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THE ADONI CASE
Silana v. Nudasa

Talia, a region in the southeastern corner of the Colombon continent, was a multi-ethnic area with two predominant ethnic groups. The Nudasan, who were the majority ethnic group in the northern region of Talia, engaged primarily in sheep herding. The Silanan were the majority in the southern region of Talia and were historically wheat farmers.

For the duration of the nineteenth century and the first half of the twentieth century, the Talia region was under the control of a major foreign colonial power, which remained in the region until 1948. It would have withdrawn from the area sooner, but the nitrate deposits discovered in the Anagab desert in the northwestern corner of Talia made the region a prized possession because of the importance of nitrate as a component of explosives. Not without difficulty, the colonial power managed to keep some degree of balance among the ethnic groups in Talia, even though the two predominant ethnic groups were culturally and economically very different and had a history of hostilities that dated back centuries.

By 1945, the colonial power had largely depleted the nitrate deposits and decided to revisit the advisability of its presence in Talia. In 1946, it declared its intention to withdraw from the

region. That announcement set off a period of bloodshed between the two predominant rival ethnic groups, who were fighting over land. It became clear that before withdrawing from the region, the colonial power would have to negotiate a treaty between the two predominant ethnic groups. The parties to the negotiations ultimately agreed that the best course of action would be to divide the Talia region into two separate States. The Nudasan would control the north, while the Silanan would control the south. A six-month transition period was established during which any Nudasan in the southern region could opt to migrate northward, and any Silanan in the north could move south.

The ethnic minority group in Talia, the Adoni, had for centuries occupied an area squarely in the center of Talia. Their culture and language are distinct from the two major ethnic groups in the region. They regard their land not as real estate, but as the mother of all living things. The sun, the air, the water and the land are all sacred for the Adoni; they believe that everything they need in life comes from Mother Earth. According to Adoni oral history, human life, the land, their language and their traditional ways of life are all the work of the Creator.

Upon their independence, in 1948, Nudasa and Silana entered into a treaty regulating their mutual relations. It, inter alia, established a boundary line between the two countries -Nudasa to the north and Silana to the south- which inevitably traversed the Adoni's ancestral territory.

At the time the treaty was concluded and the two new States came into existence, the Adoni accounted for 15% of the population of Nudasa and 21% of the population of Silana. Because the land within their ancestral territory did not lend itself well to either farming or ranching, the Adoni engaged in cottage industry, such as weaving and carving. To protect the Adoni's rights and preserve the integrity of their territory, the colonial power insisted that an entire chapter of the Silana/Nudasa treaty be devoted specifically to the Adoni. That section of the treaty spelled out the obligations of the two newly created States vis-à-vis the Adoni minority. The treaty provided that each country was to recognize the ancestral land of the Adoni and was not to entertain any private claims made upon that land. The treaty held that persons living within the territory of the Adoni were citizens of the country in which they lived: Adoni south of the border were citizens of Silana; those living north of the border were citizens of Nudasa. In the treaty, each State party undertook to respect the language of the Adoni and their way of life. The treaty provided that the Adoni were to be accorded full rights of citizenship in their respective countries and, to that end, every official document issued by the government of either country –the constitution, laws, birth certificates, marriage licenses, death certificates, property deeds, election-related documents, etc.- was to be translated into Adoni. Offices were to be set up on either side of the Silana/Nudasa border to assist the Adoni with government-related matters.

Another provision of the treaty stated that each country's system of justice was to provide Adoni interpreting and translation services for any cases brought against or by the Adoni. The treaty also provided that for the sake of the Adoni's safety and protection, neither of the States Parties to the treaty could establish any military presence within Adoni territory. The same social services provided to the general population were to be provided to the Adoni as well. To cater to the specific cultural needs of the Adoni, each country pledged to provide a bilingual education system within Adoni territory.

To keep the Adoni's extended families intact, the Adoni were to be allowed to cross the Nudasan/Silanan border within their ancestral territory with relative ease. In fact, the first generation of Adoni children born after the demarcation of the border were granted lifetime visas at birth in order to visit family members living on the other side of the border.

The treaty further provided that either State could resort to arbitration to settle any dispute arising under the treaty with the other State regarding the Adoni or Adoni territory; if arbitration failed, either State could turn to the International Court of Justice. Both States became members of the United Nations in 1948 and, under the terms of Article 36, paragraph 2 of the Statute of the International Court of Justice, declared that they recognized as compulsory, ipso facto and without special agreement, the jurisdiction of the Court in all legal disputes. Nudasa and Silana are also parties to the International Covenant on Civil and Political Rights (ICCPR), which the United Nations adopted in 1966 and which entered into force in 1976.

The years immediately following conclusion of the treaty were marked by the usual vicissitudes that attend the creation of new States. In the early years, tensions between the two countries ran high. However, Nudasa and Silana finally managed to find common ground when, twelve years after the conclusion of the treaty, a large neighboring country to the east began to pose a threat to both Nudasa and Silana. Both countries recognized that they had a common enemy on their eastern border and that their strength –and perhaps even their existence- hinged on partnership rather than mutual enmity.

The pace of development in the two countries for the first thirty years was basically the same because both had farm-based economies. However, this would change when, in 1978, vast oil reserves were discovered within Adoni territory on the Nudasan side of the border. The Nudasan government swiftly enacted legislation declaring that all underground resources were the property of the State, which meant that the Nudasan government owned and controlled the oil reserves within Adoni territory. However, in exchange for a cut of the profits, the government invited corporate transnationals into Adoni territory for the actual oil exploration and drilling. Hundreds of Adoni families were displaced in the process. Some of these displaced families moved south into Silana.

The discovery of petroleum reserves in Nudasa injected enormous vigor into its economy, which was then able to diversify into other areas. The tax revenues from oil enabled the government to build up the educational system at all levels nationwide, including the bilingual education system within the Adoni's ancestral territory. It was able to build infrastructure, equip its armed forces with more modern weaponry, and so on. Attracted by Nudasa's petroleum reserves, other countries cultivated a stronger relationship with Nudasa than they had in the past.

The Adoni on the Nudasan side of the border benefited as well. They were enlisted into the construction work done to build up the oil industry's infrastructure. Indeed, the infrastructure built within their territory to accommodate the oil industry had the effect of transforming the Adoni's own base of wealth. Nudasa appreciated the strategic advantages to be gained from building up infrastructure within the region occupied by the Adoni and the necessity of training and educating the Adoni to that end. In the process, the Adoni became more and more assimilated and integrated into Nudasan society. Indeed, members of the Adoni ethnic group rose

to positions of authority in the Nudasan government, and from there worked to ensure that the economic and social interests of the Adoni were protected.

In the meantime, the Adoni on the other side of the border were not faring as well. No oil or any other significant natural resource had been discovered within Silanan territory. The country continued to be a farm-based economy, exporting commodities and importing processed goods. As the economy weakened, Silana did not have the means to properly honor its obligations vis-à-vis the Adoni as spelled out in the 1948 Silana/Nudasa Treaty. Bilingual education within Adoni territory was one of the first areas to suffer, as the bilingual schools were closed. The Silanan system of justice no longer provided Adoni interpretation and translation services. The effect in practice was that the Adoni rarely turned to the courts to claim their rights and were at a decided disadvantage in cases brought against them. The Silanan government also stopped printing official documents in the language of the Adoni, which made it difficult for them to register births, get marriage licenses, pass on property and participate in government either by voting or running for elective office. The end result was that the Adoni on the southern side of the border were, on the whole, disenfranchised and marginalized.

By this time, the Adoni accounted for 26% of Silana's total population. Given the relative ease with which the Adoni were able to cross the border between Silana and Nudasa under the terms of the 1948 Treaty, it was not long before the Adoni in Silana began to notice that their relatives north of the border were far better off than they were. In growing numbers, Silanan Adoni crossed the border to visit family to the north, and simply never went back. This pattern became much more pronounced and a cause for concern to the Nudasan government, which found itself having to educate and otherwise provide for the Adoni crossing over from Silana. Silana, for its part, seemed undisturbed as its Adoni population migrated northward.

Even the Adoni on the Nudasan side of the border began to complain about the influx of Adoni from the south. They were concerned that they might lose land as a result. Accordingly, the Adoni within the Nudasan government began to lobby for action to be taken.

As the Silanan government failed to take any steps to mitigate conditions in Adoni territory on its side of the border, the Nudasan government decided that measures had to be taken to stop the influx of Adoni moving north of the border. It decided to create a military presence along the border within Adoni territory. It also established other small military installations elsewhere along the border between Silana and Nudasa.

Concerned by the military buildup across its northern border, Silana opted to file an application with the International Court of Justice against Nudasa alleging violation of the clause of the 1948 Silana/Nudasa Treaty that prohibited the establishment of a military presence within Adoni territory. It also claimed that Nudasa had violated the right of the Adoni to their lands and resources under the 1948 Treaty, the United Nations Declaration on the Rights of Indigenous Peoples, adopted by the General Assembly on September 13, 2007, and customary international law. Nudasa responded that the International Court of Justice did not have jurisdiction nor was the case admissible in light of the arbitration clause of the 1948 Treaty and the fact that the military presence in Talia concerned a political question. Also, it filed a counterclaim to the effect that Silana had violated the cultural, language and education rights of the Adoni people

under the 1948 Treaty, Article 27 of the ICCPR, the 2007 United Nations Declaration on the Rights of Indigenous Peoples as well as customary international law. Silana replied that it was no longer bound to afford these rights because of its dire economic situation, aggravated by the fact that Nudasan Adoni had moved to its territory as a consequence of Nudasan's unlawful transgression into Adoni lands.