



International Court of Justice

BACKGROUND GUIDE 1

Ukraine v. Russian Federation

Director's Letter

Welcome to the International Court of Justice and to the second iteration of Oakridge Model United Nations. My name is Jonathan Mio, a senior at the International School, in the US, and I am ecstatic to serve as your Director. After first being forced into MUN as a sophomore in high school, I've quickly grown as a delegate and staff member and have grown to love debate. Working alongside me on my dais team is the creative Shiwei Chen as Chair and the diligent Michael Li as Assistant Director.

The International Court of Justice is radically different from other MUN committees. Instead of delegates representing countries and writing resolutions, the ICJ instead consists of 15 unbiased judges who interpret and apply international law to cases brought to them by member states or other UN bodies. These judges' efforts eventually culminate in the writing of a legal opinion explaining their decision.

For our first topic, we have selected the annexation of Crimea. Only 18 UN member states, including Russia, recognize Crimea as part of Russia. The judges on the ICJ will need to set aside politics while deciding who violated international law and how during the annexation. The second topic is Germany v. Italy, 2008. This topic will be an opportunity for delegates to consider the responsibility of countries for heinous acts committed generations ago.

As a dais, we have produced the background guide for this committee; it will give you an understanding of the topic and a starting point for your own research. Your research will prepare you to successfully contribute to the committee and write your opinion, so please dedicate an appropriate amount of time to it. Position papers are mandatory for awards consideration and should be sent to icj@oakridgemun.com

If you have any questions at all, please do not hesitate to reach out to us! Please feel free to email us at icj@oakridgemun.com or talk to us at any point during the conference. We look forward to meeting you at the conference!

Best regards,

Jonathan Mio
ICJ | Director

Committee Overview

Formed in 1945, the International Court of Justice is the primary judicial organ of the United Nations. It is the successor to the Permanent Court of International Justice (PCIJ) established by the League of Nations with English and French as its official languages. The court is seated at the Peace Palace in the Hague, making it the only one of the principal organs not seated in New York. Its role is to resolve legal disputes between member states of the UN in accordance with international law. The court can also give non-binding advisory opinions at the request of an authorized UN organ or specialized agency, often the General Assembly. This process is aptly named “advisory proceedings”. Once the court has come to a verdict, it will issue judgements and orders; judgements are verdicts which explain the legal reasoning of the ICJ, along with the concurring or dissenting opinions of other judges. Orders instruct one or more parties to take action.

Since the late-1890s, the international community has attempted to regulate relations between States through international courts. The Hague Peace Conference of 1907 adopted the Statute of the Permanent Court of International Justice (PCIJ Statute), establishing the Permanent Court of International Justice (PCIJ) to serve as an intergovernmental arbitrator. However, the outbreak of World War II in September 1939 led to a decline in the PCIJ’s activity, leading to its dissolution in April 1946. In 1942, the foreign ministers of the United States and the United Kingdom declared their interest in establishing a new international court, leading to deliberations regarding this topic. The drafting of what would later become the Statute of the International Court of Justice (ICJ Statute) continued at the San Francisco Conference in 1945, where the Charter of the United Nations (Charter) was adopted. After the adoption of the ICJ Statute, the necessary steps were taken to transfer power from PCIJ to the new Court, and the PCIJ met for the last time in October 1945. The first case was submitted to the nascent ICJ in May 1947.

The court is composed of 15 judges who are nominated by national groups and then elected for nine-year terms (one-third of the court is up for election each cycle) by the General Assembly and the Security Council through an absolute majority. No two judges may be of the same nationality, and dismissal of any judge from the court requires unanimous consent. There may also be judges ad hoc (as necessary). If a judge of the nationality of a country who is a party to a case is not on the court, the requisite state can make a request for a judge ad hoc of their nationality for the specific case.

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These judges are paid a fee per day worked and, for all intents and purposes, have the same rights, privileges, and responsibilities as the other judges. If there are more than two countries party to a case, it is common for blocs to form. If there are multiple countries in a single bloc, that bloc will typically be restricted to choosing a single judge ad hoc, even if multiple countries in the bloc do not have a judge of their nationality on the court. That being said, it is possible for there to be more than two blocs, so there can often be 17-18 judges on the court for specific cases. There is also a registry, which is the administrative organ. They process requests for cases from a country's Minister of Foreign Affairs and maintain the paperwork and cases of the ICJ. As such, the "World Court", as it is colloquially known, has an impact on the development of international law and jurisprudence.

According to Article 94, all UN members must comply with decisions made by the ICJ. The Security Council is responsible for enforcement action if parties do not comply. Matters, however, are complicated if one of the non-complying states in a case has veto power in the Security Council. A notable example of this loop-hole is in *Nicaragua v. the United States*, when the US violated international law by supporting the Contras as they rebelled against the Sandinistas. The US refused to comply with the ICJ when they ruled in favour of Nicaragua.

Topic Overview

In November 2013, resolutions for Ukraine to form closer alliances with the European Union were sabotaged by President Victor Yanukovich, which led to massive protests commonly known as the Euromaidan protests. Conflict between the pro-Europe and pro-Russian factions led to the deposition of President Yanukovich and his inner circle and in February of 2014, the establishment of a pro-EU interim government. The interim government of Ukraine was recognized by the international community, but not by Russia and Crimeans, who called it a coup d'état. This spawned massive protests, along with separatist movements in Crimea.

An example of this is Sevastopol attempting to illegally elect a Russian mayor, where no such office exists. This culminated in Russia occupying the Crimean parliament and forcing all the MPs to vote for a referendum to dismiss the interim government and join Russia. Journalists were not permitted to watch the proceedings, and there were allegations of voter intimidation. Only 64 out of 100 delegates were present to vote. Russian troops were present in the area in order to maintain order and prevent Ukraine from reabsorbing Crimea. Russia initially denied having military presence at the site, but eventually admitted to it, formally annexing Crimea later in 2014. The international community harshly criticized Russia's actions as violating Ukraine's territorial integrity and sovereign independence, noting how Russia claimed military bases and vessels in Crimea as their own. As Russia and Ukraine are both member states to the UN, they are bound to international laws and treaties regarding Ukraine's sovereignty, and right to non-intervention in its internal affairs.

Historical Analysis

Crimea changed hands many times in its history, going between quasi-independence and occupation by foreign countries. In 1954, the President of the Supreme Soviet of the USSR transferred Crimea to Ukraine. According to the Supreme Soviet Decree, close economic and cultural relations and geographical closeness were the key motivations behind this decree. Crimea thrived as a tourist destination as its population exploded and its industries expanded. In 1991, Crimea voted for independence from Russia but remained part of Ukraine due to the wishes of Russia and Ukraine. The presence of Russian and Ukrainian military forces in the area was worrisome for a select group of people. On one hand, Russia was worried about Crimea exercising too much sovereignty and opposed Crimean efforts to elect their own president. On the other hand, they also claimed that Crimeans were against being part of Russia, and that Ukrainian territorial sovereignty must be accepted.

Following the Euromaidan protests in 2014, in which former Ukrainian president Viktor Yanukovich suspended agreements to join the EU, Yanukovich was forced to step down from office due to widespread protests against his rule. An unelected governor then assumed power, labelled by Russia as a junta committing a coup d'état. Soon after protestors clashed at the building of the Supreme Council of Crimea in February 2014, unidentified troops who were likely Russian special forces occupied the Crimean parliament building. The parliament subsequently held an emergency session to dissolve the Crimean government and hold a referendum on the independence of Crimea. Russia claimed that 96% of voting Crimeans voted in favour of joining Russia. This statistic should be considered dubious at best, as no foreign observers were present to witness the referendum, whilst armed troops patrolled the area. Crimea then declared its independence formally and signed an accession treaty with Russia. Ukraine then withdrew its troops from the area, and by July 2015, Crimea was completely integrated with Russia. The UN condemned the annexation as illegal, with only a few allies of Russia backing them.

Timeline

19 February, 1954 - The USSR transfers Crimea to the Ukraine SSR, due to the perceived similarity in the two regions. Tourism in the area exploded and large infrastructure projects were developed soon after the transfer

1991 - With 60% turnout, 54% of Crimean voters vote for independence from Russia after the fall of the Soviet Union, along with the rest of Ukraine.

19 May, 1992 - Crimea officially annulled their proclamation of self-government and joined Ukraine. The Soviet Black Sea Fleet was divided between Russia and Ukraine.

May 1997 - The Treaty of Friendship, Cooperation, and Partnership was ratified, between Ukraine and Russia. It was needed due to rising tensions between Ukraine and Russia regarding Crimea. This was most notably due to Crimea attempting to elect its own president, a pro-Russian named Yuriy Meshkov, who attempted to disband the Crimean parliament following actions taken by said parliament to limit his power. Moscow then recognized Ukraine's borders and sovereignty over Crimea and Sevastopol (a federal city in Crimea). Russia also received the ability to use up to 80% of the Black Sea Fleet.

2006 - After US Marines arrived at Feodosiya, Crimea, to take part in the annual Ukraine-NATO military exercise, with the intention of simulating the defense of the peninsula in the case of a Russian coup attempt. Crimeans called them occupiers and demanded for them to go home, as they were worried about NATO and US influence. The signs used in the protests were predominantly in Russian. They eventually withdrew after the Crimean parliament deemed Crimea a "NATO-free zone".

22 February, 2014 - Ukrainian president Viktor Yanukovich was forced to flee the country after the Euromaidan protests that followed after he suspended a proposed association agreement with the EU. A new government was appointed by the unicameral parliament. While Ukrainians were mostly in support of the interim government, closer ties to the EU, and distancing from Russia, a significant percentage of Crimeans supported joining Russia, and did not recognize the interim government.

27 February, 2014 - Russian special forces occupy the Crimean Parliament shortly before an emergency session is held. The Crimean government was suspended and

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independence was declared. A referendum to join Russia was held, with reportedly 96% of the voting population supporting joining Russia. The vote did not receive international recognition and did not have international observers

18 March, 2014 - Crimea signed an accession treaty with the Russian Federation. Most UN member states, including Ukraine, called the treaty illegal, but Ukraine military forces withdrew from Crimea.

July 2015 - Dmitry Medvedev, former Russian prime minister, claimed that Crimea had been fully integrated into Russia, following a series of programmes intended to conjoin Crimea and Russia's economy and infrastructure. Crimea joined one of Russia's military districts, switched to the ruble, started using Russian phone codes, and wrote a new constitution approved by Russia, among other things.

18 September, 2016 - All of Crimea participated in Russia's legislative election, held every five years.

Current Situation

For the last several years, there have been new conflicts rising between Ukraine and Russia which can affect their relationship. In 2018, Ukraine's new Orthodox church was founded, due to a desire on the part of Ukraine to break free from the dominance of the Russian Orthodox church. This, they reasoned, could allow them to overcome the domestic division within its own Orthodox Church. However, Russia does not recognize Ukraine's Orthodox church. This division of churches can potentially lead into a religious war between the two countries. Another problem has been Russian interest in moving the gas pipelines which supply the EU from Ukraine to Germany. Germany and the EU, however, both strongly disagree with this idea and think that Ukraine should remain as the transit country. This may lead to a new economic conflict and raise the tensions between Russia and Ukraine.

At the end of 2019, the IMF treaty expired and the United States claimed that Russia was in violation of the IMF treaty by continuing to test and deploy a banned missile system. Although Russia denies this accusation, this conflict may have an impact on other countries as well. Another relevant incident is how a Russian Coast guard forcibly prevented two Ukrainian naval vessels from passing through the waterway, detaining the crews in the process. Crimea today has gone through significant changes for the past few years and many citizens have left the peninsula. At the same time, immigration into Crimea from Russia increased, including sailors and military officers, bringing new submarines, surface combatants and combat aircrafts. Economically, Moscow has also invested in more than \$10 billion in construction throughout Crimea, including railroads, highways, and bridges that now directly link Russia to Crimea.

Looking at the future, the Ukrainian government still seeks to get Crimea back. However, the capital city of Ukraine, Kyiv, is still lacking political, economic, and military leverage to help force a return. Even if Crimea fails to revert to Ukraine, the United States and Europe will still support Kyiv's position and maintain the Crimea-related sanctions on Russia. They will still not recognize Crimea's annexation. To get back Crimea, Ukraine will need to greatly improve their economic situation, dramatically rein in corruption, and draw in large amounts of foreign investment. Then, the people in Crimea who have seen no dramatic economic boom after becoming part of Russia will think that their economic lot would be better off back as a part of Ukraine. Overall, the situation is facing a stalemate and countries need to take action to solve this conflict.

United Nations Involvement

The UN has issued numerous resolutions condemning Russia's action and calling for the withdrawal of the military presence and the repatriation of Crimea to Ukraine. One such resolution passed on December 9, 2019, in the GA, is entitled "Problem of the militarization of the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, as well as parts of the Black Sea and the Sea of Azov". The UN also is calling for the Minsk Agreements, a series of protocols for stopping fighting near the Ukraine-Russia border, to be fully implemented, as they were passed in September 2014. The vote for the resolution in 2018 had 66 for, 19 against, and 72 abstentions. In 2019, the vote changed to 63 for, 19 against, and 66 abstentions. These numerous resolutions, and general UN condemnation of the annexation based on numerous violations of international law, have been largely ignored by Russia, who claims that they are simply respecting the will of the Crimean people, and that therefore the annexation is justified under principles of self-government.

The ICJ did hear a case entitled *Ukraine v. Russian Federation*, however, it is different from the case that will be proposed in OMUN II. This case concerned Russia's treatment of Crimean Tatars, a Muslim minority indigenous to Crimea. Many Tatars are openly critical of the annexation of Crimea, and Russia has forced many of them into exile, and attempted to silence the voices of those who remain through harassment, intimidation, and banning their media and government organizations. The tatars are also painted as extremists and are arrested on trumped-up charges. The ICJ stated that Russia could not prevent the Majils (body of Tatars) from meeting, and that it had jurisdiction to make such a request based on Russia's support of terrorist separatists in Crimea and Eastern Ukraine, and their history of discrimination against Tatars after the annexation. This case does not make a statement on Russia's annexation of Crimea. While the UN is well aware of the violations of international law, their actions have not been effective.

Bloc Positions

United States

The United States strongly opposes the annexation of Crimea and Russia's actions in the region. Part of this is because Ukraine has been a good international partner of the United States for more than two decades. At the same time, the United States is also interested in Russia's next moves and will observe how Russia reacts to Ukraine's new president. Some of its goals are to support Ukraine, reassure NATO allies, and penalize Russia with the goal of effecting a change in Moscow's policy. In the past, U.S. officials have launched particular programs to assist Ukraine by helping Ukraine diversify its energy sources and increase energy efficiency so that it can reduce its dependence on Russia. However, the United States should assist Ukraine more in the military where they should help strengthen its defensive capabilities. Robinson, Trindade, and Donoghue are judges from countries in the Americas, and will support Ukraine's stance, while having a more nuanced and facts-based approach.

European Union

The European Union does not recognize Russia's annexation of Crimea and strongly believes that this is a violation of international law. The EU has imposed substantial restrictions on economic exchanges with Crimea such as bans related to tourism, trading, investment, and more. For instance, Europeans may not invest in infrastructure projects in the following sectors: transport, telecommunications, energy, and the prospection, exploration and production of oil, gas and mineral resources. The EU Commission also announced new personal sanctions, bans and asset freezes. As such, Crimean public entities are not eligible to participate in EU programmes that Ukraine has joined. Most NATO countries also call on Russia to return control of Crimea to Ukraine; they will reiterate their full support for Ukraine's sovereignty and territorial integrity within its internationally recognised borders and territorial waters. In the past, the EU leaders condemned Russia's unprovoked violation of Ukrainian sovereignty and territorial integrity and called on Russia to immediately withdraw its armed forces and allow immediate access for international monitors. They have also called for negotiations between Ukraine and Russia and for a peaceful resolution of the crisis.

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In late 2018, however, Russian coast guard ships opened fire on a group of Ukrainian Navy vessels in the international waters as they were leaving the Kerch Strait. The EU reacted to this 3 months later by sanctioning the Russian individuals who were involved. It is clear that these sanctioning methods are not working and they have not stopped Russia from moving forward. There are three judges on the court who hail from European countries; Gaja, Abraham, and Tomka. They will likely have a slight bias towards Ukraine and will work together to write an opinion. Gevorgian, who is from Russia, on the contrary, will have a stance favoring Russia, most likely. He will likely split from many blocs on the court.

Africa

Just like many other countries, most African countries also wish to solve this crisis peacefully without aggression and war. However, many countries in Africa are not eager to take sides on the Crimean crisis and they would like to keep observing the situation. As other countries started to take action, African countries' actions were muted. No African nation wished to put forth an opinion, much less a condemnation. The President of the Court, Abdulqawi Ahmed Yusuf, is from Somalia, and would likely have a slight bias towards the Somalian, and African, position, along with Bennouna and Sebutinde.

Asia

After the annexation of Crimea, China has become one of the biggest trading partners for Russia. This is due to the collapse in the price of the oil and this has left Russia economically and politically vulnerable. The Chinese were backing Russia up economically as shown through the Chinese involvement in four concrete energy projects managed by leading Russian energy companies. However, they support both sides and also wish to solve this situation in a peaceful way. The Indian government also has more of a balanced view on the situation and its decision was to keep observing. They will also support the decisions from both Russia and Ukraine as long as there is peace between the two countries. Just like before, the country of Japan also strongly urges countries to settle the annexation of Crimea in a peaceful manner because this has put Japan on in a difficult spot. If Japan does not support the sanctions, it would go against Japan's traditional, low-risk, reactive foreign policy and its role as a responsible member of the international community. However, if it supports the sanctions, it might easily cancel out any recent improvement in Russo-Japanese

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relations and indefinitely stall any resolution of the territorial dispute. Therefore, Japan plays a difficult and unique role in the annexation of Crimea, and it is likely that Iwasawa's judging and opinion writing will reflect that. Hanquin may end up siding with Russia, along with Gevorigan. Bhandari, Salam, and Crawford will likely end up being quite neutral, as is typically the stances of their respective countries in these matters. They also have had a relatively non-controversial tenure on the court and have not made many controversial decisions. However, anything is possible, and they may end up joining different blocs.

Potential Solutions

While some judges may see this as a very simple case, using their personal opinions and the stance of the greater international community, it is imperative that judges do not fall into this trap. Judges must remain impartial as they judge the validity of the annexation, the relevant international laws, and the actions taken by all parties following the annexation. The ICJ cannot become just a mouthpiece for the opinions of the GA and other international bodies. Whatever decision the court comes to will likely rankle at least one of the parties in the case.

A full-throated condemnation of Ukraine would anger Russia, and set a judicial precedent that would contradict actions taken in the past by countries in the NATO block who would likely support such a verdict. While it is possible to overturn judicial and historical precedent, judges should be aware of the ramifications of doing so. It is further necessary for judges to remember the differences between colonization and annexation in terms of sovereignty and violence, and ensure that the opinion written favors the idea that all humans can live under a government that represents them and affords them certain rights and responsibilities. An opinion that wants to assert these ideals would order Russia to return annexed Crimean lands to Ukraine with all due haste, by ruling the annexation illegal. The said opinion should also recommend that the UNSC deploy peacekeeping forces to Crimea to ensure that this transfer of land is done peacefully, without any mistreatment of the Crimean people or terrorist attacks carried out in the name of Russian unification.

A decision favoring Russia to some extent would be akin to giving countries with strongman authoritarian-like governments like Russia a license to do similar acts. Turkey, for example, an ally of Russia, may feel empowered to increase their military presence in Northern Cyprus and attempt to fully annex the region. China will feel empowered to expand into Taiwan, Hong Kong, and the South China Sea. While judges need to prioritize international law and impartiality, the impact of their decision and judicial precedent must be considered. An opinion defending Russia's actions would be defending the status quo, and would essentially require little action to be taken. Ukraine would be ordered to withdraw any military presence that could be considered as a threat to Russia's ownership of Crimea. Likewise, Russia would be ordered to withdraw any excessive troops stationed in Crimea too, as it would be illogical and legally questionable to have troops monitoring Crimea, but not other parts of Russia.

Guiding Questions

1. What international laws are being violated by either party regarding the annexation of Crimea?
2. What human rights issues are at stake, and what human rights charters are being violated, in this situation? What should the punishment be, and should the UNSC be called on to intervene?
3. Was the Ukrainian Revolution justified, or should it be construed as a coup d'état?
4. What steps should be taken to remedy any errors that have taken place, in a gradual and effective manner?
5. Does Russia have the right to take action based on the perceived desires of the Crimeans, regardless of legal process and international law?

Extra Resources

The ICJ's files relating to a case Ukraine brought to the ICJ against Russia, regarding discrimination of the Crimean Tatars.

<https://www.icj-cij.org/en/case/166>

Some background information on Crimea and history

<https://www.britannica.com/place/Crimea>

Article further exploring the annexation in greater detail

<https://www.britannica.com/place/Ukraine/The-crisis-in-Crimea-and-eastern-Ukraine>

A college law study discussing the legality of Russia's act in general

<https://digital-commons.usnwc.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&referer=&httpsredir=1&article=1377&context=ils>

An article explaining the thoughts of Russia during and after the annexation

<https://www.aljazeera.com/opinions/2019/3/16/annexation-of-crimea-a-masterclass-in-political-manipulation>

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