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

Ecuador v. Colombia (Aerial Herbicide Spraying)

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 February 2012. 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 31 March 2008, Ecuador initiated proceedings in the International Court of Justice to resolve an ongoing dispute between Ecuador and Colombia regarding Colombia's program of toxic herbicide aerial spraying. There are three main points of contention in this case. First, is the Court the best place for Ecuador to settle its differences with Colombia over the spraying program considering the other diplomatic steps taken in the dispute? Second, to what extent, if any, must a State take responsibility for the direct or indirect effects of its actions when the effects crosses international boundaries? Finally, what is the burden of proof that must be met before the acting State can be held responsible or liable for said effects?

Colombia's program of aerial dispersion of a toxic herbicide is part of a comprehensive plan to eradicate illegal crops as part of the effort to combat drug-related terrorism financing. Colombian aerial dispersion is part of Plan Colombia, an effort by the Colombian government that includes as one of its goals ending drug trafficking in Colombia. Colombia is targeting illegal coca growers who supply drug trafficking organizations that export the drug as far as the United States and Europe. This program is supported by the United States as a way to prevent drug trafficking into the United States. Colombia authorizes flights that spray high concentrations of glyphosate, commercially known as Roundup. The flights remain at least 10 kilometers from the Ecuadorian border. In response to concerns that aerial dispersion was harmful to Ecuador, Colombia temporarily suspended spraying in the area bordering Ecuador in January 2006. Furthermore, Colombia allowed the United Nations to conduct a study to determine the potential effects of the aerial dispersion campaign on health and the environment near the border of Ecuador. Colombia also agreed to consider the results and determine the appropriate measures to adopt.

In April, 2006 the preliminary study identified the need for additional studies. Colombia resumed its aerial dispersion campaign near the Ecuadorian border on 11 December 2006 and dismissed Ecuador's continuing health and environmental concerns, citing an Organization of American States study that determined the chemicals used in its aerial dispersion campaign were harmless. Colombian officials stressed the move as sovereign in nature, compelled by "the inescapable need to eradicate illicit crops" that formed "an essential aspect of the fight against the global drug problem."

Ecuador argues that Colombia's aerial spraying of toxic herbicides at locations "near, at, and across its border with Ecuador" have caused "serious damage to people, to crops, to animals and to the natural environment on the Ecuadorian side of the frontier, and poses a grave risk of further damage over time." Ecuador further asserts that repeated efforts to resolve the conflict bilaterally have been rejected by Colombia. Ecuador cites the Statue of the International Court of Justice and Article XXXI of the American Treaty on Pacific Settlement, known as the Pact of Bogota, to support the Court's jurisdiction in these proceedings. In the Application to Institute Proceedings, Ecuador also claims that the Court has jurisdiction in accordance with the provisions of Article 32 of the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

Ecuador submits three claims to the Court for adjudication. First, Ecuador claims Colombia has violated its obligations under international law by causing or allowing the deposit of toxic herbicides on Ecuadorian territory, causing damage to human health, property and the environment. Second, Ecuador claims that Colombia, as the responsible party, must take financial responsibility for any loss or damage to human life, property or the environment. Finally, Ecuador asks the Court to compel Colombia to respect the sovereign and territorial integrity of Ecuador by immediately ceasing the aerial herbicide spraying campaign so that Ecuador incurs no further damages. Ecuador asserts that the Colombian aerial dispersion program has caused anguish and concern among its population and settlements in the border area. Furthermore, Ecuador claims that the program has generated increased migration of undocumented Colombians to Ecuador and the displacement of Ecuadorians from that area into the country's interior.

For its part, Colombia asserts that the Court lacks jurisdiction to entertain this case because Ecuador has pursued this case in other forums, namely in a series of bilateral talks and three scientific commissions since 2000. One of the bilateral scientific commissions found in favor of Ecuador, while the other two adjourned without conclusion. Colombia further suggests that the involvement of the United States makes the issue one more appropriately addressed under the auspices of the Organization of American States.

Questions to consider include the following:

- Does the Court have jurisdiction in this matter?
- To what extent, if any, must a State take responsibility for the direct or indirect effect of its actions when the effect crosses international boundaries?
- Is the Court the proper forum to weigh the right to environmental integrity against the right to pursue security and drug control measures along State borders?

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GABČÍKOVO-NAGYMAROS PROJECT (HUNGARY V. SLOVAKIA)

This is a historical case. In accordance with AMUN rules and procedures, please note that the historical timeline for this case will stop on 15 April 1997. 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 16 September 1977, Hungary and Czechoslovakia signed a bilateral treaty (the 1977 Treaty) in which they agreed to build a cross-border system of locks and dams on the Danube River. The approximately 200-kilometer section of river discussed in the treaty stretched from Bratislava in Slovakia to the Hungarian city of Budapest to the southeast. After the Danube flows through Bratislava, its gradient—the ratio of how much a river drops in elevation over a given distance—decreases significantly, creating an area of slow-moving, poorly-navigable waters with large amounts of gravel and other sediment. The goals of the joint project were to produce hydroelectricity, to improve navigation on the improved section of the Danube and to protect the areas along the banks from flooding.

Each contracting party was to participate equally in the funding, construction and operation of the system, with Czechoslovakia having primary responsibility for the construction near Gabčíkovo and Hungary having primary responsibility for the construction near Nagymaros and Dunakiliti. The 1977 Treaty also provided that the Contracting Parties would endeavor to preserve the water quality of the Danube and comply with certain obligations to protect the environment. Soon after adoption of the 1977 Treaty, the Contracting Parties also entered into a Joint Contractual Plan, which provided further details of the construction and operation of the system of locks and dams. Work on the project began in 1978.

In 1983, it became apparent that continued work on the project would need to slow down, in part due to economic problems in Hungary. The two countries agreed in the 1983 Protocol to slow down construction and delay putting the power plants into operation. In a Protocol signed on 6 February 1989, the two parties agreed to restart the project at an accelerated pace. With the restart came criticism from Hungarian nationals concerning the environmental impact of the project. A group called the "Danube Circle" began protesting against further construction of Hungary's portions of the dam because of the potential impact on Hungary's underground water reserves, which are vital to supporting the large population around Budapest. The Danube Circle also claimed that the Communist government was hiding information about the project to avoid public debate about the environmental impact. Under pressure, Hungary temporarily suspended the works at Nagymaros on 13 May 1989, and again on 21 July 1989. Finally, on 27 October 1989, Hungary decided to abandon construction at Nagymaros and Dunakiliti completely.

The two parties entered into negotiations surrounding the completion of the obligations under the 1977 Treaty but were never able to come to an agreement. Czechoslovakia began looking into alternatives to complete the construction of its part of the project without Hungary. This plan, known as "Variant C," would divert the Danube on Czechoslovakian territory approximately 10 kilometers upstream of Dunakiliti. Czechoslovakia began construction on Variant C in November 1991. On 19 May 1992, Hungary notified Czechoslovakia that it was 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, and moved forward with the diversion of the river planned out in Variant C.

Hungary and Slovakia brought the present dispute to the Court through a Special Agreement signed on 2 July 1993. The Court is asked to rule on three main issues: first, "whether the Republic of Hungary was entitled to suspend and to subsequently abandon in 1989 the works on the Nagymaros Project and on the part of the Gabčíkovo Project, for which the Treaty attributed responsibility to the Republic of Hungary;" second, whether Slovakia was entitled to proceed with its "Variant C" solution; and third, the legal effects of the 19 May 1992 notification from Hungary to Czechoslovakia that it was terminating the 1977 Treaty. A threshold issue is whether, and how, Slovakia succeeded to Czechoslovakia's obligations under the 1977 Treaty and related instruments.

Hungary argues that it had lawfully ceased construction due to ecological necessity, impossibility of performance, a fundamental change in circumstances and a material breach by Slovakia. Specifically, Hungary introduces scientific evidence contending that completion of the lock and dam system would cause the extinction of local wildlife, deteriorate the water quality of the Danube, result in increased flooding and silting and decrease the water supply available to Budapest. Further, Hungary claimed that Slovakia had wrongfully continued with construction under Variant C, especially after Hungary transmitted notice that it was terminating the 1977 Treaty. Finally, Hungary argues that Slovakia did not succeed to Czechoslovakia's rights and obligations under the 1977 Treaty, and therefore has no right to attempt to enforce it, or to hold Hungary responsible for any damages.

Slovakia argues that Hungary had breached the Treaty by failing to construct the dam and failing to mitigate damages. According to Slovakia, Hungary's scientific arguments regarding environmental impact do not rise to the level of "grave and imminent peril" that would allow Hungary to invoke the defense of "Ecological Necessity" under the Vienna Convention on the Law of Treaties. Slovakia also contends that it was justified in proceeding with the Variant C plan due to Hungary's prior breach of the 1977 Treaty and refusal to continue with the project, in other words, that Slovakia had a duty under international law to mitigate its damages. Finally, Slovakia argues that it did in fact succeed to Czechoslovakia's obligations under the 1977 Treaty, invoking the Vienna Convention on the Succession of States with respect to Treaties.

Questions to consider include the following:

- Did Slovakia succeed to Czechslovakia's obligations under the 1977 treaty?
- 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? In 1992?
- Is either Party entitled to compensation?

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WHALING IN THE ANTARCTIC (AUSTRALIA V. JAPAN)

This is a historical case. In accordance with AMUN rules and procedures, please note that the historical timeline for this case will stop on 19 November 2012. 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 01 June 2010, Australia instituted proceedings before the International Court of Justice against Japan over a dispute concerning Japan's (JARPA) II program on "scientific whaling." Australia contends that the Court has jurisdiction in this matter based upon the provisions of Article 36, paragraph 2 of the Court's statute, which refer to the declarations recognizing the Court's jurisdiction as compulsory.

Australia's allegation is based on a dispute over the interpretation of the International Convention on the Regulation of Whaling (ICRW). The stated purpose of the ICRW is to "provide for the proper conservation of whale stocks and thus make possible the orderly development of the whaling industry." Under the ICRW, States Parties to the Convention form the International Whaling Commission (IWC); the IWC meets once a year to discuss and adjust the Convention. Since 1986, under the ICRW, there has been a moratorium on whaling for commercial purposes. In addition to the moratorium, an Indian and Southern Ocean Sanctuary was created, which specifically bans commercial whaling in those oceans.

Article VIII(1) of the ICRW allows any Contracting Government to grant to its nationals a special permit for scientific whaling. Whaling conducted under the protection of a permit is exempt from the ICRW, but all such permits must be reported to the ICRW immediately upon issuance. After the 1986 moratorium, Japan issued itself a permit under which it caught a small number of whales each year for scientific study. This program, known as JARPA I, ran from 1987 to 2005. When JARPA I expired, Japan announced that it was instituting a second phase of JARPA under Article VIII, called JARPA II. This second phase increased the sample size of whales taken under the program by 10 percent. JARPA II also expanded the study to include humpback and fin whales.

In its application, Australia alleges that "Japan's continued pursuit of a large-scale program of whaling under the Second Phase of its Japanese Whale Research Program under the Special Permit in the Antarctic (JARPA II) [is] in breach of obligations assumed by Japan under the International Convention for the Regulation of Whaling (ICRW), as well as its other international obligations for the preservation of marine mammals and marine environment." Australia contends that Japan has breached the following obligations under the ICRW:

1. The obligation under paragraph 10(e) of the Schedule to the ICRW to observe in good faith the zero catch limit in relation to the killing of whales for commercial purposes; and
2. The obligation under paragraph 7(b) of the Schedule to the ICRW to act in good faith to refrain from undertaking commercial whaling of humpback and fin whales in the Southern Ocean Sanctuary.

In addition to its alleged breaches of the ICRW, Australia also contends that Japan has breached, and continues to breach, its obligations under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) by removing from the sea specimens threatened with extinction absent exceptional circumstances. Similarly, Australia claims that Japan has breached its obligation under the Convention on Biological Diversity (CBD) to ensure than any actions taken within Japan's jurisdiction are not harmful to the environment of other States. Australia also asserts that ongoing negotiations in the IWC have been "unable to resolve the key legal issue that is the subject of the dispute, namely the large scale 'special permit' whaling under JARPA II."

Australia requests that the Court declare that Japan is in breach of its international obligations in implementing the JARPA II program in the Southern Ocean. It also requests that the Court order Japan to cease implementation of JARPA II; revoke any authorizations, permits or licenses allowing the activities which are subject of this application to be undertaken; and provide assurances and guarantees that it will not take any further action under JARPA II, or any other similar program, until such program has been brought into conformity with Japan's obligations under international law.

Japan contests the jurisdiction of the ICJ, arguing that the dispute was excluded by Australia's declaration under Article 36, paragraph 2, of the Statute of the International Court of Justice, which excludes from ICJ jurisdiction "any dispute concerning or relating to the delimitation of maritime zones, ... or arising out of, concerning, or relating to the exploitation of any disputed area of or adjacent to any such maritime zone pending its delimitation."

Japan entered several reservations to the CITES agreement for various whale species mentioned therein. Japan asserts that both CITES and CBD are not applicable to this matter. Further, even if CITES were applicable to this matter, the Convention allows for sustainable use of biodiversity. As such, the JARPA II program fits within the Convention's parameters.

Japan claims that JARPA II is permitted under Article VII(1) of the ICRW, which authorizes Contracting Governments to grant special permits to its nationals to kill, take or treat whales for scientific research. Further, Japan claims it is not in violation of any obligations of the Convention on Biological Diversity, including Articles 3, 5 and 10(b). Article 3 requires States to ensure that activities under their jurisdiction and control do not cause harm to other States or to areas beyond their national jurisdiction. Article 5 states, "as far as possible and as appropriate," States Parties are to cooperate (including through international organizations) in the conservation and sustainable use of biological diversity beyond their national jurisdiction. Article 10(b) requires States, "as far as possible and as appropriate," to adopt measures that avoid or minimize adverse impacts on biological diversity.

Japan cites the lack of facts to support Australia's claim that Japan is in violation of the CBD and argues that JARPA II is in compliance with the ICRW. Japan followed the mandate of the ICRW and submitted the whaling permits to the Scientific Committee of the IWC in 2005 for review. By doing so Japan asserts that it has fulfilled its obligations under the CBD. Japan notes that JARPA II is a legitimate scientific programme; the program is administered by the Institute of Cetacean Research, under the scientific-research provision in the IWC moratorium. JARPA II culls a pre-set number of three species each year for 16 years. The full programme commenced in late 2007 following a 2-year feasibility study, in which a smaller number of whales were culled each year

Questions to consider include the following:

- Does the Court have jurisdiction in this case?
- What are the obligations of a Contracting Government that issues a special permit to itself under Article VIII(1) of the ICRW? What is the nature of Australia's interests, if any, in Japan's issuance of a permit?
- Has Japan violated its obligations under the Convention on International Trade in Endangered Species of Wild Fauna and Flora and under the Convention on Biological Diversity?
- Is JARPA II a bona fide scientific program under the International Convention for the Regulation of Whaling?

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