

**International and Non-Governmental
Organizations***Quick Reference Rules of Law*

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Reparation for Injuries Suffered in the Service of the United Nations

[Parties not identified.]

I.C.J., Advisory Opinion, 1949 I.C.J. 174.

NATURE OF CASE: Advisory opinion.

FACT SUMMARY: [Facts not stated in casebook excerpt.]

RULE OF LAW

The United Nations has the capacity to bring an international claim against a country that causes an agent of the United Nations to suffer an injury in the performance of his duties with a view to obtaining the reparation due in respect of the damage caused to the United Nations or to the victim or persons entitled through him.

FACTS: [Facts not stated in casebook excerpt.]

ISSUE: Does the United Nations have the capacity to bring an international claim against a country that causes an agent of the United Nations to suffer an injury in the performance of his duties with a view to obtaining the reparation due in respect of the damage caused to the United Nations or to the victim or persons entitled through him?

HOLDING AND DECISION: [Judge not stated in casebook excerpt.] Yes. The United Nations has the capacity to bring an international claim against a country that causes an agent of the United Nations to suffer an injury in the performance of his duties with a view to obtaining the reparation due in respect of the damage caused to the United Nations or to the victim or persons entitled through him. The damage means exclusively damage caused to the interests of the organization itself, to its administrative machine, to its property and assets and to the interests of which it is guardian. With respect to damages caused the victim or persons entitled through him, the Charter does not expressly confer the capacity to include such claim for reparation. However, in order that its agents may perform their duties satisfactorily, they must feel that their protection is assured by the Organization. For that purpose it is necessary when an infringement occurs that the Organization should be able to call upon the responsible state to remedy its default, and to obtain reparation for the damage that it might have caused the agent.

ANALYSIS

The Court states that the same conclusion applies whether or not the defendant state is a member of the United

Nations. If competing interests arise between the defendant's national state and the United Nations, there is no rule assigning priority to one over the other, so the Court states that goodwill and common sense must apply.

Quicknotes

ADVISORY OPINION A decision rendered at the request of an interested party of how the court would rule should the particular issue arise.

AGENT An individual who has the authority to act on behalf of another.

Certain Expenses of the United Nations

[Parties not identified.]

I.C.J., 1962 I.C.J. 151.

NATURE OF CASE: Determination of classification of U.N. expenses.

FACT SUMMARY: [Facts not stated in casebook excerpt.]

RULE OF LAW

Expenditures made by the United Nations may be classified as authorized under the U.N. Charter if they are made to advance one of the organization's purposes as set forth in the Charter.

FACTS: [Facts not stated in casebook excerpt. The case involves U.N. peacekeeping efforts in Congo and Egypt.]

ISSUE: May expenditures made by the United Nations be classified as authorized under the U.N. Charter if they are made to advance one of the organization's purposes as set forth in the Charter?

HOLDING AND DECISION: [Judge not stated in casebook excerpt.] Yes. Expenditures made by the United Nations may be classified as authorized under the U.N. Charter if they are made to advance one of the organization's purposes as set forth in the Charter. The purposes as set forth in the Charter are to (1) promote international peace and security, (2) promote friendly relations, (3) achieve economic, social, cultural, and humanitarian goals and human rights, and (4) be a center for harmonizing the actions of nations in the pursuit of these goals. Where the United Nations acts in a way that does not conform to the division of functions among the several organs prescribed by the Charter, a conclusion that the expense incurred in taking the action was not an expense of the organization within the meaning of the Charter is not necessarily warranted, because the action of the organ may bind the United Nations as the act of an agent. [In this case, the peacekeeping efforts were agreed to by Congo and Egypt, and the measures fell within the scope of the U.N.'s purposes, and costs associated with the operations could be classified as expenses of the United Nations.]

ANALYSIS

This case illustrates the I.C.J.'s process of analyzing whether expenses can properly be classified as "expenses of the United Nations" under the Charter. First, any expense incurred to further the U.N.'s express purposes is presumed to be a U.N. expense. Where the expense is for an action, such as the deployment of peacekeeping forces, and the action is carried out in a way that does not conform to the functions of the U.N.'s internal structure, such as by the

wrong U.N. agency, the expenses incurred are not automatically considered by the I.C.J. to be unqualified expenses under the Charter. But in such a case, the I.C.J. will look at the internal structure and operation of the United Nations and determine whether the organization is responsible, through agency principles, for the actions of one of its agencies.

Prosecutor v. Tadić

State (P) v. Wrongdoer (D)

App. Chamber, Int'l Crim. Trib. for Former Yugoslavia, 1992 Case No. IT-94-1-AR72, 35 I.L.M. 32 (1996).

NATURE OF CASE: Interlocutory appeal from challenge of validity of International Tribunal.

FACT SUMMARY: Tadić (D) claimed that the Security Council was not authorized to establish an international criminal tribunal.



RULE OF LAW

Once the Security Council determines that a particular situation poses a threat to the peace, it enjoys a wide margin of discretion in choosing the course of action.

FACTS: The Charter of the United Nations provides that the Security Council shall determine the existence of any threat to the peace and decide what measures shall be taken to restore international peace and security. When the Security Council established an International Criminal Tribunal to deal with armed conflict in the former Yugoslavia, Tadić (D) claimed the Security Council lacked the power to do so.

ISSUE: Once the Security Council determines that a particular situation poses a threat to the peace, does it enjoy a wide margin of discretion in choosing the course of action?

HOLDING AND DECISION: [Judge not stated in casebook excerpt.] Yes. Once the Security Council determines that a particular situation poses a threat to the peace, it enjoys a wide margin of discretion in choosing the course of action. Where internal armed conflicts are determined to pose a threat to the peace, the Security Council may exercise its exceptional powers under Chapter VI or Chapter VII of the U.N. Charter. These powers are coercive and mandatory. Although the establishment of an international tribunal is not explicitly mandated, the measures described in the Charter are merely illustrative and not exhaustive.

ANALYSIS

Tadić (D) had originally contested the Security Council's power to determine whether the situation in the former Yugoslavia constituted a threat to the peace. At this stage, Tadić (D) no longer raised that argument. Here, Tadić (D) was challenging the legality and appropriateness of the measures chosen by the Security Council.

Quicknotes

INTERLOCUTORY APPEAL The appeal of an issue that does not resolve the disposition of the case, but is essential to a determination of the parties' legal rights.

Legality of Use of Force

(Serbia & Montenegro v. United Kingdom)

Non-U.N. member (P) v. U.N. member (D)

I.C.J., 2004 I.C.J. 1307.

NATURE OF CASE: Claim of illegal use of force against various NATO states.

FACT SUMMARY: [The Federal Republic of Yugoslavia (Serbia and Montenegro) (F.R.Y.) (P) brought a claim in the International Court of Justice against various NATO states (D), including the United Kingdom (D), in 1999. The I.C.J. first considered the issue of jurisdiction.]



RULE OF LAW

The legal position of a state within the United Nations must be determined and clearly defined by the competent organs of the United Nations.

FACTS: [The Federal Republic of Yugoslavia (Serbia and Montenegro) (F.R.Y.) (P) brought a claim in the International Court of Justice against various NATO states (D), including the United Kingdom (D) in 1999. Before considering the claim, the I.C.J. had to determine if it had jurisdiction to hear the case, which would only be the case if the F.R.Y. (P) was at the time of the claim a U.N. member state. Its predecessor state, the Socialist Federal Republic of Yugoslavia, was a member state at the time.]

ISSUE: Must the legal position of a state within the United Nations be determined and clearly defined by the competent organs of the United Nations?

HOLDING AND DECISION: [Judge not stated in casebook excerpt.] Yes. The legal position of a state within the United Nations must be determined and clearly defined by the competent organs of the United Nations. The legal position of the F.R.Y. (P) remained ambiguous between 1992 and 2000, the period during which its claim against certain NATO states (D), including the United Kingdom (D), was filed. The U.N. Security Council and General Assembly both decided that the F.R.Y. (P) could not automatically continue the membership of the Socialist Federal Republic of Yugoslavia in the United Nations, and that the F.R.Y. (P) should reapply for membership. These resolutions were approved by a majority of member voters, but they cannot be construed as conveying an authoritative determination of the F.R.Y.'s (P) legal status in the United Nations, because certain events made the F.R.Y.'s (P) status seem ambiguous—the General Assembly assessed annual contributions to the United Nations, the F.R.Y. (P) maintained that it continued the legal personality of the S.F.R.Y., and the Secretariat of the United Nations kept up the practice of the status quo ante that was in place up to the dissolution of the S.F.R.Y. But the situation cleared when the elected president of the F.R.Y. (P) in 2000 requested

admission to the United Nations from the Secretary-General, which then recommended the state's admission. F.R.Y. (P) was admitted in late 2000. In hindsight, then, the F.R.Y. (P) was not a member of the United Nations when it began this action in 1999. Therefore, there was no jurisdiction to hear its claim.

ANALYSIS

The I.C.J.'s opinion focused on the F.R.Y.'s (P) status within the United Nations. But note that non-U.N. members may also become parties to the I.C.J.'s statute under Article 93(2). Remember also that while a state that is a party to the I.C.J.'s statute is entitled to participate in cases before the I.C.J., being a party to the statute does not automatically give the I.C.J. jurisdiction over disputes involving those parties.

Quicknotes

CLAIM The demand for a right to payment or equitable relief; the fact or facts giving rise to such demand.

JURISDICTION The authority of a court to hear and declare judgment in respect to a particular matter.