Dear Delegates,

Welcome to the Southern Regional Model United Nations (SRMUN) Charlotte 2014 conference! This year's SRMUN Charlotte promises to be a wonderful opportunity to exercise diplomacy as a means to review and promote international peace and security. My name is Hether Scheel and I am honored to be the Director of the International Court of Justice (ICJ). I have served at both SRMUN Atlanta and Charlotte in a variety of capacities, including being the Secretary-General at SRMUN Atlanta 2013. I am looking forward to exploring the unique challenges of the ICJ this year alongside your assistant director Stephanie Whitley. She looks forward to participating as a new staff member after many years as a Model UN delegate.

The ICJ is one of the six primary organs of the UN system, and it plays a critical and increasingly important role in international politics. The ICJ is also one of the most complex parts of the United Nations, which makes it a challenging, but rewarding body to simulate at any model United Nations conference. This year, the cases before the International Court of Justice are:

I. Advisory Opinion Case: Violations of the Convention Against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment;
II. Contentious Case: Bolivia v. Chile;
III. Contentious Case: Australia v. Japan (New Zealand Intervening); and
IV. Contentious Case: Nicaragua v. Colombia.

In order to deliver this unique experience at SRMUN, a number of changes have been made from the manner in which traditional SRMUN committees are managed. Delegates will be acting as both advocates and justices, and will submit memorials and counter memorials in lieu of position papers.

Each individual will submit one memorial for one side of a case and than a counter-memorial. Both the memorials and counter-memorials should be no longer than two (2) pages in length and single spaced. A strong, concise, and well-thought out memorials and counter-memorials will be the foundation for this committee. Memorials are to be uploaded on the SRMUN website by 11:59pm EST on February 28. Once all memorials have been submitted, they will be available online. Delegates then have the opportunity to independently write counter memorials which are to be uploaded on the SRMUN website by 11:59pm EST on March 21.

Critical pieces of information for each justice to have alongside this background guide are the ICJ Addendum which includes a complete summary of the rules and procedures and the ICJ docket with a detailed scheduled.

Both Stephanie and I forward to the opportunity to facilitate the International Court of Justice at the SRMUN Charlotte 2014. This year's conference will be a fantastic exercise in diplomacy on issues that are pertinent to the international community. We look forward to meeting and working with you prior to and during the conference. Please do not hesitate to contact us with any questions.

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History of the International Court of Justice

The International Court of Justice (ICJ) is the primary judicial body of the United Nations(UN) and was established to settle disputes between States (contentious cases), as well as provide advisory opinions on legal questions brought forth by authorized UN bodies and agencies in accordance with international law (advisory proceedings). Established in 1954 by the UN, the ICJ continues international court processes that begun under the League of Nations Permanent Court of International Justice (PCIJ).[1] Article 33 of the United Nations Charter shows the various methods in which the ICJ conducts international disputes including, but not limited to: arbitration, mediation, and the utilization of a Third Party.[2]

Various arbitration treaties such as the Jay Treaty of Amity, Commerce and Navigation of 1794, and the Treaty of Washington in 1871 between the United Kingdom and the United States are the precursors to the ICJ.[3] Such arbitration settled breached treaties between territories as well as solved disputes. The tribunal created under the Jay Treaty demonstrated to the international community that arbitration could be an effective method of solving international disputes while the Hague Peace Conference in 1899, created by Czar Nicholas II, initiated the idea of international tribunals to solve cases on a regular basis.[4] Beginning in 1907, participants of the Hague Peace Conference began drafting a statute for what would become the Permanent Court of Arbitration (PCA); however, because it was not an adjudicating body, the PCA had difficulty enforcing arbitration among states in dispute.[5]

In the early 1920s, the League of Nations established the PCIJ through the Covenant of the League of Nations to ensure that the method of arbitration could remain effective for the international community.[6] The predecessor of the ICJ, the PCIJ was given the ability to hear and arbitrate cases brought by disputing states and give advisory opinions on matters referred by the League Council or Assembly. The PCIJ marked a milestone in history as it legitimized an international settlement court system.

In the period leading up to and during World War II, activity in the PCIJ decreased significantly, and after World War II, the PCIJ did not reconvene. International powers such as China, the USSR, the United Kingdom, and the United States, however, agreed that it was necessary to establish an international justice system.[7] On October 30, 1943, a joint statement was issued to call upon the international community to establish "at the earliest practicable date a general international organization, based on the principle of the sovereign equality of all peace-loving States, and open to membership by all such States, large and small, for the maintenance of international peace and security".[8] The drafting for the International Court of Justice began in April 1945 and received its first case in 1947.[9]

The ICJ has continued the legacy of the PCIJ and serves as a vital organ to the United Nations. The organ's main function is to settle disputes in adherence to international law and customary law. Similar to the PCIJ, the ICJ is headquartered at Peace Palace in The Hague and is the only organ of the UN not located in New York. The ICJ

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[1] *International Court of Justice-History*. http://www.icj-cij.org/court/index.php?p1=1&p2=1

[2] Ibid.

[3] Ibid.

[4] Ibid.

[5] Harvard Library. *International Court of Justice.* http://guides.library.harvard.edu/content.php?pid=100079&sid=751099

[6] Ibid.

[7] *International Court of Justice- History.* http://www.icj-cij.org/court/index.php?p1=1&p2=1

[8] Ibid.

[9] Ibid.

contains 15 judges that serve nine year terms and are elected by the United Nations General Assembly.[10] All United Nation Member States are considered *ipso facto* parties to the Court's Statute.[11]

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[10] Ibid.

[11] Ibid.

Case I: Violations of the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

The following topic on the Central Intelligence Agency's (CIA) detainee program is a fictional advisory opinion case. As stated previously , the court only entertain[s] two types of cases: legal disputes between States that is submitted, which is defined as a contentious case) and requests for advisory opinions on legal questions referred to it by the United Nations organs and specialized agencies, which is defined as an advisory proceeding.[12] It is noted that advisory opinions are non-binding but hold the same legal weight in the international community as a contentious case.[13]

Introduction

The United Nations Human Rights Council (UNHRC), an inter-governmental body within the United Nations system responsible for strengthening the promotion and protection of human rights around the globe and addressing situations of human rights violations, filed a legal question with the General Assembly to be brought to the ICJ regarding the CIA's detainee program and the alleged violations the program has committed based on the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), A/RES/39/46 of 10 December 1984, among other international human rights law.[14] [15] The General Assembly for the UNHRC argues that the CIA has failed to adhere to the CAT as well as many other treaties including the Geneva Convention III and the International Covenant on Civil and Political Rights since the detainee program was created.

History of the conflict

Following the attacks of 11 September 2001 on the United States of America (USA), CIA created its High Value Terrorist Detainee Program "to ensure that intelligence is collected in a manner that does not violate the US constitution, any US statute, or US treaty obligation."[16] It was also stated that the program has "been engaged in a struggle against an elusive enemy; terrorists [who] in the shadows, relying on secrecy and the element of surprise to maximize the impact of their attacks.[17] Of the detainees listed by the Department of Defense (DOD), all have

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[12] "How the Court works," The Court, International Court of Justice, United Nations, http://www.icj-cij.org/court/index.php?p1=1&p2=6

[13] Ibid.

[14] Welcome to the United Nations Human Rights Council, Office of the High Commissioner for Human Rights, United Nations Human Rights, http://www.ohchr.org/EN/HRBodies/HRC/Pages/AboutCouncil.aspx

[15] Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, A/RES/39/46, 10 December 1984, General Assembly, United Nations, http://www.un.org/documents/ga/res/39/a39r046.htm

[16] "Summary of the High Value Terrorist Detainee Program," Office of the Director of National Intelligence, Department of Defense, United States of America, http://www.defense.gov/pdf/thehighvaluedetaineeprogram2.pdf

[17] Ibid.

affiliation with Al-Qaeda, and are listed to "hold information that simply cannot be obtained from any other source."[18] [19]

According to the Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, A/HRC/22/52, clause 15 states "On 17 September 2001 President Bush authorised [authorized] the CIA to operate a secret detention programme [program] which involved the establishment of clandestine detention facilities known as 'black sites' on the territory of other States, with the collaboration of public officials in those States.[20] At about the same time he allegedly authorised [authorized] the CIA to carry out 'extraordinary rendition' [which is defined as the secret transfers of prisoners outside any lawful process of extradition or expulsion,] enabling them to be interrogated whilst in the formal custody of the public officials of other States, including States with a record of using torture."[21] Further, it was reported that beginning in August 2002, the Justice Department's Office of Legal Counsel "purported to authorise [authorize] a range of physical and mental abuse of terrorist suspects known as "enhance interrogation techniques."[22] Lastly, the Bush administration has reported and publicly acknowledged that one of the enhanced interrogation techniques included that of "waterboarding" on high value detainees upon on the personal authority of the President.[23]

Within the first 100 days of office, current US President Barack Obama passed Executive Order 13491, Ensuring Lawful Interrogations, which ordered a myriad of unlawful practices to be stopped.[24] Section 1 of Executive Order 13491 states:

> "Executive Order 13440 of July 20, 2007, is revoked. All executive orders, and regulations inconsistent with this order, including but not limited to those issued to or by the Central Intelligence Agency (CIA) from September 11, 2001, to January 20, 2009, concerning detention or the interrogation of detained individuals, are revoked to the extent of their inconsistency with this order."[25]

Further, the Executive Order ruled that there would be a baseline from which all individuals under custody for interrogation would be treated humanely. The baseline included the Federal torture statute of 18 U.S.C. 2340-2340A, section 1003 of the Detainee Treatment Act of 2005, Common Article 3 of the Geneva Convention and the Convention Against Torture, as well as any other laws regulating the treatment and interrogation of individuals detained in any armed conflict.[26] Executive Order 13491 states that "an individual in the custody or under the

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[18] Ibid

[19] "Detainee Biographies," Office of the Director of National Intelligence, Department of Defense, United States of America, http://www.defense.gov/pdf/detaineebiographies1.pdf

[20] Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, A/HRC/22/52, 1 March 2013, Human Rights Council, United Nations http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-52_en.pdf

[21] Ibid.

[22] Ibid.

[23] Ibid.

[24] Ensuring Lawful Interrogations, Executive Order 13491 of January 22, 2009, 74 FR 4893, Presidential Documents, United States of America, http://www.gpo.gov/fdsys/pkg/FR-2009-01-27/pdf/E9-1885.pdf

[25] Ibid.

[26] Ibid.

effective control of an office, employee, or other agent of the United States Government, or detained within a facility owned, operated, or controlled by a department or agency of the United States, in any armed conflict shall not be subjected to any interrogation technique or approach, or an treatment related to interrogation, that is not authorized by and listed in Army Field Manual 1-22.3."[27] Section 4 of the Executive Order mandated that the CIA close any detention facilities, it will not open any additional facilities, and that the CIA would establish a created the Special Interagency Task Force to evaluate all interrogation practices.[28] The task force:

> "stud[ies] and evaluate[s] whether the interrogation practices and techniques in Army Field Manual 2-22.3…provide an appropriate means of acquiring the intelligence necessary to protect the Nation…; and to stud[ies] and evaluate[s] the practices of transferring individuals to other nations in order to ensure that such practices comply with the domestic laws, international obligations, and policies of the United States and do not result in the transfer of individuals to other nations to face torture or otherwise for the purpose, or with the effect, of undermining or circumventing the commitments or obligations of the United States to ensure the humane treatment of individuals in its custody or control."[29]

Once again, the Report of the Special Rapporteur of A/HRC/22/52, states that US Attorney General Eric Holder announced that the Department of Justice would not prosecute any official who acted in good faith and within the scope of the legal guidance given by the Office of Legal Counsel in connection with the interrogation of terrorist suspects," which according to the Special Rapporteur "comes close to an assertion of the 'superior orders' defence [defense], despite its prohibition under customary law and relevant international treaties."[30] Despite the clear repudiation of the illegal and inhumane acts carried out by the Bush-era CIA, many of the facts remain classified, and no public official has so far been brought to justice in the United States to date.[31]

It is also stated that although there were extensive efforts made by Member States to minimize known cooperation with the CIA interrogation program, there "is now credible evidence to show that CIA 'black sites' were located in Lithuania, Morocco, Poland, Romania and Thailand and that the officials of at least 49 other Member States allowed their airspace or airports to be used for renditions flights."[32]

Since then only one Member State is to have said brought any public official to justice. On 4 November 2009, the Milan Criminal Tribunal convicted 22 CIA agents *in absentia*, including the Milan station chief, for their role in the abduction and rendition of Hassan Mustafa Osama Nasr, a dual Egyptian-Italian national in Milan, on 17 February 2003 where he was detained in Cairo for 14 months and repeatedly tortured.[33] CIA officials were sentenced to prison for five to nine year terms in Italy.[34] Claims by the Italian Government to withhold relevant evidence were eventually rejected, and on 1 February 2013 convictions were returned in respect of the Italian agents involved in the

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[27] Ibid.

[28] Ibid.

[29] Ibid.

[30] Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, A/HRC/22/52, 1 March 2013, Human Rights Council, United Nations http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-52_en.pdf

[31] Ibid.

[32] Ibid.

[33] Ibid.

[34] Ibid.

abduction, including the former Director of the Italian Military Intelligence Service who was sentenced to 10 years imprisonment."[35]

Laws Concerning the State

Among the many domestic and international agreements previously mentioned that were violated under the Bush administration, CAT is the most important and relevant to the ICJ. Calling Article 1 of the convention, "the term 'torture' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act her or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person...It does not include pain or suffering arising only from, inherent in or incidental to lawful sanction."[36] Article 2 of the CAT specifies that under "no exceptional circumstances whatsoever, whether a state of war or a threat of war, [etc.], or any other public emergency may be invoked as a justification of torture."[37] Lastly, Article 3 of the CAT dictates that "No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture."[38]

Other international treaties and doctrines of which the USA has been considered to violate include the Geneva Convention, Common Article II relative to the Treatment of Prisoners of War and the International Covenant on Civil and Political Rights. Common Article III of the Geneva Declaration states:

> "to this this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons: (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; (b) taking of hostages; (c) outrages upon personal dignity, in particular humiliating and degrading treatment; [and,] (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized people."[39]

Lastly, the other international human rights law that is in question of being violated by the USA's CIA detainee program is the International Covenant on Civil and Political Rights. The USA signed the document on 5 October 1977, but it was not ratified until 8 June 1992 .[40] The document, although signed with different reservations, understandings and declarations by the USA, is revered as one of the three documents to make up the International Bill of Human Rights.[41] Calling on Article 7 of the document, "No one shall be subjected to torture or to cruel,

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[35] Ibid.

[36] Ibid.

[37] Ibid.

[38] Ibid.

[39] Common Article III, Convention (III) relative to the Treatment of Prisoners of War. Geneva, 12 August 1949, http://www.icrc.org/ihl.nsf/0/e160550475c4b133c12563cd0051aa66?OpenDocument

[40] Status of the International Covenant on Civil and Political Rights, 16 December 1966, United Nations Treaty Collection, United Nations, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en#EndDec

[41] Ibid.

inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation."[42]

Similar Case: The Habré Case (Belgium v. Senegal)

Hissène Habré was the leader of Chad from 1982 until he was overthrown by Idriss Déby Itno, current President of Chad since 1990, and took refuge in Senegal.[43] Throughout his regime, Habré and his party were responsible for grave human rights abuses including the arrest and killing of members from opposing political groups on a large scale.[44] Within two years of his defection, a National Truth Commission published a report accusing Habré's regime of killing more than 40,000 individuals for political purposes and torturing more than 200,000 while he was in office.[45] While the Truth Commission called for the immediate prosecution of Habré and all those involved in the violation of human rights, Senegal did not institute proceedings against Habré who claimed asylum in Chad.[46] Further, Chad did not make any formal extradition request to bring Habré to trial.[47]

Following the arrest of Augusto Pinochet as a result of a ruling by the British House of Lords that affirmed that universal jurisdiction, which is defined as the state's ability to prosecute individuals for *inter alia* acts of torture in any given state, gave hope to victims in Chad that Habré could be brought to trial without Senegal instituting proceeding or being extradited. [48]

On 26 January 2000, seven Chadian victims and the Chadian Association of Victims of Crimes and Political Repression (AVCRP) filed a criminal complaint in Dakar, Senegal accusing Habré of torture, barbaric acts and crimes against humanity.[49] On 3 February 2000, Senegalese judge Demba Kandji indicted Habré for torture, crimes against humanity, and barbaric acts and placed him under house arrestThe trial came to a halt on 4 July 2000 when the Appeals Court dismissed the indictment stating that the Senegalese courts have no jurisdiction to pursue the case because the crimes were not committed in Senegal but in Chad.[50] The victims of the case appealed the decision to the Court de Cassation, Senegal's highest court, and also Chadian-Belgian victims filed a criminal complaint on 30 November 2000 against Habré with Judge Daniel Fransen of the District Court of Brussels under Belgium's universal jurisdiction law for crimes against humanity, torture, arbitrary arrests, and abductions.[51]

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[42] International Covenant on Civil and Political Rights, 16 December 1966, A/RES/2200A (XXI), General Assembly, United Nations, http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx

[43] Chronology of the Habré Case, Human Rights Watch, http://www.hrw.org/news/2012/03/09/chronology-habr-case

[44] Ibid.

[45] Ibid.

[46] Ibid.

[47] Ibid.

[48] Ibid.

[49] Ibid.

[50] Ibid.

[51] Ibid.

Again in 2001, the Senegalese courts denied their jurisdiction and victims sought Habré's extradition to Belgium.[52] Through the years, the case was heard by the African Union and the European Union, but on 2 February 2009, Belgium filed an application with the ICJ to request that the court to adjudicate and declare that Senegal either had an obligation under international law to bring criminal proceedings against Habré for violations of human rights or declare that Senegal was obligated to extradite Habré to Belgium.[53] The years continue to go by and Habré remained in Senegal after many different legal jurisdiction considerations and extradition requests. On 20 July 2012, the ICJ ruled in the case *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)* with "the majority of judges finding Senegal in violation of its obligations under Articles 6(2) and 7(1) of the Convention against Torture by failing to make an immediate preliminary inquiry into the facts relating to Habré's crimes and tosubmit the case to its competence authorities for the purpose of prosecution."[54] Finally the ICJ unanimously found "that the Republic Senegal must, without further delay, submit the case of Mr. Hissène Habré to its competent authorities for the purpose of prosecution, if it does not extradite him."[55] It was not until 2 July 2013 that Habré was charged with crimes against humanity, torture and war crimes by the Extraordinary African Chambers of Senegal and the African Union.[56]

Conclusion

The Special Rapporteur of the UNHRC accordingly endorsed and strongly urged all Member States of the United Nations to accept and implement the recommendation made to the UNHRC in February 2010 by the UN Joint study on global practices in relation to secret detention in the context of countering terrorism, that:

> "Those individuals found to have participated in secretly detaining persons and in any unlawful acts perpetrated during such detention, including their superiors if they have ordered, encouraged or consented to secret detentions, should be prosecuted without delay and, where found guilty, given sentences commensurate with the gravity of the acts perpetrated."[57]

Until now, the international community has failed to secure full responsibility for the acts committed by certain sections of the CIA in implementing a program of torture, rendition and secret detention of terrorist suspects, so it is now a question held to the ICJ as to how to prosecute those individuals whom committed these crimes? Based on the Geneva Convention III, the International Covenant on Civil and Political Rights and the CAT, these crimes have been unlawful acts and often times included the use of other States.

Committee Directive

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[52] Ibid.

[53] Ibid.

[54] Ibid.

[55] Ibid.

[56] Ibid.

[57] Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, A/HRC/22/52, 1 March 2013, Human Rights Council, United Nations http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-52_en.pdf

Delegates will need to research and discuss the following issues: Does the Court have jurisdiction in the present case? If the Court has jurisdiction, is the USA under obligation to prosecute its personnel? Does such an obligation exist under the CAT and/or other customary international law such as that of the Geneva Convention or the International Covenant on Civil and Political Rights? If such an obligation exists, has the United States complied with it? If it has not complied with it, is it then to be brought to the attention of another organ such as what was used in the Habré case? Would the case be possibly brought to the attention of the International Criminal Court, established to help end impunity for the perpetrators of the most serious crimes of concern to the international community? Other questions to be considered include what repercussions, if any, would other States such as Thailand and Morocco experience for the assistance in the CIA's detainee program? Also, is there a possible violation of other international human rights law including that of the International Convention on the Elimination of All Forms of Racial Discrimination or the International Covenant on Economic, Social and Cultural Rights, seeing as how the CIA primarily detained individuals of Al-Qaeda, a primarily Islamist organization?

Case II: Bolivia v. Chile

Introduction

Bolivia attained independence in 1825 with territorial boundaries that included a portion of Pacific coastline from roughly the 23rd to 24th Parallel.[58] This boundary was legally recognized by the Republic of Chile in 1874, but this small strip of coastal territory, including the ports of Varenica and Arica, was re-occupied by Chile in 1879. The Truce Pact of 1884 recognized it as an occupied territory and subsequently ended the War of the Pacific that existed between these two Member States by allowing Chile sovereignty over the coastline that had previously belonged to Bolivia; Chile, however, conceded the right for Bolivia to continue commercial access to Chilean ports as governed by "special agreements."[59] Chile has continued to occupy the annexed coastal region since the 1884 Pact.[60]

In 1904, Chile and Bolivia signed the Treaty of Peace and Friendship, which allowed Chile to continue maintain the occupied territories. In 1975, Bolivia and Chile signed the Joint Declaration of Charaña, guaranteeing that each country would continue dialogue, as iterated in the declaration's Fourth Principle as follows:

> Both Presidents, within a spirit of mutual understanding and a constructive mindset, have resolved to continue with the dialogue on different levels to find formulas for solving the vital issues which both countries face, such as the one relating to the confinement affecting Bolivia, on the basis of reciprocal benefits and considering the aspirations of the Bolivian and Chilean people.[61]

The statement was taken in good faith and was followed up with exchanges in diplomatic notes between the two party states regarding the region between the port of Arica and the Lînea de la Concordia. In 1979, the Organization of American States (OAS) issued Resolution 426 that called for immediate action between the parties to resolve the issue of territoriality while fulfilling the promises made by Chile.[62] The Assembly "[s] to the states most directly concerned with this problem that they open negotiations for the purpose of providing Bolivia with a free and sovereign territorial connection with the Pacific Ocean."[63] This resolution has been continually reconfirmed and remains on the permanent agenda of the OAS since 1979.[64]

Chile and Bolivia reopened negotiations in 1986 but talks reached a stalemate due to Chile's rejection of Bolivia's proposals for a solution. Both foreign ministries drafted and submitted a joint communiqué that reaffirmed their commitment to establishing a stronger bilateral relationship. Territorial sovereignty was affirmed as part of the "Agenda of the 13," but Chile called off all negotiations in 2010. Bolivia continues to petition the Chilean government for a restart of talks, and in 2012, Bolivia submitted its case with all supporting evidence to the International Court of Justice for hearing and arbitration.[65]

Laws Concerning the State

In 1925, members of the international community met at the international conference in Montevideo, Uruguay to address the basic rights and character of states. Before the convention, all states looked to the 1648 Treaties of

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[58] Romero, Simon, "Bolivia Reaches for a Slice of the Coast That Got Away," *The New York Times*, 24 September 2006, http://www.nytimes.com/2006/09/24/world/americas/24bolivia.html.

[59] "International Boundary Study No. 67 – March 15, 1966 Bolivia – Chile Boundary," Department of State, United States of America, http://www.law.fsu.edu/library/collection/LimitsinSeas/IBS067.pdf .

[60] International Court of Justice. *Bolivia v. Chile: Application of the Court*. 3

[61] "The Joint Declaration of Charaña," 1975

[62] Organization of American States, "Resolution 426," 1979, http://www.oas.org/en/sla/docs/ag03793E01.pdf.

[63] Ibid.

[64] Ibid.

[65] International Court of Justice, 7

Westphalia for recognition of statehood. The changing conditions of the nineteenth and twentieth centuries, as well as the rapid expansion of states outside the dimensions of Europe, required a more universal definition of statehood. The definition, according to the Montevideo Convention on the Definition of Statehood, was agreed and set forth as follows: "The state as a person of international law should possess the following qualities a) have a permanent population; b) a defined territory; c) government; and d) capacity to enter into relations with other states."[66]

The Montevideo Convention became the defining international norm under the legal regime in existence. Since Member States are the primary actors under international law, the convention was the founding document for the ICJ's jurisdiction in arbitration before the United Nations formally established the court. While some states do not fully exhibit all the characteristics of statehood under this formal definition, it is universally a norm for negotiations between two or more states.

Some states with strong and respected legal bodies have also presented their own criteria for establishing legal norms of statehood, essential for the proper conduct of state diplomacy. The United States published the *Restatement (Third) of Foreign Relations Law of the United States §201 (1987)*, which states that "International Law generally defines a "state" as an entity that has defined territory and a permanent population, under the control of its own government, and that engages in, or has the capacity to engage in, formal relations with such entities."[67] Such laws become, in the absence of firm international treaties, an important legal point of reference for international courts to make decisions. Both the Convention on Statehood and the *U.S. Restatement* all provide an excellent body of legal knowledge for understanding the primary actors involved in disputes before the Court.

The issue of territorial sovereignty is the second issue that defines the conflict between the party states. The territory of a state is defined by two principles of international law: treaties between two or several states (as was the case between Britain and the U.S. after the Revolutionary War) or through an international regime or agreement by states through the United Nations (the establishment of Israel in 1948). Outside legal norms, territoriality is organic because territory can be determined through war, seizure by another state or popular referendum by people of within the state. States may also transfer territory between them. As one of the primary requirements of statehood, each state is considered inviolable in its territory.[68] Most treaties and custom deny that war or conflict is an acceptable circumstance to legally transfer territory between two states. Two states can either agree to exchange territory by treaty or to adjudication under the ICJ, for which they have standing.

Treaties are written agreements that state obligations and expectations between two or more Member States. States can also enter into multi-lateral conventions that form a body of international law between such participants. All treaties are made on "principle of faith" that they will be carried without reservations otherwise stated. Otherwise, treaties would have no power in the absence of an international legislature and police force. International Customs are accepted principles that, while not legally binding in all cases, are adhered to as a matter of principle. This allows states to have generally accepted practices without trying to make a treaty accounting for every single detail of minutiae.[69]

Case Study: Libya v. Chad in Aouzou Strip

The Aouzou Strip Case was a long running dispute between the Islamic Republic of Libya and the Republic of Chad. The problem arose from the interpretation of a colonial treaty between Italy and France, defining the territory between their colonial holdings (Italy for Libya and France for Chad). Once the colonial powers retreated, conflict erupted between the two countries as Libya claimed ownership over the disputed territory. Twice, Libya invaded Chad and acquired de facto control over the region, excising it through local tribes. Libya claimed the strip as part of its sphere of influence and maintained a constant military presence within the territory claimed by Chad. The Chadian army drove the Libyans out of the territory in 1987, but border disputes continued until a cease fire was brokered between 1987 and 1988. After failed negotiations and continued conflict along the border, both countries

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[66] Montevideo Convention on the Character of States, 1925

[67] *Restatement (Third) of Foreign Relations Law of the United States §201 (1987)*

[68] Montevideo Convention, 1925

[69] Ibid.

agreed to submit their case to the ICJ for arbitration.[70]

Libya v. Chad demonstrates the impact of treaty law on territoriality as means of recognizing and transferring territory between two distinct legal entities. The Court relied heavily on the 1955 Treaty of Friendship, signed by France and Libya. The treaty determined the territorial boundaries of Libya's southern border with French Equatorial Africa. When Chad gained its independence in 1960, it inherited all agreements and past treaties from its colonial rulers, while retaining the legal personality of its territory. Libya claimed that Chad was not party to the treaty since it was not an independent state when it was signed. It also claimed that that when the treaty had expired, any rightful claim was null and void and new agreements would have to be established to clarify new borders.[71]

The Court ruled that Chad had territorial sovereignty of the strip. Based on the Treaty of 1955, Chad had legally inherited all subsequent agreements and obligations under international law from France when the territory of French Equatorial Africa was abolished. Although the treaty had not been renewed as per its twenty-year renewal framework, the agreement had established a precedent for territorial boundaries between the two states. Regardless of spheres of influence, such policies cannot dictate such boundaries in the presence of the previous treaty between them.[72]

Conclusion

Since the independence, Bolivia and Chile have disputed and fought over the Pacific coastline. With initiatives and mechanisms such as the Truce Pact, the Treaty of Peace and Friendship, the Joint Declaration of Charaña, and Agenda of the 13, the two neighboring Member States have failed to come to legal consensus over the sovereignty and economic use of this territory. International bodies such as the OAS have entertained means of diplomatic resolution by passing numerous resolutions to prevent the situation from further escalating, but after 35 years have yet to see resolve. This conflict has exceeded decades of unsuccessful discourse that ultimately led to legal proceedings initiated by Bolivia in 2012. Similar cases such as Libya v. Chad exemplify the severity of such circumstances and establish a legal precedence in solving similar cases with outstanding treaties.

Committee Directive

The court should consider the various legal frameworks and treaties in place to determine territoriality. The court should consider the relationship between such mechanisms as the Treaties of Westphalia, the Treaty of Peace and Friendship, and the Joint Declaration of Charaña. The Court should entertain the following questions:

a. Does Chile have a legal obligation under the Bogota Declaration to negotiate with Bolivia?
b. Does the declaration have the force of treaty under the Vienna Convention of Treaty Law?
c. Can the case between Libya and Chad provide insight to the court's proceedings?

Case III: Australia v. Japan (New Zealand Intervening)

Introduction

The International Whaling Commission (IWC) was initiated in 1946 by the International Convention for the Regulation of Whaling (ICRW) to ensure the safety of cetacean creatures in all bodies of water. As the concern for endangered sea animals increased, so did the number of state parties to the ICRW to prevent the future extinction of cetacean species.[73] In the 1980's, the number of whale stocks for commercial use became increasingly alarming, resulting in the IWC's initiation of the moratorium to track of the number of whales being killed per year due to the

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[70] Jeffrey Dunoff, Steven Ratner and David Wippman, *International Law: Norms, Actors, Process: A Problem- Oriented Approach*. 2ed. [Aspen Publishers: New York, NY]. 3-5

[71] ibid, 12

[72] ibid, 13-15

[73] Commission, International Whaling. 2009. "Key Documents." *International Whaling Commission.* October. http://iwc.int/convention.

commercial industry.[74] The IWC only issues permits for research purposes, which are then reviewed and monitored by the IWC. Member States conducting research must continually meet the standards established in the ICRW and report to the IWC. [75]

Japan has participated in the commercial and scientific whaling industry since the 1890s.[76] In 2005, Japan launched the Japanese Whale Research Programme under Special Permit in the Antarctic (JARPA) II initiative, an expansion of the 1994 JARPA initiative. JARPA is a program focused on the study and research of whale habitat and mortality rates in the Antarctic region.[77] Japan states that the primary purposes of their annual whaling practices in Antarctica are to foster scientific research and help expand the JARPA II program, as conducted by the Institute of Cetacean Research.[78] However, the meat and remains of the whales are often used in the commercial industry, raising concerns about the intentions of the JARPA II program. In 2010, Australia filed a complaint with the ICJ alleging that Japan's JARPA II program had breached the ICRW.[79] Australia claims that the JARPA II program is unlawfully abusing its permit to research the habitat of whales in Antarctica.[80] They further alleged that Japan has neglected the obligation to attempt to conserve the cetacean species with a disregard for the increasing whale stock numbers, which is potentially endangering the whales in the region.[81] Australia concluded that the JARPA II program cannot be justified under Article VIII of the ICRW.

On November 20, 2012, New Zealand filed a Declaration of Intervention in the case of Whaling in the Antarctic "by availing itself of its right to intervene, it accepts that the construction given by the judgment in the case will be equally binding upon it."[82] New Zealand's intervention is possible due its party-status of ICRW and was approved by the ICJ in February 2013. The purpose of New Zealand's involvement is to determine the legality of Japan's "special permit" under Article VIII of the convention.[83]

The International Convention for the Regulation of Whaling

The International Whaling Commission (IWC) created the International Convention for the Regulation of Whaling (ICRW) in 1946 to focus on the environmental and ecological dangers of commercial whaling. IWC focused on whaling for research purposes only to help find methods of sustainability for the whale population.[84]

The ICRW contains two key mechanisms, the *Convention* and the *Schedule*.[85] The Convention is a statement of rules and regulatory methods for all Member States to consent to and follow. The Schedule focuses on the integral parts of the Convention, but most importantly the Schedule contains the catch limits for whale populations by region and

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[74] Ibid.

[75] Ibid.

[76] 2013. "Scientific Permit Whaling." *International Whaling Commission.* December. http://iwc.int/permits.

[77] Ibid.

[78] Ibid.

[79] Hague, The. 2010. "Australia Press Release of Allegations." *International Court of Justice.* June 1. http://www.icj-cij.org/docket/files/148/15953.pdf.

[80] Ibid

[81] Ibid.

[82] "Whaling in the Antarctic; Declaration of Intervention of New Zealand;" International Court of Justice. http://www.icj-cij.org/docket/files/148/17268.pdf

[83] "Whaling in the Antarctic: Declaration of Intervention of New Zealand; New Zealand Foreign Affairs and Trade. http://www.mfat.govt.nz/downloads/treaties-and-international-law/ICJ%20case%20overview.pdf

[84] Ibid.

[85] UNEP, *Key Documents*

location to ensure that all participating Member States have met the standards.[86] One of the provisions states that all whale stock should be used for the purposes of fostering in scientific research. [87]The IWC also uses the ICRW to issue Special Permits.

Special Permits are created by resolutions passed by the IWC. The issuances of these permits are the responsibility of the Member State alone; however, once the proposal has been turned in, the Scientific Committee will review the proposal and offer an acceptance or denial.[88] The Scientific Committee contains 200 scientists that will negotiate the main points and objectives of the proposal. [89]The main points that the Scientific Committee reviews are whether:

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[86] Ibid.

[87] Ibid.

[88] Ibid.

[89] Ibid.

1. “The permit adequately specifies its aims, methodology and the samples to be taken;
2. The research is essential for rational management, the work of the Scientific Committee or other critically important research needs;
3. Methodology and sample size are likely to provide reliable answers to the questions being asked;
4. The questions can be answered using non-lethal research methods;
5. The catches will have an adverse effect on the stock;
6. The potential for scientists from other nations to join the research is adequate.”[90]

Once the results are given and the Member States are offered the permit, an ongoing review is obligatory and mandatory.[91] This is to ensure that Member States are following all of the standards set forth by the Convention. These reviews are conducted by a Panel, which may or may not contain members of the Scientific Committee.[92] The Panel also references the objectives of the proposal to determine whether or not the standards are being met. After the reviews are made, the Panel provides recommendations to Member States whether it is necessary to pursue another Special Permit.[93] The IWC places its primary focus on the protection of the environment and its inhabitants, thus it often denies many proposals from Member States based on their impacts.

JARPA

Japan first initiated scientific permits in 1987 with the establishment of the JAPRA program. During this time, the race for land and property in Antarctica was at a peak, and Japan petitioned for use of the surrounding water to conduct further research on cetacean species. They applied and proposed for a whaling permit from the IWC to allow for a whale research program in the Antarctic.[94] They were granted a Special Permit, as long as they met the standards of the ICRW. JARPA program was created with the intention of completing the following four objectives:

- Estimation of biological parameters (especially the natural mortality rate) to improve management;
- Elucidation of stock structure to improve management;
- Examination of the role of whales in the Antarctic ecosystem;
- Examination of the effect of environmental changes on cetaceans.[95]

Each year of the program was subjected to a review by the IWC to ensure that it follows the charter of the ICRW. The JARPA program was regarded as a success; however, in 2001 and 2003, the IWC instructed Japan to halt the fatal methods surrounding Minke whales and reevaluate its research methodology to include non-lethal means of research. Thus, Japan began to initiate the second phase of a new large-scale Antarctic program; JARPA II.[96]

In 2005, JARPA II was designed to be a full scale program with a new approach and new objectives:

- Monitoring of the Antarctic ecosystem;
- Modelling competition among whale species and developing future management objectives;
- Elucidation of temporal and spatial changes in stock structure;
- Improving the management procedure for Antarctic Minke whale stocks.[97]

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[90] ICW, *Special Permits*

[91] Ibid.

[92] Ibid.

[93] Ibid.

[94] Ibid.

[95] Ibid.

[96] “Australia v. Japan: JARPA II Whaling Case before the International Court of Justice.” The Hague Justice Portal. http://www.haguejusticeportal.net/index.php?id=11840

[97] Ibid.

The JARPA II program placed an emphasis on the "Minke, Humpback and Fin whales that all feed on Antarctic krill."[98] The numbers for lethal sampling in the whales were "850 (with 10 percent allowance) Antarctic Minke whales (Eastern Indian Ocean and Western South Pacific stocks), 50 Humpback whales (D and E stocks), and 50 Fin whales (Indian Ocean and the Western South Pacific stocks)."[99] JARPA II also participated non-lethal sampling through methods of biopsies, surveys and acoustic surveys.[100] The reviews for the JARPA II program were divided among the scientific and international communities. The main issues brought to the attention of the Scientific Committee included the relevance of the research and its lethal sampling, and the successes of the non-lethal sampling.[101] The committee resulted in passing multiple resolutions that were approved by a majority vote stating that Japan should refrain from its whaling program and attempts to expand its JARPA II program.[102] The final reviews for the JARPA II program will be completed in late 2013.

Allegations and the Violations of the Law

On June 1, 2010, Australia announced is allegations against Japan in The Hague before the ICJ.[103] The allegations state that:

> "Japan's continued pursuit of a large scale programme [program] of whaling under the Second Phase of its Japanese Whale Research Programme [program] under 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."[104]

Australia also stated that the JARPA II program is in violation of the conditions stated in Article VIII of the ICRW because it claims that Japan cannot justify its program due to the "lack of any demonstrated relevance for the conservation and management of whale stocks, and to the risks presented to targeted species and stocks."[105] Finally, Australia alleged that Japan, through the JARPA II program, is breaching its obligations to the Convention on International Trade in Endangered Species of Wild Fauna and Flora, as well as the Convention on Biological Diversity.[106]

Australia requests that the ICJ declare that "Japan is in breach of its international obligations in implementing the JARPA II programme [program] in the Southern Ocean".[107] Australia believes that Japan must complete the following to alleviate allegations:

- Cease implementation of JARPA II;
- Revoke any authorizations, permits or licenses allowing the activities which are the subject of this application to be undertaken; and

[98] Ibid.

[99] Ibid.

[100] Ibid.

[101] Ibid.

[102] Ibid.

[103] Hague, *Allegations*

[104] Ibid.

[105] Ibid.

[106] Ibid.

[107] Ibid.

- Provide assurances and guarantees that it will not take any further action under the JARPA II or any similar program until such programhas been brought into conformity with its obligations under international law.[108]

Japan has countered and stated it does not breach its contract due to the use of the Special Permit authorized by the Special Committee of the International Whaling Commission (IWC) to conduct whaling research that involves lethal sampling.[109]

The Court has created the basis of jurisdiction through the provisions of Article 36, paragraph 2 of the ICJ Statute. [110]

Conclusion

The case of Whaling in the Antarctic has been presented by Australia, with New Zealand intervening, alleging that Japan has violated the conditions of the ICRW.[111] The issue of the International Convention for the Regulation of Whaling (ICRW) and its Special Permits are still open questions in the case.[112] So far, the ICJ has ordered that New Zealand may intervene on the basis of the Declaration of Intervention from Article 63, paragraph 2 of the Statute.[113] At the moment, the case has been mostly in regards to time-limits and public hearings given by each party involved. The next step will be to look into the basis of Environmental Law and the Convention to determine the outcome of the allegations.

Committee Directive

The committee should look into the roots of the Convention, as well as the regulations of the Schedule and Special Permit to discover the outcome of the allegations. It will be important to note the standards of the ICRW and how they compare to the JARPA II program, as well as Australia's place and jurisdiction in the allegations made about the program. The Court should consider the following questions when addressing this case:

1. Does JARPA II have the right to continue its lethal research methods on the whales if it has a Special Permit? How does the past programs and their success compare to the current JARPA II program?
2. Can Australia and New Zealand use Environmental Laws with their allegations to justify the neglect found within the JARPA II program?
3. What can the ICJ do now that it has jurisdiction, to solve the case without harming Japan's right to research and expand its programs?

Case IV: Nicaragua v. Colombia

In November of 2012, the ICJ rendered judgment on a contentious case between Nicaragua and Colombia involving territorial and maritime disputes. For the purposes of this committee and discussion, delegates will be exploring the territorial issue that has been further contested and is currently before the Court.

Introduction

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108 Ibid.

109 Ibid.

110 Ibid.

111 April . "Whaling in Australia (Austrailia v.Japan: New Zealand intervening)." *International Court of Justice.* 2013 11. http://www.icj-cij.org/docket/files/148/17298.pdf.

112 Ibid.

113 Ibid.

Disputes between Nicaragua and Colombia can be traced back to the early 19th century at a time when the Latin American Member States were gaining independence from the Kingdom of Spain.[114] In 1928, after years of conflict, Nicaragua and Colombia settled their border disputes of the archipelago in question via the Esquerra-Barcenas Meneses Treaty.[115] The treaty proved successful for several decades, but in 1980 Nicaragua unilaterally annulled the agreement, stating that pressure from the United States of America was the only reason it initially entered into the agreement.[116] In 2001, Nicaragua filed a dispute with the ICJ containing issues that related to titles of territory and maritime delimitation.[117] Nicaragua filed for over 50,000 square kilometers of the island chain that includes San Andres, Providencia, Santa Catalina and the Quitasueno Cay, as well as a request for the maritime border to be precisely delineated based on international law.[118]

The case was in the Court for nearly eleven years and on November 19, 2012, the ICJ rendered judgment on the case. The ICJ confirmed that the San Andres archipelago would remain the sovereign territory of Colombia; however, a large area of the surrounding seas would become Nicaragua's economic exclusion zone, allotting for 200 nautical miles and essentially transferring 30,000 square miles of sea resources from one Member State to the other.[119]

Nicaragua immediately dispatched several ships to patrol the new maritime boundaries, but the Colombia refused to withdraw navy vessels already in place.[120] November 28, 2012 marked a day of escalation when Colombia withdrew from the Pact of Bogota, the agreement that Member States of the Americas established in order to settle disputes in a peaceful manner through the ICJ.[121] This escalation, and lack of compliance from Colombia, ignited another dispute presented to the ICJ by Nicaragua.

Current Dispute before the Court

On September 16, 2013, the Republic of Nicaragua initiated proceedings to the ICJ asking the Court to, "definitively determine the question of the delimitation of the continental shelf between Nicaragua and Colombia in the area beyond 200 nautical miles from the Nicaraguan coast."[122] In the previous decision, the Court decided a boundary line that established the separation of the continental shelf and the economic zone for Nicaragua.[123] However, many

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[114] Territorial and Maritime Dispute (Nicaragua v. Colombia). Application: Instituting Proceedings. International Court of Justice.
6 December 2001. http://www.icj-cij.org/docket/files/124/7079.pdf

[115] Valencia, Robert. Calming Colombia and Nicaragua's Murky Waters. World Policy Blog. 21 Aug. 2012. http://www.worldpolicy.org/blog/2012/08/21/calming-colombia-and-nicaraguas-murky-waters

[116] "Nicaragua files new claim against Colombia over San Andres. BBC News. 16 September 2013. http://www.bbc.co.uk/news/world-latin-america-24120241

[117] Territorial and Maritime Dispute (Nicaragua v. Colombia). Application: Instituting Proceedings. International Court of Justice.
6 December 2001. http://www.icj-cij.org/docket/files/124/7079.pdf

[118] Valencia, Robert. Calming Colombia and Nicaragua's Murky Waters. World Policy Blog. 21 Aug. 2012. http://www.worldpolicy.org/blog/2012/08/21/calming-colombia-and-nicaraguas-murky-waters

[119] "Hot Waters: Colombia and Nicaragua". The Economist. 29. Nov. 2013. http://www.economist.com/blogs/americasview/2012/11/colombia-and-nicaragua

[120] Ibid.

[121] Ibid.

[122] *Nicaragua institutes proceedings against Colombia asking the Court to "definitively determine the question of the delimitation of the continental shelf between Nicaragua and Colombia in the area beyond 200 nautical miles from the Nicaraguan coast.* Press Release. The International Court of Justice. 17 September 2013. http://www.icj-cij.org/docket/files/154/17530.pdf

[123] *Territorial Dispute and Maritime Delimitation (Nicaragua v. Colombia): Summary of the Judgment of 19 November 2012.* International Court of Justice. 19 November 2012. *http://www.icj-cij.org/docket/files/124/17180.pdf*

of the territories within these 200 nautical miles overlap, thus the distinction of which Member State has sovereign rights remains vague. Nicaragua is also requesting that the Court address, "the principles and rules of international law that determine the rights and duties of the two States in relation to the area of overlapping continental shelf claims and the use of its resources, pending the delimitation of the maritime boundary between them beyond the 200 nautical miles from Nicaragua's coast."[124] Nicaragua maintains that the information it has submitted to the Court shows a:

> "continental margin [that] extends more than 200 nautical miles from the baselines from which the breadth of the territorial sea of Nicaragua is measure, and both (i) traverses an area that lies more than 200 nautical miles from Colombia and also (ii) partly overlaps with an area that lies within 200 nautical miles of Colombia's coast."[125]

The Republic of Colombia has rejected the decision of the Court since the initial ruling on November 19 and maintains that any new borders or international boundaries must be agreed upon in a bilateral agreement, not by the Court.[126] The territory is rich in natural resources that both Member States wish to benefit from. Colombia maintains that this area is essential for its economy and is outraged by the decision from the Court.

There are several obstacles of this case that will make for a complicated ruling;

1: The Republic of Colombia has withdrawn from the Pact of Bogota, and ceases to recognize the jurisdiction of the ICJ.[127]

2: Nicaragua intends to start drilling for oil in the barrier reefs it was recently granted, territories that were previously under Colombian sovereignty as recently as 2012.[128]

3: Colombia maintains that it cannot make any changes to its borders automatically; proper avenues must go through its Congress as per the Constitution, therefore claiming that the territory is still within Colombian sovereignty.[129]

International Law

There are several aspects of international law significant to this case, specifically in regards to the continental shelf. According to the 1958 Geneva Conventions Article 6 (1):

> "Where the same continental shelf is adjacent to the territories of two or more States whose coasts are opposite each other, the boundary of the continental shelf appertaining to such States shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by

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[124] *Nicaragua institutes proceedings against Colombia asking the Court to "definitively determine the question of the delimitation of the continental shelf between Nicaragua and Colombia in the area beyond 200 nautical miles from the Nicaraguan coast.* Press Release. The International Court of Justice. 17 September 2013. http://www.icj-cij.org/docket/files/154/17530.pdf

[125] Ibid.

[126] "Hot Waters: Colombia and Nicaragua". The Economist. 29. Nov. 2013. http://www.economist.com/blogs/americasview/2012/11/colombia-and-nicaragua

[127] "Colombia/Nicaragua maritime dispute reignites, despite International Court Ruling." Merco Press: South Atlantic News Agency. 16 Sept. 2013. http://en.mercopress.com/2013/09/16/colombia-nicaragua-maritime-dispute-reignites-despite-international-court-ruling

[128] "Nicaragua to drill for oil off Caribbean coast." BBC News. 15 Aug. 2013. http://www.bbc.co.uk/news/world-latin-america-23721914

[129] "Colombia/Nicaragua maritime dispute reignites, despite International Court Ruling." Merco Press: South Atlantic News Agency. 16 Sept. 2013. http://en.mercopress.com/2013/09/16/colombia-nicaragua-maritime-dispute-reignites-despite-international-court-ruling

special circumstances, the boundary is the median line, every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured."[130]

Although applicable, the Court already ruled that the archipelago belongs to Colombia with surrounding waters under the sovereignty of Nicaragua. The next phase of complaints calls for the clarification of the delineation which will be problematic considering the variables.

Article 76 (1) of the United Nations Convention on the Law of the Sea (UNCLOS) states:

> "The continental shelf of a coastal State comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance."[131]

When deciding the initial case, the UNCLOS presented an interesting complication because Nicaragua has signed the treaty, however, Colombia has not.[132] When Nicaragua asked the Court to define the continental shelf, the case had to be decided with international customary law.[133] The second phase of this complex case calls for even more specific delineation of the continental shelf with no clear international legal precedence.

Conclusion

After decades of conflict and severed relations, the territorial and maritime disputes between Nicaragua and Colombia were expected to be resolved by an ICJ ruling in November, 2012. Nevertheless, conflict has continued surrounding the disputed nautical lines between the two Member States resulting in further proceedings at the ICJ. Nicaragua has alleged that Colombia has violated the previous decisions of the Court and is requesting further definitions surrounding maritime sovereignty and overlapping continental shelf distinctions. Diplomatic relations have been strained by such actions as Colombia's withdrawal from the Pact of Bogota and the economic initiatives planned to take place within the disputed exclusion zones.

Committee Directives

This is a unique case that requires the knowledge of two distinct proceedings: the initial ruling of November 2012 and the current case as hand. The Court must consider the enforcement of the previous findings and determine the specific maritime boundaries currently disputed. Questions the Court should entertain the following questions:

- Has Colombia abused or neglected the Court's decision delivered in November 2012? If so, what ramifications are necessary to ensure compliance?
- What international precedence establishes overlapping continental shelf boundaries and sovereign rights between two conflicting Member States?
- How does the Geneva Convention and the United Nations Convention on the Law of the Sea play a role in this case? How will these mechanisms be utilized to resolve these proceedings?

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130 *Convention on the Continental Shelf.* Geneva. 29 April 1958.

131 *United Nations Convention on the Law of the Sea.* Oceans and Law of the Sea: Division for Ocean Affairs and the Law of the Sea. 10 Dec. 1982.

132 "Chronological lists of ratifications of, accessions and successions to the Convention and the related Agreements as at 29 Oct. 2013." United Nations Division for Ocean Affairs and the Law of the Sea. http://www.un.org/depts/los/reference_files/chronological_lists_of_ratifications.htm

133 "Nicaragua v Colombia: An Unusual Delimitation?" Cambridge Journal of International and Comparative Law. 4 Jan. 2013. http://cjicl.org.uk/2013/01/04/nicaragua-v-colombia-an-unusual-delimitation-2/

Technical Appendix Guide (TAG)

Case I: Violations of the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

Apuzzo, Matt and Goldman, Adam, "Gitmo's secret CIA facility turned detainees into double agents," *Associated Press*. (2013). http://www.pbs.org/newshour/rundown/2013/11/gitmos-secret-cia-facility-turned-detainees-into-double-agents.html

According to the Associated Press, the United States of America's (USA) Central Intelligence Agency (CIA) sent Guantanamo Bay prisoners back to their respective homes and serve as double agents to kill other terrorists. As a result, the CIA promised the Guantanamo Bay prisoners "freedom, safety for their families and millions of dollars from the agency's secret accounts." Approximately a dozen American officials described the program that allegedly ended in 2006. Sources claimed the prisoners partaking in the program helped find many "top al-Qaida operatives."

Beehner, Lionel, "The United States and the Geneva Conventions," *Council on Foreign Relations*. (2006). www.cfr.org/international-law/united-states-geneva-conventions/p11485

The Council of Foreign Relations (CFR) noted how the USA's Congress has debated the issue of interrogation and torture on detainees. Congress also debated on whether the CIA should be held accountable to the Geneva Convention, which noted the illegality of inhumane treatment of detainees. The CFR provided a general synopsis of the Geneva Convention, its Common Article Three, the White House's stance on the Geneva Convention, and if the US can "reinterpret" aspects of the Convention.

Crawford, Jamie, "Report: Numerous countries involved in CIA interrogation programs," *CNN*. (2013). www.cnn.com/2013/02/05/world/cia-rendition-report/

CNN reported about 54 Member States that participated in the detention and rendition programs overseen by the CIA. The report, citing the Open Society Justice Initiative, stated 136 people were subjected to the process of rendition, which meant a suspected terrorist by the USA was sent to another Member State for interrogation. The report was based on public documents and sources from the USA and foreign governments as well as inquires from the Council of Europe and European Parliament. The CIA reportedly held detainees in Lithuania, Morocco, Poland, Romania, Thailand, and Sri Lanka, to name a few, have played a role in the capture, interrogation, or torture of suspected terrorists.

Mazzetti, Mark and Shane, Scott, "Interrogation Memos Detail Harsh Tactics by the C.I.A." *The New York Times*. (2009). www.nytimes.com/2009/04/17/us/politics/17detain.html?_r=2&adxnnl=1&ref=ciainterrogations&pagewanted=1&adxnnlx=1390972513-VX99lJylWB4D106388Y4oQ

The USA's Department of Justice disclosed memos detailing "brutal" interrogation techniques used by the CIA. The interrogation techniques in question were reportedly approved under the administration of President George W. Bush which included keeping detainees awake for 11 consecutive days, placement in a dark room, inserting insects into the suspect's location. One of the interrogation techniques was classified as waterboarding, and US Attorney General Eric Holder Jr. labeled as illegal torture.

Case II: Bolivia v. Chile

Granier, Jorge, *Chile's One-Party Settlement: Bolivian Confinement*.(1997).

http://www.boliviaweb.com/mar/sea/index.htm

This is an excellent resource for this case. This is an online book originally written in 1986 dedicated to the conflict between Bolivia and Chile. Topics range from the emergence of conflict and the War of the Pacific, to the Truce Pact and the involvement of the United States. Jorge discusses the beginning stages of the conflict and investigates all aspects of the two parties as well of intervening third parties. This book also includes perspectives from both parties in a relatively unbiased nature. This site also includes maps outlining the disputed territory and the progress over time.

"The Truce Between Chile and Bolivia." *The Nation.*

http://books.google.com/books?id=AvkxAQAAIAAJ&pg=PA113&lpg=PA113&dq=truce+pact+1884+between+bolivia+and+chile&source=bl&ots=nlhoH3U8pJ&sig=7DAcqA8dkzNAn_ZEQojcKEStRHE&hl=en&sa=X&ei=8o3wUsvdD8K0ygGpw4CoDQ&ved=0CFIQ6AEwBA#v=onepage&q=truce%20pact%201884%20between%20bolivia%20and%20chile&f=false

The Truce Between Chile and Bolivia is a short article describing the first mechanism of peace developed between the two Member States. The Truce Pact was signed in 1884 and is the precursor to the Treaty of Peace and Friendship. This article outlines the contents of the pact including the terms of consent and obligation. This is an interesting source because it allows you to see the progression from the very first agreement.

Treaty of Peace and Friendship, *"Papers relating to the foreign relations of the United States, with the annual message of the president transmitted to Congress December 5, 1905."* United States Department of State. (1905) http://digicoll.library.wisc.edu/cgi-bin/FRUS/FRUS-idx?type=div&did=FRUS.FRUS1905.i0011&isize=text

This is the translated version of the 1905 Treaty of Peace and Friendship between Bolivia and Chile. The details of the treaty and the designated territory are outlined specifically. This is a necessary document for an advocate preparing an argument involving the Treaty of Peace and Friendship and should be present during committee.

Vargas, Elizabeth, "Bolivia's Centenarian Maritime Claim before the International Court of Justice." *Peace Palace Library.* (2013). http://www.peacepalacelibrary.nl/2013/05/bolivias-centenarian-maritime-claim-before-the-international-court-of-justice/

This article, published by the Peace Palace Library, was written by a member of Bolivia's legal team at Dirección Estratégica de Reivindicación Marítima (Diremar). This article gives an interesting perspective on the entire conflict between the two Member States while utilizing cases of similar circumstances to explore the validity of the international justice. The article discusses aspects of international norms as *jus cogens* and *inter alia* in relation to the functionality of the international justice system.

Case III: Australia v. Japan (New Zealand Intervening)

Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)
http://www.cites.org/eng/disc/text.php

Created in the 1960s, CITES is an international agreement between countries aimed as protecting the livelihood of internationally traded specimens of wild animals and plants. CITES monitors and explores levels of exploitation of animal and plant species at high risk due to trade in order to ensure the sustainability of the species and its environment. SITES is a voluntary based, legally binding international structure in which both Japan and Australia are state parties to.

Hurd, Ian, "Whales, Law, and Science: Australia v. Japan at the ICJ." Ethics and International Affairs. (2013). http://www.ethicsandinternationalaffairs.org/2013/whales-law-and-science-australia-v-japan-at-the-icj/

This article offers insight into the relationship between the ethical, political, and legal boundaries surrounding the case. The author explains the details of the case but also asks very important questions regarding the validity of scientific practices within the legal system and the extent that each Member State can interpret the language found in the ICRW. This article does not provide a legal framework as much as important questions to consider when researching and developing arguments for this case.

"ICJ Hears Case of Whaling in Antarctic: Australia v. Japan." United Nations Information Centre.
http://un.org.au/2013/06/27/icj-hears-case-of-whaling-in-antarctic-australia-vs-japan/

This is an excellent resource for materials surrounding this case. Not only does it provide an updated overview of the case, it also provides the latest oral proceedings, video proceedings, recent developments, and the presiding justices various representatives.

Scientific Contributions: JERPA/JERPA II. The Institute of Cetacean Research. (2013)
http://www.icrwhale.org/scJARPA.html

The Japanese Whale Research Program under Special Permit (JERPA) began between the austral summer seasons of 1987/88 and 2004/05. This site provides two review workshops conducted by the International Whaling Commission Scientific Committee (IWC SC) in 1997 and 2006 as well as a number of meeting documents of the IWC SC, peer reviewed publications, and oral presentations.

Case IV: Nicaragua v. Chile

Highet, Keith and Kahale, George III*, Land, Island and Maritime Frontier Dispute*, International Decisions.(1992)
http://www.jstor.org/discover/10.2307/2203619?uid=3739832&uid=2&uid=4&uid=3739256&sid=21103344058891

This is the ICJ case of El Salvador v. Honduras with Nicaragua intervening. This is an extremely similar case that involves island and maritime disputes that stem back to the time of independence of these two Member States. El

Salvador and Honduras also entered similar peace treaties as Nicaragua and Chile, and further engaged in years of conflict to resolve territorial sovereignty including islands and the surrounding maritime borders. This case provides insight to how the Court decided on similar circumstances and could be beneficial to reference.

Kwiatkowska, Barbara, "Submissions to the UN CLCS in Cases of Disputed and Undisputed Maritime Boundary Delimitations or Other Unresolved Land or Maritime Disputes of Developing States." http://dspace.library.uu.nl/handle/1874/235430

This is a paper written by law Professor Kwiatkowska that investigates the legal proceedings and the established precedence of cases involving maritime disputes specifically involving the UN Commission on the Limits of the Continental Shelf (UNCLCS) and the Convention on the Law of the Sea. This author explicitly defines terms such as 'dispute' within the confines of the two mentioned UN entities and investigates the legal proceedings involving disputes from various regions of the world.

Smith, Robert and Thomas, Bradford, *Island Disputes and the Law of the Sea: An Examination of Sovereignty and Delimitation Disputes*. IBRU Maritime Briefing. (1998).

Smith and Thomas explicitly explain the international legal framework for disputed island territory and the surrounding sovereign waters, the two major categories involving island territory. They explain the convolution surrounding the international territorial system and the obscurities within international documents such as the UN Convention on the Law of the Sea. Island disputes have increasingly swept the headlines and states contend over natural resources and border security. Today, most controversies involving island disputes originate from East Asia and the Middle East, but are not limited to these two regions.