, it may take recourse through CARU. In the event the parties fail to reach an agreement within 180 days following such notification, either nation may submit the dispute to the International Court of Justice. Argentina asserts that, on 9 October 1975, Uruguay unilaterally authorized a Spanish company to construct a pulp mill on the river. In granting this authorization, Argentina argues that Uruguay failed to comply with the obligatory prior notification and consultation procedures under the 1975 Statute. On 27 October 2003, Uruguay notified the Argentine Embassy in Uruguay that it had granted prior environmental authorization for the construction of the pulp mill. A report prepared by the Spanish company and a Uruguayan Ministry was then sent to the embassy. Finding these reports to be deficient, Argentina informed Uruguay that this authorization was not in keeping with the 1975 Statute. Uruguay continued with its plan to build the pulp mills. The dispute intensified when a second pulp mill was built on the Uruguay River without due notification to Argentina according to the 1975 Statute. In response to these unilateral actions by Uruguay in violation of the 1975 Statute,

Argentina urges the Court to find Uruguay has procedurally breached the 1975 Statute.

In addition, Argentina seeks an injunction against Uruguay to stop production within the pulp mill plant due to the hazardous materials used. Argentina urges the Court to recognize that the impact of the construction and operation of the two pulp mills imposes major risks of environmental destruction, including pollution along the river, deterioration in plant biodiversity, damage to fish life and harmful effects on human health – all resulting in significant impacts on tourism and other Argentine economic interests. Argentina argues that the use of hazardous materials is in blatant violation of Uruguay's obligation to ensure reduction of these materials per the Basel Convention. Furthermore, Argentina asserts that Uruguay is failing to comply with the Montreal Protocol regarding the phase-out of methyl bromide, an ozone-depleting substance. The pulp mills also utilize Elemental Chlorine Free (ECF) technology, a process that includes chlorine dioxide in the course of the manufacturing process, producing organic pollutants and endocrine disrupters that have been linked with a myriad of health and environmental problems. Argentina claims that the use of ECFs is contrary to Uruguay's obligations under the United Nations Environment Programme (UNEP).

In response to Argentina's application instituting proceedings before the Court, Uruguay asserts that these accusations will not withstand serious scrutiny. Uruguay believes Argentina received the full measure of communication and collaboration entitled under the 1975 Statute. Uruguay asserts that the Statute imposes the procedural duties of notification, information sharing and, if necessary, consultation and dispute resolution by the International Court of Justice whenever one of the parties authorizes a project that may potentially cause harm to the other. Uruguay argues that nothing in the Statute imposes on either party the obligation to obtain the expressed approval of the other before carrying out a planned project within its sovereign domain. As such, the procedural provisions of the Statute only require prior consultation between the parties, not prior consent. If a persistent disagreement exists on whether a project may harm the river or the other party, the Statute does not provide for a right of rejection but for resolution of the dispute by the ICJ at the insistence of either party. Uruguay argues that it gave timely notice, shared sufficient information and consulted in good faith with Argentina about both pulp plants.

Furthermore, Uruguay also asserts that it fully complied with its obligations under Articles 36 and 41 of the Statute. According to Uruguay, the pulp mills will fully comply with CARU's water quality and other environmental regulations. Uruguay points out that Argentina lacks any scientific evidence that the plants will violate these regulations. In fact, the International Finance Corporation of the World Bank and its independent panel of experts praised the two plants' environmental performance. These independent experts found that both plants would satisfy all of CARU's water quality standards and regulations for the protection of the Uruguay River and its ecosystem. Uruguay asserts that Argentina's concerns remain speculative possibilities of eventual harm. As such, Uruguay urges the Court to uphold its actions, finding that Uruguay is not in procedural violation of the 1975 Statute, nor has Uruguay caused actual harm to the environment of the river.



In successfully adjudicating this case, the Court must address and resolve two significant issues. First, does the International Court of Justice have jurisdiction to consider the application submitted by Argentina to determine whether Uruguay is in violation of the 1975 Statute of the River Uruguay? Second, if the Court does find jurisdiction in this case, how does the Court balance the act of asserting national sovereignty with a potential or real impact that extends beyond national borders?

Questions to consider include the following:

- Consider the responsibilities and obligations Argentina and Uruguay have under the 1975 Statute of the River Uruguay. Do you believe those responsibilities and obligations were met in this case?
- This case considers both a procedural and substantive breach of faith of the 1975 Statute of the River Uruguay. How does one affect the other in your consideration of the facts of the case?
- 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?
- This case asks the Court to consider the competing interests of potential environmental damage with the opportunity for economic advancement. Which do you think is more important and how does that affect your perspective on this case?

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REQUEST FOR INTERPRETATION OF THE JUDGMENT OF 15 JUNE 1962 IN THE CASE CONCERNING THE TEMPLE OF PREAH VIHEAR (CAMBODIA V. THAILAND) (CAMBODIA V. THAILAND) (2011)

On 20 April 2011, the Kingdom of Cambodia (Cambodia) instituted proceedings before the International Court of Justice against the

Kingdom of Thailand (Thailand) requesting an interpretation of the Judgment previously rendered by the Court on 15 June 1962 (the 1962 Judgment) to resolve the ongoing dispute between the Kingdom of Cambodia and the Kingdom of Thailand over the sovereignty of territory in the vicinity of the Temple of Preah Vihear.

The 1962 Judgment and the present case are only two of many episodes in a decades old dispute between Cambodia and Thailand. In 1954, Thai military forces were stationed in the area of the Temple of Preah Vihear (the Temple) as a result of an ongoing border dispute. This action prompted both parties to seek redress before the Court. In the 1962 Judgment, the Court found that the Temple of Preah Vihear was situated in territory under the sovereignty of Cambodia. As such, the Court found that Thailand was under an obligation to withdraw any military or other police and guarding forces then stationed at the Temple. Following several skirmishes that took place in the vicinity, the Thai Minister for Foreign Affairs sent a communique to the Secretary-General of the United Nations on 6 July 1962 in which Thailand, while stipulating that the 1962 Judgment was contrary to the “principles of law and justice,” nonetheless agreed to honor its obligations according to the Judgment. However, Thailand made a reservation regarding its rights to “recover the Temple of Phra Viharn [as Thailand refers to the Temple]” and registered a protest against the decision of the Court.

On 7 July 2008, the United Nations Educational, Scientific and Cultural Organization (UNESCO) included the Temple on the list of World Heritage sites. Prior to inclusion on the list, Thailand produced a map claiming the territory disputed in the 1962 Judgment as sovereign Thai territory. On 15 July 2008, Thai soldiers occupied territory near the Temple. Since 2008, Cambodia has claimed that several Thai military incursions in the vicinity of the Temple have contributed to a general deterioration of bilateral relations and increased tensions in the area.

In its application instituting proceedings, Cambodia respectfully asks the Court to declare that the 1962 Judgment provides that Cambodia's sovereignty over the Temple is a result of the Court's determination that the Temple is situated within the sovereign territory of Cambodia. Cambodia asserts the 1962 Judgment did not independently recognize the sovereignty of the Temple to either State, but rather awarded it as part of the larger territory in question. Furthermore, Cambodia asks this Court to reaffirm that the 1962 Judgment obligates Thailand to “withdraw any military forces or police forces, or other guards or keepers” stationed at the Temple or in its vicinity because the Temple was found to be situated in Cambodian territory. According to Cambodia, this wording clearly indicates that Thailand's obligation to withdraw its forces goes beyond the immediate footprint of the Temple, but the area of the Temple in general. In fact, the 1962 Judgment established a general and continuing obligation upon Thailand to respect the territory of Cambodia delimited on the “Annex I map” as a permanent condition.

In support of the Court's jurisdiction over this matter, Cambodia relies on Article 60 of the Statute of the Court, which allows the Court to render an interpretation when there is a dispute as to “the meaning or scope.” Cambodia urges the Court to find jurisdiction and issue an interpretation of the 1962 Judgment in order to maintain international peace and security in accordance with Article 2, paragraph 3 and Chapter VI of the United Nations Charter. In spite of



efforts by the Association of Southeast Asian Nations and the Secretary-General, military forces have continued to clash in the disputed territory.

In its current application, Cambodia points to three aspects of the 1962 Judgment where the two States are in disagreement. First, the 1962 Judgment is based on the prior existence of an international boundary established and recognized by both States. Second, that boundary is defined by the so-called “Annex I map.” Finally, the 1962 Judgment obligates Thailand to withdraw any military or other personnel from Cambodian territory in the vicinity of the Temple. Cambodia asserts that it only recently became clear that Thailand had a differing interpretation of the 1962 Judgment and then only as a result of Thailand’s opposition to including the Temple on the list of UNESCO World Heritage sites.

Thailand disagrees on each of these points. In response to Cambodia’s application before the Court, Thailand argues that this case is based on nothing more than an effort by Cambodia to create a dispute of interpretation over the 1962 Judgment and encourage the Court interpret the Judgment as determining the boundary between Thailand and Cambodia, when in fact the Court made no such determination, nor did it grant status to the line on the Annex I map.

In his 1962 communique to the Secretary-General, the Thai Minister for Foreign Affairs reiterated the right of Thailand to recover the Temple with recourse “to any existing or subsequently applicable legal process.” Far from evidence of a threat, this language presaged future efforts by Cambodia and Thailand to resolve this border dispute. Thailand and Cambodia created a bilateral process on 21 June 1997 with the signing of a Joint Statement by the Ministers of Foreign Affairs, whereby the Thai-Cambodian Joint Commission on Demarcation for Land Boundary was entrusted with the task of identifying the land boundary between the two countries. On 14 June 2000, Thailand and Cambodia signed a Memorandum of Understanding on the “Survey and Demarcation of Land Boundary” which established an amicable process to identify the previous boundary and place new boundary pillars in previously unmarked sectors. By bringing this case before the Court, Cambodia has actively shifted away from working collaboratively to resolve differences over the boundary dispute.

Moreover, on 15 July 1962, Thai troops were withdrawn from the Temple and its vicinity. As such, Thailand asserts there is no present-day dispute between Cambodia and Thailand over compliance with the 1962 Judgment regarding the presence of armed forces. While Thailand does not dispute that armed incidents took place in the area of the Temple after its UNESCO listing, it does assert that these were defensive in nature, a result of Cambodia’s increased military and civilian presence in the area and armed attacks by Cambodia extending into undisputed Thai territory. Thailand asserts that none of these incidents resulted from Thai forces encroaching into the Temple area. Thailand has respected the 1962 Judgment of the Court and refused to allow its troops to enter the Temple.

Thailand rejects Cambodia’s claim that Thailand’s opposition to the listing of the Temple as a UNESCO World Heritage site is a catalyst for Cambodia to submit this case to the Court for consideration. In fact, Thailand discussed the possibility of submitting a joint Thai-Cambodian nomination to include the Temple on the UNESCO World Heritage List. Cambodia took the unilateral step to request that

UNESCO list the Temple and defined the area of the listing in such a way as to include a substantial portion of Thai territory. Although Thailand eventually did not oppose the listing of the Temple, Thailand is adamantly opposed to allowing the submission of a Cambodian site “Management Plan” that includes areas of Thai territory.

Finally, Thailand asserts that the Court, in its 1962 Judgment, specifically did not determine a boundary between Cambodia and Thailand or grant status to the line on the Annex I map. Rather, the Court limited their adjudication to the status of the Temple. In asking the Court to affirm the land boundary according to the Annex I map, Cambodia is encouraging the Court to break new ground on an old decision - an action the Court cannot take under Article 60.

In successfully adjudicating this case, the Court must consider two competing and fundamental claims. First, does the Court have jurisdiction to consider the application submitted by Cambodia to provide an interpretation of the 1962 Judgment as outlined above? Second, if the question of jurisdiction is properly found, do the competing claims warrant a more complete discussion and review of the underlying border dispute between the parties?

Questions to consider include the following:

- The 1962 Judgment by the International Court of Justice sought to balance a number of competing priorities in a volatile geopolitical time and circumstance. Should those considerations be reconsidered in the context of this case?
- This case is unique in that both parties point to a previous case adjudicated by the International Court of Justice, on which an opinion was given in 1962. Once presented with the facts of the case, which interpretation of the 1962 Judgment do you find most compelling?
- To what extent have the bilateral efforts of Cambodia and Thailand been successful in addressing this recurring conflict?

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