



## 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.

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

### AHMADOU SADIO DIALLO (REPUBLIC OF GUINEA V. DEMOCRATIC REPUBLIC OF THE CONGO)

This is a historical case. In accordance with AMUN rules and procedures, please note that the historical timeline for this case will stop on 26 November 2006. Any and all updates to this case after that date will not be relevant to the AMUN simulation nor considered in hearing the 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 concerns Guinea's assertion that Diallo, who lived in Zaire for 32 years, was unlawfully imprisoned by Zairean authorities, divested of his property, and expelled from the country after he attempted to collect a debt owed to him by Zaire. While residing in Zaire, Diallo founded two major companies: the trading company Africom-Zaire and the container transport company Africacontainers. 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 filed suit through the Zaire court system to collect the debts. Diallo was successful and the court ordered Zaire Shell to pay Africacontainers, \$13 million. The court also issued a seizure order against Zaire Shell's bank accounts and property. The decision was upheld through several appeals 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, 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 on 31 January 1996. 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 in 1998 that the International Court of Justice order Zaire, now the Democratic Republic of the Congo, to pay reparations of over \$30 billion and make a public apology to Diallo. Guinea asserts that Diallo's arrest, detention and expulsion were a result of a Democratic Republic of the Congo policy to prevent him from collecting the debts owed. Guinea is arguing on behalf of Diallo by exercising its diplomatic protection, noting that Diallo is a Guinea national and his 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.

The Democratic Republic of the Congo argues that Mr. Diallo is a dual citizen of both Guinea and the DRC. Since he resided in the country for 32 years, he acquired Congolese citizenship through the doctrine of *jus soli*. As a consequence of this legal status, the Democratic Republic of the Congo contests Guinea's ability to afford diplomatic protection for Diallo. Additionally, the Democratic Republic of the Congo asserts that Diallo engaged in improprieties with an administration that was historically corrupt and exploitative. By knowingly doing business with such a government, Mr. Diallo fails to meet the requirement of having "clean hands" to claim diplomatic protection determined in past international cases. Nevertheless, the current government of the Democratic Republic of the Congo views itself as a successor state to Zaire. As such, it took over the international identity of Zaire, but it holds that it cannot be held responsible for the obligations made by its corrupt predecessor state. Even if the Court should find that the current government is responsible, the Democratic Republic of the Congo claims that the amount of damages Guinea has asserted is far too high. As a country that holds Highly Indebted Poor Country status with the Paris Club of international creditors, the Democratic Republic of the Congo is in no shape to pay such an amount and would be irrevocably harmed by such a judgment.

In successfully adjudicating this case, the Court must first decide on the citizenship status of Mr. Diallo. His status as either a Guinea national or a dual national will have a cascading effect on the rest of the arguments made by both sides. Secondly, the Court must decide what rights and responsibilities both Mr. Diallo and the Democratic Republic of the Congo have to each other based on his citizenship status and his dealings with the past government of Zaire. Lastly, the Court must determine if the current government of the Democratic Republic of the Congo is responsible for the potentially corrupt business agreements made by the past government of Zaire.

Questions to consider on this issue include:

- What recourse does a State or individual have in the International Court of Justice when wronged as a result of internal politics in another state?
- What effect should the Court give to the decision of the Zairian 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 behalf of one of its nationals through the International Court of Justice?

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## LAGRAND (GERMANY V. UNITED STATES OF AMERICA)

This is a historical case. In accordance with AMUN rules and procedures, please note that the historical timeline for this case will stop on 28 March 2000. Any and all updates to this case after that date will not be relevant to the AMUN simulation nor considered in hearing the case.

This case concerns two German nationals, Karl and Walter LaGrand. On 7 January 1982, the brothers attempted a bank robbery in Arizona, killing the bank's manager in the attempt. 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 (Vienna Convention), a multilateral treaty to which Germany and the United States of America 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 International Court of Justice.

The Vienna Convention 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. 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 United States of America admits, that the Arizona officials failed to comply with the notification requirements of the Vienna Convention. 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 United States of America 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 International Court of Justice granted Germany's request, stating that until final decision in the case was made, the United States of America "should take all measures at its disposal" to stay the execution. Germany then sought to enforce the provisional measures in the United States Supreme Court; the Supreme Court denied Germany's request. Despite Germany's diplomatic and legal 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 Vienna Convention and the United States of America's 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 Vienna Convention violation issue in later federal court proceedings involving the LaGrands. Germany argues that the Vienna Convention should take precedence, especially since the reason the brothers did not claim their rights at trial was a result of Arizona's failure to notify them of this right.

After Walter LaGrand's execution, Germany changed its claim for remedies since a new trial was no longer possible. Germany demands a declaration from the International Court of Justice that the United States of America violated the Vienna Convention. Additionally, Germany demands that the United States of America both pay reparations and put in place protocols to ensure that a similar situation would be prevented in the future. In legal support of its argument, Germany claims the Vienna Convention confers rights on individuals such as the LaGrand brothers, rights which are enforceable in both domestic and international courts. The United States claims the Vienna Convention confers enforceable rights on States Parties only, not individuals.

Germany also argues in support of the binding power of provisional International Court of Justice rulings, claiming that the United States of America violated the Vienna Convention's VCCR's Optional Protocol by not complying with the Court's provisional measures and staying the execution. The United States of America counters with the claim that its domestic doctrine of procedural default takes precedence over the Vienna Convention and that the Court 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.



Questions to consider on this issue include:

- What judicially enforceable rights, if any, do treaties confer upon individuals?
- When the International Court of Justice was created, along with the United Nations Charter, to what extent did the founding Member States intend for provisional International Court of Justice rulings to be binding?
- How can countries strike the appropriate balance between effective International Court of Justice 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 Member State affect the implementation of its domestic laws? What about the actions of its sub-state political entities, such as the State of Arizona under the United States of America's federal system?

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## OBLIGATION TO NEGOTIATE ACCESS TO THE PACIFIC OCEAN (BOLIVIA V. CHILE)

On 24 April 2013, the government of the Plurinational State of Bolivia filed an application to institute proceedings against the Republic of Chile. Bolivia cites more than one hundred years of treaties, agreements, government communications and public statements to support their assertion that Chile has an unfulfilled obligation to negotiate with Bolivia a path for sovereign access to the Pacific Ocean.

Bolivia cites the 1948 American Treaty on Pacific Settlement, also known as the Pact of Bogotá, in support of the Court's jurisdiction in this matter. Article 31 recognizes the jurisdiction of the Court in matters between American States involving, among other disputes, matters of interpreting treaties and questions of international law. Both Bolivia and Chile have signed and ratified the Pact.

Chile and Bolivia achieved independence from Spain in 1810 and 1825, respectively. At the time, Bolivia's territory reached the Pacific

Ocean, although both Chile and Bolivia declared sovereignty over the area that represented Bolivia's link to the ocean, referred to in Bolivia as the department of Litoral. The Treaty of 10 August 1866 settled this dispute, marking the border between the two nations at the 24th parallel. This resolution was further solidified by the Treaty of 6 August 1874. This agreement was short lived, with Chile annexing the Litoral during the War of the Pacific, (also known as the Guano or Nitrate War). This war, between Chile, Bolivia and Peru, began in 1879 and ended with the Truce of Valparaíso, signed in 1884, sealing Chile's victory; the Truce granted Chile control over the disputed territory and declared the border treaties of 1866 and 1874 null and void. This treaty, however, did not officially end the conflict nor give Chile permanent annexation of the disputed territory—only control. In 1895, the parties executed the Special Treaty on the Transfer of Territories, which included provisions for Bolivia to regain natural and sovereign access to the sea, dependent on Chile's acquisition of specific areas.

In 1904 the parties signed the Treaty of Peace and Friendship, officially ending the War of the Pacific and establishing Chilean rule over the previously conquered Bolivian territories, including the department of Litoral. The Treaty did grant Bolivia the right to import and export goods through two ports, Arica and Antofagasta. The loss of the Litoral converted Bolivia into a landlocked country, with all the special difficulties in the export and import of goods that entails. Bolivia is rich in natural resources, which are difficult to export without a sea port. In addition to the direct access it provides to the ocean, the contested department of Litoral is rich in natural resources.

Over the subsequent years, there have been a number of communications between the two countries concerning the status of Bolivia's former land link to the Pacific Ocean. In 1950 and 1961, official communications from Chile to Bolivia discussed the possibility of entering into formal negotiations to grant Bolivia sovereign access to the Pacific Ocean.

On 8 February 1975, the President of Chile, Augusto Pinochet, signed a Declaration with Bolivian President Hugo Banzer, in which both assumed a compromise "to find formulas to solve the vital issues which both countries faced, such as one relating to the landlocked situation that affects Bolivia." With this compromise, both governments started a negotiation in which Chile, through an official note on 19 December 1975, expressed: "it would consider, as manifested by President Banzer, the cession to Bolivia of a sovereign seacoast linked to the Bolivian territory by an equally sovereign territorial strip."

This problem was further discussed in bilateral agreements between Bolivia and Chile, such as the Ayacucho Statement of 1974. In 1979 the Organization of American States adopted resolution 426, formally asking the countries to engage in negotiation to provide Bolivia with sovereign access to the Pacific Ocean. Further resolutions adopted by OAS in 1980, 1981 and 1983 reiterated this request.

In 2006, the Chilean government agreed to start negotiations about the maritime theme as part of a 13-point Agenda which, after four years of conversations without result, led to another formal Chilean pledge, this time "to present and to achieve concrete, feasible and useful solutions" for the maritime issue, as written in the Act signed in La Paz on 14 July 2010. A few months later however, the meetings disintegrated. After this point, Chile declared through multiple state organs that there was no issue needing to be discussed, and that there is no legal basis for Bolivia's claim. Bolivia asserts that Chile has affirmed through its public officials and



past discussions an agreement to negotiate an agreement granting sovereign access to the Pacific Ocean. Furthermore, they claim that this obligation has not been met.

Chile has asserted that there exists no agreement or obligation to negotiate access. They state that there is no legal basis for the dispute, that there are no ongoing maritime discussions between the two countries and that the 1904 Treaty of Peace and Friendship established the border between the two countries.

Questions to consider include the following:

- Does the Pact of Bogotá provide the Court jurisdiction over this matter?
- Do statements of the Chilean government prove or create an obligation to negotiate both sovereign access to the Pacific Ocean for Bolivia and the territories which Chile will cede to Bolivia?
- What, if any, mechanism, does the Court have to mandate and review negotiations between two Member States?

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