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Report of the International Court of Justice

Introduction

1. Since the creation of nuclear weapons, their non-proliferation and disarmament has been a permanent feature of the United Nations' agenda. Over 70 years later, the nine Nuclear States – the United States, Russia, France, the United Kingdom, China, India, Pakistan, Israel and North Korea - have around 15,000 operational warheads combined[1,2] and over a dozen other nations have sufficient enriched uranium to produce a nuclear warhead.[3] The destructive potential of nuclear weapons or nuclear accidents can inflict devastating harm on humanity, economics, and infrastructure, for which reconstruction processes would require enormous financial contributions from international bodies.[4] Therefore, continued investment into nuclear weapon technology challenges the progress of the International Community, because it deviates USD 1.6 trillion from sustainable development initiatives with direct benefits to humanity,[5] while threatening the achievement of Sustainable Development Goal (SDG) Sixteen: to promote just, peaceful and inclusive societies. At UA-MUNC Geneva 2018, the International Court of Justice will deliberate upon the case of 'Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament,' with Ukraine as the Applicant party and the Russian Federation as the respondent.

[1] Davenport, K. (2018). Nuclear Weapons: Who Has What at a Glance | Arms Control Association. [online] Armscontrol.org. Available at: https://www.armscontrol.org/factsheets/Nuclearweaponswhohaswhat [Accessed 21 Feb. 2018].
[2] UN News. (2017). Treaty banning nuclear weapons opens for signature at UN. [online] Available at: https://news.un.org/en/story/2017/09/565582-treaty-banning-nuclear-weapons-opens-signature-un [Accessed 21 Feb. 2018].
[3] Siracusa J. M. (2008) Nuclear Weapons, Oxford University Press.
[4] Sabatier, M., 2014. Disarmament or development? ILPI Publ., ILPI Weapons of Mass Destruction Project.
[5] "11 Facts About Global Poverty | DoSomething.org | Volunteer for Social Change," 2018

Introduction to the Committee, its Jurisdiction, and Mandate

2. The International Court of Justice (ICJ) is the primary judicial organ of the United Nations, established under the UN Charter in 1945. The permanent seat of the court –the Peace Palace- is located in The Hague, Netherlands.[6]
3. The ICJ is organised under the rules detailed in the Statute of the International Court of Justice and exercises two main functions, whose proceedings are governed by the Rules of the Court. The ICJ's primary purpose is to settle disputes between Member States in accordance with international law, under Article 38 of its Statute,[7] by producing legally binding rulings when two states agree to the Court's jurisdiction over a dispute. This acceptance can be provided on a case-by case basis - the majority of UN Member States accept the Court's jurisdiction in this way. As such, the ICJ settles disputes submitted to them by an applicant Member State (hereinafter 'Applicant Party' or 'Applicant') against a respondent one (hereinafter 'Respondent Party' or 'Respondent'). Additionally, the ICJ can provide non-binding legal advisory opinions (Article 65 of the Statute)[8] on a variety of issues pertaining to international law upon the request of the United Nations' organs and various specialized agencies.[9] To date, most of these requests have come from the United Nations General Assembly.
4. Since its inception, the ICJ has been instrumental in solving numerous disputes on a variety of topics. Several cases brought forth before the Court relate to maritime delimitation and land disputes. Nevertheless, this body has also ruled on disputes concerning drug trafficking and environmental law, like Ecuador vs. Colombia on the issue of Aerial Herbicide Spraying. It is essential to note that under Article 59[10] of its Statute, the decisions of the Court are not binding except when ruling over a case involving disputing parties.
5. Nevertheless, Article 36[11] of the Statute is the main reason why the ICJ has difficulty widening its portfolio of disputes. This article makes the agreement to compulsory ipso facto acceptance of the Court's jurisdiction non-mandatory. This means that just the 73 UN Member States that have signed the Declaration have an obligation to appear before the Court in a dispute, out of the total of 193.[12] Out of the five permanent members of the Security Council (P5), only the United Kingdom accepts compulsory ICJ jurisdiction and the many cases brought against P5 countries have stagnated in the past due to the fact that they only agree to the Court's Jurisdiction on a case-by-case basis.
6. The Court is comprised of 15 Judges (including the President and Deputy President) who are elected for a term of 9 years.[13] The Judges are independent lawyers that do not have an affiliation to any Member State in the context of the case. Although they come from specific Member States, there have been multiple occasions where a Judge from a particular Member State ruled against that country's interests. An example of this would be a former Judge from the United States of America, Thomas Buergenthal who voted against US interests on most parts of the judgment in the LaGrand dispute (Germany vs. United States).[14] In addition, Judges participate in the entire Court procedure and are strongly advised to take copious notes throughout the proceedings in order to keep up with the progress of the case.

[6] Icj-cij.org. (n.d.). The Court | International Court of Justice. [online] Available at: http://www.icj-cij.org/en/court [Accessed 23 Feb. 2018].
[7] ICJ. (1945). Statute of the Court | International Court of Justice. [online] Available at: http://www.icj-cij.org/en/statute [Accessed 1 Feb. 2018].
[8] Ibid.
[9] Icj-cij.org. (n.d.). How the Court Works | International Court of Justice. [online] Available at: http://www.icj-cij.org/en/how-the-court-works [Accessed 23 Feb. 2018].
[10] ICJ. (1945). Statute of the Court | International Court of Justice. [online] Available at: http://www.icj-cij.org/en/statute [Accessed 1 Feb. 2018].
[11] Ibid.
[12] Icj-cij.org. (n.d.). Declarations recognizing the jurisdiction of the Court as compulsory | International Court of Justice. [online] Available at: http://www.icj-cij.org/en/declarations [Accessed 23 Feb. 2018].
[13] Icj-cij.org. (n.d.). Members of the Court | International Court of Justice. [online] Available at: http://www.icj-cij.org/en/members [Accessed 23 Feb. 2018].
[14] KEITH, K. (2011). Thomas Buergenthal: Judge of the International Court of Justice (2000–10). Leiden Journal of International Law, 24(01), pp.163-171.

Moreover, the President and the Deputy President are elected from among the Judges and, with guidance from the Registrar, will moderate the proceedings of the court.

7. Furthermore, Counsels are also part of the ICJ's proceedings. They are regarded as the 'pillars' of the case, and the success of this educational simulation largely depends on how prepared they are. This is because the highlight of the ICJ as a Model UN committee is most apparent when Judges successfully resolve moral and legal dilemmas of the case. Since the Judges cannot consider evidence that has not been submitted to the Court, the number of these dilemmas depends upon the evidence the Counsels present and how well they argue them. This is why one of the most important rules of being a Judge in an accurate ICJ simulation is to never prejudge.
8. Finally, the ICJ is assisted in its functions by the Registry, its administrative organ. The above body is headed by the Registrar who sits in on all Court meetings. The role of the Registry is comparable to that of the UN Secretariat, which aids the proceedings of the General Assembly and ECOSOC, among others. However, the Court does not report to the UN Secretary-General and its Registry works to facilitate the work for the Court only.

Background of the Issue

Emergence of Nuclear Weapons and Warfare:

9. Early in the 20th century, humanity's knowledge regarding atoms considerably expanded, with scientist Ernest Rutherford making several significant discoveries in 1911 regarding the structure and behaviour of atoms. Some years later, the Danish physicist Niels Bohr developed Rutherford's ideas and described electronic arrangements in shells.
10. Although legal experts might not be as interested in the science behind nuclear weapons as they are in the legal agreements surrounding their possession, the basics of nuclear physics are still essential to understand in order to appreciate the history and the complexity of this issue.[15]
11. Atomic nuclei have an unusual property: the mass of a nucleus is lower than the sum of individual protons and neutrons in its composition. This is called mass defect and the loss of mass is related to the energy that an atom gives out and its stability. This energy is what gives nuclear arms a greater destructive force than any other weapon known to man. Einstein's theory of relativity, $E=mc^2$, relates energy and mass and suggests that an enormous amount of energy can be released from a minimal amount of matter. This simple idea propelled a revolution in global-scale warfare in 1945, with lasting consequences on international relations and politics throughout the 20th and 21st centuries.[16]
12. About 85% of energy from nuclear weapons is released as either heat or light. This type of energy is responsible for the short-term effects of nuclear weapons - the heat generated can even disintegrate objects entirely if they are close enough to the epicenter of a nuclear explosion. The remaining 15% are released as radioactive fallout, where various forms of radiation are emitted.[17] These contribute to the long-term consequences of nuclear weapons. Exposure to radiation has a profound effect on human tissue, increasing cellular mutations, which can cause various forms of cancer and even death. Radioactivity can also accumulate and remain in soil and water resources for years after initial contamination. Therefore, decontaminating the scene of an explosion is an expensive and dangerous process.

Application of Nuclear Weapons:

13. Throughout the early 1940s, the United States' Manhattan Project employed 65,000 personnel, including some of the world's brightest scientists at the time. It is, therefore, unsurprising that they were the first to put nuclear warfare to use. The first explosion of an atomic bomb occurred on July 16th, 1945. Just short of two months later, on August 6th, 1945, the US dropped an atomic bomb on the Japanese city of Hiroshima, with Nagasaki suffering the same fate three days later.[18] In Hiroshima, over two-thirds of buildings were demolished. To a layperson unfamiliar with nuclear physics, the magnitude of devastation inflicted both on human lives and on infrastructure seemed unfathomable.
14. Since the bombing of Hiroshima and Nagasaki, nuclear weapons have never been used against civilian or military targets because states feared 'mutually assured destruction' – nuclear war would evidently have a devastating impact on both parties.
15. Nuclear weapons gave the United States an early military advantage. Nevertheless, the Soviet Union followed their American enemies with a successful test of their own nuclear warhead on August 29th, 1949.[19]

[15] Siracusa J. M. (2008) Nuclear Weapons, Oxford University Press.
[16] Ibid.
[17] Ibid.
[18] Ibid.
[19] Ibid.

The Cold War and its Arms Race:

16. Since the middle 1940s, over 128,000 nuclear weapons have been produced, 98% of which were generated either in the United States or the Soviet Union.[4] The rate of weapons production was fastest at the height of the Cold War, when nuclear dominance was regarded as equivalent to political dominance by the above nations. Although both countries obtained enough atomic war power to destroy the other twice over, they did not stop producing weapons. Complex nets of alliances, as well as the development of Intercontinental Ballistic Missiles (ICBMs),[20] meant that both the US and the USSR could extend their nuclear protection to other countries.
17. As the years progressed and both sides invested trillions of dollars into the arms race, nuclear weapons became increasingly powerful. Eventually, fission technology reached its limit and scientists on both sides of the globe turned to thermonuclear weapons with nuclear fission at their core. In 1953, the US tested their first hydrogen bomb; the explosion vaporized the island on which it was tested. Furthermore, on October 30th, 1961, the Soviet Union detonated the Tsar Bomba, the most powerful atomic weapon ever created. The explosion still remains the largest of its kind throughout the entirety of the human history.[21,22]
18. On the other hand, atmospheric nuclear tests had a significant impact on the environments in which they were tested, with some nuclear test sites of the 50s and 60s displaying significantly higher levels of radioactive activity than the rest of the world. Therefore, the worried International Community adopted the 1963 Partial Test Ban Treaty (PTBT),[23] which prohibited all nuclear tests except those carried out underground. Although not all atomic states ratified the PTBT, namely China and France, it was still seen as the first step to discontinuing nuclear tests.
19. This accord was followed by the Comprehensive Test Ban Treaty (CTBT)[24], which the General Assembly adopted in September 1996. The CTBT has not entered into force to this day, as it lacks ratification from numerous nuclear states. Hence, since the adoption of the treaty, India, Pakistan and North Korea have tested nuclear weapons.

The Chernobyl Catastrophe and the Fall of the Soviet Union:

20. On April 26th, 1986, a malfunction in the Chernobyl nuclear power plant reactor resulted in an explosion that released 400 times as much radioactive material as the bomb dropped on Hiroshima and made neighboring Pripyat a ghost town.[25] The resulting cover-up paved the way for Gorbachev's policies of *glasnost* and *perestroika* and catalyzed the demise of the Soviet Union.
21. According to the Belarus Foreign Ministry, the total damage from the Chernobyl Disaster – taking into account the loss of human lives and economic productivity - cost around USD 235 billion.[26] Looking at the above numbers, it is not difficult to see how the Chernobyl Disaster contributed to crippling the Soviet economy and accelerated its collapse. Currently, with the borders of the Soviet Union dissolved, the governments of Ukraine and Belarus must address the results of the accident.

[20] The editors of Encyclopaedia Britannica, ICBM (April 28, 2017), Encyclopædia Britannica, inc. https://www.britannica.com/technology/ICBM
[21] Wald, M. (1990). U.S. Nuclear Arms' Cost Put at $5.48 Trillion. [online] Nytimes.com. Available at: http://www.nytimes.com/1998/07/01/us/us-nuclear-arms-cost-put-at-5.48-trillion.html [Accessed 21 Feb. 2018].
[22] Lindley, D. and Clemency, K. (2009). Low-Cost Nuclear Arms Races. Bulletin of the Atomic Scientists, 65(2), pp.44-51.
[23] United Nations (1963) Nuclear Test Ban Treaty; Treaties and Other International Agreements Series #5433; General Records of the U.S. Government; Record Group 11; National Archives.
[24] United Nations (1998) CTBT, Comprehensive Nuclear Test-Ban Treaty. [New York, N.Y.], United Nations, Dept. for Disarmament Affairs and Dept. of Public Information.
[25] Economist.com. (2016). A nuclear disaster that brought down an empire. [online] Available at: https://www.economist.com/news/europe/21697741-chernobyl-led-thousands-deaths-including-soviet-union-nuclear-disaster [Accessed 16 Feb. 2018].
[26] Chernobyl Disaster. (2009). [ebook] Belarus Foreign Ministry. Available at: http://chernobyl.undp.org/russian/docs/belarus_23_anniversary.pdf [Accessed 16 Feb. 2018].

22. The Soviet Union was dissolved on December 26th, 1991 into fifteen independent republics. Out of them all, the Russian Federation emerged the strongest as far as international relations were concerned, taking the Soviet Union's permanent seat in the UN Security Council shortly after the USSR's dissolution.
23. Following these events, the now independent Ukraine held an estimated third of the total Soviet nuclear arsenal, making it the third most powerful nuclear state at the time.[27] Nevertheless, together with its nuclear weapons, Ukraine's fragile economy also inherited the persistent disastrous consequences of the Chernobyl nuclear explosion.

The Applicable Law

In principle, the legal aspects of this case are not complicated nor numerous.
Below are several legal milestones that could be applied on this case:

The Nuclear Non-Proliferation Treaty (NPT):

The Nuclear Non-Proliferation Treaty of 1968 is an international treaty authored by UN Member States that concerns itself with nuclear disarmament and stopping the spread of nuclear weapons. Currently, the NPT has 190 parties, including the Russian Federation and Ukraine.[28] The case at hand principally concerns itself with Article 6 of the treaty (the full text of article is provided in the evidence list section). Some scholars and states would argue that the NPT's vast list of party states makes it customary international law; others claim that Member States should have to abide by the treaty by virtue of having ratified it. However, even though the Russian Federation has signed and ratified the NPT, Article 6 related to 'good faith', remains blurry because this is a concept without infallible roots in the context of international law, as will be explored later on in this section.

The NPT as Customary International Law:

24. Customary international law refers to the global obligations based upon previous state practice instead of international treaties. According to the ICJ's statute Article 38(1)(b), customary international law is one of international law's branches, and is established through state practice and opinio juris.[29]
25. Of the above, state practice defined as "behaviors respecting a particular issue that amounts to direct action by, or has a direct effect on, the state whose behavior is in question,"[30] is a lot more objective that opinio juris.
26. On the other hand, opinio juris, otherwise known as opinio juris sive necessitatis, is, in essence, a subjective sense of obligation that a state feels in regards to a particular piece of legislation - if a state were acting according to opinio juris, it would do so with the belief that they would be legally obliged to carry out that action. In a case concerning Nicaragua[31], the ICJ described opinio juris as it applies to international law as the following:

> *"[…] for a new customary rule to be formed, not only must the acts concerned 'amount to a settled practice,' but they must also be accompanied by opinio juris sive necessitatis. Either the States taking such action or other States in a position to react to it must have behaved so that their conduct is evidence of a*

[27] Dahlburg, J. (1991). Ukraine Votes to Quit Soviet Union : Independence: More than 90% of voters approve historic break with Kremlin. The president-elect calls for collective command of the country's nuclear arsenal.. [online] latimes. Available at: http://articles.latimes.com/1991-12-03/news/mn-504_1_soviet-union [Accessed 17 Feb. 2018].
[28] Disarmament.un.org. (2018). Disarmament Treaties Database: Treaty on the Non-Proliferation of Nuclear Weapons (NPT). [online] Available at: http://disarmament.un.org/treaties/t/npt [Accessed 23 Feb. 2018].
[29] Shaw M. N. (2003) International Law 80, 5th ed., Cambridge.
[30] Weisburd, A. (2008). The International Court of Justice and the Concept of State Practice. SSRN Electronic Journal.
[31] ICJ (1986) Nicaragua Case,I.C.J. Rep. 14.

belief that the practice is rendered obligatory by the existence of a rule of law requiring it. The need for such belief, the subjective element, is implicit in the very notion of opinio juris sive necessitatis."[32]

27. The NPT is the most widely signed arms-related treaty ever since the UN came to exist. There is a very small number of non-signatories: Israel, India, Pakistan and North Korea are not parties to the treaty.[33]
28. However, regardless of whether the NPT is customary international law, due to Russia's signing and ratification of the it, this nation is required to abide by it according to principles of international law. If, for instance, the Court finds that despite the NPT, Russia has been modernizing its nuclear arsenal, this might actually weaken the NPT as customary international law as that would suggest that its principles are not actually within the state practice of legally recognised Nuclear States. Nevertheless, this does not mean that Russia's obligation to abide by it by international law diminishes.

Good Faith:

29. When customary international law or treaties do not apply or lose strength in the face of legal arguments, international law leans towards the principle of good faith. The concept of good faith is not straightforward, with Judge Stewart of the Supreme Court once stating, "I shall not today attempt to define [it]…But I know it when I see it."[34] One could say that this concept is more of a principle than a rule meant to guide the actions of states, instead of dictating them. Although it frequently appears in ICJ case law, this is not considered enough for generating laws based on good faith.[35]

Details of the Applicant Party

The Destruction of Ukraine's Nuclear Weapons:

30. In 1994, Ukraine formally joined the NPT and agreed to destroy its vast nuclear arsenal for the sake of global nuclear non-proliferation, after being one of the most potent nuclear states for around three years. For the Ukrainian government, the decision to give up the above status was not a one-sided one at all.[36]
31. Initially, the President of the then newly independent Ukraine expressed certainty that his country would eventually become a nuclear-free state. However, soon, tensions emerged within Ukraine's Verkhovna Rada (Parliament) on whether nuclear weapons were worth giving up, due the security they were seen to provide.

Reasons for Remaining a Nuclear State:

32. Nevertheless, Ukraine had several incentives for remaining a nuclear state. Firstly, this status would deter Russia from pursuing potential aggressive politics towards Ukraine. Ukrainian political and military leadership at the time believed that nuclear deterrence would be superior in terms of national security to protection from the United States or local nations. If Ukraine could have somehow foreseen the Russian annexation of Crimea in 2014 –and the subsequent pro-separatist movements in several eastern regions of Ukraine- they might have taken a different course of action with regards to their nuclear arsenal.

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[32] Ibid.
[33] Armscontrol.org. (n.d.). Fact Sheets | Arms Control Association. [online] Available at: https://www.armscontrol.org/factsheets/Timeline-of-the-Treaty-on-the-Non-Proliferation-of-Nuclear-Weapons-NPT [Accessed 23 Feb. 2018].
[34] Jacobellis v State of Ohio (1964) 378 US 184, 197 (Supreme Court, per J Stewart), while actually referring to obscene material.
[35] Reinhold, S. (2013). Good Faith in International Law. SSRN Electronic Journal.
[36] William C. Martel (1998). "Why Ukraine gave up nuclear weapons : nonproliferation incentives and disincentives". In Barry R. Schneider, William L. Dowdy. Pulling Back from the Nuclear Brink: Reducing and Countering Nuclear Threats. Psychology Press. pp. 88–104. ISBN 9780714648569.

33. Secondly, the possession of nuclear weapons could have helped Ukraine to find an avenue for military security and political cooperation with European nations and the United States, providing it with further political and economic influence. This is because numerous Ukrainian officials believed that the United States would not allow a nuclear state to experience significant economic deterioration - an environment that leads to political conflict or even war. Therefore, authorities believed that nuclear armament would bolster American investment in Ukraine. This would, in turn, strengthen the growing nationalist movement that was thought to consolidate the country following the fall of the Soviet Union.[37]

Factors against becoming a Nuclear State:

34. Despite the above incentives, Ukraine gave up its nuclear capabilities due to numerous reasons.
35. The first issue with reinforcing Ukraine's nuclear deterrence was the possibility of a preemptive Russian strike targeting the Ukrainian arsenal with either atomic or conventional weapons. Following the Soviet break-up, the Russian Federation reformed its military doctrine to include specific measures to combat Ukraine's nuclear capabilities. This principle was well known amongst the Ukrainian leadership. Moreover, it is believed that whilst Ukraine had physical custody of several hundred nuclear weapons, the Russian Federation retained operational control over the vast majority of them due to robust security measures that Ukrainian authorities were unable to overwrite,[15] thus calling into question the efficiency of their nuclear deterrent.
36. Furthermore, upon Ukraine's failure to destroy their nuclear weapons, Russia issued political and economic sanctions. Although Ukraine had abundant agricultural resources, it was almost completely dependent on Russia in terms of oil and natural gas[38] and was also one of Russia's primary trading partners for a range of other goods. Perhaps the idea of possible investment opportunities from the West was not sufficient enough to overcome the imminent loss of trade benefits from Russia.[39]

Current Situation:

37. With the continued conflict over Crimea, this dispute is not just about the question of non-proliferation, but also about a potential threat to Ukraine's national security. Submitting this case to the Court and attaining a favorable judgment would allow Ukraine to have a more equal relationship with Russia concerning the balancing of their respective security interests.

Details of the Respondent Party

Russia's Policies regarding Disarmament:

38. Russia is one of the five legal possessors of nuclear weapons worldwide, as allowed by the NPT. In recent years, its nuclear policy has been somewhat inconsistent. When asked about nuclear disarmament, the Russian President claimed that he "[wanted] it and [would] be striving to achieve that."[40] Deciding whether the President's proclamations would constitute

[37] Ibid.
[38] Konończuk, W. (2017). Ukraine has let itself become dangerously dependent on Russian oil. [online] EnergyPost.eu. Available at: http://energypost.eu/15647-2/ [Accessed 21 Feb. 2018].
[39] William C. Martel (1998). "Why Ukraine gave up nuclear weapons : nonproliferation incentives and disincentives". In Barry R. Schneider, William L. Dowdy. Pulling Back from the Nuclear Brink: Reducing and Countering Nuclear Threats. Psychology Press. pp. 88–104. ISBN 9780714648569.
[40] Sampathkumar, M. (2017). Putin just said he's ready to develop new weapons. [online] The Independent. Available at: http://www.independent.co.uk/news/world/europe/vladimir-putin-russia-new-weapons-us-mid-range-nuclear-missiles-treaty-withdraw-response-kremlin-a8009466.html [Accessed 20 Feb. 2018].

good faith will be at the discretion of the ICJ. However, since then, Russia has developed new weapons systems, circumventing the 1987 Intermediate-range Nuclear Forces Treaty that eliminated a significant amount of nuclear weapons. The accord did not cover sea-launched missiles, as the USSR did not have the capability to develop them for a number of years.

39. Nevertheless, this is no longer the case and Russia has since moved to develop such weapons systems.[41] Furthermore, a report published by the Bulletin of the Atomic Scientists provides evidence that the Russian Federation is modernizing the rest of its nuclear arsenal.[42] The report estimates the Russian nuclear stockpile contained 4,300 atomic warheads –assigned for use either by long-range, strategic launchers or shorter-range tactical nuclear forces- as of early 2017. Out of those nuclear warheads, an estimated 1,950 are stored inside ballistic missiles and at heavy bomber bases. Another 500 strategic warheads are currently in storage as are approximately 1,850 non-strategic warheads. Additionally, there is also a likely stockpile of almost 2,700 warheads that, despite being retired, are mostly intact and believed to be ready for dismantlement. This totals the inventory of around 7,000 warheads. These modernization efforts might be the result of the realization that Russia cannot compete with the United States as far as conventional warfare is concerned and is, instead, choosing to invest in its nuclear capabilities, where it is very close to potentially outcompeting the US.

The Difficulty of Requesting a 'Preliminary Objection:'

40. Despite the existence of compelling evidence that Russia is failing to take necessary steps towards nuclear disarmament, the Russian Federation is not the only NPT-approved nuclear state to receive such allegations. For example, the United States has been recently reported to be modernizing its nuclear arsenal as well,[43] but it would be considerably complicated to submit a case like this against most nuclear states, including the US, as they could submit a 'preliminary objection' to the Court arguing for the absence of a dispute. If a nuclear respondent party acted in this manner, it would disable a ruling against it in this matter and deliberations on it would cease. However, it is important to bear in mind the tensions between Russia and Ukraine over Crimea, and the disarmament negotiations following the breakup of the Soviet Union, which make it more difficult for Russia to follow the course of action available to other nuclear states.
41. However, it is also important to consider that if the Court were to rule in favor of Ukraine, Russia could be seen to targeted among a range of other nuclear states that may be violating their commitments to the NPT.

Key Evidence

42. The below pieces of evidence will be central to the case and both parties should scrutinize them. For Ukraine, careful study of these documents will aid them to strengthen their case to the Court. For the Russian Federation, on the other hand, critical reading and analysis will be essential in order to find legal loopholes and other weaknesses in the issue.
    - The Nuclear Non-Proliferation Treaty
        - 'Article VI: Each of the Parties to the Treaty undertakes to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms

[41] Ibid.
[42] Kristensen, H. and Norris, R. (2017). Russian nuclear forces, 2017. Bulletin of the Atomic Scientists, 73(2), pp.115-126.
[43] Panda, A. (2018). U.S. Nuclear Weapons Modernization. [online] Council on Foreign Relations. Available at: https://www.cfr.org/backgrounder/us-nuclear-weapons-modernization [Accessed 20 Feb. 2018].

race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control.'[44]

- ICJ Advisory Opinion - Legality of the Threat of Use of Nuclear Weapons, 8 July 1996
    - 'There exists an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control.'[45]
- The 2017 Russian Nuclear Weapons Report from the Bulletin of the Atomic Scientists. [46]
    - The Bulletin of the Atomic Scientists is a long-standing, award-winning academic publication on nuclear policy and security. According to their 2017 report, The Russian Federation has moved towards atomic modernization, stockpiling an estimated 4,300 nuclear warheads.

43. It is crucial, however, that both parties carry out detailed further research to develop the best possible legal case and the most enriching and accurate ICJ simulation.

Possible Judgments

44. At the ICJ, the Judges decide upon both the facts and the law as there is no jury. This section aims to aid the Judges to understand what conclusions they might come to. However, the following list is not meant to be exhaustive as it is, ultimately, up to the Judges to decide the points of the case:
45. The Court may rule that the NPT is customary international law, and that Russia has failed to comply with the terms of the treaty and did not move towards nuclear disarmament 'in good faith'.
46. The ICJ may alternatively determine that the NPT is not customary international law, but since Russia has ratified the agreement, it is still legally binding. Therefore, Russia would have failed to comply with the terms of the treaty and did not move towards nuclear disarmament 'in good faith'.
47. On the other hand, the Court may rule that the NPT is customary international law, but also that Russia has complied sufficiently with the terms of the treaty.
48. Finally, the Court may decide that the NPT is not customary international law, but also that Russia has complied sufficiently with the terms of the treaty.

Notes on the Simulation:

For the purposes of this educational simulation we are assuming that:

1. The Court has Jurisdiction over this fictitious case.
2. There is a dispute based on the ongoing tensions between the Russian Federation and Ukraine, the disarmament negotiations after the USSR's dissolution, and the possible nuclear threat that Russia poses with regards to Ukraine.
3. Russia, which accepts the ICJ's jurisdiction on a case-by-case basis, is willing to submit to the Court's authority. In this respect, it will be up to the Respondent to figure out what arguments to use to achieve a ruling in their favor.

[44] United Nations (1968) Treaty on the Non-Proliferation of Nuclear Weapons (NPT), The United Nations, entered into force in 1970.
[45] Icj-cij.org. (n.d.). Latest developments | Legality of the Threat or Use of Nuclear Weapons | International Court of Justice. [online] Available at: http://www.icj-cij.org/en/case/95 [Accessed 23 Feb. 2018].
[46] Kristensen, H. and Norris, R. (2017). Russian nuclear forces, 2017. Bulletin of the Atomic Scientists, 73(2), pp.115-126.

Disclaimer:

This case has never appeared before the International Court of Justice and is fictional, although it has some basis in truth when it comes to the evidence and the statistics presented.

References and Additional Resources

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