International Court of Justice (ICJ)

London International Model United Nations

17th Session | 2016
Introductory Letter

It is my pleasure to welcome you on behalf of the ICJ chairing team and the LIMUN Secretariat to LIMUN 2016. Since it would be rather impolite to continue without introducing my colleagues, I will get right to it. Let it be noted that justice is completely a female task this year!

My amazing colleagues are Julia Marssola and Carolina Abecasis. Julia will serve as the Vice-President and has already taken part in more than fifteen Model United Nations conferences since 2011. She is currently pursuing a law degree at the University of Brasilia, where her main interests are international law and philosophy.

Carolina, this year’s Registrar, is a Portuguese student studying law at the London School of Economics. She has participated in 12 MUN conferences, where most of them were in Lisbon, but a few in Oporto and The Hague. This ICJ will also mark her first university level Model UN!

As for myself, I am a Media Associate for Best Delegate and a UN4MUN ambassador.

Always at your disposal for any inquiries, and we are really looking forward to an amazing edition!

Justice will be served,

Alexandra Sideris
President
Introduction to the International Court of Justice

From the beginning of the past century, humankind has made efforts for an international judicial mechanism to regulate relations between states. Following the First World War a Permanent Court of International Justice, hereinafter PCIJ, was founded and served in a rather innovative way the spirit of Justice. Most of the applicants did comply\(^1\) with its dynamic and quite original decisions\(^2\).

Only in 1922, when the PCIJ was created to serve as the judicial arm of the League of Nations, did the international judicial system become relatively coherent and structured.\(^3\) Then, after the Second World War, efforts at creating a judicial organ to the new United Nations led to the creation of the International Court of Justice.


In particular, on 30th October 1943, following a conference between the great powers including China, the USSR, the United Kingdom and the United States, a joined statement was issued stressing the necessity for "an international organization, based on the principle of the sovereign equality of all peace-loving States and open to membership by all such States, for the maintenance of international peace and security." Shortly afterwards, in April 1945, a committee of jurists representing 44 States met in Washington, and were entrusted with the preparation of a draft Statute for the future International Court of Justice. That document was finally presented during the proceedings of the San Francisco Conference which, during the months of April to June 1945, set the necessary framework for the further elaboration of the United Nations Charter.

At the San Francisco Conference, it was decided that an entirely new Court should be created on the basis of the PCIJ’s previous experience. Therefore the bench of the PCIJ resigned on 31 January 1946, followed by the election of the first Members of the ICJ at the First Session of the United Nations General Assembly (held at Central Hall Westminster where the LIMUN Opening Day takes place). The ICJ currently serves as the world's highest but not the only international court and the principal judicial organ of the United Nations. For its composition, the United Nations General Assembly and the Security Council elect fifteen judges who work for nine years in their position. Furthermore, the official languages of the ICJ are English and French.

The Court’s role is to settle contentious cases and to give advisory opinions, having a major impact upon the general system of international law, leading to new and lasting direction to solve judicial matters. Contentious cases are legal disputes submitted by the States who want to seek the ICJ’s jurisdiction, whilst advisory opinions refer to legal questions originally dealt with by an authorized United Nations organ and specialized agencies.

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Marshall Islands vs. Nine Nuclear States

1. Factual Summary of the case

In 2014, the Republic of the Marshall Islands, hereinafter RMI, instituted proceedings against three (the United Kingdom, India and Pakistan) of the nine nuclear states (the others are the United States, Russia, France, China, Israel and North Korea). The case refers to the “Obligations concerning negotiations relating to cessation of the nuclear arms race and to nuclear disarmament”.

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<thead>
<tr>
<th>Year</th>
<th>Event</th>
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<tr>
<td>2014</td>
<td>RMI vs. UK, IN, PK</td>
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<td>1968</td>
<td>NPT opens for signatures</td>
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<td>1970</td>
<td>NPT entered into force.</td>
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2. Arguments of each side

2.1 General Remarks

Before commencing a general discussion of the topic, it is important to note that this case is not commonplace in the ICJ, which often hears cases relating to land, border and maritime disputes. The case that the RMI has brought

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against the UK, India and Pakistan is of international importance and relates to the issue of nuclear disarmament, which is extremely relevant and controversial within other organs of the UN—the General Assembly, the Security Council and the UN Office for Disarmament Affairs, to name a few.

The most significant part of this discussion is the law. Article 6 of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) is of utmost relevance. It is particularly important to discuss whether Article 6 does or does not constitute customary international law. Customary international law is relevant in terms of whether the three states have breached it. It is also important to consider whether the nuclear programs of the three states are in breach of Article 51 of the Charter of the UN, the ICJ Advisory Opinion of 1996 and the Security Council Resolution 1172 of 1998. Another relevant point is the good faith requirement.

2.2. Republic of Marshall Islands (RMI)—the applicant

There are several key points to bear in mind when discussing this case. The first point is that the RMI is not seeking monetary compensation for the human and environmental costs of nuclear testing on the islands and surrounding area. The legal basis of the lawsuit lies on Article VI of the Nuclear Non-Proliferation Treaty (NTP), which states that possessors must “pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament”.

The second point is that, even though the RMI wants to institute proceedings against all nine nuclear states, it has only instituted proceedings against three of the nine—the UK, India and Pakistan—for reasons that are not particularly...

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relevant to the discussion. Therefore, only these three states are being tried in our ICJ.

The third point is that, while it may be tempting to treat the UK as one case and India and Pakistan as other cases, you should remember that the separate applications submitted by the RMI are very similar and that the RMI is asking that the Court enforce very similar measures on the three states. Keeping this in mind, it is true that the UK, on the one hand, and India and Pakistan, on the other, have been brought to Court for slightly different reasons.

Although the human and environmental costs incurred by the RMI do not relate directly to this case, since the RMI is not seeking monetary compensation for the damage, it is still important to acknowledge the damage caused during the years of the Cold War. One of the main reasons for why the RMI is instituting proceedings against the three states is because of the human and environmental costs that it still suffers as a result of the nuclear testing that took place during the past century. The RMI, in bringing the three states to Court, tries to attract international attention towards an issue that is often disregarded and overshadowed by present-day tragic events in the world. The RMI is an NPT non-nuclear state. It was the site of nuclear testing for 12 years, from 1946 to 1958, during which 67 nuclear weapons were detonated in the RMI. During this time, the RMI was under the trusteeship of the US. To this day, the RMI still suffers the effects of radioactivity, most notably in terms of human health issues and environmental degradation, which both affect its economy.

<table>
<thead>
<tr>
<th>1) No monetary compensation</th>
<th>violation of Ar 6/NPT-good faith principle</th>
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<tr>
<td>2) 3/9 Nuclear States in front of the Court</td>
<td>UK, IN, PK</td>
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<td>3) Different but simultaneous cases</td>
<td>Slightly different reasons for each Respondent</td>
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<td>4) MRI-not a nuclear State</td>
<td>international attention to the problem</td>
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17 Ibid. 5-7.
2.3 The Respondents.

2.3.1 The UK

The RMI claims that the UK has breached Article 6 of the NPT, customary international law and the good faith requirement because of its lack of initiative to partake in nuclear disarmament negotiations and the fact that it maintains and continuously modernizes its nuclear arsenal. The RMI argues that the UK has shown a lack of initiative to contribute to nuclear disarmament negotiations because it has constantly opposed the negotiation of a Nuclear Weapons Convention. The UK opposed the General Assembly’s resolution on “Follow-up to the Advisory Opinion of the International Court of Justice on the Legality of the Threat or Use of Nuclear Weapons”. The resolution is meant to be a platform for a Nuclear Weapons Convention. The UK has shown opposition to this and other initiatives. Furthermore, the UK has plans to modernize Trident, its nuclear weapons system. In 2006, the UK government published a White Paper that called for the replacement of Trident by a more sophisticated system. Other steps have been taken. On the other hand, the British government has progressively reduced its nuclear stockpile. The latest reduction announcement was in the Strategic Defense and Security Review of 2010. Although the UK is working to decrease its nuclear arsenal, it has stated that national security is its main priority. The British government has shown commitment to the cause of nuclear disarmament and is very transparent in matters relating to its nuclear policy.

| RMI-lack of nuclear disarmament initiatives | UK. huge reduction/national security |

2.3.2 India

The RMI also claims that India and Pakistan have breached Article 6 of the NPT, customary international law and the good faith requirement, but for slightly different reasons to those of the UK. India and Pakistan do not have an accurate account of their current nuclear stockpiles. The Indian government stated, “Nuclear weapons are an integral part of our national security and will remain so, pending the global elimination of all nuclear weapons on a

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19 Ibid. 11-28.
22 The country’s current profile http://www.nti.org/country-profiles/india/nuclear/
The government has said that it would only use nuclear weapons in the event of a nuclear attack on Indian territory—this was later amended to the event of a “major attack against India” by biological or chemical weapons. Therefore, India does not have a clear no-first-use policy, which is controversial. India is neither a party to the NPT nor the Comprehensive Test Ban Treaty.

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<th>Ar.6 NPT, good faith principle</th>
<th>not a party either to NPT nor CTBT</th>
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<td>no accurate account of nuclear arsenal</td>
<td>national security</td>
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2.3.3 Pakistan
The Pakistani government refuses to adopt a no-first-use policy mainly because of conflict with India. Pakistan is also not a party to the NPT or the CTBT. Furthermore, Pakistan is building and improving its nuclear arsenal. On the other hand, Pakistan has a policy of credible minimum deterrence. The conflict between India and Pakistan stems from the struggle to establish “hegemony” over South Asia. It is well known that nuclear weapons play a credible role in preventing wars. This is due to fear of mutual annihilation.

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<th>Ar. 6 NPT-good faith requirement</th>
<th>constant conflict with India</th>
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<td>no clear registrar of nuclear arsenal</td>
<td>reduction efforts.</td>
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3. Claims and Questions presented in front of the Court

The first important point of law to consider is Article 6 of the NPT, which reads: “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

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23 The relevant statement, available at http://indiatoday.intoday.in/story/India+says+it+won’t+sign+NPT/1/63491.html
24 For a detailed analysis of the Indian position, see http://www.ejiltalk.org/the-marshall-islands-case-against-indias-nuclear-weapons-program-at-the-icj/
25 Ibid
complete disarmament under strict and effective international control.”

The UK is a party to the NPT, but India and Pakistan are not parties to the treaty. In its applications, the RMI argues that India and Pakistan still have an obligation to comply with Article 6 because the article was reaffirmed in the ICJ Advisory Opinion of 1996, making it customary international law. Article 6 is relevant because it expressly obligates states to negotiate in good faith measures relating to cessation of the nuclear arms race and nuclear disarmament. The question here is whether Article 6 is or is not customary international law. Furthermore, the Court must consider whether the ICJ Advisory Opinion is or is not customary international law, and thus whether or not it extends Article 6 to India and Pakistan.

Customary international law, according to the ICJ’s statute, refers to international obligations arising from established state practice, as opposed to obligations arising from formal written international treaties and is one of the main sources of international law. Customary international law can be established by showing (1) state practice and (2) opinio juris. Put another way, ‘customary international law’ results from a general and consistent practice of states that they follow from a sense of legal obligation.”

On this definition, or a similar one so long as it comes from a reliable source, the applicant must argue why the respondents have breached customary international law, and the respondents must argue why they have not breached customary international law. As aforementioned, a key point is to determine whether Article 6 and the ICJ Advisory Opinion are customary international law, as claimed by the RMI. Another point would be, related to the status of Advisory Opinions and ICJ’s documents in general in their evaluation as sources of law.

It has to be noted that customary international law violations could later result in preventive conventional rules. Therefore the question deriving from the potential customary nature of this obligation has to evolve through the initial definitive elements of custom. Then, it has to be examined which of them plays the ultimate importance, the time element or the number of States practising the very exact behaviour. Lastly, if it is to be considered as such, it should also be examined whether the Respondents are also applying rules of customary importance or could possibly claim that there are reasons precluding

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wrongfulness. An indicative one could be the State of Necessity\textsuperscript{33} in the case of the Respondents. The notion of self-defence could also be examined but, in a lato sensu context and always with respect towards the notion of proportionality.

As far article 51 of the Charter of the UN; is another important piece of international law that must be taken into consideration. Article 51 was reaffirmed in the ICJ Advisory Opinion along with Article 2, paragraph 4. Article 51 reads, “Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.”\textsuperscript{34} Article 51 is important because a threat or use of force by nuclear weapons is not completely unlawful so long as it is not contrary to the article. The same applies for Article 2, paragraph 4. In determining whether the UK, India and Pakistan are within the limits of the articles, based on the evidence presented, the Court can decide whether the articles are in favour of the RMI or the three states. In other words, the Court must determine whether the UK’s, India’s and Pakistan’s nuclear programs are justified under the articles.\textsuperscript{35}

The ICJ Advisory Opinion of 1998 is of utmost importance to the case. The World Health Organization first put forward the issue of the legality of the threat or use of nuclear weapons to the ICJ, but it was not within the WHO’s legal capacity to do this. The General Assembly put forward the same question in 1994. The Court addressed the question in its Advisory Opinion and came to the conclusion that neither customary nor conventional international law provides authorization or prohibition for the threat or use of nuclear weapons. As aforementioned, the ICJ decided that any threat or use of nuclear weapons contrary to Article 2, paragraph 4, or Article 51 of the Charter of the UN was unlawful. Furthermore, the Court ruled that a threat or use of force of nuclear

weapons should be compatible with the international law applicable in armed conflicts. The Court stated that it could not rule that nuclear weapons were illegal because in extreme cases of self-defence it might be that they should be legal. The Court also declared that negotiations towards nuclear disarmament should be pursued in good faith and brought to a conclusion.\textsuperscript{36} The UK government argued that the White Paper that it published in 2006 on the replacement of Trident did not violate any of the UK’s treaty obligations; however, this is debatable.\textsuperscript{37}

The Security Council Resolution 1172 of 1998 relates to India and Pakistan directly. When the resolution was passed, India and Pakistan had recently conducted nuclear tests. The Security Council was concerned and afraid that this would lead to a nuclear arms race in South Asia. The resolution condemns the nuclear tests conducted by India and Pakistan in the same year. It demands that all nations cease to conduct nuclear tests in accordance with the CTBT. It urges India and Pakistan to resume dialogue, especially on matters that relate to peace and security (e.g. Kashmir). Furthermore, it calls upon the two nations to stop their nuclear weapons development programs.\textsuperscript{38} It seems that India and Pakistan have failed to meet most requirements, but it is also true that the two states are not parties to the CTBT, and thus it is questionable how much they are governed by the resolution.

The last main point of law that must be addressed is the good faith requirement, which the RMI claims all three states have breached and asks for the Court to have them correct this. Good faith “constitutes a ‘fundamental principle’ of international law [...]. Not only is it a general principle of law for the purposes of Article 38(1)(c) of the Statute of the International Court of Justice and a cardinal principle of the Law of Treaties, it also encapsulates the essence of the Rule of Law in international society and is one of the Principles of the United Nations.”\textsuperscript{39} The RMI argues that the UK, India and Pakistan have not been negotiating in good faith because they have been avoiding negotiations (the UK with other countries, while India and Pakistan with each other). Furthermore, there is evidence that all countries are modernizing or intend to modernize their nuclear stockpiles. On the other hand, the


respondents may counter that this is within their treaty obligations, and thus there is no breach of the good faith requirement.
To conclude, this rather new case will inevitably challenge the existing legal doctrines and will possibly pose problems as far as individual research is concerned. It is one of the most vivid examples though, that International law is constantly evolving and the States will always try to adapt to its demands.

4. Witnesses to be called in front of the Court

The United Nations Secretary-General could serve as a great example of advice and potential guidance for every country involved. Moreover, the ambassadors of each of the 9 countries involved, as the remaining 6 ones could be possibly intervening or be used for further clarifications on the factual situation, could be considered as potential witnesses. Lastly, the boards of relevant organs like the General Assembly First Committee (Disarmament) or the International Atomic Energy Agency could be helpful as advisors. In general, all of the testimonies excluding the ambassadors of UK, India and Pakistan would be of consultative status.

Let it not be forgotten that evidence can be presented in front of the Court as well. The procedure will be conducted as described in articles 57, 58, 62, 63 and 70 of the Court’s Statute.40

5. Questions to be addressed in the judgement

Procedural Questions:
A) Will the rest of the countries be called to testify?
B) Will the case be considered in whole or 3 separate ones?

Claims to be discussed:
In this case only the Applicant has a demand from the Court, to adjudge and declare that Ar.6 of NPT has been violated and that customary international law, and the principle of good faith have been violated. The Respondents will have to contradict the abovementioned arguments.

Theoretical Questions:
A. Can a State by committed by a treaty to which is not a party but has simply expressed general compliance to its rules?

40 The text can be found at http://www.icj-cij.org/documents/index.php?p1=4&p2=3&
B. Should the definition of custom be elaborated? Is the current list of definitions sufficient enough?

C. Status of ICJ’s decisions with regards to sources of public international law.

D. The doctrine of self-defence and the notion of good faith.

E. Reasons precluding wrongfulness from an international obligation.

6. Further reading

A) For Public International Law:

- A Manual of Public International Law. Edited by Max Sørensen, Professor of International and Constitutional Law, Aarhus University.

B) For the International Court of Justice

- The International Court of Justice: Its Future Role After Fifty Years Edited by A. Sam Muller, Sam Muller, David Raič, J. M. Thuránszky Martinus Nijhoff Publishers 2004

C) On factual updates of the case

- http://www.southasianalysis.org/node/1622
7. Bibliography

Facts of the case:

ICJ Documents:

UN Documents:

Manuals-Publications:


Relevant Sites:

- For a detailed analysis of the Indian position, see http://www.ejiltalk.org/the-marshall-islands-case-against-indias-nuclear-weapons-program-at-the-icj/
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  #LIMUN2016

**Agenda & Rules of Procedure**

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Contact Details

For any enquiries relating to your committee proceedings or if you want to get in touch with your committee’s directors, or for submission of position papers:

- please e-mail: ecosoc@limun.org.uk

Other enquiries regarding the Conference:

- please e-mail: enquiries@limun.org.uk

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