

## International Court of Justice

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### Committee Overview

The International Court of Justice (ICJ), also known as the World Court, was established in 1945 to serve as the United Nation's chief judicial branch. Consisting of 15 judges, each of whom serves nine-year terms and is elected by the General Assembly and Security Council, the ICJ allows for contentious proceedings by individual nations and advisory proceedings to the different departments within the UN such as the WHO and UNESCO. The International Court of Justice has no affiliation with other judicial institutions such as the International Criminal Court (ICC), which does not belong to the United Nations.

Only countries and United Nations committees can appeal to the International Court of Justice. The ICJ settles legal disputes between states. Its rulings are binding and cannot be appealed. Although the ICJ does not have its own methods of enforcement, its rulings can be turned over to the Security Council, which does have the means to enforce. Additionally, the ICJ frequently advises specialized committees and other organs of the United Nations upon request. As one of the six main branches of the United Nations, the ICJ is crucial in its role as an impartial third party that regulates disputes between nations.

Topic 1: Nuclear Disarmament within the Republic of the Marshall Islands

### History

Advances in nuclear power within the last century have resulted in efforts toward nuclear disarmament. Nations and parties vying for nuclear disarmament do so in regards to the political, ethical, and long-term environmental concerns that arise from the use of nuclear energy as a power source or weaponry. In light of the increasing use of nuclear energy, the Treaty on the Non-

Proliferation of Nuclear Weapons (NPT) marks the beginning of an organized attempt to control the world's use of nuclear power. Since its signing in 1968, the goals of the NPT have been to accomplish nuclear disarmament by preventing the spread of nuclear weapons technology while still attempting to promote a peaceful use of nuclear power. Along with the numerous parties that have signed on to the treaty, the United States, China, France, Russia, and the United Kingdom, the five nuclear weapon states, also ratified or acceded to this treaty.<sup>1</sup>

Since the ratification of the NPT, efforts such as the Strategic Arms Reduction Treaty (START) and the Strategic Arms Limitation Talks (SALT) between the U.S. and the U.S.S.R. during the Cold-War period have also contributed to the conscious effort to diminish the use of nuclear weapons.<sup>2</sup> Despite disarmament proceedings, however, nuclear weapons have become more accessible and the number of countries that have conducted nuclear tests has increased. Since the NPT first recognized the original five nuclear weapons states, India, Pakistan, and North Korea, three nations that are not parties to the NPT, have carried out nuclear proceedings.<sup>3</sup> Besides these states, Israel is also believed to have conducted nuclear tests.

While the amount of nuclear weapons and nuclear testing has increased on a global basis and four more nuclear states have been recognized since the signing of the NPT, the five original nuclear weapons state have experienced a decreasing growth trend in their nuclear weapons inventories.<sup>4</sup> Despite this, the Marshall Islands recently presented a case to the International Court of Justice in April 2014 charging the United States, China, France, Russia, and the United Kingdom with violation of Article VI of the Treaty on the Non-Proliferation of Nuclear Weapons. Article VI requires the five nuclear weapons states to actively create effective negotiations in support of non-proliferation and hasten global nuclear disarmament. India, Pakistan, North Korea, and Israel, the four new nuclear states outside of the NPT, were also charged with neglecting accepted international law regarding nuclear nonproliferation.<sup>5</sup>

## Current Issues

Among the nuclear weapons states, the United States continued with nuclear tests following the NPT, but performed its last test in 1992. China and France continued until 1996, the U.S.S.R. until 1990, and the U.K. until 1991.<sup>6</sup> Although nuclear weapons states have made a conscious effort to limit nuclear activity, other nuclear states have just begun to advance in the nuclear field. As recently as 2013, North Korea announced that they had completed their third nuclear test in seven years. Additionally, other nations such as Iran seek access to nuclear weaponry.

The Republic of the Marshall Islands presented the case against nine nuclear states on their failure to adhere to effective nuclear disarmament proceedings with respect to the island chain's own history as a site of U.S. nuclear testing between 1946 and 1962. Through this lawsuit, the Republic of the Marshall Islands aims to initiate negotiations between nuclear states to end the nuclear arms race. Given their history as a site for nuclear weapons tests, the Marshall Islands targets a global plan for regulating and eliminating nuclear power and weapons rather than monetary reparations. Although they have been compensated with financial aid and medical operations, they their lawsuit stands on an ethical and political basis against the nine states that have tested or continue to test nuclear weapons.

The ethical issues include the harmful effects of nuclear testing on the environment, which lasted for years following the tests, as well as the effects of left over radiation from these tests that destroys the homes and the health of people in nearby areas. Many citizens in the Marshall Islands, for instance, have actually had to evacuate their homes and move to other islands in search of safer living conditions. Professor Neal Palafox commented on this evacuation, saying, "when you contaminate the land, and you move the people to 'safer islands,' the whole cultural structure changes."

Politically speaking, controversy arises when dealing with the fact that four of the charged nations, India, Pakistan, North Korea, and Israel are not bound under the NPT and its nuclear disarmament guidelines. These nations must adhere to conventional international law on nuclear weapons, which limits the possession, testing, and use of nuclear weapons, but they are not given the same restrictions and non-proliferation goals as the nuclear weapons states under the NPT. While international law does not explicitly ban nuclear weapons, the ICJ does determine them to be against the ideals of international humanitarian law.

### Current Analysis

Leading into the Post-Cold War period, several initiatives towards nuclear non-proliferation have been set globally. The Presidential Nuclear Initiatives set in 1991 created measures for the U.S., and ultimately the U.S.S.R./ Russia, to reduce nuclear weapons arsenals and work towards disarmament.<sup>7</sup> Additionally, following the expiration of START in 2009, Russia and the United States signed the New START in 2011, requiring much fewer strategic arms from both countries. Furthermore, the United Kingdom's Strategic Defense and Security Review promised to work towards nuclear disarmament by reducing warheads.<sup>8</sup>

The decision that the International Court of Justice must reach as to whether or not legal action against the nations charged by the Republic of the Marshall Islands is justified is not simply a matter of determining which party wins the case. This ties in with the bigger picture of nuclear non-proliferation and disarmament procedure and a global plan towards the use of nuclear weapons. It is the duty of the ICJ to determine whether or not the charged nuclear states have failed to and must meet their nuclear obligations, if they have complied with their obligations, or if their non-compliance is justified.

Despite the decreasing nuclear inventory growth trends in the original five nuclear weapons states, the four most recent nuclear nations have experienced growing trends as of 2014.<sup>9</sup> With this, the Marshall Islands claims that nations are more focused on updating and improving their arsenals rather than taking the appropriate procedures towards disarmament. Since the unprecedented case was first submitted, several nations have refuted the Marshall Islands' lawsuit. The United States moved to dismiss the case, claiming that its nuclear activity has been justified.<sup>10</sup> Additionally, Russia rejected the lawsuit, arguing that it has been making effective efforts to reduce its arms.<sup>11</sup> It is the duty of the ICJ to determine if there is sufficient evidence of disarmament efforts in the accused nations to indicate whether or not their nuclear actions have been justified under international law.

### Questions

1. Is the Republic of the Marshall Islands justified in its concern for global failure to adhere to nuclear disarmament proceedings?
2. How strong is the legal case against Israel, North Korea, Pakistan, and India, the four recent nuclear states, considering they do not fall under the 1968 NPT?
3. By what standards can the International Court of Justice claim that a nation has or has not acted effectively toward nuclear disarmament?
4. Along with the political controversies in this case, could other factors such as ethical concerns play a role in determining who is in the right?
5. Should certain nuclear states be more targeted in this lawsuit?
6. Upon reaching a decision, should the ruling be specific to each nation or general to the international community?
7. Should the ICJ consider making nuclear states guilty of failure to meet nuclear disarmament obligations pay reparations or compensate for their negligence of international law?

8. Should nations be allowed to dismiss the lawsuit with sufficient evidence of disarmament proceedings?

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3. <http://www.icj-cij.org/presscom/index.php?p1=6&p2=1> – This site contains ICJ Press Releases for any updates on the following issue.
4. <http://www.wagingpeace.org/marshall-islands-statement-to-2014-npt-prepcom/> - This source contains the Marshall Islands Statement to 2014 NPT Prepcom.
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Topic 2: Maritime Delimitation within the Caribbean Sea and the Pacific Ocean

### A History of the Problem

International disputes between nations become much more difficult to resolve when disputing territorial waters. Though geographic boundaries have already been drawn on land, every coastal nation has jurisdiction over the adjacent seas and oceans, making maritime limits more ambiguous. The division of the seas signifies the distribution of the rights of each nation, including the ability to monitor traffic through the use of submarines, the usage of the waters to transport

imports and exports, and the national right to claim mineral and biological resources<sup>12</sup>. However, there are also duties involved such as limiting the amount of pollution in the marine environment in order to avert detrimental effects to the living resources, marine life, human health, and any hindrances to uses of the sea such as exporting and fishing. The controversy over maritime delineation is significant because many nations' economies depend on these waters to generate revenue. Whether it is used for tourist attractions or fishing, a difference in a few square miles could be catastrophic for a smaller nation's economy.

Though proposed by Hugo Grotius in 1609, the freedom-of-the-seas doctrine was not adopted until the 19th century<sup>13</sup>. It states that during a time of peace all nations were entitled to use the high seas for commercial purposes. It was not until the second half of the 20th century when coastal states, such as Honduras Nicaragua, Costa Rica, Panama and Colombia, demanded more offshore-fishing rights, the conservation of maritime resources, and the exploitation of resources, specifically oil. In 1967, Arvid Pardo, Malta's Ambassador to the United Nations gave a speech to the General Assembly demanding other nations to recognize the hazardous environmental effects that national rivalry was causing<sup>14</sup>. 35 nations later came together to create an Ad Hoc committee known as the United Nations Seabed Committee<sup>15</sup>. Their purpose served to protect and promote exploration, conservation, and peaceful uses of the seabed and ocean floor. The first and second United Nations Conference on the Law of the Sea, in 1958 and 1960, respectively, convened to discuss potential solutions to the pollution and territorial disputes by creating an international maritime law, which ultimately failed. The third conference began in 1973 and is continuing to attempt to create an international set of laws in order to govern the uses of the oceans and their resources<sup>16</sup>.

According to the third United Nations Convention on the Law of the Sea, limits of the territorial sea extend 12 nautical miles past the outermost point of land<sup>17</sup>. However, when many

islands are within close vicinity, conflicts arise dealing with who has the jurisdiction. Controversies typically arise dealing with territorial sovereignty and jurisdictional rights seeing as the delimitation of maritime limits has economic, environmental, and strategic military advantages. When controversies emerge dealing with exclusive economic zones such as those with high fish population or areas with potentially high economic gain, the ICJ has the responsibility of intervening in order to reach an unbiased solution. This committee will deal specifically with the issue between Costa Rica and Nicaragua and the maritime delimitation in respect to the Pacific Ocean and the Caribbean Sea. Both are important to the nations' economic prosperity, but because Costa Rica and Nicaragua are located adjacent to one another, boundaries and limits become difficult to discern.

### Current Issues

On February 26, 2014, Costa Rica instigated a proceeding against Nicaragua in order to settle a dispute regarding maritime delamination in the Caribbean Sea and the Pacific Ocean, specifically in regards to the Caribbean Sea and the Pacific Ocean<sup>18</sup>. Because Costa Rica and Nicaragua share a border, the two States disagree on where the maritime boundaries should be drawn in both the Caribbean Sea and the Pacific Ocean. Costa Rica and Nicaragua have both proposed their own resolutions to partition the economic and territorial zones, but there has been "an overlap of claims in the Pacific Ocean" as well as an indecision with regards to the Caribbean Sea<sup>19</sup>. Both nations have also tried diplomatic negotiations in 2002, 2005, and 2013, but have yet to reach an agreement. Due to the American Treaty on Pacific Settlement of Disputes, also known as the Pact of Bogotá, the two nations have agreed to allow the ICJ to settle the dispute<sup>20</sup>.

However, this is not the first territorial dispute between the two nations. In 2009 and 2010 Costa Rica and Nicaragua also disputed against the San Juan River, which was established in the Cañas-Jerez Treaty in 1858. Though Costa Rica's boundary clearly ended at the end of the bank,

Costa Rica argued for navigational rights. Costa Rica claimed Nicaragua had violated 9 ordinances including charging fees to Costa Ricans. The ICJ sided with Costa Rica and agreed that they had a right to free navigation along the river for commerce purposes and that Nicaragua did not have a right to charge the vessels. However, official vessels such as police vessels did not have a right to free passage, as spelled out in the Cañas-Jerez Treaty<sup>21</sup>.

Recently, in respect to the Caribbean Sea and Pacific Ocean delimitation dispute, Nicaragua appointed Carlos Jose Arguello Gomez as Agent and Costa Rica nominated Edgar Ugalde Alvarez, Jorge Urbina and Sergio Ugalde as Co-Agents. The representatives then spoke on behalf of their respective nations in an appointment with the President of the Court on March 31, 2014. There, Costa Rica indicated that a period of 6 months would be appropriate to file their written pleading, while Nicaragua preferred 12 months due to the complexity of the delimitation question. The Memorial of the Republic of Costa Rica will have until February 3, 2015 to file the written pleadings while the Counter-Memorial of the Republic of Nicaragua will have until December 8, 2015<sup>22</sup>. The case will deal with creating a single maritime boundary between all maritime areas surrounding Nicaragua and Costa Rica, specifically the Caribbean Sea and the Pacific Ocean. The ICJ will also have the responsibility of determining precise coordinates for the single maritime boundary.

### Current Analysis

Considering past territorial disputes between Nicaragua and Costa Rica, determining the maritime delimitation will not only determine the limits between the two nations but will also determine who comes out as the more powerful nation. Although both economies rely on agriculture as their main export, a large portion of their economic revenue comes from tourist attractions, specifically the beaches and other types of ecotourism<sup>23</sup>. Therefore, increasing maritime boundaries may increase the amount of tourism entering the nation, increasing the economic

revenue generated. Along with an economic benefit, the nation who obtains a further limit will also have a military strategic advantage as well using the waters to import and export goods.

Diplomatic attempts occurred for over twelve years and caused tension between the two nations. Leaving maritime issues unresolved may lead to the disruption of peace and security, and economic turmoil. Therefore it is up to the ICJ to settle the dispute between Nicaragua and Costa Rica. This committee must determine the co-ordinates in which the single maritime boundary will exist. In order to do this, one must carefully consider the consequences that it may cause, both economically, politically, and environmentally. Since the first Convention on the Law of the Sea in 1958, the Convention has been trying to establish a standard regime of laws and rules in order to clarify jurisdiction and to maintain order<sup>24</sup>. If this were to occur, many territorial disputes would be resolved quickly and without the need of the International Court of Justice. The ICJ should not look at this case as a simple territorial dispute case, but an opportunity to resolve future cases with a standard set of laws.

### Questions

1. If Costa Rica was granted a further boundary than Nicaragua, would this create more tension between the two nations?
2. Central American nations have recently had many cases discussing territorial disputes; will this case set a precedent for future cases? If so, what would this case say?
3. How will other nations view the result of this case in terms of power?
4. Should the ICJ simply create a standard set of laws to resolve future territorial disputes to avoid cases like this in the future?
5. Should the maritime boundaries extend from the geographical land boundaries or have special rules per nation?

6. Should the economy of each nation impact the drawing of maritime boundaries?
7. What consequences would arise if the single maritime boundary were improperly drawn?

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