NHSMUN

Background Guide | *ICJ*

NHSMUN
National High School Model United Nations

Dear Judges,

My name is Paula Bonequi, and I am honored to welcome you to the International Court of Justice for Session I of NHSMUN 2026. I am very excited to serve as your Director this year alongside Odera.

For this year's conference, Odera and I have developed two cases that will challenge you to think critically about sovereignty, responsibility, and the evolving landscape of international law. The first, Arbitral Award of 3 October 1899 (Guyana v. Venezuela), deals with one of the most enduring territorial disputes in Latin America, touching on issues of sovereignty, natural resources, and geopolitical stability. The second, Australia v. China, is a fictional case that encourages you to confront the role of states in environmental disasters, long-term damages, and the blurred line between direct responsibility and global phenomena like climate change.

A little bit about myself. I was born and raised in Mexico City, where I am currently in my second year at ITAM pursuing a dual degree in economics and law. NHSMUN has been an essential part of my journey. I had the privilege of sitting exactly where you will in March as a judge for two consecutive years, which gave me an invaluable perspective on how to approach complex legal issues. Last year, I had the privilege of serving as Assistant Director for the Court, an experience that taught me so much and made me even more eager to return as your Director this year.

Outside of academics, I have always enjoyed pursuing unusual hobbies. I hold a black belt (2nd Poom) in tae kwon do and competed in Irish dance for around 13 years. I also love to travel and discover new countries, go to concerts of any kind—literally any—and do film photography, which also led me to start a vintage camera collection.

NHSMUN is an experience that goes far beyond debate. It is about engaging with complex issues, learning to work through differences, and connecting with people from all over the world. I am confident that these cases will strengthen your legal analysis skills and deepen your understanding of both the potential and the limitations of international law.

As we approach the conference, I encourage you to stay curious and keep exploring these topics as they continue to evolve. Please reach out to us with any questions about the ICJ, the cases, or anything else on your mind. Odera and I are excited to help however we can. I am really looking forward to meeting you all soon and hearing the unique ideas you will bring to our discussions in the Court.

Kind regards,
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NHSMUN 2025, Session I
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Dear Delegates,

My name is Odera Arene, and I am so excited to welcome you to the International Court of Justice for NHSMUN 2026. I will be your Session II Director for this conference. Last year I was the Assistant Director for the Haitian Cabinet, and the year before that, I was a judge for the ICJ. Altogether, this is my 3rd year of NHSMUN.

Paula and I have curated two amazing background guides for you to delve into. The first case deals with the border dispute between Guyana and Venezuela. The second case, which is a fictional case but is still very relevant, concerns an oil spill by a Chinese tanker in Australia's Great Barrier Reef. Both cases challenge you on the Court this year to apply international law to some of the most pressing modern issues.

A little bit about me! I was born in Port Harcourt, Nigeria, but I was primarily raised in the Inland Empire of California. I visit Nigeria often, like last summer when I was bustling around five states in Nigeria for almost three weeks. Currently, I am a student at Harvard College studying chemical and physical biology with a secondary in math. After college, I plan on attending medical school. On campus, I am a part of the Harvard Glee Club, play bass in the jazz combos, and conduct research in the field of OCT. Outside of class, I like to run marathons, eat food, and complete side quests.

During high school, NHSMUN was one of my favorite conferences and was the last conference I was a delegate in. I remember being surprised by the number and diversity of countries that participated in NHSMUN. As a delegate, I had a really great time and learned countless new things not just about international issues but also about diplomacy and teamwork. Now, as a part of the staff, I hope to make this conference an opportunity for you to learn, grow, and have fun.

As the conference approaches in March, make sure to stay up to date with recent developments on the topics presented. If you have any questions regarding ICJ, NHSMUN, or the topics, do not be afraid to reach out. I can not wait to see you all!

Odera Arene
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NHSMUN 2026, Session II
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A NOTE ON RESEARCH AND PREPARATION

Delegate research and preparation is a critical element of attending NHSMUN and enjoying the debate experience. We have provided this Background Guide to introduce the topics that will be discussed in your committee. We encourage and expect each of you to critically explore the selected topics and be able to identify and analyze their intricacies upon arrival to the conference.

The task of preparing for the conference can be challenging, but to assist delegates, we have updated our Beginner Delegate Guide, Advanced Delegate Guide, Research Guide, and Rules of Procedure Guide. In particular, these guides contain more detailed instructions on how to prepare a position paper and excellent sources that delegates can use for research. Use these resources to your advantage. They can help transform a sometimes overwhelming task into what it should be: an engaging, interesting, and rewarding experience.

To accurately represent a judge, delegates must be able to defend their positions based on legal principles. Accordingly, NHSMUN requires each judge to write a position paper for each topic on the committee's agenda. More information about how to write and format position papers can be found in the NHSMUN Research Guide. To summarize, for ICJ position papers should be structured into three sections:

I: Topic Background – This section should describe the history of the topic as it would be described by the delegate. Delegates do not need to give an exhaustive account of the topic, but rather focus on the details that are most important to the delegate's policy and legal analysis.

II: Legal Background – This section should discuss the delegate's interpretation of the relevant treaties, conventions, and research. Their understanding of this research will shape their analysis. The analysis should be written in plain terms, if possible. Comparisons with similar cases are also appropriate here.

III. Legal Analysis – This section should detail the delegate's legal analysis of the topic. This analysis should be well-sourced and thorough. Each argument should clearly connect to topic and to the legal background. Delegates should also identify potential counterarguments and why they believe those counterarguments are incorrect.

Each topic's position paper should be **no more than 10 pages** long double-spaced with standard margins and 12 point font size. This is a maximum; **3–5 pages per topic is often a suitable length**. The paper must be written from the perspective of your assigned country and should articulate the policies you will espouse at the conference.

Each delegation is responsible for submitting position papers on or before **February 20, 2026**. If a delegate wishes to receive detailed feedback from the committee's dais, a position must be submitted on or before **January 30, 2026**. The papers received by this earlier deadline will be reviewed by the dais of each committee and returned prior to your arrival at the conference. Instructions on how to submit position papers will be shared directly with faculty advisors.

Complete instructions for how to submit position papers will be sent to faculty advisers via email. If delegations are unable to submit their position papers on time, please contact us at nhsmun@imuna.org.

Delegations that do not submit position papers will be ineligible for awards.

Committee History

Established in 1945, the mission of the International Court of Justice (ICJ) is to resolve disputes between states and advise on international law. It serves as the main judicial organ of the United Nations (UN).[1] The ICJ's roots can be traced back to the Permanent Court of International Justice—part of the League of Nations. At the end of World War II, supplementing the UN's creation in 1945, the ICJ was formed to establish a more efficient global judicial system.[1]

The Court, based in the Netherlands, has 15 judges of different nationalities, each serving nine-year terms.[2] All 193 UN Member States are parties to the ICJ's Statute (its "constitution"). Therefore, all UN member states can bring cases before the Court. Non-members may associate themselves with a case as deemed permissible by the General Assembly but may not bring a case before the Court.[3]

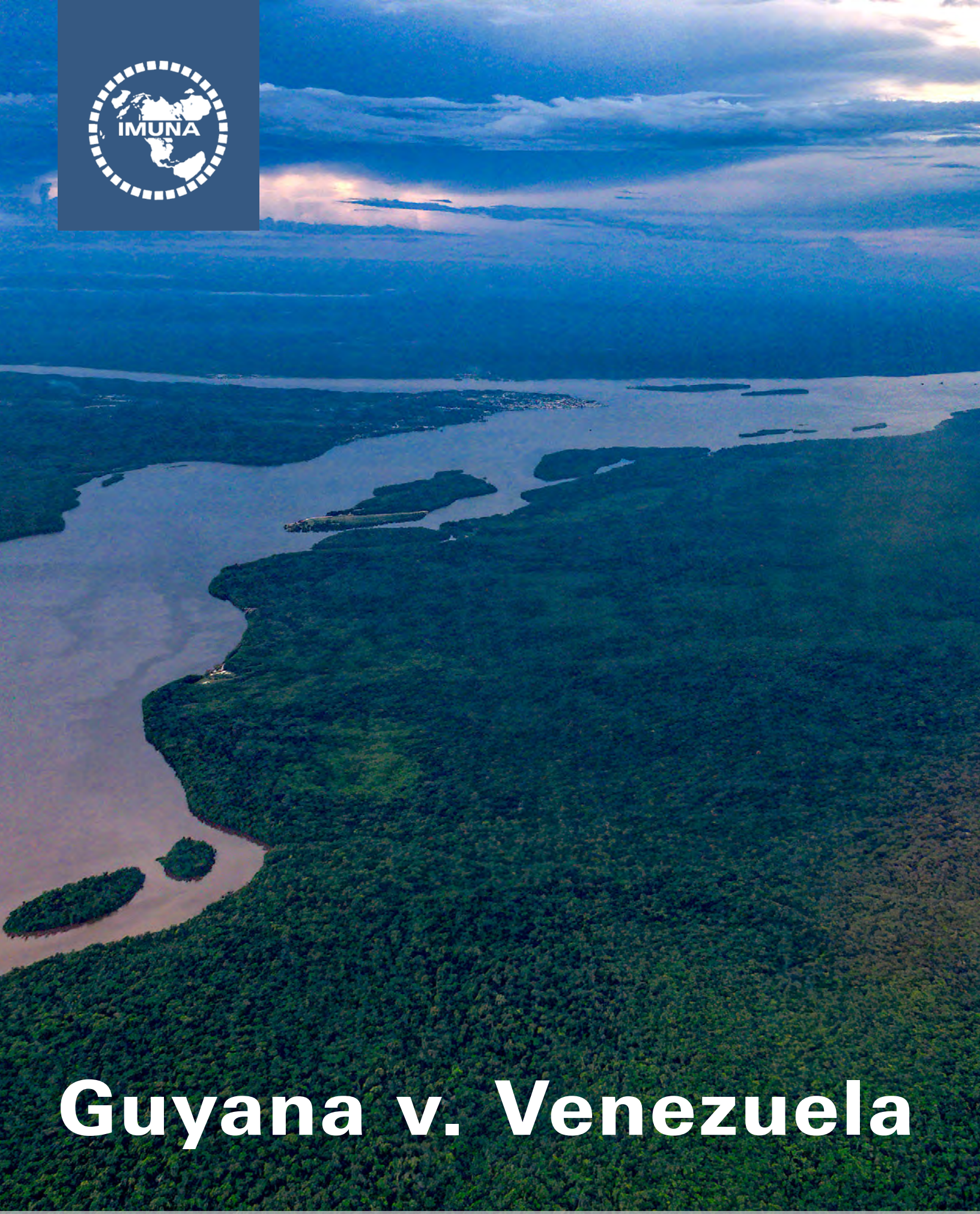
States introduce cases to the ICJ by signing a special agreement. The agreement outlines the conflict and stipulations in question. A case can also be called to the Court through treaties that allow the ICJ to reconcile legal disputes. States may also submit to the Court's compulsory jurisdiction.[4]

The ICJ uses two types of jurisdictions: contentious and advisory. With contentious jurisdiction, the Court can only act on an issue if the parties in question have accepted its authority. This happens through either a special agreement or compulsory jurisdiction. Once states consent to the Court hearing a dispute in a contentious case, written arguments are then submitted. This is followed by live arguments before the judges. Afterward, the Court issues a binding majority opinion. Dissenting opinions can also be attached, but they carry very limited legal weight.[5]

With advisory jurisdiction, the ICJ can deliver non-binding opinions on questions of international law at the request of the General Assembly or the Security Council. While such judgments are not binding on any individual country, the advisory opinions often serve as the foundation of future legal arguments.[6]

The ICJ lacks an ability to ensure enforcement. It relies on the Security Council to enforce its decisions.[7] This often restricts its ability to engage in complex contentions and hold the Security Council's permanent members accountable, as they hold veto power. Regardless, the ICJ's major accomplishments include interpreting international treaties and fostering the peaceful settlement of conflicts. With environmental obligations and territorial disputes on the horizon, the jurisdiction and abilities of the ICJ will likely be tested.[8]

1 "The Court," International Court of Justice, 2017–2024, accessed September 20, 2024, https://www.icj-cij.org/court.
2 S. Gozie Ogbodo, "An Overview of the Challenges Facing the International Court of Justice in the 21st Century," Annual Survey of International & Comparative Law 18, no. 1 (2012): Article 7, http://digitalcommons.law.ggu.edu/annlsurvey/vol18/iss1/7.
3 International Court of Justice, "The Court."
4 International Court of Justice, "The Court."
5 United Nations General Assembly, International Court of Justice Statute, 33 UNTS 993, 26 (June 26, 1945), https://www.icj-cij.org/statute.
6 United Nations General Assembly, United Nations Charter, 1 UNTS XV, 17 (June 26, 1945), https://www.un.org/en/about-us/un-charter/chapter-14.
7 United Nations General Assembly, International Court of Justice Statute, 33 UNTS 993, 26 (June 26, 1945), https://www.icj-cij.org/statute.
8 International Court of Justice, "The Court."



Guyana v. Venezuela

Photo Credit: Dan Lundberg

Memorial of the Co-operative Republic of Guyana

Chapter I: Introduction

This case was initiated on March 29, 2018, by the Co-operative Republic of Guyana through the 1966 Geneva Agreement treaty. The case was filed with the International Court of Justice by the Co-operative Republic of Guyana.[1]

After Guyana sent its application, the International Court of Justice discussed the time limits of the case on June 19, 2018. The International Court of Justice set the deadline for the Co-operative Republic of Guyana's memorial as November 19, 2018. The Co-operative Republic of Guyana submitted its memorial on November 19, 2018.[2]

Following Article 49 of the Rules of the International Court of Justice, this memorial contains the following:

A statement of facts in Chapter II,

A statement of law in Chapter III,

The Co-operative Republic of Guyana's submission to the International Court of Justice in Chapter IV. This chapter asks the Court to recognize the validity of the 1899 Arbitral Award.

In this memorial:

The International Court of Justice will be referred to as "the Court" or "the ICJ,"

The Co-operative Republic of Guyana will be referred to as "Guyana,"

The Bolivarian Republic of Venezuela will be referred to as "Venezuela,"

The 1899 Arbitral Award and the Paris Arbitral Award will be used interchangeably.

Under Article 36(1) of the Statute of the Court, the Court has jurisdiction over this case since there is a treaty in place. Additionally, this case centers on an international dispute over territory and its resources.[3]

This memorial will assert that the 1899 Arbitral Award is a valid and binding treaty. It will attest to Venezuela violating international law through its forceful entry into the Essequibo region. Under the legal principle of arbitration awards as being binding, valid, and final, the 1899 Arbitral Award should be upheld by the Court.[4]

1 International Court of Justice, *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, May 2, 2025, https://www.icj-cij.org/case/171.
2 International Court of Justice, *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*.
3 International Court of Justice, *Statute of the International Court of Justice*, June 26, 1945, https://www.icj-cij.org/statute.
4 International Court of Justice, *Case Concerning Arbitral Award of 3 October 1899 Co-operative Republic of Guyana v. Bolivarian Republic of Venezuela Memorial of Guyana*, Volume I, November 19, 2018, https://www.icj-cij.org/sites/default/files/case-related/171/171-20181119-WRI-01-00-EN.pdf.

CHAPTER II: STATEMENT OF FACTS

Historical Importance

Colonial Times

The earliest known inhabitants of what is now modern-day Guyana were the Arawak, Carib, and Warao. These groups sustained themselves through agriculture and hunting.[5]

The first written account of the Essequibo region by a European was created by English explorer Sir Walter Raleigh in 1584. In his book, *The Discovery of Guiana* (1596), he describes his search for gold in the region. He made another expedition to the region in 1617 but was executed for attackingthe Spanish site, Santo Tomé de Guyana. This attack violated Anglo-Spanish treaties. These treaties established peace between the English and Spanish colonies.[6]

Following Raleigh's expedition, the Dutch began to set up permanent colonial settlements in the 17th and 18th centuries in the Essequibo region and other regions in the north of South America. As the Dutch created trading posts, they made peace with the native populations in these regions.

During this time, there was no clear boundary between the Dutch colonies and the Spanish colony of Venezuela. This confusion over the boundary between the two persisted after Venezuela gained its independence in 1811.

The Dutch colonies were given to the United Kingdom (UK) during the Napoleonic Wars under the Treaty of Vienna in 1815. The UK would combine the Demerara, Berbice, and Essequibo Regions to form British Guiana. The boundaries between Venezuela and British Guiana were still unclear.[7]

The UK's Royal Geographical Society sent explorer Robert Schomburgk in 1834 to survey British Guiana. He ventured into parts of Brazil and even the upper Orinoco from 1838 to 1839. Upon his return to Great Britain, he suggested that the UK should clearly mark out the border between Venezuela and British Guiana. The British government then sent Schomburgk back to the region to create this border. Schomburgk carved out a line west of the Essequibo River. This gave British Guiana the Essequibo region and the southern bank of the Orinoco delta. This border is known as the Schomburgk Line. Venezuela objected to the Schomburgk Line, as it largely supported the UK's claims.[8]

Slavery was abolished in British colonies in 1838. There were around 100,000 slaves in Guiana at the time. These now freedmen began creating their own settlements on the coastal plains. They even acquired labor from indentured servants, mostly from India. These indentured servants, after working for a while, would also earn their freedom and make settlements on the coastal plain. The native populations, freedmen, and indentured servants from India served as the main ethnic groups of British Guiana, including the Essequibo region.[9]

In the late 19th century, there was an economic depression caused by increased sugar beet competition, a vital crop in British Guiana. An economic boom quickly followed this depression with the discovery of gold in 1879. This discovery led to a growth in the number of settlements.[10]

With the discovery of gold, the border dispute worsened between British Guiana and Venezuela. Venezuela went as far as to cut off diplomatic ties with the UK. Finally, in 1985, Venezuela

5 Bonham C. Richardson and Jack K. Menke, "History of Guyana," *Geography & Travel*, Britannica, June 21, 2025, https://www.britannica.com/place/Guyana/History.
6 Leslie Bethell, "Notes on the History of the Venezuela/Guyana Boundary Dispute," *CEBRI-Journal* 3, No. 9 (2024): 165-175. https://www.cebri.org/revista/en/artigo/138/notes-on-the-history-of-the-venezuelaguyana-boundary-dispute.
7 Leslie Bethell, "Notes on the History of the Venezuela/Guyana Boundary Dispute."
8 Leslie Bethell, "Notes on the History of the Venezuela/Guyana Boundary Dispute."
9 Bonham C. Richardson and Jack K. Menke, "History of Guyana."
10 Bonham C. Richardson and Jack K. Menke, "History of Guyana."

successfully lobbied the US to become involved in the dispute.[11]

The US gathered the UK and Venezuela together to create the 1897 Washington Treaty. One provision of this treaty was the creation of the 1899 Arbitral Tribunal. This tribunal, arbitrated by the US, was charged with setting the border between Venezuela and the UK. The tribunal consisted of 54 oral hearings, extensive evidence, and detailed records of all proceedings.[12]

After 3 months of deliberation, the tribunal used the Barima, Mururuma, Haiowa, and Amakura rivers as markers. This countered Venezuela's wish to use the Essequibo River as the boundary. The tribunal did, however, grant Venezuela the mouth of the Orinoco River. At the time, this was enough for Venezuela. For both parties, the 1899 Arbitral Award was satisfactory and valid.[13]

Self-government and Independence

The residents in British Guiana were slowly gaining more political power. In 1928, colonial reforms vested more power in the Colonial Office and the governor. In 1953, a newly devised constitution created a bicameral legislature, universal adult suffrage, and a ministerial system.[14]

Map of Guyana's disputed areas (Credit: Central Intelligence Agency)

In 1953, the first elected government was run by the People's Progressive Party (PPP) led by Cheddi Jagan. However, the UK quickly disbanded this government, believing the PPP was too pro-communist. The UK even revoked constitutional provisions and sent troops in response, restoring the constitution in 1957. During the British intervention, the PPP split along ethnic lines. Jagan would lead the Indo-Guyanese faction, while Forbes Burnham led the Afro-Guyanese faction, which became the People's National Congress (PNC).[15]

The PPP gained a majority in the government in the elections of 1957 and 1961. This caused strikes and bloodshed between the Afro-Guyanese and the Indo-Guyanese. These conflicts led the UK to once again deploy the military to restore peace.[16]

The PNC and a smaller conservative party formed a coalition led by Burnham, winning the 1964 elections.[17] Shortly after his victory, Burnham accused the PPP of being communist sympathizers. This drew the attention of outside powers. That same year, Venezuela, with the help

11 Bonham C. Richardson and Jack K. Menke, "History of Guyana."
12 *Award Regarding the Boundary between the Colony of British Guiana and the United States of Venezuela* (Paris: United Nations, October 1899), Reports of International Arbitral Awards, 331-340, https://legal.un.org/riaa/cases/vol_XXVIII/331-340.pdf.
13 *Award regarding the Boundary between the Colony of British Guiana and the United States of Venezuela* (Paris: United Nations, October 1899).
14 Bonham C. Richardson and Jack K. Menke, "History of Guyana."
15 Bonham C. Richardson and Jack K. Menke, "History of Guyana."
16 Bonham C. Richardson and Jack K. Menke, "History of Guyana."
17 Bonham C. Richardson and Jack K. Menke, "History of Guyana."

Hugo Chávez at Venezuela's state-run oil company (Credit: Karel Fuentes)

of the United States, planned to kidnap Jagan.[18]

During this period, Venezuela was increasingly vocal about its dissatisfaction with the 1899 Arbitral Award that was negotiated 60 years prior. Venezuela argued that the previous negotiation was unfair and tainted by secret agreements, despite its acceptance of the outcome. Once again, Venezuela reasserted its claim to all lands up to the Essequibo River.

The UK and Venezuela sent diplomats to Geneva to establish another agreement, culminating in the 1966 Geneva Agreement. In short, this agreement allowed Guyana to continue administering the disputed land but pledged to find a new permanent solution. It established a mixed commission of British and Venezuelan officials to settle land claims. British officials were replaced by Guyanese officials from the Burnham administration after Guyanese independence in 1966.[19]

In 1970, Guyana and Venezuela entered into a twelve-year pause on negotiations called the Port of Spain Protocol. This ended in 1982 when Venezuela unilaterally demanded that negotiations take place again. At this point, Guyana requested that the United Nations intervene.[20]

In 1989, the conflict started to be mediated by a special representative of the UN Secretary-General. Since then, negotiations have largely stalled, largely due to the intransigence of Venezuelan negotiators to accept Guyanese sovereignty.[21]

Guyanese Efforts at Democracy

The Growing Importance of the Essequibo Region

When President Hugo Chávez came to power in Venezuela, he sought to create unity among Latin American and Caribbean states. Chavez knew that the rhetoric about the Essequibo region had to be dampened for that unity to exist. In a visit to Georgetown, Guyana's capital city, in 2004, Chávez said, "The Venezuelan government won't be an obstacle to any project happening in the Esequibo that will benefit the inhabitants of the area." Although Chávez did not formally relinquish Venezuela's claim, he clearly recognized the validity of Guyana's administration of the region.[22]

In 2005, Chávez granted Guyana membership in Petrocaribe. Petrocaribe was an oil alliance between Latin American states granting members special discounts and privileges. Guyana was able to acquire 5,200 barrels of oil a

18 *Action Memorandum From the Assistant Secretary of State for European and Canadian Affairs (Tyler) to Secretary of State Rusk* (D.C.: United States, July 1964), Office of the Historian, https://history.state.gov/historicaldocuments/frus1964-68v31/d523.
19 Leslie Bethell, "Notes on the History of the Venezuela/Guyana Boundary Dispute."
20 Simon Rodriguez, "Essequibo, or the Persistence of El Dorado," *Strange Matters,* May 21, 2025, https://strangematters.coop/essequibo-conflict-venezuela-guyana-maduro-imperialism/.
21 Simon Rodriguez, "Essequibo, or the Persistence of El Dorado."
22 Marc Suñer, "How Chávez Softened Down on the Esequibo," Caracas Chronicles, December 1, 2023, https://www.caracaschronicles.com/2023/12/01/how-chavez-softened-down-on-the-esequibo/.

day, half of its total demand, at a discounted rate. Venezuela even went so far as to cancel Guyana's debt from 1974.[23]

From 2005 to 2015, Guyana experienced steady economic growth. Guyana's shift towards capitalism in the late 1990s allowed for the oil, diamonds, gold, bauxite, and agricultural resources to diversify and grow the economy.[24] With peace came migration and cultural exchange. In 2005, around 40–70 thousand Guyanese were living in Venezuela.[25]

On May 20, 2015, United States company ExxonMobil announced it had discovered oil reserves in the Liza-1 well at Stabroek in the Essequibo region. They estimated that the oil reserves were worth well over USD one billion.[26] By 2020, an additional 17 oil fields were found in the Stabroek Block. Economists now say Guyana is one of the fastest-growing economies in the world.[27]

When the wells were first discovered, President David Granger of Guyana partnered with ExxonMobil to exploit the oil boom. However, the territorial dispute loomed over the agreement. Venezuela, now led by Nicolás Maduro, aggressively reasserted Venezuela's claims once again when it was advantageous to do so. Guyana turned to the ICJ using the 1966 Geneva Agreement to seek a permanent end to the territorial dispute.[28] Currently, Guyana has the backing of the US, China, the UK, and Cuba.

On March 1, 2025, Venezuela sent military gunboats to the waters off the coast of the Essequibo region. The UK responded by deploying the *HMS Trent* to ensure peace. US Secretary of State Marco Rubio strongly defended Guyana's territorial integrity, saying the US is willing to give Guyana "100%" support.[29]

Given that the Guyanese Defence Force is tiny compared to the Venezuelan armed forces, Guyana is relying on the ICJ's ruling to restore peace and stability. Without the ICJ ruling, Venezuela will continue to violate the 1899 Arbitral Award. This would endanger two-thirds of Guyanese land and the future of Guyanese prosperity.[30]

CHAPTER III: STATEMENT OF LAW

ICJ Jurisdiction

Under Article 36(1) of the Statute of the Court, the ICJ has jurisdiction over contentious cases regarding treaties. The disagreement between Guyana and Venezuela is mainly about how the 1966 Geneva Agreement should be understood and applied. This dispute over a treaty gives the ICJ jurisdiction to hear this case.[31]

Furthermore, Article 40(1) provides that the treaty must indicate the parties involved and the issue at issue. Moreover, Article 38(1) states that the treaty must give the provisions that give the ICJ jurisdiction.[32]

The 1966 Geneva Agreement satisfies the provisions in the Statute of the Court. The 1966 Geneva Agreement is a treaty involving Guyana and Venezuela on the issue

23 Simon Rodriguez, "Essequibo, or the Persistence of El Dorado."
24 Bonham C. Richardson and Jack K. Menke, "History of Guyana."
25 Simon Rodriguez, "Essequibo, or the Persistence of El Dorado."
26 José de Arimatéia da Cruz, "Strategic Insights: Guyana-Venezuela: The Essequibo Region Dispute," *Strategic Studies Institute*, U.S. Army War College, December 14, 2015, https://ssi.armywarcollege.edu/SSI-Media/Recent-Publications/Article/3993020/strategic-insights-guyana-venezuela-the-essequibo-region-dispute/.
27 Bonham C. Richardson and Jack K. Menke, "History of Guyana."
28 Bonham C. Richardson and Jack K. Menke, "History of Guyana."
29 "The Case Between Guyana and Venezuela in the International Court of Justice," *Ministry of Foreign Affairs and International Cooperation: Cooperative Republic of Guyana*, February 21, 2025, https://www.minfor.gov.gy/newsroom/case-between-guyana-and-venezuela-international-court-justice.
30 "The Case Between Guyana and Venezuela in the International Court of Justice."
31 International Court of Justice, *Statute of the International Court of Justice*, June 26, 1945, https://www.icj-cij.org/statute.
32 International Court of Justice, *Statute of the International Court of Justice*.

of the Essequibo region. It also states the purpose of the treaty is the Paris Arbitral Award, or the dispute over the Essequibo region.[33]

The 1966 Geneva Agreement was signed by British Guiana, Venezuela, and the United Kingdom. Although British Guiana is technically not Guyana, Article VIII provides that Guyana enters the agreement on its independence. Thus, Article 40(1) of the Statute is satisfied.[34]

Article I of the 1966 Geneva Agreement states that a mixed commission would be created to settle the Arbitral Award of 1899. This has already occurred from 1966 to 1970.[35]

Article IV(1) of the 1966 Geneva Agreement states that if this mixed commission failed, Guyana and Venezuela could choose another peaceful method of negotiation under Article 33 of the United Nations Charter. However, from 1966 to 1970, the commission failed to reach a solution. Thus, Article IV(I) came into force.[36]

During the 12-year moratorium from 1970 to 1982, Guyana and Venezuela could not agree on how to settle the dispute. Article IV(2) of the 1966 Geneva Agreement thus came into action. This article says that if the countries involved cannot agree on what method to use under Article 33 of the United Nations Charter, the decision is handed over to the Secretary-General of the UN.[37]

Article IV(2) of the 1966 Geneva Agreement further states that choosing the method of negotiation under Article 33 of the United Nations Charter can be repeated by the Secretary-General if necessary. This means that if one method does not resolve the issue, the Secretary-General can select another method.[38]

The first part of Article IV(2) of the 1966 Geneva Agreement was clearly exhausted during the Port of Spain Protocol. Thus, the decision of what method to decide this dispute was left to the United Nations Secretary-General.

Then Secretary-General Diego Cordovez in 1983 assumed responsibility for selecting the method of mediation. From 1990 to 2014, subsequent Secretaries-General implemented the good offices procedures. A "good office" procedure is when a third party helps two states to meet. This representative is there only to make sure negotiations happen, not to give solutions. This process allowed for the foreign ministers of Guyana and Venezuela to meet. A representative of the Secretary-General acted as a neutral third party during these meetings.[39]

Several representatives of the Secretary-General continued to use good offices. However, following the guidance of then Secretary-General Ban Ki-moon, a representative made a statement on December 15, 2016. He declared that if the controversy was not solved by the end of 2017, he would turn over the dispute to the ICJ.[40]

Today, Venezuela is demonstrating naked aggression in the Essequibo region. Clearly, the conflict still is not settled. Based on the rules in the ICJ Statute, the United Nations Charter, and the 1966 Geneva Agreement, this argument can be decided by the ICJ.

33 International Court of Justice, *Treaties*, accessed June 8, 2025, https://www.icj-cij.org/treaties.
34 *Venezuela and the United Kingdom of Great Britain and Northern Ireland: Agreement to resolve the controversy over the frontier between Venezuela and British Guiana. Signed at Geneva, on 17 February 1966* (Geneva: Guyana, May 1866), United Nations, https://treaties.un.org/doc/publication/unts/volume%20561/volume-561-i-8192-english.pdf.
35 *Venezuela and the United Kingdom of Great Britain and Northern Ireland: Agreement to resolve the controversy over the frontier between Venezuela and British Guiana. Signed at Geneva, on 17 February 1966* (Geneva: Guyana, May 1866), United Nations.
36 *Venezuela and the United Kingdom of Great Britain and Northern Ireland: Agreement to resolve the controversy over the frontier between Venezuela and British Guiana. Signed at Geneva, on 17 February 1966* (Geneva: Guyana, May 1866), United Nations.
37 *Venezuela and the United Kingdom of Great Britain and Northern Ireland: Agreement to resolve the controversy over the frontier between Venezuela and British Guiana. Signed at Geneva, on 17 February 1966* (Geneva: Guyana, May 1866), United Nations.
38 *Venezuela and the United Kingdom of Great Britain and Northern Ireland: Agreement to resolve the controversy over the frontier between Venezuela and British Guiana. Signed at Geneva, on 17 February 1966* (Geneva: Guyana, May 1866), United Nations.
39 International Court of Justice, *Case Concerning Arbitral Award of 3 October 1899 Co-operative Republic of Guyana v. Bolivarian Republic of Venezuela Memorial of Guyana*, Volume I, November 19, 2018, https://www.icj-cij.org/sites/default/files/case-related/171/171-20181119-WRI-01-00-EN.pdf.
40 International Court of Justice, *Case Concerning Arbitral Award of 3 October 1899 Co-operative Republic of Guyana v. Bolivarian Republic of Venezuela Memorial of Guyana*.

The 1899 Arbitral Award is Valid, Final, and Binding

When it comes to solving arguments between countries, international law expects that when arbitrators make a final decision, both sides must respect it. This rule is especially important to ensure peace and trust between states and faith in judicial proceedings. Over time, countries have turned to arbitration to solve major disputes, knowing that the results will be honored and not questioned later on.[41]

The idea that decisions made by arbitrators should be final and binding comes from Hugo Grotius, an influential thinker from the 16th and 17th centuries who helped shape international law.[42] Since then, international courts have followed this principle.

The first case that applied this principle was the *Alabama Arbitration*. This case concerned the invasion of British vessels on United States territory. This arbitration between the United States and the United Kingdom resulted in an arbitral award in 1871–1872.[43]

The *Alabama Arbitration* serves as the template for arbitration. In this case, even the dissenting opinion by a British arbitrator reaffirmed that an arbitration between two states be valid, binding, and final.[44]

In *Case concerning the Arbitral Award of 31 July 1989 (Guinea-Bissau v. Senegal)*, Guinea-Bissau and Senegal submitted to the ICJ to settle a maritime border dispute between the two countries. The court reaffirmed the legal principle of arbitral awards as binding. Even in his dissenting opinion, Judge Weeramantry cited the importance of Grotius and the Court's prior adherence to his principles.[45]

> *Thus, applying this principle to the present case, the 1899 Arbitral Award is valid, final, and binding.*

Furthermore, this legal principle has been formally codified in international conventions. The 1899 Hague Convention for the Pacific Settlement of International Disputes states an award binds the parties definitively to *compromis*. *Compromis* is the idea that states loyally adhere to the award.[46]

This principle was further established in *Orinoco Steamship Company*, a case that Venezuela was a party to. This case states that the adherence to arbitral awards is key to international peace and the development of international arbitration.[47]

The cases and conventions mentioned, among others, all highlight that arbitral awards are assumed to be valid and are final and binding.[48]

Specifying this principle to the case at hand, the 1897 Washington Treaty that led to the arbitration of the Essequibo region is clear. It states, "The High Contracting Parties engage to consider the result of the proceeds of the Tribunal of Arbitration as a full, perfect, and final settlement of all the questions referred to the Arbitrators."[49]

Following the 1899 Arbitral Award, Venezuela accepted the results. The Venezuelan president at the time called it one of his greatest achievements in office.

41 International Court of Justice, *Case Concerning Arbitral Award of 3 October 1899 Co-operative Republic of Guyana v. Bolivarian Republic of Venezuela Memorial of Guyana*.
42 Yasuaki Onuma, "Hugo Grotius," *Arts & Culture*, Britannica, April 6, 2025, https://www.britannica.com/biography/Hugo-Grotius.
43 Reports of International Arbitral Awards, *Alabama claims of the United States of America against Great Britain*, September 14, 1872, https://legal.un.org/riaa/cases/vol_XXIX/125-134.pdf.
44 Reports of International Arbitral Awards, *Alabama claims of the United States of America against Great Britain*.
45 International Court of Justice, *Case concerning the Arbitral Award of 31 July 1989 (Guinea-Bissau v. Senegal)*, November 12, 1991, https://www.icj-cij.org/case/82.
46 International Court of Justice, *Case Concerning Arbitral Award of 3 October 1899 Co-operative Republic of Guyana v. Bolivarian Republic of Venezuela Memorial of Guyana*.
47 Reports of International Arbitral Awards, *Orinoco Steamship Co. Case ("United States v. Venezuela"), Arbitral Award of 25 October 1910*, October 25, 1910, https://www.worldcourts.com/iatc/eng/decisions/1910.10.25_USA_v_Venezuela.pdf.
48 International Court of Justice, *Case Concerning Arbitral Award of 3 October 1899 Co-operative Republic of Guyana v. Bolivarian Republic of Venezuela Memorial of Guyana*.
49 Reports of International Arbitral Awards, *Treaty between Great Britain and the United States of Venezuela Respecting the Settlement of the Boundary between the Colony of British Guiana and the United States of Venezuela*, February 2, 1897, https://treaties.fcdo.gov.uk/data/Library2/pdf/1897-TS0005.pdf.

The mouth of the Orinoco was granted to Venezuela, which is what they sought. The 1905 Agreement between Venezuela and British Guiana further provides evidence that Venezuela had accepted the arbitration. In 1941, Venezuela's foreign minister restated again that the 1899 Arbitral Award was valid.[50]

In the case of the *Award made by the King of Spain*, Nicaragua wanted to cancel a decision made in 1906 about its border with Honduras. The Court said that because Nicaragua had accepted the decision and acted as if it was valid for many years, it could not change its mind and try to cancel it later on. The Court did not even question whether the award was valid, because past rules and cases showed that these decisions are considered final unless there is strong evidence to show otherwise.[51]

Venezuela for years accepted the 1899 Arbitral Award. Following case precedent from the *Award made by the King of Spain*, Venezuela cannot go back and nullify the 1899 Arbitral Award.[52]

Grounds for Nullification

What Venezuela seeks is the nullification of the 1899 Arbitral Award. Accepting this would mean any country can nullify a treaty after ratifying it. Under current law, the only exception to nullifying a treaty after the day of signing is *jus cogens superveniens*. This principle allows for a treaty to be invalidated if later it is found to violate another international law.[53]

The draft regulations by the *Institut du Droit International* in 1875 give only four provisions that allow for the nullification of the treaty. In Article 27, it states, "The arbitral award is null in case of an invalid *compromis*, or in case of excess of authority, or of proved corruption of one of the arbitrators, or of essential error."

Venezuela has failed to provide evidence that any of these four provisions had been met at the signing of the 1899 Arbitral Award. Thus, the grounds for nullification have not been achieved.

CHAPTER IV: SUBMISSIONS

Following the evidence that was presented, the Co-operative Republic of Guyana asks the Court to recognize that the 1899 Arbitral Award is valid, final, and binding.

May it please the Court to adjudge and declare that:

The Court has jurisdiction to hear this case.

Venezuela's claims in the Essequibo region are in violation of the 1899 Arbitral Award and the Draft Regulations by the *Institut du Droit International*.

The removal of Venezuelan forces can be assisted by the UN Security Council, if necessary.

The 1899 Arbitral Award and the 1966 Geneva Agreement are the only legal documents covering the full extent of this dispute. The Mallet-Prevost Memorandum is invalid.

The border determined by the 1899 Arbitral Award is not subject to modification by any party in this case. Additionally, Guyanese individuals within the Essequibo region are not citizens of Venezuela but of Guyana.

Guyana reserves the right to update its demands if new information emerges from legal proceedings.

50 International Court of Justice, *Case Concerning Arbitral Award of 3 October 1899 Co-operative Republic of Guyana v. Bolivarian Republic of Venezuela Memorial of Guyana*.
51 International Court of Justice, *Case concerning the Arbitral Award made by the King of Spain on 23 December 1906 (Honduras v, Nicaragua)*, December 23, 1906, https://www.icj-cij.org/case/39#:~:text=The%20King%20gave%20his%20arbitral,this%20matter%20to%20the%20Court.
52 International Court of Justice, *Case Concerning Arbitral Award of 3 October 1899 Co-operative Republic of Guyana v. Bolivarian Republic of Venezuela Memorial of Guyana*.
53 International Court of Justice, *Case Concerning Arbitral Award of 3 October 1899 Co-operative Republic of Guyana v. Bolivarian Republic of Venezuela Memorial of Guyana*.

Counter-Memorial of the Bolivarian Republic of Venezuela

Chapter I: Introduction

This case was initiated on March 29, 2018, by the Co-operative Republic of Guyana through the 1966 Geneva Agreement treaty. The case was filed with the International Court of Justice by the Co-operative Republic of Guyana.[54]

After receiving the application from the Co-operative Republic of Guyana, the International Court of Justice discussed the time limits of the case on June 19, 2018. The International Court of Justice set the deadline for the Bolivarian Republic of Venezuela's memorandum as April 18, 2019. The Bolivarian Republic of Venezuela submitted its memorandum on November 28, 2019.[55]

Following Article 49 of the Rules of the International Court of Justice, this memorial contains the following:

A statement of facts in Chapter II,

A statement of law in Chapter III,

The Bolivarian Republic of Venezuela's submission to the International Court of Justice in Chapter IV. This chapter asks the Court to recognize the International Court of Justice's lack of jurisdiction and the grounds for nullification in the 1899 Arbitrational Award.

In this memorial:

The International Court of Justice will be referred to as "the Court" or "the ICJ,"

The Co-operative Republic of Guyana will be referred to as "Guyana,"

The Bolivarian Republic of Venezuela will be referred to as "Venezuela,"

The 1899 Arbitral Award and the Paris Arbitral Award will be used interchangeably.

Under Article 36(1) of the Statute of the Court, the Court lacks jurisdiction over this case. This is due to the indispensable party, the United Kingdom (UK), not being involved in this case despite being implicated in the 1899 Arbitral Award. Nevertheless, Venezuela submits a memorandum in good faith with the Court.[56]

Furthermore, even if this were entertained, the 1899 Arbitral Award meets the grounds for nullification under the 1875 Draft Regulations. Looking at the context of the signing of the Paris Arbitral Award, these grounds were met. Furthermore, this memorandum will find that Guyana lacks the right for the 1899 Arbitral Award to be arbitrated.[57]

54 International Court of Justice, *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, May 2, 2025, https://www.icj-cij.org/case/171.
55 International Court of Justice, *Arbitral Award of 3 October 1899 (Guyana v. Venezuela),*
56 International Court of Justice, *Statute of the International Court of Justice*.
57 International Court of Justice, *Memorandum of the Bolivarian Republic of Venezuela on the Application filed before the International Court of Justice by the Cooperative Republic of Guyana on March 29, 2018*, Volume I, November 28, 2019, https://www.icj-cij.org/sites/default/files/case-related/171/171-20191128-WRI-01-00-EN.pdf.

CHAPTER II: STATEMENT OF FACTS

Historical Importance

Colonial Times

The colonial period of Venezuela in relation to the Essequibo region is characterized by indifference. Before Venezuela's independence from Spain in 1811, Spain claimed not only the entirety of the Essequibo region but also lands east of the Essequibo region. Spain was distracted by the Napoleonic Wars (1803–1815), allowing the UK to claim the Essequibo region.[58]

Venezuela, after gaining independence, claimed the Essequibo region following Spanish colonial claims in the region. Without consulting Venezuela, the UK sent a British explorer, Robert Schomburgk, to carve out a line west of the Essequibo River to validate the UK's baseless claims. In 1840, the UK published the Schomburgk Line, claiming the Essequibo region and the southern bank of the Orinoco Delta.[59]

Venezuela immediately protested this fabricated claim. As Spain did before Venezuelan independence, Venezuela argued that the Essequibo River served as the true boundary. In the years after Venezuela's protest, all attempts to find an agreed-upon boundary failed. This led Venezuela to cut diplomatic ties with the UK.[60]

Paris Arbitral Award

Venezuela was able to convince the United States to arbitrate the issue in 1895 with the Pauncefote-Andre Treaty. This treaty allowed the boundary to be decided in another arbitration in 1897.[61] This second arbitration was a tribunal consisting of five jurists. Two of the jurists, Charles Baron Russell of Killowen and Richard Henn Collins, were from the UK. Two other jurists from the United States, Melville Western Fuller and Josiah David Brewer, were nominated by Venezuela. The last jurist was selected by the other jurists and was the president of the tribunal. The last jurist was Fyodor von Martens, a notable Russian diplomat.[62]

These jurists presented and recorded their arguments that would occur in Paris from 1898 to 1899. The jurists decided on October 3, 1899, that the border would largely follow the Schomburgk Line. The border uses the Barima, Mururuma, Haiowa, and Amakura Rivers and the Imataka, Roraima, and Akarai Mountains as markers. This decision, known as the Paris Arbitral Award, gave Venezuela some disputed land, such as Point Barima and 3,000 square miles (7,768 square kilometers) in the dense jungle interior of the Essequibo region. However, the UK emerged as the victor, receiving the vast majority of the disputed territory.[63]

1966 Geneva Agreement

At the time, Venezuela believed it had no choice but to accept the award. Support from the US waned after the arbitration. At the time, Germany, Italy, and the UK sent joint naval blockades to block Venezuelan seaports. The trio of states claimed Venezuela had not paid back its loans.[64] This over-the-top show of force to collect on some late payments was meant to cow Venezuela into submission on the Essequibo region.

Venezuela had another reason to view the Paris Arbitral Award as illegitimate. Severo Mallet-Prevost, who acted as junior counsel for

58 Jared Ashburn, "Venezuela, Guyana, and the Struggle Over Essequibo," *Global Weekly*, March 7, 2024, https://www.global-weekly.com/post/venezuela-guyana-and-the-struggle-over-essequibo.
59 Leslie Bethell, "Notes on the History of the Venezuela/Guyana Boundary Dispute."
60 Leslie Bethell, "Notes on the History of the Venezuela/Guyana Boundary Dispute."
61 United Nations General Assembly, *Question of Boundaries Between Venezuela and the Territory of British Guiana*, A/SPC/SR.349.
62 *Award Regarding the Boundary between the Colony of British Guiana and the United States of Venezuela* (Paris: United Nations, October 1899), Reports of International Arbitral Awards, 331-340, https://legal.un.org/riaa/cases/vol_XXVIII/331-340.pdf.
63 *Award Regarding the Boundary between the Colony of British Guiana and the United States of Venezuela* (Paris: United Nations, October 1899).
64 Allan Brewer-Carías, "Guyana-Venezuela Border Dispute," *Oxford Public International Law* (2026), https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e143.

Venezuela during the arbitration, alleged that the jurists were coerced. Mallet-Prevost claimed that political deals between Russia and the UK caused the jurists to vote in favor of the Schomburgk Line. This information was not known until 1949. Mallet-Prevost had dictated to Judge Otto that this memorandum was to be released after his death.[65]

In 1962, Venezuelan President Rómulo Betancourt declared that the Paris Arbitral Award was invalid. Using the Mallet-Prevost memorandum, Venezuela justly deferred to its previous claim that the Essequibo River formed the border between Venezuela and Guyana.[66]

Venezuela brought this issue to the United Nations General Assembly in 1962 and demanded a reevaluation of the 1899 Arbitral Award. Acknowledging the unjust nature of the prior negotiations, the UK and Venezuela reentered negotiations from 1963 to 1965. On February 17, 1966, the *Agreement to Resolve the Controversy between Venezuela and the United Kingdom of Great Britain and Northern Ireland over the Frontier Between Venezuela and British Guiana* (1966 Geneva Agreement) was signed.[67]

Chávez November 1992 coup attempt (Credit: Prensa Presidencial - Government of Venezuela)

19th-Century Venezuela

Conflicts between Venezuela and Guyana

The 1966 Geneva Agreement created a four-year mixed commission. This commission was unsuccessful in finding solutions to the Essequibo conflict. On October 12, 1966, Venezuela sent military and civilians to Ankoko Island in the Cuyuni River, which has been Venezuelan territory since its independence. In 1968, the Venezuelan president sent forces to patrol the waters near the Essequibo region to protect Venezuelan claims.[68]

Shortly after its independence, Guyana fell under the rule of a brutal strongman, Forbes Burnham. Guyana's rule over the people of the Essequibo was unpopular. In 1969, ranchers from the Rupununi region of southern Guyana attacked a police station and seized airstrips as an act of rebellion. The Guyanese government violently cracked down on these dissenters, seized the ranchers' lands, and deported them. Recognizing their plight, Venezuela gave them citizenship and protection. To add insult to injury, Burnham then accused Venezuela of fomenting the uprising to deflect the valid criticism of his regime. Venezuela continues to deny any involvement in the uprising, but it

65 Allan Brewer-Carías, "Guyana-Venezuela Border Dispute."
66 Allan Brewer-Carías, "Guyana-Venezuela Border Dispute."
67 Allan Brewer-Carías, "Guyana-Venezuela Border Dispute."
68 Allan Brewer-Carías, "Guyana-Venezuela Border Dispute."

serves as a sign of the unpopularity of Guyanese rule.[69]

Negotiations continued to stall. Frustrated with the slow rate of progress, Venezuela closed its border with Guyana on March 3, 1970. Finally, in agreement with Guyana and the United Kingdom, Venezuela signed the *Port of Spain Protocol*. This effectively paused negotiations for twelve years while new avenues to peace were explored. At no point did Venezuela relinquish its claims during this period. After twelve years with no progress, Guyana asked Venezuela to extend the *Port of Spain Protocol*, obviously to its benefit. Venezuela declined, and demanded that proper negotiations continue.[70]

Hugo Chávez

The following years were difficult for Venezuelans. Successive corrupt governments squandered Venezuela's wealth and sold its resources to outside corporations. As a brave act of heroism, Hugo Chávez attempted to overthrow the corrupt government in 1992 but unfortunately was defeated by the military. Undaunted, Chávez continued to fight for the people of Venezuela against the imperialist-backed leadership, establishing himself as a national hero. In 1998, overcoming great resistance from the political elite, Chávez was elected president of Venezuela, promising to use Venezuela's oil riches to reduce poverty and inequality.[71]

Moving swiftly to improve the lives of Venezuelans, President Chávez expanded social services and reduced poverty by 20%. His popularity with the working class gave him a strong mandate to make the dramatic reforms needed to ensure a prosperous future for all Venezuelans.[72]

Recognizing the role that the US continuously played in undermining Venezuela, Chávez also moved Venezuela towards new allies. Through PDVSA, he sold discounted oil to allies like Russia and China. Furthermore, Chávez allowed Russian state-owned oil firm Rosneft to be the drilling partner of PDVSA. Venezuela had to put up 49% of their stake in Citgo as collateral. These actions deeply upset the imperialist American oil companies that had long extracted vast riches from the country. US sentiment towards Venezuela quickly soured, and the government sought other ways to extract Venezuela's oil riches.[73]

Guyana's tone changed when oil was discovered off the coast of the Essequibo.

The Importance of Essequibo to Venezuela

Venezuelan Sentiments

In the 1990s and 2000s, the Venezuelan people were not concerned about the Essequibo region. Their focus was on recovering after the disastrous administration that preceded Chávez's revolution. Meanwhile, Chávez sought a peaceful resolution to the Essequibo conflict. To rebuild trust, Chávez went to Georgetown, the capital of Guyana, to discuss binational projects. He pledged a cooperative stance on economic developments in the Essequibo. He hoped that this renewed trust could help both parties find a mutually agreeable solution.[74]

Guyanese officials initially seemed to accept this olive branch from Chávez. Guyana's Ambassador to Venezuela, Odeen Ishmael, discussed having shared access to the resources off the coast of the Essequibo. Unfortunately, this was just rhetoric from Guyana, and no real steps towards realizing these projects were taken.[75]

Although there was an opportunity to share this wealth, Guyana immediately sought to exploit these resources by itself. Worse yet, Guyana partnered with ExxonMobil, a US oil company. ExxonMobil sought to use the

69 Allan Brewer-Carías, "Guyana-Venezuela Border Dispute."
70 Allan Brewer-Carías, "Guyana-Venezuela Border Dispute."
71 Diana Roy and Amelia Cheatham, "Venezuela: The Rise and Fall of a Petrostate."
72 Diana Roy and Amelia Cheatham, "Venezuela: The Rise and Fall of a Petrostate."
73 Jared Ashburn, "Venezuela, Guyana, and the Struggle Over Essequibo."
74 Simon Rodriguez, "Essequibo, or the Persistence of El Dorado."
75 Simon Rodriguez, "Essequibo, or the Persistence of El Dorado."

Essequibo conflict to extract Venezuela's oil riches without its permission. Again, American imperialism raged into Latin American affairs.[76]

Frustrated with the UN's inability to mediate the dispute and Guyana's brazen actions to begin oil extraction, Venezuelans decided they had had enough. President Nicolás Maduro held a referendum in 2023 asking Venezuelans if they believed Venezuela should annex the Essequibo region. The ballot asked voters if Venezuela should reject the 1889 Arbitration Award, return to the 1966 Geneva Agreement, reject ICJ jurisdiction, offer Venezuelan citizenship to Essequibo inhabitants, and annex Essequibo. 96–98 percent of voters supported these initiatives.[77]

Based on the will of the people, Venezuela incorporated the region into the state of Guayana Esequiba. Venezuela even appointed members of its National Assembly and appointed a Venezuelan governor to control the state.[78]

These brave steps broke the diplomatic stalemate. The Caribbean Community (CARICOM), an intergovernmental organization of Caribbean states, stepped up to do what the UN could not. CARICOM set up a meeting between Guyana and Venezuela, mediated by Brazilian President Luiz Inácio Lula da Silva. The two countries created the Argyle Agreement, which set up a joint commission to move negotiations forward.[79]

Clearly, Guyana only responds to shows of force. Therefore, to ensure continued cooperation, Venezuela has not relented on pressuring Guyana to continue negotiating in good faith. For example, Venezuelan soldiers completed construction on the bridge between Venezuela and Ankoko Island, showing that Venezuela is planning to invest in the region's infrastructure.

Venezuela maintains that Essequibo and its resources are part of its sovereign territory. It hopes for a diplomatic solution to this problem, but it is prepared to use its armed forces to defend its territorial integrity.

CHAPTER III: STATEMENT OF LAW

ICJ Jurisdiction

On March 28, 2018, Guyana unilaterally submitted an application to the ICJ against Venezuela. Guyana asked the Court to make the 1899 Arbitral Award valid and binding, to grant Guyana the whole Essequibo region, and to force Venezuela to accept these terms.[80]

Venezuela states that this issue is not under the jurisdiction of the Court. This statement aligns with the 1966 Geneva Agreement, the United Nations Charter, and the Statute of the ICJ.[81]

The 1966 Geneva Agreement requires that "a settlement be amicably reached through a practical, acceptable, and satisfactory solution for both Parties."[82] The application to the Court was done without the consent of Venezuela and violates this treaty.

76 Simon Rodriguez, "Essequibo, or the Persistence of El Dorado."
77 Leslie Bethell, "Notes on the History of the Venezuela/Guyana Boundary Dispute."
78 "The Case Between Guyana and Venezuela in the International Court of Justice," *Ministry of Foreign Affairs and International Cooperation: Cooperative Republic of Guyana*, February 21, 2025, https://www.minfor.gov.gy/newsroom/case-between-guyana-and-venezuela-international-court-justice
79 "The Case Between Guyana and Venezuela in the International Court of Justice."
80 International Court of Justice, *Memorandum of the Bolivarian Republic of Venezuela on the Application filed before the International Court of Justice by the Cooperative Republic of Guyana on March 29, 2018*, Volume I, November 28, 2019, https://www.icj-cij.org/sites/default/files/case-related/171/171-20191128-WRI-01-00-EN.pdf.
81 International Court of Justice, *Memorandum of the Bolivarian Republic of Venezuela on the Application filed before the International Court of Justice by the Cooperative Republic of Guyana on March 29, 2018*.
82 *Venezuela and the United Kingdom of Great Britain and Northern Ireland: Agreement to resolve the controversy over the frontier between Venezuela and British Guiana. Signed at Geneva, on 17 February 1966* (Geneva: Guyana, May 1966), United Nations.

Additionally, nowhere in the 1966 Geneva Agreement does it say that one party may refer the matter to the ICJ. For example, compromissory clauses that require arbitration do not specify that an arbitral tribunal has jurisdiction. Rather, further special agreements are required to give an arbitral tribunal jurisdiction.[83]

Also, Article IV(2) of the 1966 Geneva Agreement does not say that just one country can give the Court power to decide the case. Both countries must agree to refer the dispute to the Court. Since Venezuela did not agree, the Court is not entitled to decide on this dispute.[84]

Previous ICJ decisions provide precedent for this argument. In *Aerial Incident of 10 August 1999 (India v. Pakistan)*, India attempted to force a disagreement about a downed Pakistani aircraft to be referred to the Court. The Court found that Article 33 of the United Nations Charter does not give compulsory jurisdiction to the Court. This is because Article 33 does not specify the Court as the only means of peaceful negotiation.[85]

Tying this prior case to the current dispute, Article IV(2) of the 1966 Geneva Agreement only allows the Secretary-General to choose a method of mediation under Article 33 of the United Nations Charter. Secretary-General Guterres has not referred the matter to the Court, and therefore, the Court has no jurisdiction.[86]

In response to Guyana saying that the other methods of settling the dispute under Article 33 of the United Nations Charter have been exhausted, Venezuela disagrees. Venezuela was willing to allow the representative of the Secretary-General to act as not just a facilitator but a mediator. This would allow the representative to make proposals. Guyana did not agree to this, even though it could have settled the dispute.[87]

Lastly, in its memorial, Guyana affirms the validity and binding nature of the 1899 Arbitral Award. This is not what is being argued in this issue. What is under debate is the provisions of the 1966 Geneva Agreement, not the validity of the 1899 Arbitral Award.

The Legality of Guyana's Involvement

The 1899 Arbitral Award was between Venezuela and the United Kingdom, not Guyana. Guyana at the time did not exist. The 1899 Arbitral Award, even if it was subject to arbitration, would have to be between the United Kingdom and Venezuela.[88]

Additionally, Guyana was not an independent state at the signing of the 1966 Geneva Agreement on February 17, 1966. Forbes Burnham signed the 1966 Geneva Agreement on behalf of a nonexistent state.

Even though Guyana tried to sign the 1966 Geneva Agreement before it became independent, the rules in the agreement only let Guyana act within its limits. The 1966 Geneva Agreement does not let Guyana decide whether the old awards are valid or not. The agreement just lets Guyana help find a peaceful solution to the land dispute. According to Article VIII, Guyana would become a part of the agreement along with the United Kingdom and Venezuela. [89]

The United Kingdom did not cede its rights and still maintains its obligations and commitments to the treaty. Thus, if the 1899 Arbitral Award is to come into question, Guyana lacks the *jus standi*, the right to arbitrate. This means Guyana is not entitled to submit for

83 International Court of Justice, *Memorandum of the Bolivarian Republic of Venezuela on the Application filed before the International Court of Justice by the Cooperative Republic of Guyana on March 29, 2018.*
84 International Court of Justice, *Memorandum of the Bolivarian Republic of Venezuela on the Application filed before the International Court of Justice by the Cooperative Republic of Guyana on March 29, 2018.*
85 International Court of Justice, *Aerial Incident of 10 August 1999 (Pakistan v. India) Overview of the Case,* June 21, 2000, https://www.icj-cij.org/case/119.
86 *Venezuela and the United Kingdom of Great Britain and Northern Ireland: Agreement to resolve the controversy over the frontier between Venezuela and British Guiana. Signed at Geneva, on 17 February 1966* (Geneva: Guyana, May 1966), United Nations.
87 International Court of Justice, *Memorandum of the Bolivarian Republic of Venezuela on the Application filed before the International Court of Justice by the Cooperative Republic of Guyana on March 29, 2018.*
88 International Court of Justice, *Memorandum of the Bolivarian Republic of Venezuela on the Application filed before the International Court of Justice by the Cooperative Republic of Guyana on March 29, 2018.*
89 *Venezuela and the United Kingdom of Great Britain and Northern Ireland: Agreement to resolve the controversy over the frontier between Venezuela and British Guiana. Signed at Geneva, on 17 February 1966* (Geneva: Guyana, May 1966), United Nations.

arbitration the validity of the 1899 Arbitral Award.[90]

If the Court were to decide whether the 1899 Arbitration Award is valid, like Guyana wants, its decision would not actually be binding. According to Article 59 of the Court's rules, the Court's decision only applies to the countries involved in the case. Because the United Kingdom was not included in Guyana's petition, any decision the Court makes would not have legal power over the parties involved.

Grounds for Nullification of the 1899 Arbitrational Award

The draft regulations by the *Institut du Droit International* in 1875 give four provisions that allow for the nullification of the treaty. In Article 27, it states, "The arbitral award is null in case of an invalid *compromis*, or in case of excess of authority, or of proved corruption of one of the arbitrators, or of essential error."[91]

Although the 1899 Arbitral Award cannot be questioned by the Court without the United Kingdom, Guyana has made the argument that it is valid. Under Article 27, the award is invalid due to "excess of authority," "corruption of one of the arbitrators," and "essential error."[92]

The 1897 Treaty of Washington did not give the 1899 Arbitrators authority to award the free navigation of the Barima and Amakura Rivers. Nowhere in the treaty did it specifically put these rivers up to arbitration.[93] Thus, pursuant to Article 27 of the Draft Regulations, the 1899 Arbitrators exceeded their authority.

The 1899 Arbitrational Award did not consider *uti possidetis juris. Uti possidetis juris* is a principle that allows for newly formed states to use the boundaries of the preceding state. For example, a colony that becomes independent, the colony is the preceding state. Beginning in the 1820s, this principle allowed for emerging states following colonization to assume the borders it had during colonization. Spain, the country that the colony of Venezuela belonged to, claimed the Essequibo region as a part of its colony.[94]

In the *Case Concerning the Frontier Dispute (Burkina Faso/ Republic of Mali)*, the Court ruled on where the border lies between the Republic of Upper Volta (Burkina Faso) and the Republic of Mali. The Court in its judgment, maintained colonial borders using the principle of *uti possidetis juris*.[95]

The 1899 Arbitrational Award fails to consider *uti possidetis juris* and thus fulfills the "essential error" provision. This provides the 1899 Arbitrational Award another ground for nullification.[96]

It has already been stated in the Mallet-Prevost memorandum that the 1899 Arbitral Award was the result of coercion of the judges by the United Kingdom, which was seeking to fulfill a political deal with Russia. This led to the 1899 Arbitrational Award being unfavorable to Venezuela.[97]

The Mallet-Prevost Memorandum clearly shows that there was "corruption of one of the arbitrators." Therefore, under Article 27 of the Draft Regulations, the 1899 Arbitrational Award fulfills another ground for nullification.[98]

90 International Court of Justice, *Memorandum of the Bolivarian Republic of Venezuela on the Application filed before the International Court of Justice by the Cooperative Republic of Guyana on March 29, 2018*.
91 Institut de Droit International, *Draft Regulations for International Arbitral Procedure*, August 1874, https://www.idi-iil.org/app/uploads/2016/01/1875-Session-of-The-Hague-Arbitral-Procedure-translated-Scott.pdf.
92 Institut de Droit International, *Draft Regulations for International Arbitral Procedure*, August 1874.
93 Treaty Between Great Britain and the United States of Venezuela Respecting the Settlement of the Boundary Between Colony of British Guiana and the United States of Venezuela, February 2, 1897, https://treaties.fcdo.gov.uk/data/Library2/pdf/1897-TS0005.pdf.
94 International Court of Justice, *Arbitral Award Made by the King of Spain on 23 December 1906 (Honduras v. Nicaragua)*, Judgment, Dissenting Opinion of Judge Urrutia Holguin, November 18, 1960, https://www.icj-cij.org/case/39.
95 International Court of Justice, *Case Concerning the Frontier Dispute (Burkina Faso/Republic of Mali)*, Judgment, December 22, 1986, https://www.icj-cij.org/case/69.
96 International Court of Justice, *Case Concerning Arbitral Award of 3 October 1899 Co-operative Republic of Guyana v. Bolivarian Republic of Venezuela Memorial of Guyana*.
97 Allan Brewer-Carías, "Guyana-Venezuela Border Dispute," *Oxford Public International Law* (2026), https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e143.
98 Institut de Droit International, *Draft Regulations for International Arbitral Procedure*, August 1874.

CHAPTER IV: SUBMISSION

Following the evidence that was presented, the Bolivarian Republic of Venezuela asks the Court to recognize that the 1899 Arbitral Award meets the grounds for nullification and should be struck down.

May it please the Court to adjudge and declare that:

The Court lacks the jurisdiction to hear this case.

Even if the Court finds that it has jurisdiction over this case, the 1899 Arbitral Award is invalid. The 1899 Arbitral Award meets the grounds for nullification in the Draft Regulations by the *Institut du Droit International*.

Since the 1899 Arbitral Award is not valid, Venezuela and Guyana should keep negotiating based on the 1966 Geneva Agreement. Furthermore, the 1899 Arbitral Award cannot be decided on without the United Kingdom being involved.

Current political claims by Venezuela on the Essequibo region are valid. Using the international law principle *uti possidetis juris*, Venezuela has rights to claim the Essequibo region.

The context of the signing, as attested to by the Mallet-Prevost memorandum, gives the 1899 Arbitral Award an invalid *compromis*.

Venezuela reserves the right to update this submission should new information come to light.

Australia v. China

Photo Credit: MODIS Land Rapid Response Team, NASA GSFC

MEMORIAL OF THE COMMONWEALTH OF AUSTRALIA

CHAPTER I: INTRODUCTION

This case was initiated through the claim by the Commonwealth of Australia, dated February 14th, 2023. It was filed with the International Court of Justice, under article 26 of its statute and the principle of forum prorogatum, after the spill caused by the Chinese oil tanker *Xing Ye* on April 19th, 2019.[1]

The People's Republic of China, acting in good faith, accepted that the Court exclusively hear this case, thereby submitting to the Court's jurisdiction. The Court fixed the relevant procedural time limits, and the present memorial is submitted within the time prescribed.

In compliance with article 49 of the ICJ, this memorial contains:

A statement of the facts outlined in Chapter II,

A statement of law in Chapter III, and

The submissions to the court by the Commonwealth of Australia in Chapter IV, which sets out formal requests for reparation.

For the purposes of this memorial:

The International Court of Justice will be referred to as "the Court" or the "ICJ,"

The Commonwealth of Australia will be referred to as "Australia,"

The People's Republic of China will be referred to as "China,"

The United Nations Convention on the Law of the Sea will be referred to as UNCLOS.

This memorial will demonstrate that China became internationally responsible by violating its obligation of due diligence. It did so by allowing the high-risk navigation of the *Xing Ye,* which caused the spill of approximately 250,000 barrels of crude oil. This resulted in a loss of biodiversity and damages initially valued at USD 50 billion.

Such conduct breaks the customary obligation to prevent harm across borders and the "polluter pays" principle. These grounds justify full reparation, including compensation for future losses linked to the decline of the tourism and fishing industry, claimed by Australia.

In addition, China's arguments attributing the degradation of the Great Barrier Reef to climate change do not free it from its responsibility. The specific damage argued in this case is directly related to China's acts and omissions. China, in offering to cover the immediate cleanup costs of the spill, recognizes this responsibility.

1 International Court of Justice, "How the Court Works," accessed June 7, 2025, https://www.icj-cij.org/how-the-court-works

Chapter II: Statement of Facts

Xing Ye's Catastrophe and Its Direct Impact on the Great Barrier Reef

On April 19th, 2019, the Chinese oil ship *Xing Ye* had a major accident. While navigating the Great Barrier Reef in Australian waters, the ship veered off its designated course, crashing into shallow reefs. As a result, its hull and tank were breached. This caused over 250,000 barrels of crude oil to spill into waters under Australia's control, spreading across 4,200 square kilometers. The spill happened in an area recognized as a World Heritage Site by UNESCO and considered a Particularly Sensitive Sea Area by the International Maritime Organization. Because of this special status, countries whose ships travel there are supposed to be extremely cautious to protect the environment.[2]

Australia argues that China did not take enough care to make sure the *Xing Ye* ship was safe for passage through a very sensitive area. Under customary international law, specifically the international no-harm principle, all countries must take all appropriate measures to prevent significant transboundary harm if they know of a risk. The ICJ has already reminded states of the importance of this principle, as was seen in the Nuclear Tests (*Australia v. France*) case. Furthermore, the International Tribunal for the Law of the Sea (ITLOS) explained in the *M/V "SAIGA" (No. 2) Case (Saint Vincent and the Grenadines v. Guinea)* that the country whose flag the ship flies must make sure its ships follow safety rules and are in good condition. This care must be taken tangibly, not just on paper.[3]

After the oil spill, China attempted to fix the situation by providing both USD 50 billion and laborers to the cleanup effort. Even so, Australia claims that the long-term ecological damage will hurt tourism for many years. As a result, they argue that China should also pay for this decline in tourism revenue. Environmental groups say the reef was already in a weak state, and significant accidents, like this one, will dramatically affect the ability of the reef to recover in the future.[4]

Australia has asked the Court to decide if China is responsible for the long-term effects of the oil spill. This is separate from the general problem of global warming that China argues has contributed to the issue. Groups like the UNEP and OCHA Environment Unit say that big oil spills in fragile places like coral reefs often cause serious, sometimes permanent, damage to the environment. They also say it is important to look at the impact on the economy and recommend making the polluter—the one who caused the accident—pay for the damages.[5]

Permanent Biodiversity Loss and the Prolonged Effects on Tourism and Sustainable Development

After the spill of over 250,000 barrels of crude oil, large parts of the Great Barrier Reef were left severely damaged. UNESCO had already warned that the reef's corals could only handle a small amount of harm before suffering permanent damage. The *Xing Ye* accident has pushed the reef past that limit.[6]

This harm is not only an ecological problem. The Economics of Ecosystems and Biodiversity (TEEB) study demonstrates that each square kilometer of the reef that is still alive provides direct benefits to coastal communities. This natural space is key to

2 International Maritime Organization, "Particularly Sensitive Sea Areas (PSSAs)," accessed June 18, 2025, https://www.imo.org/en/OurWork/Environment/Pages/PSSAs.aspx.
3 ITLOS, *M/V "Saiga" (No. 2), Judgment,* paras. 155-157
4 Great Barrier Reef Marine Park Authority, *Great Barrier Reef Outlook Report 2019,* Outlook Report 2019 (2019), https://hdl.handle.net/11017/3474.
5 Joint UNEP/OCHA Environment Unit, *Guidelines for Environmental Assessment Following Chemical Emergencies,* prepared by Joseph A. Bishop.
6 UNESCO, *Report on the Reactive Monitoring Mission to the Great Barrier Reef (Australia), 6-14 March 2012,* 14 March 2012.

Satellite image of the Great Barrier Reef (Credit: NASA)

fundamental activities like artisanal fishing, tourism, and protection against climate-related phenomena. The social and economic value this ecosystem represents, exceeds any known restoration effort. Thus, the loss of even a small section of the habitat also entails losing the main source of subsistence of the communities in the region. [7]

Recent scientific evidence indicates that the future trajectory of the reef is highly uncertain, even under favorable climatic conditions. The intense local damages increase the possibilities of a prolonged degradation. Consequently, the spill acts as a factor that deepens the risk of a functional loss in the ecosystem.

From a legal perspective, experts like Christina Voigt argue that countries are supposed to do more than just fix the immediate damage they have caused. They also need to ensure that the ecosystem can bounce back and stay healthy in the future.[8] Australia believes that losing so much of the reef means that it is missing out on long-term benefits, like fishing and tourism, which help local communities.

The economic damage from the oil spill can be measured using real numbers. Studies like TEEB say that every square kilometer of healthy reef provides between USD 100,000 and USD 1,200,000 each year from fishing, tourism, and protecting the coast.[9] Even with the lowest estimate for the areas of the Great Barrier Reef that were badly damaged by the spill, the cost adds up to several hundred million dollars every year. This proves that the long-term losses are much bigger than just the immediate cleanup, and it supports including future damages when deciding how much should be paid in compensation.

Recognition of Negligence and Immediate Response of the Chinese State

In international law, countries are expected to do more than just pay for cleaning up after an accident. They have to repair all the damage that occurred due to their actions, not just the immediate mess. This comes from Article 31 of the Articles on the Responsibility of States for Internationally Wrongful Acts (ARSIWA).[10]

In the case of the *Xing Ye* oil spill, China paid for the emergency cleanup, but Australia argues that is not enough. The Great Barrier Reef endured catastrophic damage to its ecosystems and its beauty—which attracts tourists. This is a tangible and measurable type of damage. Paying for long-term impacts is not new. In the *Trail smelter case (United States, Canada)*, Canada had to pay not only for pollution that drifted

7 TEEB, *The Economics of Ecosystems and Biodiversity: Mainstreaming the Economics of Nature: A Synthesis of the Approach, Conclusions and Recommendations of TEEB* (2010), prepared by Pavan Sukhdev et al.
8 "Due Diligence in International Environmental Law and the Rule of Law," in *Rule of Law for Nature*, ed. Christina Voigt (Cambridge: Cambridge University Press, 2013), 58–77, https://doi.org/10.1017/CBO9781107337961.
9 TEEB, *The Economics of Ecosystems and Biodiversity: Mainstreaming the Economics of Nature.*
10 UN International Law Commission, *Articles on Responsibility of States for Internationally Wrongful Acts,* UN Doc. A/56/10 (2001), Art. 31.

into the US but also for crops that were ruined in the process.[11]

Another example is the *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, in which the Court found that countries need to work together to stop and fix major environmental harm. They also said that repairs should bring things back to how they were before the damage, as much as possible. For the Great Barrier Reef, that means China should help fund projects to monitor and restore the reef and pay for the tourism money lost while the reef recovers.[12]

The United Nations Environment Programme also supports the idea that those who cause pollution should pay for all the costs, not just immediate ones.[13] If only short-term damage is paid for, local communities would have to cover the future costs, which is not fair.

So, fixing just the emergency damage is only part of what international law expects from the country responsible. According to these rules and past cases, the country should help restore the environment and pay for all economic losses now and in the future caused by the accident.

Dispute Over Long-Term Responsibility in the Context of Climate Change

The main issue in this case is whether an oil spill should bring extra responsibility to a country, even if climate change is already hurting the Great Barrier Reef. The Declaration of Legal Principles on Climate Change says that countries should avoid making things worse for fragile environments, even if part of the problem is due to global issues they cannot fully control.[14]

Agnes Chong argues that a state commits a wrongful act when it aggravates an environmental risk that was objectively identifiable and manageable beforehand. This argument does not rely on the scale of the impact, just on whether a state increased the risk of a hazard or injury.[15]

Scientists have come up with ways to estimate how much of the damage comes from a specific event, like the oil spill. Jessica Wentz uses these methods in rules that say countries must act quickly when a species or habitat becomes endangered. For example, if a law says to avoid making things worse for a threatened habitat, then authorities can use these calculations to figure out what caused the extra risk and decide what needs to be done to fix it. This makes scientific data useful for making legal decisions, not just for research.[16]

Lavanya Rajamani and Jacqueline Peel note that international courts are starting to look at these studies to create plans for restoring the environment, not just paying money for the damage.[17] So, a solution could be a mix of fixing the reef and watching over it for a long time to handle both climate change and the effects of the spill.

In the end, the question is not whether climate change or the spill is to blame. It is about whether the spill added to the damage in a way that could have been avoided. According to the legal rules, if China's actions made the already weak reef even more at risk, then China could have extra responsibility to help fix it now and prevent future harm.

11 *Trail Smelter (United States v. Canada),* Arbitral Award, 16 April 1938 and 11 March 1941, *Reports of International Arbitral Awards,* vol. III, 1905-1982.
12 ICJ. *Gabcíkovo-Nagymaros Project (Hungary/Slovakia), Judgment*. 1997.
13 United Nations Environment Programme, *Environmental Law and Governance*, https://www.unep.org/topics/environmental-law-and-governance.
14 International Law Association, *Resolution 2/2014: Declaration of Legal Principles Relating to Climate Change*, adopted at the 76th Conference of the International Law Association, Washington, D.C., 7–11 April 2014.
15 Agnes Chong, "The Positive Obligation to Prevent Climate Harm under the Law of State Responsibility," *Georgetown Environmental Law Review* 34 (2022): 275.
16 Jessica A. Wentz, *Climate Attribution Science and the Endangered Species Act* (New York: Columbia Law School, Sabin Center for Climate Change Law, October 2021).
17 Lavanya Rajamani and Jacqueline Peel, "The Role of International Courts and Tribunals in Climate Change Law," in *The Oxford Handbook of International Climate Change Law*, (Oxford: Oxford University Press, 2016), 765–784.

CHAPTER III: STATEMENT OF LAW

China's Violation of International Obligations to Prevent Environmental Harm

The due diligence obligation requires anticipating preventable risks and adopting legislative and administrative measures to mitigate them. Professor Medes Malaihollo compares this duty to the minimum result obligations recognized in human rights standards. This term refers to a state's responsibility to guarantee a fundamental and measurable threshold of protection. For example, this could involve preventing avoidable deaths or providing access to drinkable water.[18]

This obligation does not require the resolution of all the problems. Instead, it demands factual proof that the minimum standard has been met. The Court reinforced this idea in *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*. In its decision, the Court ruled that, before authorizing a potentially contaminating activity, a state must conduct a deep environmental impact evaluation. It must also share that assessment with any party that may be resultantly affected. Additionally, the state must continuously monitor the operation to ensure that it does not cause transboundary harm. Uruguay failed to comply with these three requirements. It authorized the construction and operation of a pulp mill next to a shared river. This occurred in the absence of a complete environmental study or informing Argentina.[19]

China acted similarly. It allowed the *Xing Ye* to navigate across the Great Barrier Reef without prior technical inspection or effective contingency plans. When applying the same legal logic to both cases, China's conduct demonstrates clear negligence. This confirms a breach of the due diligence duty.[20]

The responsibility to protect and take care of the ocean environment, explained in articles 192 to 194 of the United Nations Convention on the Law of the Sea (UNCLOS), means that every country has to do its best to stop serious harm—even when private businesses are involved. This includes things like shipping companies with ships registered in the country, people who run ships, shipyards that do repairs, and groups that approve safety. All of these businesses need permits from China. In this situation, China is known as the flag state, and it must make sure these companies follow international rules. China cannot claim it is not responsible just because the companies are independent. [21]

Additionally, Article 94 of UNCLOS says that the country whose flag a ship sails under must regularly check that ship's safety. These checks should start before the ship is registered and continue while it is in operation, especially when it docks at a port. Inspectors need to look at the ship's hull to make sure it is not corroded, test the engines and systems, and make sure emergency gear like pumps, fire extinguishers, and beacons are working. They also need to confirm that the crew has the right licenses and training, approved by the International Maritime Organization (IMO). If inspectors find big problems, they must stop the ship from sailing until it is fixed and meets international safety standards.[22]

The Great Barrier Reef is known around the world for being a very delicate ecosystem. The International Tribunal for the Law of the Sea says that when a place is especially vulnerable, countries

18 Medes Malaihollo, "Due Diligence in International Environmental Law and International Human Rights Law: A Comparative Legal Study of the Nationally Determined Contributions under the Paris Agreement and Positive Obligations under the European Convention on Human Rights," *Netherlands International Law Review* 68(2021): 121-155, https://doi.org/10.1007/s40802-021-00188-5.
19 Medes Malaihollo, "Due Diligence in International Environmental Law and International Human Rights Law: A Comparative Legal Study of the Nationally Determined Contributions under the Paris Agreement and Positive Obligations under the European Convention on Human Rights."
20 Pulp Mills, ICJ Judgement, 2010, para. 204.
21 Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment, International Court of Justice, Reports 2010, para. 101.
22 UNCLOS, Art. 94

must take even stricter safety measures. Because of this, rules and responses should be tougher for the reef than for regular shipping routes. China did not make its rules stricter to match the higher level of risk involved.

In 2022, China's Ministry of Foreign Affairs released a statement saying the country respects all UNCLOS rules "in full and in good faith" and wants to help lead the world in taking care of the oceans. This kind of public statement is important because, in international law, promises made by countries can create official responsibilities to other nations. For example, in *Nuclear Tests (Australia v. France)*, the Court decided that when France publicly promised to stop nuclear tests in the Pacific, it was legally bound to keep that promise. Based on this logic, China's statement means it is responsible not just for cleaning up the reef, but also for fixing the damage and paying compensation for future economic losses caused by the spill.[23]

Irreversible Damage to Australia's Natural Resources and National Economic Interests

An Exclusive Economic Zone (EEZ) is a sea area that goes up to 200 nautical miles from a country's coast. While the country does not own the waters there, UNCLOS Article 56 gives it special rights to use and protect the natural resources, like fish and minerals, found in that zone.

According to the United Nations Division for Ocean Affairs and the Law of the Sea (DOALOS), these special rights mean a country can fish, allow tourists, and take minerals in its EEZ, but other countries cannot use these resources without permission. In this case, the oil spill makes it impossible for Australia to fully benefit from the natural resources in that area.

In 1961, the United Nations General Assembly said every country is entitled to choose how to use its wealth and resources.

This protects the ability of countries to get economic benefits from the sea. By ruining the coral reefs that help tourism and fishing, the accident hurt Australia's economic independence, which is recognized by the international community.

The DOALOS report also says that ships must respect the rights of the country whose EEZ they are passing through. The oil spill showed negligence, meaning someone did not take proper care, and this harmed Australia's ability to use and protect the Great Barrier Reef.

In the *Chorzów Factory* case (Germany v. Poland), the Permanent Court of International Justice (PCIJ) decided that when something is taken away illegally, the victim should be compensated such that they are in a similar position as they would have been if nothing had happened. If the item cannot be returned, then the victim should get money to cover everything lost, including future profits. In this situation, the same rule means China should pay for not just the cleanup, but also for any future money lost because of the damaged ecosystem.

State Responsibility and the Right to Full Compensation

The United Nations International Law Commission declared that a state acquires responsibility after an event, when its conduct violates an obligation it is bound by, and said conduct can be attributed to its national authorities.[24] There is no need to prove the action was done in bad faith. A breach and its attribution are enough to create liability.[25]

23 Ministry of Foreign Affairs of the People's Republic of China, "Implement UNCLOS in Full and in Good Faith and Actively Contribute to Global Maritime Governance," September 2, 2022, https://www.mfa.gov.cn/eng/wjb/zzjg_663340/tyfls_665260/tfsxw_665262/202209/t20220902_10760381.html.
24 United Nations International Law Commission, *Articles on Responsibility of States for Internationally Wrongful Acts, United Nations* Doc. A/56/10 (2001), Arts. 1, 2, 31, 36.
25 James Crawford, "State Responsibility," *Max Planck Encyclopedia of Public International Law,* Oxford University Press, accessed 8 June 2025, https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1093?rskey=5OvBWL&result=1&prd=

China vessel 5205 (Credit: Philippine Coast Guard)

Journalist Alan Boyle explains that there are two main types of harm: material and moral. In this case, material damage includes things such as the cost of cleaning up, fixing property, and paying for lost income. Moral damage means harm to things that you cannot easily measure, such as the loss of biodiversity or the special cultural connection people have to a place. Boyle also says that coral reefs are valuable not just for tourism and fishing, but because they help protect the coast and store carbon, which can also be counted as part of the damage.[26]

Article 36 of the Articles on Responsibility of States for Internationally Wrongful Acts says that compensation should cover not only the direct damage caused, but also any profits that are lost because of the incident. Although China has offered financial support for the immediate cleanup, this does not include the loss of parts of the reef or the future harm to tourism and fishing.

China's Liability for Negligence of Vessels Registered Under Its Jurisdiction

UNCLOS says that every ship must sail under the flag of one country, called the "flag state." This country is responsible for making sure its ships obey the rules. Under Article 94, the flag state has four main jobs. First, it must keep an up-to-date list of its ships and make clear safety rules. Second, it has to check its ships regularly to make sure things like the hull, tanks, and emergency valves are safe and meet the standards. Third, the country needs to make sure the crew has the right certificates and that their work hours follow rules for safety and fairness. Finally, countries must enforce international codes like SOLAS (Safety of Life at Sea) and MARPOL (which helps prevent pollution from ships), and cooperate with audits performed by the IMO. If a country fails at any of these tasks, its flag no longer proves that its ships are safe or well-managed, and the country can be held responsible under international law.

UNCLOS also demands that the flag state promptly react when one of their vessels fails to comply with the regulations. This suggests opening a formal investigation, imposing administrative sanctions, such as suspension of navigation, fines, or deregistration, and ensuring that the vessel is not allowed to sail until the deficiencies are addressed.[27] Without this phase of enforcement, the inspections become ineffective, and the risk remains present. In the case of the *Xing Ye*, there is no record that China started a procedure

MPIL.

26 Alan Boyle, *"Reparation for Environmental Damage in International Law: Some Preliminary Problems," Environmental Damage in International and Comparative Law: Problems of Definition and Valuation,* ed. Michael Bowman and Alan Boyle (Oxford: Oxford University Press, 2002; online edition, Oxford Academic, 22 March 2012), https://doi.org/10.1093/acprof:oso/9780199255733.003.0002.

27 Tamo Zwinge, "Duties of Flag States to Implement and Enforce International Standards and Regulations – And Measures to Counter Their Failure to Do So," *Journal of International Business and Law* 10, no. 2 (2011): art. 5, 5, https://scholarlycommons.law.hofstra.edu/jibl/vol10/iss2/5.

of this sort before authorizing its navigation through the Great Barrier Reef, which reinforces the conclusion that the effective control, as provided in Articles 91 through 94 of UNCLOS, was not undertaken.

If the flag state fails to apply adequate controls, it incurs indirect liability. In other words, the state becomes responsible for providing the necessary reparations because it allowed a deficient vessel to cause the damage. In the present case, China did not spill the crude oil intentionally, but probably omitted the inspections that could have avoided the incident. Author Tamo Zwinge explains that this responsibility emerges because the national omission facilitates the breach of safety and environmental rules.[28]

China had jurisdiction over the *Xing Ye* at the time of the incident. It should have demonstrated effective control through the compliance of the four obligations instituted by UNCLOS on this matter. The fracture of the hull indicates that these controls, if any, were insufficient. Thus, the Court should conclude that the People's Republic of China failed to fulfill its duty of supervision and must assume responsibility for the incident.

Chapter IV: Submissions

For the foregoing reasons, Australia respectfully requests the following prayers of relief from the ICJ:

May it please the Court to adjudge and declare that:

The Court has jurisdiction to hear this case,

The oil spill caused by the *Xing Ye* vessel constitutes an internationally illicit act that can be attributed to the People's Republic of China,

The resulting environmental damage violates customary law obligations, including the duty to prevent transboundary harm and the principle of due diligence in the supervision of ships under its jurisdiction,

Australia should be compensated for the long-term financial impact from the environmental damage. Assessing the damage at USD 1,000,000 per square km per year over an area of 4,200 square km, the net present value of this damage is USD 105 billion.

The existence of climate change does not exempt China of its specific responsibility in this case, nor can it be utilized as an argument to limit the extent of its obligation to repair the damage caused by its negligence.

Australia reserves the right to modify its claims if new evidence or relevant legal elements surge during the process.

Counter-Memorial of the People's Republic of China

Chapter I: Introduction

China affirms that the Court lacks jurisdiction in this case, as there is no express consent in accordance with Article 36, Paragraph 1, of the Court's statute.

The appearance of China in this proceeding is purely ad cautelam, or for precautionary purposes,

28 Zwinge, "Duties of Flag States," 5.

and in good faith. It accepts the Court's jurisdiction to hear this case based on the forum prorogatum principle. This principle, recognized by the ICJ in the case *Corfu Channel (United Kingdom of Great Britain and Northern Ireland v. Albania)*, allows that a state that has not recognized the compulsory jurisdiction of the Court, grants consent when, following the submission of a claim against it, it wishes the Court to rule on the merits.[29]

In compliance with article 49 of the ICJ, this memorial contains:

A statement of the facts outlined in Chapter II,

A statement of law in Chapter III, and

The submissions to the court by China in Chapter IV.

For the purposes of this counter-memorial:

The International Court of Justice will be referred to as "the Court" or "the ICJ,"

The People's Republic of China will be referred to as "China,"

The Commonwealth of Australia will be referred to as "Australia,"

The United Nations Convention on the Law of the Sea will be referred to as UNCLOS,

The crude oil spill will be referred to as "the spill," and

Whenever the term "due diligence" appears, it shall be understood as the obligation of each state to adopt reasonable measures to prevent transboundary harm.

China claims that it met its responsibility by acting quickly to stop the oil spill, covering all the initial cleanup costs, and offering labor to assist with the cleanup effort. This happened at no small expense to China. Australia's request for more money for long-term damage does not have a clear connection to the accident and does not consider bigger issues, like how climate change affects the Great Barrier Reef.

This counter-memorial argues, using international law, that China should not be held responsible for the spill. It shows that Australia's request for more compensation goes beyond what is usually accepted by the ICJ. It also asks the Court to declare that China has already met its international responsibilities with the actions it has taken, and to reject Australia's extra claims because there is not enough proof or a clear connection to the damage.

CHAPTER II: STATEMENT OF FACTS

Xing Ye's Transit Through a High-Traffic and Environmentally Sensitive Maritime Route

According to the 2023 "Ships' Routeing" manual from the International Maritime Organization, the shipping lane near the Great Barrier Reef and Torres Strait is carefully organized. Deep-draft ships, like oil tankers, are told to use a single, strict path. This helps keep navigation orderly and lowers the chances of ships unexpectedly crossing paths, since hundreds of tankers follow the same lane every month. However, even with these rules, there is always some risk, though it is kept as low as possible.[30]

UNCLOS guarantees the innocent passage of foreign ships in territorial waters as long as coastal peace and safety are respected. Articles 17 and 22 establish that while the coastal state can regulate, it cannot impede the transit of vessels that comply with international safety standards.[31]

In the *M/V "SAIGA" (No. 2) Case (Saint Vincent and the Grenadines v. Guinea)*, the International

29 *Corfu Channel (United Kingdom v. Albania),* Merits, *ICJ Reports* 1949, 35-36.
30 International Maritime Organization, *Ships' Routeing*, 2023, https://www.imo.org/en/OurWork/Safety/Pages/ShipsRouteing.aspx.
31 *United Nations Convention on the Law of the Sea* , 10 December 1982, Part II, Arts. 17–22.

Tribunal for the Law of the Sea (ITLOS) explained that a flag state's responsibilities are judged by how well it obeys the rules and regulations, not by whether it can completely prevent accidents. For the area near the reef, the "Ships' Routeing 2023" guide from the IMO sets out three main requirements. First, every oil tanker must follow a specific path, with separate lanes for incoming and outgoing ships. Second, ships are not allowed to pass through certain "Areas to be Avoided" that protect the coral reefs. Third, vessels must regularly send their location and cargo details to the REEFREP reporting service. These steps together show what is considered reasonable and careful behavior for ships in that region.[32]

Principle seven of the Rio Declaration on Environment and Development assigns common but differentiated responsibilities. The maintenance of a vital corridor for energetic commerce requires cooperation in which coastal authorities offer signalization and emergency response, whereas flag states guarantee vessel compliance.[33] As the coastal authority, Australia bears some burden of responsibility for ships' safe navigation through the Great Barrier Reef.

The Rio Declaration says that countries have shared but different responsibilities when it comes to the environment. For important shipping routes like this one, countries along the coast need to provide clear signs for navigation and be ready to deal with emergencies. The countries that own the ships must make sure their vessels follow the rules. As the flag state, this was China's responsibility.[34]

As Rüdiger Wolfrum explains, the idea of "freedom of navigation" is still a key principle for ships traveling around the world. In busy sea routes that are also dangerous for the environment, new rules or responsibilities should be carefully considered.[35] This means looking at how many ships use the route, what they are carrying, past accidents, and the chances of another spill happening.

Any rules that limit this freedom should be fair and only used when there is real danger.

In summary, the facts show that the *Xing Ye* followed rules that were agreed on by several countries. The ship met all notification requirements and operated according to the main laws that apply, like UNCLOS and the navigation plans published by the IMO. This means the *Xing Ye* acted carefully and within the expected standards.[36] The fact that an accident took place does not necessarily mean that it was the product of negligence. China adhered to all relevant international regulations before the spill.

The Immediate Response of the Chinese Government and the Voluntary Assumption of Cleanup Costs

When the *Xing Ye* incident occurred, China quickly sent emergency teams and agreed to pay the full cost of the cleanup, which cost roughly USD 50 billion. China offered this as a gesture of goodwill to a valued trade partner. China also recognizes the environmental and cultural importance of the Great Barrier Reef. China did not offer this aid as an acknowledgment of negligence.

Articles 34 to 36 in ARSIWA describe that restitution, compensation, and satisfaction

32 International Maritime Organization, *Ships' Routeing: 2023.*
33 *Report of the United Nations Conference on Environment and Development* (Rio de Janeiro, 3–14 June 1992), UN Doc. A/CONF.151/26 (Vol. I), Annex I (Rio Declaration on Environment and Development), 12 August 1992, http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm.
34 *Report of the United Nations Conference on Environment and Development* (Rio de Janeiro, 3–14 June 1992), United Nations Doc. A/CONF.151/26 (Vol. I), Annex I (Rio Declaration on Environment and Development), 12 August 1992, http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm.
35 Wolfrum, Rüdiger. *Freedom of Navigation: New Challenges*. Statement as President of the International Tribunal for the Law of the Sea.
36 UNCLOS, Part II, Arts. 17-22; International Maritime Organization, *Ships' Routeing: 2023*.

become obligations once an illicit act is confirmed in the legal plane.[37] The assistance offered by China did not proceed from that assumption, but from a voluntary decision known as *ex gratia*. James Crawford describes this figure as a payment done in good faith without admitting responsibility nor creating a mandatory precedent.[38]

Moreover, the value of the provision lies in facilitating immediate cooperation while the parties discuss in a judicial or diplomatic setting, without an additional legal obligation.[39] Under this framework, the total coverage of the decontamination expenditures is interpreted as a political gesture to accelerate remediation, instead of as a guilt recognition or the waiver of arguments concerning the causation of future damage.

The Court confirmed said distinctions in *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*. It ruled that disbursements made by Uganda were courteous gestures and not a legal recognition of responsibility.[40] Thus, the precedent supports the conclusion that China's early cooperation does not prejudge the final attribution of additional obligations.

Lack of Preventive Measures from Australia in an Ecosystem with a Known Vulnerability Status

Before the spill, studies regarding thermal stress and the increase of transit in the zone already recognized the reef's critical condition.[41] This alert reasonably should have led Australia to review their protection and nautical supervision measures.

The prevention principle is the obligation of states to mitigate proven risks.[42] Nevertheless, the corridor remained operational with the same width and without any sort of monitoring concerning the state of the ecosystem.

In *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, the Court explained that "due diligence" must be proved through impact studies and proportional adjustments according to the threat.[43]

In its advisory opinion of February 1, 2011, the Seabed Disputes Chamber of the ITLOS maintained that activities in ecologically delicate zones demand "the most caution" and "continuous vigilance," adding that the due diligence in these cases includes timely environmental monitoring and contingency plans ready to be executed in emergency cases.[44]

Additionally, in *Costa Rica v. Nicaragua*, the Court considered the lack of mitigation actions adopted by the affected State when calculating the reparation.[45] This precedent introduced the idea of contribution. In other words, those who do not reduce preventable damage, assume part of the liability.

China argues that while these factors do not eliminate its responsibility, it demands a balanced distribution of it. The Court must decide the extent to which the Australian omission mattered in the final scale of the damages and, overall, in the quantification of the demand for any additional compensation.

Absence of a Bilateral Agreement in Sensible Ecological Zones

In the "Aegean Sea Continental Shelf" case, the Court warned that

37 ILC, *Articles on Responsibility of States for Internationally Wrongful Acts*, Arts. 34–36.
38 James Crawford, *State Responsibility: The General Part* (Cambridge: Cambridge University Press, 2013), chap. 6.
39 Hugh Thirlway, "Fitzmaurice's Principles," in *The Law and Procedure of the International Court of Justice: Fifty Years of Jurisprudence*, vol. II (Oxford: Oxford University Press, 2013; online edn, Oxford Law Pro), https://doi.org/10.1093/law/9780199673384.003.0108.
40 ICJ, *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, 2005, para. 259.
41 Jacqueline Peel and Hari M. Osofsky, *Climate Change Litigation: Regulatory Pathways to Cleaner Energy* (Cambridge: Cambridge University Press, 2015), 112–124.
42 Nicolas de Sadeleer, "The Principles of Prevention and Precaution in International Law: Two Heads of the Same Coin?," *RECIEL* 23, no. 1 (2014): 56–65.
43 ICJ, *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, Judgment, 2015, paras. 104–109.
44 ITLOS, *Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area (Request for Advisory Opinion Submitted to the Seabed Disputes Chamber)*, Advisory Opinion, 2011, paras. 117–120.
45 ICJ, *Costa Rica v. Nicaragua,* paras. 224-228

the absence of agreed procedures aggravates the possibility of severe damage and encouraged the parties to negotiate specific mechanisms when environmentally sensitive regions are shared.[46] This reasoning strikes at the core of the present case. Without a bilateral channel, each state acts independently, and prevention probabilities are diluted.

The *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)* centers on a joint dam project over the Danube agreed to in 1977 by Hungary and Czechoslovakia. Studies later indicated that the project could significantly affect the river's flow and harm nearby wetlands. Hungary unilaterally halted their part, and Slovakia (formerly Czechoslovakia) continued the construction. The Court looked at whether it was legal for the countries to act without agreeing with each other. It decided that, because the risks to the environment are so serious, both countries should have kept communication open about the issue. The Court also said it was important for them to share real-time information about water conditions and work together to find solutions that would lower the impact. This is directly relevant to the current case. Just like with the Danube, the Great Barrier Reef incident involved two countries whose choices impacted a fragile ecosystem.

Experts concur with this legal approach. Boyle and Redgwell discussed situations where scientists gave warnings, but because there was no way for the governments to talk to each other, responses were delayed and the damage got worse. Sands also looked at oil spills in the North Atlantic and found that without good, real-time communication between countries about the shipping route, actions to deal with the crisis only started after oil had already polluted the water. This delay meant harm that could have been prevented if protective steps were taken sooner. The same thing happened in both earlier cases—reports said the reef was fragile, but without a joint system, early warnings did not turn into quick, coordinated action.

Great Barrier oil spill (Credit: Whitealley)

Articles 4 and 5 of ARSIWA confirm that inaction from national organs is attributable to the state. In the absence of a mutual framework, especially when both of the involved governments have the capability to structure it, the preventive burden is equally distributed. Neither party can claim full reparation.[47]

Therefore, China emphasizes that the lack of such a system left both parties unequipped to contain the crude oil spill during the first critical hours. In light of precedent and expert commentary, this institutional vacuum must be considered when the economic consequences of the spill are allocated.

46 ICJ, *Aegean Sea Continental Shelf (Greece v. Turkey)*, Judgment, 1978, paras. 42, 50–52.
47 ILC, *Articles on State Responsibility,* Arts. 4-5.

CHAPTER III: STATEMENT OF LAW

Admissibility and Jurisdiction Before the ICJ

The Court can only examine a dispute when both involved parties consent in a clear manner according to article 36 of its statute.[48] Consenting entails signing a special agreement or presenting a previous declaration that accepts mandatory jurisdiction. Without that express act, the Court must refrain from entering into the merits.

China never agreed to let the Court decide this issue. When China joined UNCLOS, it made a statement saying that it would not accept the Court's authority over environmental responsibility disputes. This means the Court can only get involved if both countries make a separate agreement after the fact. This statement follows the Vienna Convention rules. Because no other country objected to it at the time, it limits the Court's power to decide on this case.[49]

The *Mavrommatis Palestine Concessions* case involved Greece bringing a complaint against the United Kingdom over cancelled construction contracts in Palestine, which was under British control at the time. The United Kingdom did not give its permission for the Court to hear the case. Because both sides did not accept the Court's authority, the Court said it could not hear the case. This shows that if both countries do not clearly agree, the Court cannot issue a decision. In the current situation, there is no agreement from both sides, so the Court may not be able to rule on the dispute.[50]

The International Law Commission (ILC) studied how international laws work together and found that if a treaty creates its own way to solve problems, that system should be respected. For example, UNCLOS (United Nations Convention on the Law of the Sea) has special groups like the Commission on the Limits of the Continental Shelf (CLCS) and the International Tribunal for the Law of the Sea (ITLOS) to help settle disagreements. Australia did not use these groups or try to talk things over directly with China, so it did not follow all the steps that UNCLOS set out.[51]

Attribution of Harm in the Context of Preexisting Environmental Degradation and Climate Change

For the Court to impose responsibility on a state, it must prove that its conduct was a decisive factor for the damage. Experts consider this relationship the most sensitive aspect of environmental litigation, as ecosystems are usually exposed to simultaneous stressors. The causal link, understood as the element that connects the action with the harm, is broken when other variables of equal or greater significance contribute to the outcome.[52]

Before the spill, the Great Barrier Reef suffered an accelerated decline caused by global warming and the ocean's acidification. This phenomenon is understood as a change in the water's chemistry that occurs when the sea absorbs carbon dioxide and becomes more acidic, weakening the coral skeletons. Authors Birnie and Boyle emphasize that, in such conditions, no isolated event can be measured without analyzing the previous trends, since

48 *Statute of the International Court of Justice,* art. 36
49 James Crawford, *Brownlie's Principles of Public International Law,* 8th ed. (Oxford: Oxford University Press, 2013), 688-695.
50 *Mavrommatis Palestine Concessions Case (Greece v. United Kingdom),* PCIJ, Series A, No. 2 (1924).
51 International Law Commission, *Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law: Report of the Study Group of the International Law Commission, United Nations* Doc. A/CN.4/L.702 (18 July 2006).
52 Daniel M. Bodansky, *The Art and Craft of International Environmental Law* (Cambridge, MA: Harvard University Press, 2010).

the ecosystem was already at critical risk of collapsing.[53]

Professor Daniel Bodansky, for his part, suggests that in scenarios with harm resulting from multiple causes, the claiming party must provide clear and convincing studies, capable of separating the influence of the incident being disputed from the other factors. This includes historical data, projection models, and explicit margins of error. When the environment is deteriorated by causes such as climate change, this data tends to be imprecise to sustain attribution for a specific event.[54]

International law demands an equitable distribution of the reparation burden when the damage results from coexisting causes. Assigning all the reparations to a single party would ignore the influence of global emissions that intensify the thermal stress over the reef. The principle of proportionality, implies that each actor should be held liable only for the portion of harm that can accurately be linked to its conduct.[55] In Australia's calculation of damages, it assumes that the Great Barrier Reef will be economically productive in perpetuity. This is unlikely to be the case. If revenues decline by even 5% each year, their claim is reduced to USD 46 billion—less than half of its current claim.

To sum up, there is no justification to blame China for long-term damage because the Great Barrier Reef was already on the precipice of disaster. Furthermore, it is nearly impossible to calculate damages on an infinite timescale from this one event. So, unless there's strong evidence that the spill directly caused all the harm, China can only be held responsible for the damage that can be clearly linked to the spill itself, not for everything that's happened to the reef over time.

The law says responsibility should be shared and based on clear proof.

Rejection of Australia's Entitlement to Full Reparation Owing to Its Lack of Due Diligence in Mitigating the Damage

Australia's Responsibility in Preventing and Reducing Damage

Countries must do everything they reasonably can to prevent serious damage that might affect other countries. In its judgment for the *Gabčíkovo-Nagymaros Project*, the Court said countries need to be "careful and cautious" when there's a risk of environmental harm. This means that Australia should have acted quickly and done more to protect the Great Barrier Reef, since it is so delicate. By not reacting fast enough, Australia failed its duty to prevent more damage.

International law asserts that every country needs to take action to control risky activities within their borders and work with other countries that might be affected. These rules require all countries involved to try to reduce harm together. For example, Australia could have set up bigger safety zones or limited ship weights in busy areas to help prevent the spill from getting worse. Because they did not, Australia worsened the damage and did not follow important international rules to prevent harm.

Countries that are harmed also have to help stop the damage from spreading. In another case about pollution, the Court said the country affected should do everything reasonable to reduce the harm and cannot remain idle. So, Australia should have used barriers and monitoring systems, but there is no evidence that they did. That makes their claim for total compensation more questionable.

Sharing responsibility is important in environmental cases.

53 Patricia Birnie, Alan Boyle, and Catherine Redgwell, *International Law and the Environment*, 3rd ed. (Oxford: Oxford University Press, 2009), 193–199, https://doi.org/10.1093/he/9780199594016.001.0001.
54 Bodansky, *The Art and Craft of International Environmental Law* .
55 Duncan French, "From the Depths: Rich Pickings of Principles of Sustainable Development and General International Law on the Ocean Floor—the Seabed Disputes Chamber's 2011 Advisory Opinion," *The International Journal of Marine and Coastal Law* 26, no. 4 (2011): 525–568, https://doi.org/10.1163/157180811X598691.

Experts say that the cost should be divided based on how much each country contributed to the damage and what they did to prevent it. China has already paid for the direct cleanup and has given technical help to restore the reef. Requesting China to pay for everything, while Australia did not do enough to prevent or lessen the damage, would be unfair.

In summary, because Australia did not do everything possible to stop and reduce the damage, it bears some responsibility for any long-term damages. Any recommended damages should reflect Australia's role in exacerbating the harm and should also recognize the steps China took to help fix things quickly.

China's Compliance with Environmental Obligations Under International Customary and Treaty Law

International customary law, as seen in the Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA), provides that any state that causes harm must "make full reparation for the damage."[56] Reparation constitutes reestablishing the previous situation, within feasibility, or, failing that, granting economic compensation.[57] The rule demands to remedy the harm or pay for it when it can no longer be reversed.

The cleanup costs, integrally covered by China, comply with the form of compensation established under Article 34 of the ARSIWA and reflect the accepted practice by the ICJ in the Pulp Mills case, where it emphasized that monetary compensation is the most suitable course of action when the environmental harm is irreversible.[58] Consequently, Chinese conduct demonstrates adherence to the legal principle of full reparation.

Article 37 of ARSIWA, defines satisfaction as the non-monetary response that a state can offer when the damage cannot be entirely repaired.[59] This includes the official recognition of responsibility, the offering of an apology, and commitments to prevent further incidents. By recognizing the severity of the spill and cooperating with Australia, China provided the form of recommended satisfaction to recover bilateral trust and avoid extended legal disputes.

The principle of international cooperation, consecrated in the Stockholm Declaration, in its 22nd principle, urges nations to work together and compensate for environmental damages when required.[60] China's decision to fund and execute containment operations, illustrates the practical application of this principle. Recent studies on environmental disputes underscore that such voluntary measures demonstrate good faith and avoid the need for contentious interventions, understood as legal proceedings before international courts where the parties oppose each other to seek compensation.[61]

Finally, UNCLOS reinforces the duty to collaborate in protecting the marine environment. While it does not require a perfect outcome, the Convention demands that nations react promptly and allocate proportionate resources.

China complied with this standard by mobilizing resources and equipment immediately. Academic literature on international obligations supports this approach. It suggests that countries offer spontaneous and early solutions (as observed in this case), prevent future disputes, and build trust between states.[62] In consequence, the Australian claim for additional compensation must be assessed considering China's full compliance with its duties of cooperation and reparation under international law.

56 United Nations International Law Commission, *Articles on Responsibility of States for Internationally Wrongful Acts, United Nations* Doc. A/56/10 (2001), Art. 31.
57 ILC, *Articles on Responsibility of States for Internationally Wrongful Acts,* Art. 34.
58 *Pulp Mills,* ICJ Judgment 2010.
59 ILC, *Articles on Responsibility of States for Internationally Wrongful Acts,* Art. 37.
60 United Nations Conference on the Human Environment, *Declaration of the United Nations Conference on the Human Environment* (Stockholm Declaration), Principle 22, UN Doc. A/CONF.48/14/Rev.1 (1972).
61 Daniel Bodansky, "The Role of the International Court of Justice in Addressing Climate Change: Some Preliminary Reflections," *Arizona State Law Journal* 49 (2017), https://ssrn.com/abstract=3012916.
62 Victorino J. Tejera Pérez, "Diplomatic Protection Revival for Failure to Comply with Investment Arbitration Awards," *Journal of International Dispute Settlement* 3, no. 2 (July 2012): 445-475,

Chapter IV: Submissions

Without prejudice to its position on the Court's compulsory jurisdiction, the People's Republic of China, acting in good faith and exclusively to contribute to the resolution of the present dispute, respectfully appears before this Court in a precise and specific manner. This participation must not be interpreted as a general recognition of the ICJ's jurisdiction in this case.

In light of the above, China respectfully requests the Court to adjudge and declare the following:

The Court can only hear the present case to the extent that China has accepted the Court's jurisdiction exclusively for this proceeding in accordance with the forum prorogatum principle. This allows the Court to entertain the dispute even when a state does not recognize its general jurisdiction by giving consent, tacit or explicit, to hear a specific case.

Australia's claim is inadmissible, given that China submitted a reserve to article 298 of UNCLOS, excluding disputes related to the protection of the marine environment.

China did not incur international responsibility, having cooperated immediately and exhaustively with the containment, reparation, and compensation efforts deriving from the *Xing Ye's* accident.

The environmental damage alleged by Australia is not exclusively attributed to said incident. Rather, it results from cumulative and global processes, in particular climate change, the effects of which have been widely recognized by the international scientific community.

Australia's request for additional compensation does not have a technical or legal basis, as it is founded on speculative scenarios regarding future losses lacking verification and not based on commonly accepted methodologies.

China expressly reserves the right to present new observations if Australia amends or expands its claims during the proceedings.

In addition, China reserves the right to modify its position on the Court's jurisdiction at any stage of the proceedings, as long as such jurisdiction has not been irrevocably recognized, and in accordance with the forum prorogatum principle and the established practice by this Court.

Research and Preparation Questions

The following research and preparation questions are meant to help you begin your research on your country's policy. These questions should be carefully considered, as they embody some of the main critical thought and learning objectives surrounding your topic.

Topic A

1. What are the different means by which the Court can obtain jurisdiction? How do the wording of the 1966 Geneva Agreement and the United Kingdom's absence in this current case affect this?
2. How can the Court determine whether the 1899 Arbitral Award remains binding? Additionally, what weight should the Court place on the Mallet-Provost Memorandum and the principle of uti possidetis juris?
3. How might Venezuela and Guyana interpret the concept of "the will of the state" differently? What precedents could guide the Court in applying it to territorial disputes?
4. How should the Court treat consistent behavior, such as diplomatic actions, administrative control, or public statements, in determining the legitimacy of territorial claims?
5. What precedent would be set if the Court overturned a century-old arbitral award? Should the Court prioritize legal stability regarding the Award or equity in Venezuela's claim to the land?
6. Does the presence of natural resources in the Essequibo region strengthen or weaken either country's claim to the land? Is it an important aspect of the case, or must the Court not take it into consideration?
7. What options are available to the Court in the outcome of this case? Can it go beyond affirming or overturning the 1899 Arbitral Award? Can it suggest more negotiations, reparations, or adjusting territory?

Topic B

1. Beyond the UN Convention on the Law of the Sea (UNCLOS), what international conventions describe states' sovereign rights and responsibilities at sea?
2. In light of the Great Barrier Reef's unique ecosystem, how has the spill impacted Australia's economic outlook? How can this impact be fairly quantified?
3. Has Australia taken the proper steps to preserve the Great Barrier Reef in the face of environmental changes? Does that make Australia responsible for the precarious position the reef is in?
4. Many of the examples cited in both memorials dealt with incidents on land or in rivers and other interior waterways. This incident happened on the open ocean. Does that change how these precedents are applied?
5. Does China's rapid offer of relief imply any blame, guilt, or responsibility in the aftermath of the spill?
6. How can the Court chart a path towards effective enforcement of any compensation payment, if deemed necessary?

Important Documents

Topic A

Award regarding the Boundary between the Colony of British Guiana and the United States of Venezuela. Paris: United Nations, October 1899. Reports of International Arbitral Awards. 331-340. https://legal.un.org/riaa/cases/vol_XXVIII/331-340.pdf.

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Topic B

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