



CHAPTER ELEVEN

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 Court has two primary functions: developing advisory opinions on matters of international law referred to it by United Nations bodies and specialized agencies and presiding over legal disputes submitted to it by Member States. Only Member States may submit cases to the Court. 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 International Court of Justice does not preside over legal disputes between private organizations, the public or individuals.

Website: www.icj-cij.org

ADVISORY OPINION ON NUCLEAR WEAPONS

This is a historical case. In accordance with AMUN rules and procedures, please note that the historical timeline for this case will stop on July 8, 1996. Any and all updates to this case after that date will not be relevant to the AMUN simulation nor considered in hearing the case.

The International Court of Justice received an initial request for an advisory opinion on the threat or use of nuclear weapons from the World Health Organization (WHO) on 3 September 1993. However, the ICJ declined this request because the WHO request was *ultra vires*, or acting outside of its legal capacity. Consequently, the UN General Assembly requested an advisory opinion in December of 1994, which was accepted by the ICJ in January of 1995. The GA requested that the ICJ answer the question: “Is the threat or use of nuclear weapons in any circumstances permitted under international law?”

The first issue the Court must consider is whether the ICJ has jurisdiction to address this issue. An advisory opinion differs from a contentious case in that it does not arise directly out of a dispute between Member States. Instead, the General Assembly or the Security Council must formally request that the ICJ give its official opinion on some matter of international law. The United Nations Charter provides that the General Assembly may request the ICJ to give an advisory opinion on “any legal question.”

However, the ICJ need not necessarily render an advisory opinion whenever asked. The Member States who oppose jurisdiction in the present case argue that the General Assembly is not authorized to ask the ICJ for an opinion on a matter unrelated to its work. Since the General Assembly cannot, for example, create an outright ban on nuclear weapons, opponents of jurisdiction claim that rendering an advisory opinion would be inconsistent with the United Nations Charter. Additionally, they argue that the politically charged nature of the issue puts it outside the jurisdiction of the ICJ, and that an ICJ opinion on the matter could undercut progress being made on this issue both in other bodies of the United Nations and among Member States privately. This opinion was requested during a time in which many Member States were either looking to acquire nuclear weapons of their own or disclaiming them and seeking disarmament of the world powers who did possess such weapons.

Proponents of jurisdiction argue that the United Nations Charter gives the General Assembly broad authority to ask “any legal question” and is not limited as other, more specialized bodies are. The General Assembly has also frequently addressed questions of nuclear disarmament in many different forums. They argue that the court must also decide that, as phrased, the General Assembly’s request is indeed a “legal question” under the United Nations Charter and the Statute of the ICJ. Opponents of jurisdiction characterize the question as vague and abstract, while proponents claim that even if the question is abstract, that is no bar to the authority of the ICJ to render an advisory opinion.

The legal issue is highlighted by two conflicting provisions of the United Nations charter. Article 2 (4), states all Members’ commitment to refrain from using force or the threat of force “against the territorial integrity or political independence of any state.” However, Article 51 provides that Member States retain the right to self defense.

Nuclear weapons are consistently an issue at the forefront of international relations. While many limitations were put in place during the Cold War in the 1960s and 1970s, the threat of nuclear war persists, and is continuously re-evaluated. The threat of nuclear weapons can be used to deter other states from using nuclear weapons but may also be used as a threat of violence against other states. Although nuclear weapon capabilities have been available for decades, they have been put to use in just two instances, both in 1945 near the end of World War II, by the United States. Nuclear weapons have since been detonated several thousand times, to the international community’s knowledge, for non-violent purposes of demonstration and testing by the countries that acknowledge possessing them.

The use of nuclear weapons and the possible impact that nuclear weapons have on the international community has resulted in a variety of actions by the United Nations. With wide-ranging support from United Nations Member States, many actions have passed regarding the use of nuclear weapons. Examples include the Partial Test Ban Treaty (PTBT), the Outer Space Treaty and the Treaty on the Non-Proliferation of Nuclear Weapons (NPT).

The Partial Test Ban Treaty (PTBT) was ratified in 1963 by the United Kingdom, the United States and the Soviet Union, essentially banning nuclear testing. As the treaty was passed during the Cold War, this was a milestone for the States struggling for power in the international community. However, this treaty emphasizes environmental issues rather than disarmament, so nuclear testing was not completely eliminated.

The 1967 Outer Space Treaty prohibits parties to the treaty from putting any object carrying nuclear weapons or other weapons of mass destruction into orbit around the earth. Additionally, it prohibits military actions, nuclear tests, and installing weapons systems or military bases on celestial bodies.

The NPT entered into force in 1970 and was extended indefinitely in 1995. It is essentially a bargain between those States Parties that possess nuclear weapons and those that do not. Those who do not already possess nuclear weapons agree to never acquire such weapons, while



those already possessing them agree to peacefully share civilian nuclear technology with other States Parties and to embark on programs of complete nuclear disarmament. Presently, nearly all United Nations Member States have joined the treaty, with a few exceptions. North Korea acceded to the treaty in 1985 but never complied, and announced withdrawal in 2003. Additionally, India, Israel and Pakistan have not accepted the NPT; although none of the three have acknowledged possessing nuclear weapons, the international community widely accepts that all do. South Sudan, which gained independence in 2011, has yet to join. The NPT establishes a system to oversee Member States' actions through the International Atomic Energy Agency (IAEA) as well as conferences to be held every five years.

In considering its decision, the Court must take into account customary and conventional international law as well as the United Nations Charter. The question posed by the General Assembly can be further broken down to consider both distinct varieties of international law and distinct scenarios in which the threat or use of nuclear weapons may occur. First, there is the question of whether international law has any type of authorization or prohibition of the threat or use of nuclear weapons. The Court must also consider whether the United Nations Charter ever authorizes the threat or use of nuclear weapons in matters of self-defense. International humanitarian law and the laws applicable to armed conflict also play a role, as the Court must consider if the threat or use of nuclear weapons is compatible with instruments such as the Geneva Conventions under differing circumstances, such as a pre-emptive strike versus self-defense. Finally, the Court may choose to consider the issue of whether any international obligation toward disarmament exists.

Questions to Consider

- Does the Court have jurisdiction to render an opinion in this case? On what grounds would that jurisdiction rest? Even if the Court does have jurisdiction, should it exercise its discretion to not render the opinion?
- Currently, what effect could the use of nuclear weapons have on international agreements regarding use of force?
- What are the circumstances, if any, in which the use of nuclear weapons can be deemed legal?
- What aspects of international humanitarian law govern the threat or use of nuclear weapons?
- What effect would use of a nuclear weapon as a weapon of war have on the international community?

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LIECHTENSTEIN V. GERMANY: DISPUTE OVER THE RESTITUTION OF PROPERTY AFTER WORLD WAR II AND THE VAN LAER PAINTING

This is a historical case. In accordance with AMUN rules and procedures, please note that the historical timeline for this case will stop on 18 June 2004. 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 June 1, 2001, Liechtenstein initiated proceedings in the International Court of Justice against Germany to recover certain property that was seized from nationals of Liechtenstein and used to fund war reparations during the Second World War. The crux of the dispute is a painting that Liechtenstein claims belongs to the Prince of Liechtenstein. During World War II, Czechoslovakia was a belligerent against Germany; Liechtenstein remained officially neutral. Throughout the war, the Czechoslovakian government passed a series of laws, collectively known as the Beneš Decrees. These Decrees nationalized the personal property of German and Hungarian nationals and people allegedly of German or Hungarian descent to fund reparations for damages caused during the war. The Decrees applied to Liechtensteinians, whom the Czechoslovakian government considered to be of German descent. The property of Liechtenstein nationals seized under these decrees has never been returned to its owners, nor has compensation been offered or paid. The validity of the Beneš Decrees and the associated confiscations is an unresolved issue between Liechtenstein, the Czech Republic and Germany.

In 1945, Czechoslovakia confiscated the property of Franz Joseph II, Prince of Liechtenstein, located within Czechoslovakian borders, under the Decrees. Among other things, the seizure included land, a castle and all of the contents of that castle, including a painting by the seventeenth century Dutch artist Pieter van Laer called *A Roman Lime Quarry*. Following its seizure, the painting was held by the Historic Monuments Office in Brno, Czechoslovakia. In 1991 the van Laer painting was on loan to the Wallraf-Richartz Museum in Cologne, Germany. While the painting was in Germany, Prince Hans Adam II filed suit in the German courts to regain custody of the painting. On 28 January 1998, the Federal Constitutional Court in Germany decided against Prince Hans-Adam II, finding that Article 3 of the Convention on the Settlement of Matters Arising out of the War and the Occupation (the Settlement Convention) precluded the court from hearing the merits of the case. The German court system did not allow for an appeal of this ruling, and, for the next two years, Liechtenstein brought its protest directly to the German government but was denied compensation. Germany released the painting, and it was returned to what had become the Czech Republic.

Liechtenstein believes that this Court has jurisdiction under the European Convention for the Peaceful Settlement of Disputes, which entered into force on 18 February 1980. States Parties to this Convention submit to the jurisdiction of the Court for any disputes that arose before the Convention entered into force. Germany believes that the Court lacks jurisdiction *ratione temporis* on the basis of Article 27(a) of the European Convention for the Peaceful Settlement of Disputes. If the Court is to find that there exists a dispute, it would relate to the Settlement Convention and the Beneš Decrees, which predate the entry into force date of the European Convention for the Peaceful Settlement of Disputes as between Liechtenstein and Germany, which is 18 February 1980.

Germany contends that there is no dispute between the Parties. Germany has never accepted the validity of the Beneš confiscations and German courts have consistently held that the Settlement Convention bars the German court from ruling on the lawfulness of confiscation measures resulting from the Second World War. The German government and courts have consistently contended that the only dispute in this matter is between Liechtenstein and the successor States of Czechoslovakia.

Liechtenstein contends that, prior to this dispute, Liechtenstein and Germany were in agreement that the disputed property was not subject to any of the treaties or accords that proceeded from World War II for the reparation of war debts or crimes committed by the German Reich. Liechtenstein claims Germany allowed, for the first time in 1995, Liechtenstein's assets to be treated as German external assets for purposes of the Settlement Convention. Germany has placed all such property under this umbrella and, in so doing, has violated Liechtenstein's sovereignty and international law by refusing to pay any sort of compensation for the lost property to Liechtenstein. Liechtenstein asserts that this is a separate dispute between Liechtenstein and Germany, which, according to Liechtenstein, Germany has itself acknowledged.

There is no common understanding between Liechtenstein and Germany that the Settlement Convention did not apply to Liechtenstein property, and no common understanding on the existence of a dispute. Germany additionally objects to jurisdiction on the theory that the rights and obligations of the Czech Republic are at issue in this case; without their participation in the matter the Court cannot proceed. Following ICJ precedent, any rulings regarding the determination of the rights and obligations of a third party must include the consent and representation of that State. This is known as the "necessary third party rule." In this case, the third party is the Czech Republic, which is absent from these proceedings. To prevail, Germany would have to show that any ruling by the Court would, in fact, involve the determination of rights and obligations of the Czech Republic. Liechtenstein asserts that this matter only addresses Germany's actions after 1995, and, therefore, the Czech Republic is not a required party.

Liechtenstein asserts that, as an established neutral party during the Second World War, it is a violation of customary international law to subject the property of Liechtensteinian nationals to confiscation for German debt. Liechtenstein claims Germany has violated its rights as a neutral party by applying the Settlement Convention to the confiscation of the Pieter van Laer painting. Germany argues that it did not interfere with Liechtenstein's rights and that Settlement Convention barred the German courts from considering the merits of the Liechtenstein's case.

Questions to Consider

- Does the Court have jurisdiction to decide this case and if so, on what issue?
- How should the Court apply the Beneš Decrees to their legal discussion?
- How does the "necessary third party rule" affect the analysis?
- How does the status of the parties as neutral, Allied or Axis during WWII affect the ruling?
- Is the primary issue in this case sovereignty, reparations or property rights?



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MARITIME DELIMITATION IN THE INDIAN OCEAN (SOMALIA V REPUBLIC OF KENYA)

Maritime delimitation throws boundary-making, sensitive questions of State sovereignty, jurisdiction and title to valuable natural resources into question. As the world continues to develop maritime resources, the potential political and security risks of boundary disputes are high, and unresolved maritime boundaries between States may easily affect bilateral relations or international peace and security.

An area of roughly 62,000 square miles in the Indian Ocean has become the center of a dispute between Somalia and Kenya. This triangular area may contain significant gas and oil deposits, which has sparked conflict between these two generally friendly States. Experts have determined the disputed area has unclear ownership. Kenya believes that the area is within its boundaries, claiming that the maritime boundary should extend due east along the line of latitude established by where their land border meets on the coast. Kenya also argues that this border demarcation reflects the de facto arrangement over the last 100 years. Somalia argues that the maritime boundary should be an extension of the land boundary, which would extend the maritime boundary to the south-east. This conflict is further complicated by the Kenyan sale of mineral rights to a portion of the disputed area.

This case arises as a result of the structure outlined in Article 76, paragraph 8, of United Nations Convention on the Law of the Sea (UNCLOS), which entered into force on 16 November, 1994. Kenya ratified UNCLOS on 2 March 1989; Somalia followed on 24 July 1989. UNCLOS directs States Parties to establish the outer limits of the continental shelf beyond 200 nautical miles, and to submit this information to the Commission on the Limits of the Continental Shelf (CLCS), which makes recommendations regarding these borders. UNCLOS requires three delimitation areas: the Territorial Sea, the Exclusive Economic Zone (EEZ) and the Continental Shelf. These definitions are outlined in UNCLOS. Unresolved maritime boundaries may also cause disputes when oil and gas discoveries are made in overlapping claimed

areas. Delimitation is commonly necessary between adjoining states, as a boundary must be drawn to divide the waters from the point where the land boundary meets the sea to a distance of 200 nautical miles from shore.

The main discussions regarding maritime delimitation occurred during the United Nations Conference on the Law of the Sea. Delimitation of the Continental Shelf discussions and those regarding the delimitation of the Exclusive Economic Zone, on grounds of their similarity, were conducted together throughout the sessions of the Conference. Negotiations during the Conference on the Law of the Sea revealed the existence of two virtually irreconcilable approaches: (1) delimitation should be effected by the application of the median line or equidistance line coupled with an exception for special circumstances; and, (2) delimitation should involve a more emphatic assertion of equitable principles. Kenya and Somalia were both among the group of States supporting the equitable principle as the criterion in delimitation. During the Conference, many draft proposals were presented by the differing sides, the proponents of the equidistant line favor the equidistance/median line as a standard of delimitation, while supporters of the equitable approach object to the very mention of the equidistance/median line as standard for delimitation and reject the elevation of that standard to the status of a basic principle.

A compromise was reached in 1982, with the text, "The delimitation of the EEZ/continental Shelf zone between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in article 38 of the Statute of the international Court of Justice, in order to achieve equitable solution," being incorporated in UNCLOS. Unfortunately, this has not decided the issue. Because of the ambiguity in the rules, it has been left for the international courts and tribunals to interpret and apply the common expression of the delimitation to "achieve an equitable solution" in cases where the Parties cannot settle their dispute by mutual agreement. When evaluating an "equitable solution," courts have looked at historical title, geographical considerations, the use of reefs, islands and elevations, the proportionality of the area to be delimited, and other circumstances.

In 2009, Kenya submitted proposed borders for maritime delineation to the CLCS. Somalia responded to the proposed borders, stating that it rescinded its agreement to the borders and, instead, relied upon a prior memorandum of understanding with Kenya to settle the dispute by negotiation and that settlement would occur after obtaining the recommendations of the CLCS. This argument became the basis for jurisdictional questions—did the prior memorandum preclude the ICJ from taking on the border dispute for mediation and was the CLCS recommendation necessary prior to negotiation or only for finalization? In 2014, Kenya and Somalia submitted to two technical level meetings for recommendations on maritime delimitation in the disputed region. Both the memorandum and the technical level meetings concluded that Somalia and Kenya needed to come to an agreement on a single border for delimitation. Somalia has responded that the memorandum was followed by negotiations at the 2014 technical level meetings, consequently giving the ICJ precedent for stepping in.

In regards to the border delimitation itself, Kenya believes that the area is within its boundaries, claiming that the maritime boundary should extend due east along the line of latitude established by where their land border meets on the coast. Kenya also argues that it historically has had jurisdiction. It argues that Kenyan control of the area was formalized



when Kenya defined its EEZ in 1979. The 1979 declaration cemented the traditional colonial use of the sea. Kenya claims that their actions thus far in the disputed area have been transitory and comply with ICJ precedent set in *Aegean Sea Continental Shelf* (Greece v. Turkey), Interim Protection, Order of 11 September 1976. Somalia contests this claim, stating that Kenya only asserted this use in 2005, and that their objection was noted relatively quickly in 2009. Somalia also argues that the maritime boundary should be an extension of the land boundary, which would extend the maritime boundary to the southeast.

While the question of jurisdiction is an important one in every case, this simulation will not address this question because the Court has already addressed many of these concerns in its Judgment on Preliminary Objections of 2 February 2017.

Questions to consider

- How do previous agreements impact the decision made and what may this mean for future cases?
- How should the CLOS be applied?
- Does Kenya's sale of mineral rights affect the boundary dispute?
- What geographic considerations are there for the court to consider?

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