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Report of the International Court of Justice

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Introduction

1. The present report provides an introduction to the 2019 UA-MUNC Geneva simulation of the International Court of Justice, and has the following sections: an overview of the International Court of Justice; the background of the present case, which includes a summary of the law applicable to the case and the overview of the position of both parties to the case; and concluding remarks on the simulation. Collectively, this report should serve as an important jumping-off point for understanding the simulation and the case and for commencing further research, and should be considered by all participants as required reading.

Overview of the Court

2. The International Court of Justice (ICJ) is the principal judicial body of the United Nations and comprises, along with the General Assembly, the Security Council, the Secretariat, the Economic and Social Council, and the Trusteeship Council, one of the six main organs of the United Nations set out in the Charter.¹
3. The main purpose of the UN is to maintain international peace and security, and to that purpose its Charter forbids every Member State to unlawfully threaten or use force as a means of international dispute resolution.² Hence, States shall resort to peaceful means, listed in article 36 of the Charter, which include judicial settlement, being the ICJ one of the institutions states may resort to.

¹ *Charter of the United Nations* [hereinafter UN Charter], 24 October 1945, Chapters III and XIV. United Nations, Treaty Series, chapter 1. Available at [<http://www.un.org/en/charter-united-nations/>].

² UN Charter, Art. 2.4.



4. The ICJ is composed by a body of fifteen independent judges elected by the Security Council and the General Assembly, regardless of their nationality from among persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices or are jurisconsults of recognized competence in international law.³ Its permanent seat is located in the Hague, the Netherlands.
5. All member states of the UN are parties to the Statute of the ICJ –appended to the UN Charter- by virtue of their ratification of the UN Charter.⁴ However, non-UN Member States can also access the Court by way of other international instruments and special provisions regulated by the Security Council.⁵ Unlike its predecessor, the Permanent Court of International Justice, the ICJ holds both compulsory and advisory jurisdiction, and its jurisdiction is not compulsory but voluntary. That means that ICJ jurisdiction is not automatic, and each state must give its consent, whether general or to the particular situation/dispute, in order for the ICJ to have jurisdiction on a given matter.
6. Article 36 of the Statute lays out three basic ways a state can accept the Court’s jurisdiction: by unilateral declaration, by special agreement, or by a compromissory clause in a treaty. In all instances, the principle *compétence de la compétence* applies, which means that the Court has the last word in determining whether it has jurisdiction to rule on a case and to what extent.
7. *Unilateral declarations* or “optional clause declarations,” are declarations in which countries state they will accept the jurisdiction of the court universally and without restriction. However, those declarations might be conditional or unconditional, limited in time, content and situations, and subjected to reciprocity. That means that the ability to bring a case against another state may or not be limited by both states’ declarations.⁶
8. *Special agreements* or “*compromis*,” are specific, explicit agreements between two countries to submit a particular dispute to the ICJ for adjudication. Any two parties to the Statute may submit a case by *compromis* independent whether they have recognized the Court’s jurisdiction more broadly and agreeing to a *compromis* does not meansignify an acceptance of jurisdiction over any matter other than the specific one contained in the agreement. Because these cases involve the most explicit and recent consent by both parties involved, they are generally the most effective with regard to carrying out the Court’s ruling.
9. Finally, *compromissory clauses* are any clause or provision in a binding treaty which empowers the ICJ to adjudicate disputes between parties of the treaty. Many major modern treaties have compromissory clauses. Sometimes, when the text 20 of a treaty contains such a clause, any state that has ratified the treaty submits itself to the ICJ’s jurisdiction over any dispute with a fellow ratifier that may arise over a provision of the treaty. Others, the

³ *Statute of the International Court of Justice* [hereinafter ICJ Statute], 24 October 1945. United Nations, *Treaty Series*, Art. 2. Available at https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=I-3&chapter=1&clang=en.

⁴ UN Charter, Art. 93.

⁵ ICJ Statute, Art.35.

⁶ CRAWFORD, J. (2012), *Brownlie’s Principles of Public International Law*, Oxford University Press, p. 725.



compulsory clause its actually submitted to the ICJ's rule son jurisdiction, which means that special consent by the other two ways is required.

10. *The Contentious jurisdiction* is activated by cases brought by two states concerning a dispute between them.⁷ In a contentious case, representatives of the two states involved in the dispute submit their arguments –both written and oral- and evidence to the Court,⁸ and the judges deliver a ruling in favor of one of the parties and may order remedial measures to be taken, often in the form of compensation or reparations. Generally, the country that initiates proceedings is called the *Applicant*, while the country against whom proceedings are brought is called the *Respondent*. Judgments of the Court in contentious cases are legally binding and cannot be appealed,⁹ however they can be revised for further clarifications.¹⁰ In the event that either party to a case fails to comply with the Court's judgment, the Security Council is empowered to take measures to force that state into compliance.¹¹
11. *Advisory proceedings* are not brought by states and are not binding; rather, they are advisory legal opinions which any of the other main UN organs or one of the 16 Specialized Agencies of the UN can request on a particular question. Since there are no parties to an advisory proceeding, the Court itself calls on states, organizations, and experts to help it determine the facts and rule on the law. These groups then act as the parties to a contentious case normally would, providing testimony and submitting evidence to public sittings of the Court. While an advisory opinion is just that—advisory—and accordingly is not legally binding, it is nonetheless considered to constitute a subsidiary mean of interpretation by virtue of the Court's intellectual and moral authority.¹²
12. All proceedings at the ICJ are guided by article 38 of its Statute, which lays out the sources of international law which the Court should draw on when adjudicating a case: conventions and treaties, customary international law and general principles.
13. *Conventions and treaties* are written agreements between at least two states which, once they enter into force are legally binding on them. Conventions and treaties cover diverse areas of international law and can deal with any matter that concerns to international relations, since its powers lies on the consent of states. Hence, usually treaties are considered as *lex specialis*.¹³
14. *Customary international law* refers to laws which even not written down in any treaty are nonetheless taken as binding law. For the Statute is “general practice accepted as law”. Hence, a customary rule –for its existence- needs to be composed by two elements: virtually

⁷ International Court of Justice (n.d.) *How the Court Works* [online]. Icj-cij.org. Available at: [<http://www.icj-cij.org/en/how-the-court-works>].

⁸ ICJ Statute, Art. 43.

⁹ ICJ Statute, Art. 60.

¹⁰ ICJ Statute Art. 61.

¹¹ International Court of Justice 2017 , *What is the ICJ?* [online] , video recording, Icj-cij.org , Available at: [<http://webtv.un.org/meetings-events/international-court-of-justice-icj/what-is-the-icj/watch/quest-ce-que-lacjwhat-is-the-icj-/2305217341001>]

¹² HILLIER, T. (1998), *Sourcebook of Public International Law*, Cavendish Publishing Limited, pp. 562-563.

¹³ MALANCZUK, P. (2002), *Akehurst's Modern Introduction to International Law*, Routledge, p. 56



uniform state practice, and opinion “*opinio juris sive necessitatis*,”¹⁴ i.e. the material behavior of states, and the psychological or subjective belief that such behaviour is law.¹⁵

15. *General principles of law* are broad legal principles commonly recognized by the main domestic legal systems throughout the world.¹⁶ Examples of general principles of law are the principle of “good faith” (*bona fide*), “equity” (*aequitas*), and “claim preclusion” (*res judicata*). They differ from the *principles of international law*, since those are considered to be abstractions of international customary rules, while *general principles of law* are born inside the national systems.¹⁷
16. There is no hierarchy among these rules of international law. However, some rules -generally of a customary nature- can reach the level of a peremptory norm (known by the latin *jus cogens*). While the law of the treaties usually defines them as norms from which no derogation is permitted;¹⁸ these have been defined as those rules that protect essential values for the international community.¹⁹ Few of them have being recognized so far as such: the inadmissibility of slavery, the prohibition of torture, the crime of genocide, equality and non-discrimination, among others.²⁰ The *jus cogens* character of a rule must be distinguished from the *erga omnes* obligations – i.e. the opposite of *inter partes*-, which are those opposable to every state belonging to the international community.²¹
17. Article 38 also refers to the judicial decisions and the teachings of the most highly qualified publicists of the various nations. These are *subsidiary means for the determination of rules of law*. Even though these are not binding as the sources of international law, they are used by the ICJ – and every Court and Tribunal- to interpret its scope and how to interpret it in a particular case.
18. Finally, the Court reserves the power to decide a case *ex aequo et bono*, if the parties agree thereto.²² This means that the parties to a case can give the ICJ the power to rule not based on on the basis of law, but merely on tits understanding of what is fair and equitable in good faith. It is worth to mention that so far the ICJ has never decided a case *ex aequo et bono*.

¹⁴ *Continental Shelf* (Libyan Arab Jarnahiriya/Malta), Judgment, I.C.J. Reports 1985, p. 27, *North Sea Continental Shelf* (Ger. v. Neth.) 1968 I.C.J. 3 (Apr. 26), pp.72-74.

¹⁵ SHAW, M. (2008), *International Law*, Cambridge University Press, p. 74

¹⁶ CRAWFORD, J. (2012)), *Brownlie's Principles of Public International Law*, Oxford University Press, p. 35-37.

¹⁷ *Ibid.*

¹⁸ Vienna Convention on the Law of Treaties [hereinafter VCLT], 1969, 1155 U.N.T.S. 331, Art. 53.

¹⁹ CANÇADO TRINDADE, A. A. (2006), “International Law for Humankind: Towards a new jus gentium (I). General Course on Public International Law”, *Collected Courses of the Hague Academy of International Law* N°316, Martinus Nijhoff, p. 342.

²⁰ GAJA, G. (1981), “Jus cogens beyond the Vienna convention”, *Collected Courses of the Hague Academy of International Law* N° 172, Martinus Nijhoff, p. 299 and 303.

²¹ HIGGINS, R. (1991), “International trade law and the avoidance, containment and resolution of disputes: general course on public international law”, *Collected Courses of the Hague Academy of International Law* N° 230, Martinus Nijhoff, p. 220.

²² ICJ Statute Art. 38.2.



The Case (Ukraine / Russian Federation)

19. The situation is presented by Ukraine and the Russian Federation by way of a special agreement, after two months of failed negotiations. Ukraine, the Applicant, claims that the lack of adherence by Russia to the Comprehensive Nuclear Test Ban Treaty (CTBT) violates international law. Russia, the Respondent, alleges that there is no conclusive evidence to sustain a ruling against it in this case and that, in any event, no binding rule of international law forbids Russia's activities.

The Applicable Law

20. The Comprehensive Nuclear Test Ban Treaty (CTBT) was adopted in 24 September 1996, and was the product of decades of negotiations, preceded by other treaties like the Partial Test Ban Treaty (PTBT), the Nuclear Non-proliferation Treaty (NPT), and the Threshold Test Ban Treaty (TTBT). The CBTB was adopted to eradicate all nuclear test in every ground, i.e. true zero-yield, with the aim of moving towards full nuclear disarmament.²³ Article 1 establishes the basic obligation “not to carry out any nuclear weapon test explosion or any other nuclear explosion, and to prohibit and prevent any such nuclear explosion at any place under its jurisdiction or control” and “to refrain from causing, encouraging, or in any way participating in the carrying out of any nuclear weapon test explosion or any other nuclear explosion”.
21. The CTBT itself includes a Protocol divided in three parts: Part I detailing the International Monitoring System (IMS); Part II on On-Site Inspections (OSI); and Part III on Confidence-Building Measures (CBMs). There are also two Annexes to the Protocol: Annex 1 detailing the location of various Treaty monitoring assets associated with the IMS; and Annex 2 detailing the parameters for screening events. Also, according to article 16, the Treaty shall enter into force 180 days after the date of deposit of the instruments of ratification by all States listed in Annex 2.²⁴ Hence, it has not enter into force yet. However, the organization created by the treaty has been created and recognized as such by the UN, through a cooperation agreement.²⁵ To promote its entry into force, the UN Secretary General, upon

²³ BAUER, S AND O'REILLY, C. (2016), “The Comprehensive Nuclear-Test-Ban Treaty Organization (CTBTO): Current and Future Role in the Verification Regime of the Nuclear-Test-Ban Treaty”, in BLACK-BRANCH, J.L AND FLECK, D. (eds.), *Nuclear Non-Proliferation in International Law - Volume II*, T.M.C. Asser Press, p. 135.

²⁴ The 44 States are: Algeria, Argentina, Australia, Austria, Bangladesh, Belgium, Brazil, Bulgaria, Canada, Chile, China, Colombia, Democratic People's Republic of Korea, Egypt, Finland, France, Germany, Hungary, India, Indonesia, Iran (Islamic Republic of), Israel, Italy, Japan, Mexico, Netherlands, Norway, Pakistan, Peru, Poland, Romania, Republic of Korea, Russian Federation, Slovakia, South Africa, Spain, Sweden, Switzerland, Turkey, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Viet Nam, Zaire. Of those, only China, North Korea, Egypt, India, Iran, Israel, Pakistan and the United States have not ratified the treaty.

²⁵ UNGA, Resolution 54/280, A/RES/54/280, 30 June 2000.



the request of a majority of ratifying states, convenes biennially special conferences for that sole purpose.²⁶

22. Despite that, the CTBT's global verification regime is well advanced, and consists largely of an International Monitoring System (IMS) comprising around 337 facilities (321 monitoring stations and 16 radionuclide laboratories), which is now almost 90 % complete.²⁷ For that reason, all information transmitted by the IMS is considered to be accurate and relevant.
23. In spite of CTBT's lack of enforceability, both States in this case are parties to the Vienna Convention on the Law of Treaties of 1969 (VCLT).²⁸ According to the article 18 of the VCLT, states have the obligation not to defeat the object and purpose of a treaty prior to its entry into force. Both Applicant and Respondent are contracting states to the CTBT.
24. Back in 1996, the ICJ concluded in its Advisory Opinion on the *Legality of the Threat or Use of Nuclear Weapons* that "the current state of international law, and of the elements of fact at its disposal, the Court cannot conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defense, in which the very survival of a State would be at stake".²⁹ Hence, nuclear weapons are not definitively illegal under international law, but limited to a very narrow scenario where its use –or threat of use- could be legal. This raises several issues.
25. On the one hand, several States possess nuclear arsenals as part of a policy of deterrence³⁰ aimed at discouraging attacks from other nuclear States.³¹ Moreover, these States continue to invest in their nuclear capabilities worldwide for many reasons. Further, it could be argued that no *opinio juris* exists, as States might only be disarmed or renounced their nuclear plans for circumstantial reasons³² or reduced their arsenals pursuant to bilateral agreements.
26. On the other, there is also State practice that could be considered extensive and virtually uniform regarding nuclear demilitarization. Over a hundred States from every region in the

²⁶ UNODA, Fact Sheet on Comprehensive Nuclear-Test-Ban Treaty, available at [http://www.un.org/disarmament/WMD/Nuclear/About_CTBT.html]

²⁷ BAUER, S AND O'REILLY, C. (2016), "The Comprehensive Nuclear-Test-Ban Treaty Organization (CTBTO): Current and Future Role in the Verification Regime of the Nuclear-Test-Ban Treaty", in BLACK-BRANCH, J.L AND FLECK, D. (eds.), *Nuclear Non-Proliferation in International Law - Volume II*, T.M.C. Asser Press, p. 133.

²⁸ Vienna Convention on the Law of Treaties, 1155 U.N.T.S. 331 (hereinafter "VCLT").

²⁹ *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, (8 July 1996), ICJ Rep. 1996, p.

³⁰ National Security Strategy of the United States of America 30 (2017); State Council Information Office of the People's Republic of China, China's Military Strategy 9 (2015); French Strategic Review of Defence and National Security 2017 Key Points pp.1, 6 (2017); Military Doctrine of the Russian Federation p.21(c) (2014); HM Government, National Security Strategy and Strategic Defence and Security Review 2015: First Annual Report 2016, 13 (2016); Statement by Ambassador Amandeep Singh Gill, Permanent Representative of India to the Conference on Disarmament, UNGA 72nd Session – First Committee (Oct. 12, 2017) p.3; Statement by HE Mr. Shahid Khaqan Abbasi, Prime Minister of the Islamic Republic of Pakistan, UNGA 72nd Session – First Committee (Sep. 21, 2017) 5; Statement by HE Mr. Ri Yong Ho, Minister for Foreign Affairs of the Democratic People's Republic of Korea, UNGA 72nd Session – First Committee (Sep. 23, 2017) 3-4, 8; Warsaw Summit Communiqué, Issued by the Heads of State and Government participating in the meeting of the North Atlantic Council in Warsaw (July 9, 2016) pp.52, 53.

³¹ *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, (8 July 1996), ICJ Rep. 1996, p.48.

³² BELLANY, I. (2011), "Terrorism and Weapons of Mass Destruction", in LODGAARD, S. (ED.) *Nuclear Disarmament and Non- Proliferation Towards a nuclear- weapon-free world?*, Routledge, P. 131.



world have negotiated in good faith towards nuclear disarmament through the establishment³³ and recognition³⁴ of five Nuclear-Weapon-Free zones and the demilitarization of Antarctica.³⁵ Moreover, States have concluded several treaties aimed at reducing their nuclear arsenals and prohibiting nuclear tests.³⁶ Further, several States have recently celebrated the Treaty on the Prohibition of Nuclear Weapons, which forbids States Parties to develop, test, produce, manufacture, acquire, possess or stockpile nuclear weapons.³⁷

27. Both States in the case at bar are parties to the NPT, which Article VI states that “Each of the Parties to the Treaty undertakes to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control”. This obligation applies exclusively to the purposes of the NPT, however given the amount of UN members to the treaty, some might argue that it has become a rule of customary nature and *erga omnes* character.³⁸ Furthermore, the ICJ understood that this obligation pursuit the end of achieving nuclear disarmament in all its aspects,³⁹ and that nuclear disarmament can only be achieved with the cooperation of all States.⁴⁰ Hence, the interests of all States are affected.
28. On the other hand, Article IV of NPT read as follow: “Nothing in this Treaty shall be interpreted as affecting the inalienable right of all the Parties to the Treaty to develop research, production and use of nuclear energy for peaceful purposes without discrimination”. Indeed, the NPT seeks to prevent the spread of nuclear weapons and weapons technology to further the goal of achieving nuclear disarmament, but also to promote cooperation in the peaceful uses of nuclear energy.⁴¹ That makes the burden of proof higher, since not every nuclear test relates to the nuclear arms race.

³³ Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean, 1967, 634 U.N.T.S. 28; South Pacific Nuclear-Free Zone Treaty, 1985, 1445 U.N.T.S. 177; Treaty on the Southeast Asia Nuclear Weapon Free Zone, 1995, 1981 U.N.T.S. 129; Treaty on the Nuclear-Weapon-Free Zone in Africa, 1996, 35 I.L.M. 698; Treaty on a nuclear-weapon-free zone in Central Asia, 2006, 2790 U.N.T.S. 257.

³⁴ Additional Protocol I to the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean, 1967, 634 U.N.T.S. 28; Additional Protocol II to the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean, 1967, 634 U.N.T.S. 281; Protocol I to the South Pacific Nuclear Free Zone Treaty, 1985; Protocol II to the South Pacific Nuclear Free Zone Treaty, 1985; Protocol III to the South Pacific Nuclear Free Zone Treaty, 1985, Protocol I to the Pelindaba Treaty, 1996; Protocol II to the Pelindaba Treaty, 1996; Protocol to the Treaty on a Nuclear-Weapon-Free Zone in Central Asia, 2006.

³⁵ The Antarctic Treaty, 1959, 402 U.N.T.S. 71, Art. 1.

³⁶ Treaty on the Prohibition of the Emplacement of Nuclear Weapons and other Weapons of Mass Destruction on the Sea-bed and the Ocean Floor and in the Subsoil Thereof (Seabed Arms Control Treaty), 1971, 955 U.N.T.S. 115; Treaty Banning Nuclear Weapon Test in the Atmosphere, in Outer Space and under Water (Nuclear Test Ban Treaty), 1963, 480 U.N.T.S. 43; Comprehensive Nuclear-Test-Ban Treaty (CTBT), 1996, 35 I.L.M. 1439.

³⁷ Treaty on the Prohibition of Nuclear Weapons, 7 July 2017.

³⁸ *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, Declaration of President Bedjaoui (8 July 1996), ICJ Rep. 1996, pp. 273-274.

³⁹ *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, (8 July 1996), ICJ Rep. 1996, parr. 99

⁴⁰ *Ibid.* p.100.

⁴¹ UNODA, Fact Sheet on the Treaty of Non-Proliferation of Nuclear Weapons, available at [<http://www.un.org/disarmament/WMD/Nuclear/NPT.shtml>].



29. Even though it is unlikely to present a violation of the NPT, on the basis of a customary rule of *erga omnes* character regarding nuclear disarmament it would be reasonable to infer the violation of that rule by failure to comply with other international binding instruments that share the same object and purpose: achieving nuclear disarmament. That would be the case for example of the Intermediate-Range Nuclear Forces Treaty (INF), The Strategic Arms Limitation Talks (SALT I and II), Strategic Offensive Reduction Treaty (SORT), Measures for the Further Reduction and Limitation of Strategic Offensive Arms (New START), India-Pakistan Non-Attack Agreement, The Joint Declaration of the Denuclearization of the Korean Peninsula, the Lahore Declaration, etc.
30. This complicated legal background raises the issue of the existence or not of an international dispute between the Applicant and Respondent. A dispute is “a disagreement on a point of law or fact, a conflict of legal views or of interests” between parties,⁴² i.e. the claim of one party regarding the performance or non-performance of certain’ international obligations must be opposed to the others.⁴³ Whether a dispute exists is a matter for objective determination by the Court’s examination of the facts through the evidence presented by the parties and their conduct.⁴⁴ Particularly, “a dispute exists when it is demonstrated, on the basis of the evidence, that the respondent was aware, or could not have been unaware, that its views were “positively opposed” by the applicant”.⁴⁵
31. Evidence turn into a key issue, both to the preliminary objections and the merits. The ICJ Statute contains no rules restricting the admissibility of timely presented evidence.⁴⁶ The Court may use any means to ascertain the objective truth and it is not tied to any evidentiary system.⁴⁷ In practice, it is flexible regarding the admissibility of evidence.⁴⁸ Since in international law, the party alleging a fact has the burden of proof,⁴⁹ when it challenges the admissibility of the evidence, it has the burden of proving the grounds for its exclusion.⁵⁰

⁴² *Mavrommatis Palestine Concessions*, Judgment No. 2, 1924, P.C.I.J., Series A, No. 2, p. 11

⁴³ *South West Africa* (Ethiopia v. South Africa; Liberia v. South Africa), Preliminary Objections, Judgment, I.C.J. Reports 1962, p. 328; *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea* (Nicaragua v. Colombia), Preliminary Objections, Judgment, I.C.J. Reports 2016 (I), p. 50,

⁴⁴ *Questions relating to the Obligation to Prosecute or Extradite* (Belgium v. Senegal), Judgment, I.C.J. Reports 2012 (II), pp. 50-55; *Application of the International Convention on the Elimination of All Forms of Racial Discrimination* (Georgia v. Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2011 (I), pp. 53; *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea* (Nicaragua v. Colombia), Preliminary Objections, Judgment, I.C.J. Reports 2016 (I), pp. 71 and 73.

⁴⁵ *Obligations concerning Negotiations Relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament* (Marsh. Is. v. U.K.) I.C.J. Rep. 2016, (Oct. 5), p. 41.

⁴⁶ I.C.J. Statute, Articles 49 and 52; ROSCINI, M. (2015), “Evidentiary Issues in International Disputes Related To State Responsibility for Cyber Operations”, *Texas International Law Journal*, p. 269.

⁴⁷ *Oscar Chinn* (U.K. v. Belg.), 1934 P.C.I.J. (ser. A/B) No. 63 (individual opinion of Judge Van Eysinga), p. 146, 147.

⁴⁸ BENZING, M. (2012), “Evidentiary Issues”, in ZIMMERMANN, A., ET AL. (ED.), *The Statute of the International Court of Justice*, Oxford University Press, p.11.

⁴⁹ *Maritime Delimitation in the Black Sea* (Rom. v. Ukr.), 2009 I.C.J. 61 (Feb. 3), p.68; *Pulp Mills on the River Uruguay* (Argentina v. Uruguay), I.C.J. Rep. 2010, (Apr. 20), p.162.

⁵⁰ *Minquiers and Ecrehos* (Fr. v. U.K.) 1953 I.C.J. 47 (individual opinion of Judge Levi Carneiro), p. 99.



32. It is a general principle that proof may be administered by means of circumstantial evidence⁵¹ - like newspapers, NGO reports, etc. - when there is none or limited access to direct evidence, as soon as circumstantial evidence does not contradict direct evidence available or accepted facts.⁵² However, it must leave “no room for reasonable doubt”,⁵³ as happened for example, in the *Corfu Channel* Case when the ICJ resorted to circumstantial evidence to find Albania responsible.⁵⁴ Some might even say that in international adjudication, circumstantial evidence creates a *prima facie* presumption that is sufficient to discharge a party’s burden of proof⁵⁵ and shift it.⁵⁶

Overview of the Applicant Party

33. Since 2014, the Russian annexation of Crimea caused tension between Ukraine and the Russian Federation reached their higher point. This conflict already has one pending case in the ICJ.⁵⁷
34. For that reason, Ukraine concerns regarding military activities of its biggest and most powerful neighbor have intensified. One of the main critical issues between them, since the dissolution of the USSR, has always been the denuclearization of Ukraine and the continued nuclear development of Russia. In 1994, after being one of the most potent nuclear states, Ukraine formally joined the NPT and agreed to destroy its once vast nuclear arsenal with the conditions established in the Budapest Memorandum on Security Assurances. In that memorandum, Russia –alongside the USA and the UK, with China and France joining afterwards- committed not to attack Ukraine, as a guarantee for its decision to destroy its nuclear arsenal. In fact, the willingness of Ukraine to preserve its territorial integrity was a key factor to that negotiation.⁵⁸ Besides the armed conflict in Crimea and the Russian involvement on it –particularly its declarations on the use of nuclear weaponry⁵⁹, Ukraine reaffirmed its commitment to the NPT.⁶⁰ Nevertheless, some declarations by Ukrainian officials seemed to point out Ukraine’s willingness to return to the nuclear arm race.⁶¹

⁵¹ *Corfu Channel* (UK v. Alb.), 1949 I.C.J. 4 (Apr. 9), p. 18; *Velazquez Rodriguez v. Honduras*, Inter-Am. Ct.H.R. (ser. C) No. 4 (Jul. 21, 1989), p.170; *Iran v. United States*, 11 Iran-US CTR, 271, (1986), p. 276.

⁵² *Corfu Channel* (UK v. Alb.), 1949 I.C.J. 4 (Apr. 9), p. 18; SCHARF, M. (2012), “The International Court of Justice’s Treatment of Circumstantial Evidence and Adverse Inferences”, *Chicago Journal of International Law*, p. 129.

⁵³ *Corfu Channel* (UK v. Alb.), 1949 I.C.J. 4 (Apr. 9), p. 18; *Ireland v. UK*, Eur.Ct.H.R., No. 5310/71, (Jan. 18 1978), p.161

⁵⁴ *Corfu Channel* (UK v. Alb.), 1949 I.C.J. 4 (Apr. 9), p. 18.

⁵⁵ *Rockwell International v. Iran*, 23 Iran-US CTR 150, (1989), p. 188.

⁵⁶ *Eritrea v. Ethiopia - Partial Award - Central Front*, 2004 Eritrea Ethiopia Claims Commission (Apr. 28), p.95; *Genocide Case* (Bos. v. Yug.) 1993 I.C.J. 325 (Sep. 13) (separate opinion of Judge Lauterpacht), p.67.

⁵⁷ *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination* (Ukraine v. Russian Federation).

⁵⁸ For a complete legal analysis of the conflict on Crimea see MEREZHKO, O. (2015), “Crimea’s Annexation by Russia –Contradictions of the New Russian Doctrine of International Law”, *ZaöRV* 75, pp. 167-194.

⁵⁹ <https://www.bbc.com/news/world-europe-31899680>

⁶⁰ <https://obamawhitehouse.archives.gov/the-press-office/2014/03/25/joint-statement-united-states-and-ukraine>

⁶¹ <https://www.globalresearch.ca/ukraine-has-the-capabilities-to-develop-nuclear-weapons-how-will-russia-react/5662783>



35. Russia's drive to modernize and expand its military capabilities - which dates back to the beginning of President Putin's first term - catches Ukraine in the crossfire between the members of the North Atlantic Treaty Organization (NATO) and the Russian Federation. Indeed, NATO has been deeply involved in the conflict regarding Crimea, which has included military assistance to Ukraine and sanctions against Russia.⁶² Especially after Russia's blockade over Ukrainian ports in the Black Sea.⁶³
36. While Ukraine maintains a great commitment to the NPT and nuclear demilitarization, Russia has recently been accused by the US of carrying out low-yield supercritical nuclear test in the Arkhangelsk region, around Novaya Island,⁶⁴ thus going against the CTBT's true zero-yield policy and the moratorium created by both the US and Russia during the early 90's.⁶⁵ Furthermore, a recent missile blast accident in Russian Arctic raised suspicions on its compliance, since nuclear radiation traces were detected,⁶⁶ while two Russian monitoring stations went silent.⁶⁷ As a contracting state of the CTBT, Ukraine believes Russia has defeated the CTBT's object and purpose.
37. Moreover, Ukraine considers Russia's actions led to the termination of the INF, hence violating its obligations under international law regarding nuclear disarmament. After several previous accusations by the US of Russia violating the treaty,⁶⁸ on 2nd February 2019 President Trump provided a six-month notice of withdrawal from the INF, due to 2nd August 2019. President Trump declared that Russia failed to return to full and verified compliance of the treaty through the destruction of its noncompliant missile system—the SSC-8 or 9M729 ground-launched, intermediate-range cruise missile.⁶⁹ Following this, President Putin suspended the application of the treaty, which led –alongside with the alleged Russian violation of the CTBT- to the final decision by the US to terminate it.
38. This situation raises uncertainty regarding the future of the New START treaty, which expires in 2021, and the achievement of full global denuclearization. Ukraine considers there is an international responsibility attributable to Russia for this new crisis.

⁶² <https://www.cfr.org/interactive/global-conflict-tracker/conflict/conflict-ukraine>

⁶³ <https://www.nbcnews.com/news/world/russia-ukraine-sea-clash-puts-spotlight-1994-agreement-n941601>

⁶⁴ <https://www.nytimes.com/2019/05/29/us/politics/russia-nuclear-tests.html>

⁶⁵ <https://www.thereaganvision.org/u-s-nuclear-weapons-testing-moratorium/>

⁶⁶ <https://www.theguardian.com/world/2019/aug/26/russia-confirms-radiation-spike-after-weapons-test-blast>; <https://www.themoscowtimes.com/2019/08/30/russias-mystery-nuclear-explosion-occurred-during-missile-recovery-at-sea-reports-a67084>; <https://www.nature.com/articles/d41586-019-02574-9>; <https://www.businessinsider.com/russian-missile-disaster-shows-signs-nuke-reactor-blew-up-experts-2019-8>

⁶⁷ <https://www.newsweek.com/skyfall-burevestnik-nuclear-missile-russia-zerbo-1454954>

⁶⁸ <https://www.scmp.com/news/world/article/1562244/us-accuses-russia-violating-nuclear-treaty-mid-range-missile-tests>

⁶⁹ <https://www.state.gov/u-s-withdrawal-from-the-inf-treaty-on-august-2-2019/>



Overview of the Respondent Party

39. Despite certain evidence that suggests otherwise,⁷⁰ Russia has continuously denied its involvement in the Crimean conflict. Hence, it believes that it has complied with, the Budapest Memorandum on Security Assurances. Given the number of nationals of the Russian Federation living in Crimea, that State has always declared on its right to protect them from any harm committed in Ukraine or by its Government.⁷¹ In fact, Russia claims historic rights over the peninsula, where the majority of its population is Russian or from Russian origins.⁷²
40. Regarding the US allegations of low-yield nuclear test by Russia, Lassina Zerbo, the executive secretary of the Comprehensive Nuclear-Test-Ban Treaty Organization (CTBTO) seems to conclude that so far there is not enough evidence to support that Novaya's blast corresponds to a nuclear weapon test –even though the power of the blast was more powerful than Hiroshima and Nagasaki bombs-.⁷³ Furthermore, even if there were nuclear activities, evidence does not conclusively support so far that activity was unusual.⁷⁴
41. A few months later the missile blast accident occurred in Arkhangelsk region, while some Russian nuclear monitoring stations went off-line.⁷⁵ However, the failure in the system was communicated by the Russian authorities themselves, supporting Putin's claims that Russia has nothing to hide regarding the incident.
42. As to the INF termination, Russia has always denied US allegations of non-compliance. In fact, the termination process was started by President Trump, being the Russian suspension issued only after US's notification of withdrawal,⁷⁶ decision finally supported by the NATO.⁷⁷ Russia has accused the US of using that as an excuse to develop new missiles and stocking tensions in between them. In fact, Russia has continuously denounced that its missile defense shield hosted by NATO allies was in violation of the INF.⁷⁸ For that reason, Russia considers that the responsibility on the INF termination lies on the US.
43. From the Russian perspective, it has not defeated the object and purpose of the CTBT and no violation was committed regarding its obligations on nuclear demilitarization. Moreover, Ukraine has no standing in the case, due to lack of evidence and an actual dispute with Russia on this matter.

⁷⁰ <https://www.theguardian.com/world/2019/aug/18/new-video-evidence-of-russian-tanks-in-ukraine-european-court-human-rights>

⁷¹ https://www.washingtonpost.com/world/transcript-putin-says-russia-will-protect-the-rights-of-russians-abroad/2014/03/18/432a1e60-ae99-11e3-a49e-76adc9210f19_story.html?noredirect=on

⁷² <https://www.bbc.com/news/world-europe-26415508>

⁷³ <https://www.theguardian.com/world/2019/may/30/nuclear-watchdog-no-evidence-russia-violating-test-ban>

⁷⁴ <https://edition.cnn.com/2019/05/30/politics/us-claim-russia-nuclear-treaty-breach/index.html>

⁷⁵ <https://www.timesofisrael.com/atomic-watchdog-russian-monitoring-stations-went-silent-after-mystery-blast/>

⁷⁶ <https://www.bbc.com/news/world-us-canada-49405499>

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https://www.nato.int/cps/en/natohq/official_texts_168164.htm?utm_source=twitter&utm_medium=jensstoltenberg&utm_campaign=inf-nac

⁷⁸ <https://www.aljazeera.com/news/2019/08/russia-accuses-stoking-tensions-missile-test-190820074722935.html>



Notes on the Simulation

44. Firstly, judges and advocates should be familiar with the following terms:
45. Burden of proof - a duty placed on a party to prove or disprove a disputed fact. In the ICJ the burden of proof lies with the Applicant, the party that submitted the case to the Court. There are different levels of burdens that depend largely on the type of court.
46. Preponderance of the evidence - the type of Burden of Proof that is used in the ICJ. This means that if a Judge is convinced by more than 50%, even if it's by 50.000001% then the Applicant has met their burden of proof and they have won the case. However, if a Judge 'sits on the fence' and has a 50/50 split decision then the Applicant hasn't met their burden of proof and the case is won by the Respondent.
47. The Prayer - a statement made at the end of the opening and closing statement of each party to the case which outlines what each Party wants the Court to rule in the verdict. The prayers of each party typically fully contradict each other.
48. Judges should expect to analyse written material as well as the statements delivered by the disputing Parties during oral proceedings. The ICJ is not like other Model United Nations committees and at some points of the simulation, each delegate will have to speak in turn, as directed by the President of the Court.
49. Most Judges are expected to take part in the writing of the Judgements, either in the main body of the Judgement or as separate opinions or declarations. Further guidance on writing these Court documents will be provided at the conference. It is important to remember that although the case is based on real legal treaties, the disputing parties never appeared in the real Court over this issue. For the purposes of the simulation, the Registry of UA-MUNC Geneva 2019 will supply you with a mix of real and fictional information to make the simulation more comprehensive and engaging.



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