

CASE MEMORANDUM (v2)^{*}

Case History:

After the dissolution of the Bluestan Empire in 1880, Oxia and Swiftia became independent. Oxia, a multi-ethnic state, experienced a two-year civil war, but in 1882 a government with a majority of Greener ethnicity dominated the administration of Oxia. Some ethnic Greeners were living in Swiftia. After the civil war, Oxia immediately claimed the Swiftian territories that had a Greener majority. In 1902, Oxia and Swiftia signed an agreement, adopting the former administrative borders, the Purple River, as the international border. Upper parts of the river were not accessible due to the mountainous region's harsh climate.

“Article II. The boundary between the Parties shall follow the course of the Purple River, which flows to the south of the Gray Mountain, from its mouth to its source.”

After the border agreement, both Oxian and Swiftian fishers started fishing in the Purple River together. Until 1975, neither side taxed the fishers from the other side. They also only taxed their own fishers, regardless of their fishing location in the river. In 1975, Swiftia started to claim that the middle point of the river was the border. Swiftian navy fired at the Oxian fishers who crossed the middle point to fish in the Swiftian half. Oxia protested the Swiftian claims and Swiftian attempts to seize Oxian fishing boats and tax their cargo, and claimed that there was a bilateral custom over the fishing arrangement in the Purple River that allowed fishers from both states to fish freely in both sides.

In 1981, Swiftia sent mountain troops and surveyors to the mountainous region in the upper parts of the Purple River to demarcate the border. Upon inspecting the mountainous region, Swiftian officials found that the river flowed through the north side of the Gray Mountain instead of south of it as previously believed by both parties. This meant that the mountain was on the Swiftian side of the border. Swiftian troops established multiple military posts around the mountain. After learning the true location of the river, Oxia declared the 1902 border agreement null and void on the basis of “rebus sic stantibus” and “mistake(error)” and claimed that it can no longer be followed due to the factual errors that led to its conclusion and that following it creates an unfair burden. Swiftia rejected this interpretation and argued that the border agreement only mentions the mountain descriptively in the north of the river and that the border was always the river, regardless of the location of the mountain.

After the rise of these border disputes around the Purple River and Gray Mountain, Swiftia became more aggressive towards its Greener minority, living close to Oxia, due to the fears that they were supporters of the Oxian influence. After several incidents of disappearances

^{*} Hypothetical case and fictional states and names. Assume that these events take place in our history, in our timeline, in which international law was developed along with the international organizations of our history.

of Greener activists in 1986, several hundred radical Greeners in Swiftia started an armed organization called “Free Cats” to liberate their regions and join Oxia. After the initial defeat against the Swiftian forces in 1988, Free Cats withdrew towards the mountainous regions in the upper parts of Purple River and continued their activities through guerrilla-style hit-and-run attacks and terrorist attacks in major Swiftian cities between 1988 and 1992. In late 1992, Swiftia initiated a major offensive against Free Cats, pushing them across the borders, but they did not cross the border to pursue them in the Oxian territory. Free Cats continued their operations from the Oxian part of the mountainous region and crossed the border to attack Swiftia until the end of the 1990s.

In 2000, Free Cats crossed the border and attacked dozens of Swiftian villages across the border, presumably with the support of the Oxian intelligence agency (OIA). In these attacks, they kidnapped more than 500 Swiftian citizens from Greener villages in Swiftia and took them into their camps in Oxia. After realizing the attack, Swiftian leaders promised to exact revenge on Oxia and Free Cats and liberate its kidnapped citizens. After the attack, Oxia wanted to mediate an agreement between Free Cats and Swiftia for the release of the kidnapped Swiftians. Swiftia rejected the offer, mobilized its troops across the border in February 2001, and prepared its army and navy for the invasion of Oxia.

In anticipation of the incoming invasion, Oxian Air Forces (OAF) attacked the approaching Swiftian ships in the Swiftian waters in April 2001 and sank two frigates. Swiftia claimed that its troops were engaged in a naval exercise and that the attack constituted a military provocation. After its military preparations were completed, Swiftia initiated the invasion of Oxia, justifying it as a response to attacks on ships, Free Cats’ kidnapping of its citizens, and Oxian support for Free Cats.

After a year-long war, Swiftian troops entered the Oxian capital and toppled its Greener government in 2002. After a year-long occupation, it installed a government led by Oranges, an ethnic group, in 2003 and signed an agreement with the new Oxian government that authorized the presence of Swiftian troops in Oxia. In 2006, the Orange-led government and Swiftia signed a new border agreement. In this agreement, Oxia confirmed the validity of the Swiftian interpretation of the 1902 border agreement and recognized the Swiftian ownership of Gray Mountain. In addition to the territories south of the river, the new Oxian government gave ownership of the entire mountainous region in the upper parts of the Purple River to Swiftia. Upon receiving ownership of the entire mountainous region, Swiftia eradicated Free Cats in 2008 and liberated its kidnapped citizens. Swiftia withdrew its troops from Oxia in 2009 and left the control of Oxia to the Orange-led government.

In 2010, the Green Party won the elections in Oxia and returned to power. Upon the change in government, Oxia declared the 2006 border agreement null and void because it was signed under duress. Although Swiftia started to mobilize its troops for another invasion, Swiftia and Oxia agreed to bring their disputes before the ICJ due to the pressure from the UN Security

Council. Both states have signed Article 36(2) declarations under the Statute of the ICJ and have agreed to submit all their disputes for binding adjudication.

Task:

Final Legal Memo (Due August 1)

Your law firm was hired by the Government of Swiftia. The partners in your law firm want you to write a memorandum assessing the elements of the dispute. This memo is critically important for our strategy in the dispute before the Court. In this memo, you must objectively explain the following legal issues.

Your memorandum should be typed, with at least 1-inch margins all around, a typeface of between 11 and 12 points, and between 5-6 pages long (at least 1.5-spaced). You must cite cases in the following format: (State/State, Year). Example: (Indonesia/Malaysia, 2002). If it is an advisory opinion, cite with a case name (e.g. Nuclear Weapons). If you are citing a treaty, you can use its article and abbreviation (e.g. Art.31, VCLT). If you are citing anything else, you are free to follow your chosen format. You do not need a bibliography. Your memo will be read by partners in your law firm and the lawyers of Swiftia. You can use legal language. Remember, we want an objective assessment. We want to avoid misleading our clients by using persuasive language instead of objective language. Be objective! **Please complete your memo and submit it through Canvas by 11:59 p.m. on Saturday, August 1, 2026.**²

Initial Assessment (Due July 27)

The law firm has a quick meeting with our clients, the representatives of Swiftia, this Tuesday. **The partners want an initial assessment (case strategy) of the case by 11:59 p.m. on Monday, July 27, 2026.** Please see the additional instructions below for the initial assessment.

The Use of AI & ChatGPT & Late Policy

If you use ChatGPT or other GenAI, you must explain how you used it in your submission comments. Please add your link to the shared chat and be prepared to produce your chat history about the assignment in case we request to see it. If you use ChatGPT or other GenAI and fail to declare your use, or if you fail to produce your chat history once requested, your failure to declare constitutes cheating and will result in a failing grade. For late submission and appeal policies, see the syllabus.

² All submitted essays will be included as source documents in the Turnitin.com reference database solely for the purpose of detecting plagiarism in such papers.

Legal Issues and Analysis

You should, at least, address the following legal issues in your final memorandum:

- Whether the border follows the Purple River through north of the Gray Mountain or south of it where the river was thought to be when the 1902 agreement is properly interpreted under Articles 31–32 of VCLT³;
- Whether Oxia may invalidate the 1902 border agreement on any ground (mistake(error) or fundamental change of circumstances) according to Articles 48 or 62 of VCLT;
- Whether a bilateral customary rule permitting reciprocal fishing throughout the Purple River and exempting each state's nationals from the other's taxation existed between 1902 and 1975;
- Whether the 2000 cross-border raid by Free Cats constituted an armed attack within the meaning of Article 51 of the UN Charter and whether it is attributable to Oxia;
- Whether Oxia's April 2001 strike on Swiftian vessels in Swiftian waters was lawful self-defense;
- Whether Swiftia's 2001 invasion, occupation, the removal of the Oxian government, and the duration of the Swiftian presence satisfied the requirements of necessity and proportionality and whether Swiftia's response constituted self-defense or an unlawful armed reprisal;
- Whether the 2006 border agreement is valid, or void under Articles 51–53 VCLT, given the circumstances in which the Oxian government that concluded it came to power. (No case law here. Don't look for it)

Finally, please assess our chances of winning the dispute before the ICJ. There is no need to discuss whether the ICJ has jurisdiction over the issue. Assume that it does. Analyze these substantive issues. Do not spend any time on the following issues, as we know that Oxia will not bring them up: self-determination of Greeners in Swiftia and Oxia's pre-1902 claims over the Swiftian territories that had a Greener majority.

Legal Memorandum

Legal memoranda are typically produced by lawyers at law firms upon the request of partners and clients, and they are used by them to decide on a course of action. They should be objective. A good memo begins with a statement of issues in the case and a short answer or summary in response to the issues. This is the quick answer to the broader task at hand. Then, a good memo presents the critically important facts of the case, not all facts. A good lawyer finds important facts among the unimportant and irrelevant ones. After the facts, a good memo conducts the legal analysis. The analysis is usually divided into parts. Each part analyzes each issue by presenting the issue, presenting the applicable rule, applying that rule to the facts, and coming to a conclusion about the issue in question. After the analysis of each issue is completed, a good

³ [Vienna Convention on the Law of Treaties \(1969\)](#)

memo concludes the discussion by considering all issue-level conclusions and coming to a probabilistic assessment about our likelihood of winning the case before the court. Again, objectivity is important. If we may not win the case, then use probabilistic language (very likely, likely, hard to predict, unlikely, very unlikely) so that we do not feel overconfident and mislead our client.

- *Header:*

MEMO

TO: Senior Partner
 FROM: [your name]
 RE: [name this dispute]
 DATE: [date your text]

- *Issue Statement:* This section is a very brief statement of the core issues in the legal dispute. In this memo, you are asked to analyze multiple issues. Your general issue statement should include all of them. For the relevant issues, see the legal issues above. Your issue statement can state the points the partner sent you, along with the applicable rule(s). Example:

The issue here is whether State A acquired the disputed territory through the doctrine of *effectivites* by taking actions X, Y, and Z.

- *Short Answer or Summary:* This section is usually the part where you answer each issue with a single sentence and give us an early conclusion.
- *Facts of the Case:* This section should include the facts that you use in your analysis and exclude the ones that are not important for your analysis.
- *Legal Analysis:* This section is the part where you focus on each issue one by one and analyze them. A good analysis first reminds the specific issue being analyzed, then presents the applicable rule, and then applies that rule to the facts to reach a conclusion about the specific issue. (The example below is completely made up. Don't try to put words where the capital letters are.)

The issue here is whether State A acquired the disputed territory through the doctrine of *effectivites* by taking actions X, Y, and Z. The doctrine of *effectivites* applies in the situation of K. It has the following requirements: a, b, and c. In our case, the dispute is a form of K. State A took actions X and Y, which may satisfy the requirements a and b.

- *Conclusion:* After the sub-conclusions about each issue in the legal analysis, the conclusion of the memo considers all important issues and comes to a conclusion about the possible outcome of the case before the court.

Several small tips for a good memo:

- Read the case history carefully. You have already been provided with the list of issues. By examining the events and issues, determine the applicable laws and match them with the relevant facts and circumstances.
- Complete your initial assessment before starting to write the memo.
- First, start with writing an issue statement to make a list to follow in your analysis. Follow the logical order. Some issues are conditional on others. Then, write your legal analysis.
- After your legal analysis is completed, write your conclusion.
- At the very end, summarize your conclusion in the short answer and write the facts of the case by looking at which facts you used in your analysis.

Additional Instructions for Initial Assessment (Case Strategy)

Your initial assessment paper will lay out your initial answer to each legal issue. In this document, please do the following:

- Have at least one sentence response to each issue by stating the applicable rule and the outcome of your initial analysis for each issue.
- Moving from these conclusions, make an initial assessment about the likelihood of winning this case.

Your initial assessment is not a contract. You can change your answer later in the final submission. It aims to get you to start working on the assignment. This submission should be at least a paragraph in length and no more than one page. It is due on Monday, July 27, 2026, at 11.59 pm.

The same instructions regarding submission through Canvas, declaration of AI usage, and other policies outlined in the syllabus apply.

Where to Find the Relevant Caselaw

- Start from the coursebook. The coursebook can give you most, if not all, of the relevant legal principles.
- Do not limit yourself to the coursebook. Proceed to the caselaw of the ICJ. Remember, our case is going to the ICJ. The caselaw of the ICJ and the Permanent Court of Arbitration (PCA) can be useful.
- Do not try to read everything from case histories and archives. Look for case summaries that can help you understand the dispute, states' arguments, and the court's decision.
- Here is a list of cases and the important principles that can be useful for your analysis:
 - Temple of Preah Vihear (Cambodia v. Thailand, 1962), ICJ, [link](#)
 - Error, acquiescence, and estoppel
 - Frontier Dispute (Burkina Faso/Mali, 1986), ICJ, [link](#)

- Uti possidetis
 - Territorial Dispute (Libya/Chad, 1994), ICJ, [link](#)
 - Treaty law (cession and border delimitation), uti possidetis
 - Armed Activities on the Territory of the Congo (DRC v. Uganda, 2005), [link](#)
 - Self-defense against non-state actors, occupation, proportionality
 - Kasikili/Sedudu Island (Botswana/Namibia, 1999), [link](#)
 - River boundaries, thalweg, VCLT Art. 31, subsequent practice.
 - Gabčíkovo-Nagymaros (Hungary/Slovakia, 1997), [link](#)
 - Rebus sic stantibus and treaty termination
 - Right of Passage over Indian Territory (Portugal v. India, 1960), [link](#)
 - Bilateral custom
 - Asylum (Colombia/Peru, 1950), [link](#)
 - Local and regional customs, burden of proof on the state invoking customs
 - Nicaragua v. United States (1986), [link](#)
 - Armed attack (scale and effects), effective control, necessity and proportionality
 - Oil Platforms (Iran v. United States, 2003), [link](#)
 - Proportionality, attributing attacks and required proof
 - North Sea Continental Shelf (Federal Republic of Germany/Netherlands, 1969), [link](#)
 - Formation of custom, opinio juris
 - Legal Consequences of the Wall (Advisory Opinion, 2004), [link](#)
 - Art. 51, non-state actors, non-acquisition of territory by force
 - Nuclear Weapons (Advisory Opinion, 1996), [link](#)
 - Necessity and proportionality as customary limits on self-defense.
 - Caroline incident (1837)
 - Daniel Webster's commonly adopted formula for anticipatory self-defense
- If you need help with researching and interpreting some of the caselaw, please reach out.