



# IT'S A SMALL WORLD AFTER ALL

*Why it is so important for Texans to understand the International Court of Justice.*

BY DAN A. NARANJO

**IN 2010, THE WORLD'S POPULATION TOPPED 7 BILLION** and is expected to reach more than 9 billion by 2050.<sup>1</sup> As the population grows, the world is becoming increasingly interconnected by technology and the need to extend the availability of traditional finite energy resources. According to the U.S. Census Bureau, Texas alone saw a 20.6 percent population increase between 2000 and 2010.<sup>2</sup> This data further demonstrates that Texans are as diverse as ever.<sup>3</sup> As these trends continue, there will be more reliance on international law and trade policy to assist in resolving inevitable cross-border conflicts. As international law professor and author Christopher C. Joyner wrote, "Globalization makes the world ever more interconnected and interdependent and, in doing so, transforms foreign affairs."<sup>4</sup>

Historically, each nation played by its own international rules. This often led to confusing and stalemated disagreements. Today, however, international law is often created by intergovernmental organizations such as the International Court of Justice, seated in The Hague, Netherlands. Because they work to maintain an even-handed and unbiased stance, intergovernmental organizations and international agreements are often best suited to handle such immense macro-level legal problems. Take, for example, the international Law of the Sea, which is important because more than two-thirds of all internationally traded goods are shipped via water transport.<sup>5</sup>

## THE INTERNATIONAL COURT OF JUSTICE

The most important intergovernmental organization dealing with legal issues is the International Court of Justice. Set up by the United Nations,<sup>6</sup> its main purpose is to settle civil disputes between U.N.-member nations, though at times the court will issue advisory opinions to the U.N. and its selected agencies.<sup>7</sup> It differs from the International Criminal Court, which handles cases against individuals accused of serious offenses such as genocide, war crimes, and transgressions against humanity.<sup>8</sup> In stark contrast, the ICJ does not try criminals of any sort. Instead, the ICJ is a place where countries may bring grievances against one another.<sup>9</sup> Notably, it is the highest authority on international law in the world.<sup>10</sup>

The U.N. General Assembly and Security Council elects 15 judges to the court, each with a nine-year renewable tenure.<sup>11</sup> By electing three judges from Africa, two from Latin America, three from Asia, five from Western Europe and North America, and two from Eastern Europe,<sup>12</sup> the ICJ ensures that all legal systems are represented.<sup>13</sup> Once elected, ICJ judges must take an oath of impartiality and are insomuch expected to rule independently of the nation from which they were elected. The ICJ cannot resolve a dispute without the consent of all of the parties involved.<sup>14</sup>

The ICJ is the judicial organ of the U.N. and thus an ideal venue for nations to resolve cases before tensions escalate. The ICJ has a history of dealing with both natural resource issues and treaty interpretation; for that reason, matters like the Texas-Mexico water dispute may soon wind up before the ICJ.

## TEXAS LAWYERS AND INTERNATIONAL LAW

As noted earlier, the ICJ does not hear cases from individuals or corporations. However, a Texas corporation can lobby the federal government to pursue a case at the ICJ on its behalf. With that in mind, it is imperative for Texas lawyers to understand the ICJ and its role in international affairs.

### Water Crisis

International law is especially crucial with respect to the Earth's most valuable resource: water. For example, countries that inhabit the Fertile Crescent have historically found themselves in conflict over the Tigris and Euphrates Rivers. With no one to mediate these disagreements, tensions have worsened due, in part, to drought in the area.<sup>15</sup>

Closer to home, Texas and Mexico have water conflicts over the Rio Grande River. In 2014, the Texas Commission on Environmental Quality published a report on the ongoing issue between the two nations,<sup>16</sup> which highlighted the importance of the region's water supply to Texas

farmers and the disagreement over a 1944 treaty between the two countries:

The failure of Mexico to consistently deliver water, in accordance with the 1944 water treaty between the United States and Mexico significantly harms Texas interests. The treaty requires delivery from certain tributaries in Mexico to the United States ... Mexico has failed to deliver the amount of water owed resulting in hardship for Texas' water users who rely on that water for irrigation, as well as municipalities that need the irrigation water to convey public drinking water supplies. Mexico needs to recognize the United States as a user of water under the 1944 Treaty. This recognition needs to result in water being set aside by Mexico in their annual allocation processes and reservoir operation plans to deliver, at a minimum 350,000 acre-feet per year on average.<sup>17</sup>

According to former Texas Department of Agriculture Commissioner Todd Staples and Carlos Rubinstein of the TCEQ, the situation recently has become even more ominous for South Texas farmers:

[T]he State of Texas has been warning the International Boundary and Water Commission that our Valley region is running out of water, and pleading with the U.S. negotiators to put the pressure on Mexico to fulfill its water obligations. In a bipartisan effort, Texas and federal lawmakers, as well as Gov. Rick Perry, have urged the IBWC, the State Department, and President Barack Obama to make a concerted effort to get Mexico to fulfill its treaty obligations. As a result, the IBWC and the State Department have achieved—nothing ... Mexico continues to ignore its treaty obligations.<sup>18</sup>

In 1997, the ICJ decided a case dealing with intergovernmental water issues.<sup>19</sup> In that case, Hungary accused Slovakia of not fulfilling its obligations under an agreement concerning a dam on the Danube River.<sup>20</sup> Hungary claimed that Slovakia's actions impeded their water rights to the Danube, while Slovakia claimed it had the right to build a dam for production of electricity and flood control.<sup>21</sup> The court held that the building of the dam may continue, but that both countries had to engage in good faith negotiations in order to ensure that both of their rights and objectives would be met under the agreement.<sup>22</sup>

An independent body such as the ICJ can undoubtedly ameliorate the stagnant nature of Texas's water conflict with Mexico. More international disputes are likely to

arise along the longest international border of any American state. But unless Texas attorneys are aware of the ICJ and other neutral bodies, we are never likely to see lasting progress.

#### **WHAT ELSE CAN WE DO?**

Academic institutions—for example, the St. Mary's University School of Law Institute on World Legal Problems in Innsbruck, Austria—can be effective in promoting and understanding these problems. Comparative and

fishing area has long been controlled by Chile; Peru, however, claims the boundary has never actually been defined.<sup>26</sup> *The Economist* emphasized the importance of the ICJ in the matter: “In a continent where nationalism is rife, there is still much to be said for accepting the ICJ as a referee.”<sup>27</sup>

Although the ICJ stays busy with immediate conflicts like these, the evolution of technology and industry guarantees the eventual necessity to deal with novel legal questions.

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international law-oriented courses allow students and legal professionals to juxtapose the laws of different nations and their domestic and international effects. In doing so, such courses encourage understanding of how international law operates in the 21st century, with opportunities to analyze global issues and to propose potential solutions. These classes may include topics regarding international business transactions, criminal justice, and human rights and should be strongly encouraged—if not required—by legal institutions throughout the state. Unless we continue to foster in our students this fundamental understanding of international law and conflicts, the world's transition toward a completely globalized, interconnected society would surely suffer, if not cease.

#### **THE INTERNATIONAL COURT OF JUSTICE AND THE FUTURE OF THE LAW**

It is likely that the ICJ will become increasingly involved in environmental law, with the evolution of issues such as pollution, climate change, natural resources, and protection of endangered species. For example, Australia has begun proceedings before the ICJ against Japan regarding the regulation of whaling and preservation of marine mammals.<sup>23</sup> In another case, Ecuador claims that Colombia is conducting “aerial spraying of toxic herbicides at locations near [...] its border with Ecuador.”<sup>24</sup> It is likely that more environmental cases like these will come before the court.

Peru and Chile also have a case pending with the ICJ over a boundary dispute in the Pacific Ocean.<sup>25</sup> The rich

#### **SPACE LAW: THE FINAL LEGAL FRONTIER?**

An interesting sub-field emerging from international law is extraterrestrial law—the law of outer space. With the volume of both national and private space activities growing at an unprecedented level, it is expected that the ICJ will expand its role accordingly. The legal questions regarding space law involve issues such as “state sovereignty and jurisdiction, torts, contracts, environment, anti-trust (which is of special relevance to the United States), taxation, and intellectual property.”<sup>28</sup> Because of the paucity of litigation and laws governing outer space, several legal scholars suspect that the ICJ will sit at the forefront of these questions in the future.<sup>29</sup> Notably, it is probable that Houston, home of the Johnson Space Center—“the heart of NASA's Human spaceflight program”<sup>30</sup>—will serve as an incubator, birthplace, and battleground for many of these inevitable issues.

#### **CONCLUSION**

The facts are undeniable: the world population is growing exponentially and the globalization of this era is following suit. As the world spirals on toward an international society, it is important that we think proactively and long term. As a state, Texas is in a unique position to play a major role in the development of international law. In order for Texas attorneys to take claim of this opportunity, we must arm ourselves with information and learn to engage the International Court of Justice. Only then can we navigate enduring cooperation along our international border and prepare for whatever lies ahead, written in the stars. **TBJ**

## NOTES

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3. *Id.*
4. Joyner at 288.
5. David J. Bederman, *Globalization and International Law* (1st ed. 2008).
6. See International Court of Justice: How the Court Works, <http://www.icj-cij.org/court> (last visited Oct. 15, 2012).
7. See *id.*
8. See *id.*
9. See *id.*
10. See *id.*
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14. See International Court of Justice: How the Court Works, <http://www.icj-cij.org/court> (last visited Oct. 15, 2012).
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16. *Water Shortage Issue Related to the Mexican Water Deficit*, Texas Commission on Environmental Quality, <http://www.tceq.texas.gov/border/water-deficit.html> (last visited July 6, 2013).
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21. See *id.*
22. See *id.*
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25. An islet for the sea: Colombia smarts from the loss of territorial waters, *The Economist* magazine, <http://www.economist.com/news/americas/colombia> (last visited June 5, 2013).
26. See *id.*
27. *Id.*
28. Joyner at 288.
29. See *id.* at 243-246.
30. [http://www.nasa.gov/50th/50th\\_magazine/NASAFacilities.html](http://www.nasa.gov/50th/50th_magazine/NASAFacilities.html).

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The ICJ offers low-resolution live streaming of its public sessions for the general, worldwide audience and high-resolution streaming for the televised media. For more information, go to [icj-cij.org](http://icj-cij.org).



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