

Anikó RAISZ¹:

The Charles Rousseau Moot Court Contest - 2004

Between 1-9th May, 2004 the Charles Rousseau Moot Court Contest of simulated process in international law took place in Geneva, Switzerland. 27 teams from all over the world (from the American continent, through Europe to Africa) arrived at this annual French speaking competition, among them our team (Eszter Gilányi, Nóra Klebercz, Anikó Raisz and László Varju, coaches: Csaba Pákozdy and Prof. Péter Kovács) from the University of Miskolc, Hungary. This year the subject was the conflict in Iraq.

The contest simulated a process of advisory opinion before the International Court of Justice (ICJ). The teams had the task to argue on behalf of the United States of America and on behalf of Malaysia (representing the Islamic Conference) about the question of the General Assembly of the United Nations put in Resolution 58/1 of 18th September 2003.

The questions were:

1. Was the use of force by the United States of America and the other powers present in Iraq without authorisation by the Security Council in conformance with the international law?
2. What are the legal consequences of the permanent presence of the United States of America and the other powers in Iraq?

Examining the **preliminary objections**, the most significant questions are the following:

- *The judicial character of the question.* The party arguing on behalf of the United States of America queries the judicial character of the question of the General Assembly, laying emphasis on the political aspects. The party on behalf of Malaysia may refer to the advisory opinion of the International Court of Justice of 8th July 1996 upon the legality of the use of nuclear weapons, which says that political aspects are the necessary concomitants of questions occurring in the field of international law. This does not mean that the obligations of the states are not mainly of judicial nature.
- *The problem 'ratione temporis'.* The United States argues that it is too early to deal with this question before the ICJ since the recently by the US government ordered official report concerning the reasons that led to the situation in the US is not yet available. Malaysia may refuse this argument due to the available British report and argue that this objection would only cause a needless postponement in the proceeding.
- *The competence of the ICJ.* Some of the teams query the right of the General Assembly (GA) to put this question. The core of their argumentation is the principle of the pre-emption

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of the Security Council (SC) that is to say the Security Council has already discussed the question in Iraq and so the General Assembly would not have the competence to put this question before the ICJ. The party on behalf of Malaysia can argue that the ICJ has not yet made a statement on this problem, but in the ‘Certain expenses of the United Nations’ it declared that although the SC has a primary role in the questions of international peace and security, this role is not exclusive.

In connection with the **first question** the main points of the argumentation of the parties were the following:

- *The principle of the prohibition of the use of force.* Malaysia can argue that at present the prohibition of the use of force is an internationally accepted principle. One can refer to the development of this principle through the last century – among them the Conventions of the Hague and the Briand-Kellogg Pact – confirming that the civilised nations reject the use of force as declared in §1 and 2(4) of the Charter of the United Nations. The party arguing on behalf of the United States would like to persuade the Court that the action of the allied powers of 20th March 2003 aimed at implementing exactly this principle since Iraq had ignored its international obligations perpetually as confirmed through a decade by the SC. Besides analyzing the development, Malaysia may refer to the interpretation of the Charter through numerous resolutions of the GA and through the ICJ itself in cases like Nicaragua, 1986 or Corfu, 1949.
- *Resolution 3314 (XXIX).* The most powerful argument of Malaysia is the definition of aggression in Resolution 3314 of 1974. The definition given in the annex covers the acts committed by the USA and his allies in Iraq since the beginning of the military activities – argues the Malaysian party. The sovereignty, territorial integrity and political independence of Iraq have been attacked and injured – without doubt. The United States draws attention to the problem of the acceptability of the resolution and refers to its non-obligatory validity. Malaysia lays stress on the customary law character of the definition, accepted by the ICJ also in the case of Nicaragua.
- *Resolution 1441 of 2002.* The United States sees an authorisation in Resolution 1441 (2002) of the Security Council for the use of force in Iraq. The Malaysian party denies that direct authorisation could be traced back to the text of the resolution.
- *Right for self-defence, danger of terrorism.* The United States of America refers to the right of self-defence, declared in §51 of the Charter of the United Nations, saying that Iraq embodied danger for the region and the world, in particular for the USA among others in the form of supporting terrorists. Malaysia refuses the applicability of this paragraph in the situation of Iraq, emphasizing that the action of the United States was neither necessary, nor immediate, nor proportional and the means chosen were not the mildest – and refers to the case *Steamer Caroline* of 1837; and rejects the arguments of the United States concerning the danger of terrorism, which has admittedly changed a lot in the past decades.
- *Weapons of mass destruction.* The most significant point in the argumentation of Malaysia is that no weapons of mass destruction were found before, during or after the military actions of the allied powers and so there exists no justified reason for the occupation.
- *Liberation of the Iraqi people.* The United States of America reassures the Court that the real aim of the action was the liberation of the people of Iraq from the dictatorial regime of Saddam Hussein. The party arguing on behalf of Malaysia mentioned that this argument

occurred only after it had become clear that there were no weapons of mass destruction in Iraq. The USA has never spoken out against all the dictators of the world and arbitrarily selecting among them undermines the legality of this action.

Concerning the **second question** the following main points have to be mentioned:

- *Resolution 1483 (2003)*. Resolution 1483 gives the allies permission to stay legally on Iraqi territory and control the humanitarian aspects during the process of building a new, democratic regime in Iraq. The Resolution hands over the leadership over the troops joining the actions of maintaining the peace after the official end of the war in the hands of the Americans and the British.
- *The obligations*. The troops attempting to maintain peace in the Iraqi region have the international legal obligation of keeping the Conventions of the Hague and Geneva. The positions of the teams arguing on behalf of the United States have not become more comfortable in the contest as further proofs came to light also during the week of the contest relating to the terrible tortures that took place in Iraq.

After three teams of the Universities of Paris (II, X and XI) and the McGill University of Montréal came into the semi-finals, the team of Paris XI won the competition in 2004. For all the other teams – including us – it was a fabulous experience to take part in such a contest with a francophone-international milieu. But maybe we were all in a convenient situation for not having the responsibility to give a real advisory opinion on the question of the situation of Iraq.