



SRMUN Charlotte 2025
March 20-22, 2025
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Esteemed Delegates,

Welcome to SRMUN Charlotte 2025 and the International Court of Justice (ICJ). My name is Katie Reese, and I have the pleasure of serving as your Director for the ICJ. This will be my third time as a SRMUN Charlotte staff member, having previously served as the Assistant Director of the General Assembly Plenary and Director of the Security Council. I also attended SRMUN Charlotte once as a delegate. I am currently pursuing my Juris Doctorate after having graduated with my Bachelor's in Political Science in 2023. Our committee's Assistant Director will be Sarah Johnson. This will be Sarah's fourth time as a staff member, and she has participated in both Charlotte and Atlanta conferences. She previously served as the Assistant Director for the World Trade Organization, Assistant Director of UN Habitat, and Assistant Director of the International Law Commission. Sarah has attended multiple SRMUN conferences since 2019 as a delegate. Sarah graduated in 2021 with a bachelor's degree in Political Science and wants to pursue her Juris Doctorate in the future.

Colloquially known as the "World Court", the ICJ is a court that was established by the United Nations Charter to resolve international disagreements between Member States. The Court is made up of fifteen judges and is located at the Peace Palace in The Hague in the Kingdom of the Netherlands. Court proceedings are done in either French or English, with documents being published in both languages.

Focusing on the mission of ICJ, delegates will be responsible for arguing on behalf of their assigned position for their assigned case. For the remaining cases, delegates will serve as a Justice in order to listen to the arguments made by their peers at conference. For SRMUN Charlotte 2025, the following cases will be debated:

- I. Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar 7 States intervening)
- II. Obligations of States in respect of Climate Change
- III. Allegations of Genocide under the Convention on the Prevention and Punishment on the crime of Genocide (Ukraine v. Russian Federation: 32 States Intervening)
- IV. Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan)

This background guide will serve as the foundation for your research, yet it should not be the extent of the research for the ICJ. Preparation is given to each topic to help guide delegates in their initial research, and to serve as a starting place for more in-depth studies. While we have attempted to provide a holistic analysis of the above cases, the background guide should not be used as the sole source of research for the delegates in order to better prepare themselves for the conference in March. The memorials and counter-memorials for the committee should reflect the oftentimes complex, multilayered issues that surround these cases. Delegates, come conference, should be prepared to argue both for their submitted memorial and their submitted counter-memorial. Examples and more information about both memorials and counter-memorials can be found later in this document. For more detailed information about formatting and how to write for this committee, delegates can visit srmun.org. **All memorials MUST be submitted no later than Friday, February 28, 2025, by 11:59pm EST via the SRMUN website to be eligible for Outstanding Position Paper Awards.**

Both Sarah and I are so excited for the opportunity to serve as your dais for the International Court of Justice. I wish you all the best of luck in your conference preparation and look forward to meeting and working with each of you. Should questions arise as you begin to prepare for this conference, contacting those on your dais is always encouraged.

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Committee History of the International Court of Justice

The International Court of Justice (ICJ) is the principal judicial organ that was established by Chapter XIV of the Charter of the United Nations (UN) in 1945.¹ As the ‘principal judicial organ’ of the UN, the ICJ’s jurisdiction is divided into two types of cases.² The first type, involving legal disputes settled by the court submitted by Member States.³ The second, involving the Court, provides advisory opinions on legal matters referred to it by authorized UN bodies and specialized agencies.⁴ These two types of cases are respectively known as contentious cases and advisory proceedings.⁵ The ICJ is not to be confused with the International Criminal Court (ICC).⁶ As the ICJ is an UN organ that solves disputes between Member States, the ICC is a criminal court, endorsed by the UN General Assembly (UNGA) but independent from the UN itself, that “brings cases against individuals for war crimes or crimes against humanity”.⁷

The ICJ originated from the Permanent Court of International Justice (PCIJ).⁸ The PCIJ was established by the Covenant of the League of Nations; it held its first session in 1922 and continued its operations until its dissolution in 1946.⁹ The PCIJ played a crucial role in establishing various aspects of international law and contributed to its development.¹⁰ Between 1922 and 1940, the PCIJ addressed 29 contentious cases and delivered 27 advisory opinions.¹¹ During this period, numerous treaties, conventions, and declarations granted the Court jurisdiction over specific categories of disputes, establishing a proper judicial process.¹² The PCIJ, although successful in solving serious international disputes, experienced a decline in its level of activity, which resulted in the creation of a new international court system: the ICJ.¹³ In the establishment of the UN in 1945, the Charter stated that the Statute of the ICJ was “based upon that of the PCIJ”.¹⁴ The ICJ inherited the tasks that the PCIJ handled previously- contentious cases and advisory opinions- and, with the resignation of previous judges, the PCIJ was officially dissolved.¹⁵

Regarding contentious cases, Member States that have accepted the ICJ’s jurisdiction can bring cases to the Court and have cases brought against them.¹⁶ The ICJ will consider the dispute once Member States accepted its jurisdiction in three ways: (1) entering into a special agreement submitted to the Court; (2) “by virtue of a jurisdictional clause”, which occurs when the parties involved are bound to a treaty that allows one party to refer disputes over its interpretation to the Court; and (3) “through the reciprocal effect of declarations made by them under the Statute”, in which Member States accept the jurisdiction in the event that each party made similar declarations.¹⁷ Official proceedings will begin once an application or special agreement is submitted to the ICJ.¹⁸ Applications are considered to be “unilateral in character” and submitted by an applicant Member State against the respondent Member State.¹⁹ Special agreements are considered to be “bilateral in character” and can be submitted by either or both parties involved.²⁰ The proceedings includes two phases: a written phase in which each party files and

¹ “Chapter XIV: The International Court of Justice (Articles 92-96),” *United Nations*, accessed June 16, 2024, <https://www.un.org/en/about-us/un-charter/chapter-14>.

² “How the Court Works”, *International Court of Justice*, accessed June 18, 2024, <https://www.icj-cij.org/how-the-court-works>,

³ “How the Court Works”, *International Court of Justice*

⁴ “How the Court Works”, *International Court of Justice*

⁵ “How the Court Works”, *International Court of Justice*

⁶ “What is the International Court of Justice and why does it matter?”, *UN News*, January 10, 2024, <https://news.un.org/en/story/2024/01/1145392>.

⁷ “What is the International Court of Justice and why does it matter?”, *UN News*

⁸ “History”, *International Court of Justice*, accessed June 18, 2024, <https://www.icj-cij.org/history>.

⁹ “Permanent Court of International Justice”, *International Court of Justice*, accessed June 18, 2024, <https://www.icj-cij.org/pcij>,

¹⁰ “Permanent Court of International Justice”, *International Court of Justice*

¹¹ “Permanent Court of International Justice”, *International Court of Justice*

¹² “History”, *International Court of Justice*, accessed June 18, 2024, <https://www.icj-cij.org/history>.

¹³ “History”, *International Court of Justice*

¹⁴ “History”, *International Court of Justice*

¹⁵ “History”, *International Court of Justice*

¹⁶ “How the Court Works”, *International Court of Justice*, accessed June 18, 2024, <https://www.icj-cij.org/how-the-court-works>.

¹⁷ “How the Court Works”, *International Court of Justice*

¹⁸ “How the Court Works”, *International Court of Justice*

¹⁹ “How the Court Works”, *International Court of Justice*

²⁰ “How the Court Works”, *International Court of Justice*

exchanges pleadings, and an oral phase, in which each party openly addresses the Court.²¹ These cases are titled with the names of involved parties and separated by the abbreviation (v.) for the Latin *verses* (e.g., Cameroon v. Nigeria).²² The ICJ has two official languages, French and English; therefore, all proceedings are written or said in one language and translated in the other.²³ Contentious case judgements are binding and not eligible to be appealed.²⁴

Regarding advisory proceedings, these cases are “only open to five organs of the United Nations and 16 specialized agencies of the United Nations family or affiliated organizations”.²⁵ The UNGA and the Security Council (SC) may submit a written request to the Court for advisory opinions; other UN organs and specialized agencies have the authority to request the same with respect to “legal questions arising within the scope of their activities”.²⁶ In advisory proceedings, the names of the parties on the official document are separated by an ‘oblique stroke’ (e.g., *Indonesia/Malaysia*).²⁷ Advisory opinions given by the ICJ are non-binding; the UN organs, agencies, and organizations are free to “give effect to the opinion as it sees fit”, excluding certain regulations or instruments such as the conventions on the privileges and immunities of the United Nations.²⁸

The ICJ is composed of 15 judges who are elected to nine-year office terms by the UNGA and the SC.²⁹ These organs vote simultaneously but separately on judges.³⁰ Multiple voting rounds are sometimes necessary to ensure the candidate receives an “absolute majority of the votes in both bodies”.³¹ Every three years, one-third of the ICJ is elected; judges may be reappointed.³² The President and Vice-President of the ICJ are elected by Members of the Court through a secret ballot, also every three years.³³ The President presides at all meetings of the ICJ, supervises the administration, directs the Court’s work, and in the event of a tie, casts the final vote.³⁴ The Vice President takes the place of the President in the case of absence or failure to perform the duty.³⁵ On February 6, 2024, the ICJ elected Judge Nawaf Salam (Lebanon) as President and Judge Julia Sebutinde (Uganda) as Vice President.³⁶ The remaining Judges of the ICJ are as follows: Judge Peter Tomka (Slovakia), Judge Ronny Abraham (France), Judge Abdulqawi Ahmed Yusuf (Somalia), Judge Xue Hanqin (China), Judge Dalveer Bhandari (India), Judge Iwasawa Yuji (Japan), Judge Georg Nolte (Germany), Judge Hilary Charlesworth (Australia), Judge Leonardo Nemer Caldeira Brant (Brazil), Judge Juan Manuel Gomez Robledo (Mexico), Judge Sarah H. Cleveland (United States of America), Judge Bogdan-Lucian Aurescu (Romania), and Judge Dire Tladi (South Africa).³⁷

Formal votes are called for by the President of the ICJ and following the apparent support of several judges for draft judgement.³⁸ Draft judgements require a two-thirds majority voice from all judges to pass; if the judgement fails, judges will continue deliberation until one is passed.³⁹ Judges may also file dissenting judgements should they not be in agreement with the judgement that was passed.⁴⁰ Member States may not appeal the Court’s decision since all

²¹ Couvreur, Philippe. 2012. “Upholding the Rule of Law at the International Level: The Role of the International Court of Justice.” *UN Chronicle* 49 (4): 38–39. <https://doi.org/10.18356/4f446d7b-en>.

²² “Cases”, *International Court of Justice*, accessed June 18, 2024, <https://www.icj-cij.org/index.php/cases>.

²³ Couvreur, Philippe. 2012. “Upholding the Rule of Law at the International Level: The Role of the International Court of Justice.” *UN Chronicle* 49 (4): 38–39. <https://doi.org/10.18356/4f446d7b-en>.

²⁴ Couvreur, Philippe. 2012. “Upholding the Rule of Law at the International Level”

²⁵ “How the Court Works”, *International Court of Justice*, accessed June 18, 2024, <https://www.icj-cij.org/how-the-court-works>.

²⁶ “How the Court Works”, *International Court of Justice*

²⁷ “Cases”, *International Court of Justice*, accessed June 18, 2024, <https://www.icj-cij.org/index.php/cases>.

²⁸ “How the Court Works”, *International Court of Justice*, accessed June 18, 2024, <https://www.icj-cij.org/how-the-court-works>.

²⁹ “Member of the Court”, *International Court of Justice*, accessed June 18, 2024, <https://www.icj-cij.org/members>.

³⁰ “Member of the Court”, *International Court of Justice*

³¹ “Member of the Court”, *International Court of Justice*

³² “Member of the Court”, *International Court of Justice*

³³ “Member of the Court”, *International Court of Justice*

³⁴ “Presidency”, *International Court of Justice*, accessed June 19, 2024, <https://www.icj-cij.org/presidency>.

³⁵ “Presidency”, *International Court of Justice*

³⁶ “Presidency”, *International Court of Justice*, accessed June 18, 2024, <https://www.icj-cij.org/presidency>

³⁷ “Current Members”, *International Court of Justice*, accessed June 19, 2024, <https://www.icj-cij.org/index.php/current-members>.

³⁸ “Dispute Settlement,” United Nations Conference on Trade and Development, accessed July 13, 2024, https://unctad.org/system/files/official-document/edmmisc232add19_en.pdf

³⁹ “Dispute Settlement,” United Nations Conference on Trade and Development

⁴⁰ “Dispute Settlement,” United Nations Conference on Trade and Development

decisions are final; however, Member States may request an interpretation of the decision by the Court which further elaborates its judgement.⁴¹ In addition to this, if new evidence is discovered that may change the verdict, Member States, UN bodies, or UN agencies from the case may apply for a revision of the judgement.⁴²

The ICJ is primarily funded through the UN regular budget, which “encompasses UN programmes spanning various domains”, including international justice and law.⁴³ In 1989, the SG under the Financial Regulations and Rules of the UN created a Trust Fund, which is financial assistance that is provided to all Member States for expenses in connection to a submitted dispute or executed judgement.⁴⁴ Member States, intergovernmental organizations (IGOs), and non-governmental organizations (NGOs) are also able to voluntarily contribute to the Trust Fund, “as well as natural and juridical persons”.⁴⁵

⁴¹ “Dispute Settlement,” United Nations Conference on Trade and Development

⁴² “Dispute Settlement,” United Nations Conference on Trade and Development

⁴³ “General Assembly approves \$3.59 billion UN budget for 2024”, *UN News*, accessed July 13, 2024, <https://news.un.org/en/story/2023/12/1145072>.

⁴⁴ “Secretary-General's Trust Fund to Assist States in the Settlement of Disputes through the International Court of Justice: Report of the Secretary General”, *United Nations General Assembly*, accessed July 13, 2024, <https://documents.un.org/doc/undoc/gen/n04/518/22/pdf/n0451822.pdf?token=3XUeiU0XcXr4zBkK8N&fe=true>.

⁴⁵ “Secretary-General's Trust Fund to Assist States in the Settlement of Disputes,” *United Nations General Assembly*

Case I: Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar; 7 States intervening)

Introduction

The issue before the Court is that the Republic of the Gambia (Gambia) alleges a failure on the part of the Republic of the Union of Myanmar (Myanmar) in its obligations to protect against and punish acts of genocide within their borders.⁴⁶ More specifically, the Gambia brings forth a suit on behalf of the ethnic minority group of Muslim people within Myanmar known as the Rohingya.⁴⁷ This ethnic group has maintained a presence within the State within an area known as the Rakhine State.⁴⁸ It is alleged that armed Myanmar security forces repeatedly performed human rights violations against the Rohingya without punishment or other hindrance from the Myanmar government.⁴⁹

The United Nations (UN) set out the terms of the “Convention on the Prevention and Punishment on the Crime of Genocide” on December 9, 1948 through General Assembly Resolution 260.⁵⁰ Article II defines the word “genocide” to mean:

“In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;*
- (b) Causing serious bodily or mental harm to members of the group;*
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;*
- (d) Imposing measures intended to prevent births within the group;*
- (e) Forcibly transferring children of the group to another group.”⁵¹*

The Convention is known colloquially as the Genocide Convention.⁵² Since its’ ratification in 1948, the Genocide Convention has only been invoked three times: in 1979 for Cambodia, 1994 for Rwanda, and in 1995 for Bosnia.⁵³ With this allegation, the Gambia brings about the fourth official invocation of the Genocide Convention against Myanmar for their involvement in the ongoing genocide.⁵⁴

History of Conflict

⁴⁶ United Nations Human Rights Council, “ICJ - The Gambia v. Myanmar”, *Independent Investigative Mechanism for Myanmar*, accessed August 18, 2024, <https://iimm.un.org/icj-the-gambia-v-myanmar/>.

⁴⁷ Global Justice Center, “(Updated) Q&A: The Gambia v. Myanmar - Rohingya Genocide at The International Court of Justice”, May 20, 2020, accessed August 18, 2024, <https://www.globaljusticecenter.net/updated-q-a-the-gambia-v-myanmar-rohingya-genocide-at-the-international-court-of-justice-2/>.

⁴⁸ USA for UNHCR: The UN Refugee Agency, “Rohingya Refugee Crisis Explained”, August 22, 2024, accessed October 10, 2024, <https://www.unrefugees.org/news/rohingya-refugee-crisis-explained/>.

⁴⁹ Global Justice Center, “(Updated) Q&A: The Gambia v. Myanmar - Rohingya Genocide at The International Court of Justice”.

⁵⁰ United Nations General Assembly resolution 260, *Convention on the Prevention and Punishment of the Crime of Genocide*, A/RES/260, (9 December, 1948), https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf.

⁵¹ United Nations General Assembly resolution 260, *Convention on the Prevention and Punishment of the Crime of Genocide*.

⁵² United Nations Office on Genocide Prevention and the Responsibility to Protect, “The Convention on the Prevention and Punishment of the Crime of Genocide (1948)”, accessed October 11, 2024, <https://www.un.org/en/genocideprevention/documents/Genocide%20Convention-FactSheet-ENG.pdf>.

⁵³ The Conversation, “Genocide: 70 years on, three reasons why the UN Convention is still failing”, December 18, 2018, <https://theconversation.com/genocide-70-years-on-three-reasons-why-the-un-convention-is-still-failing-108706#:~:text=Consider%20how%20many%20genocides%20have,1975%2D9%20Pot%20Pot%20regime>.

⁵⁴ The Conversation, “Genocide: 70 years on, three reasons why the UN Convention is still failing”.

The Rohingya, a Muslim minority group in Myanmar have faced a long history of discrimination and persecution that can be deeply rooted back to the British rule of Myanmar, known formerly as Burma.⁵⁵ In 1824, during the British rule of Myanmar, policies encouraging migration were implemented in order to increase the cultivation of rice resulting in demographic changes in within Myanmar with the arrival of the Rohingya.⁵⁶ In 1942, as Japanese forces invaded Burma, to increase support for British forces, the British promised the Rohingya a separate land that was to be known as a “Muslim National Area.”⁵⁷ Despite this promise, the British failed to deliver on this promise and Myanmar locals would continue to view the Rohingya as foreigners.⁵⁸ After World War II, when Myanmar gained independence in 1948, tensions between the Myanmar government and the Rohingya began to escalate.⁵⁹

Following Myanmar’s independence from the British, the Rohingya requested that the Myanmar government grant them their own autonomous state.⁶⁰ This request was denied and barriers were implemented to restrict access to citizenship on the basis that the Rohingya were foreigners.⁶¹ In 1950, a group of Rohingya staged a rebellion to protest the policies of the Myanmar government and demanded both access to citizenship as well as an independent state.⁶² In response, the Myanmar government responded with Military intervention to suppress the rebellion and rejected all demands.⁶³ In 1962, a military coup in Myanmar established a one-party state resulting in increased nationalism resulting in the Rohingya being viewed as a threat to this new national identity.⁶⁴ This new perceived threat resulted in the Myanmar military targeting members of the Rohingya minority subjecting them detainment, abuse, forced labor, torture, mass killings and countless other human rights abuses.⁶⁵ These human rights abuses along with the targeting of Rohingya owned and led businesses and organizations would force over 250,000 of Rohingya to flee for Bangladesh by the early 1990s.⁶⁶

The legal status of the Rohingya has long been a contentious issue, with the Myanmar government claiming that the Rohingya are not indigenous to Myanmar and therefore lack the legitimate ties to the land of Myanmar.⁶⁷ In 1982, Myanmar’s Citizenship Act mandated that applicants for citizenship must prove their ancestry is tied to recognized “national races” present to Myanmar prior to British colonization.⁶⁸ As a result, this has denied the Rohingya of citizenship and the protections that come from it, leaving them as one of the world’s largest stateless populations.⁶⁹

In October of 2016, a series of attacks on the Border Guard Police in the Rakhine State wherein nine officers were killed triggered the subsequent humanitarian crisis.⁷⁰ Following these series of attacks, the Myanmar government launched military operations targeting Rohingya villages that resulted in widespread violence, killings and the burning of homes.⁷¹ Allegations that followed of human rights violations and other crimes were not able to be immediately investigated by the United Nations, as the Myanmar government’s restrictions barred UN investigators

⁵⁵ Dorothy Settles, “The Rohingya Genocide Is Rooted in British Colonialism.” *Spheres of Influence*, October 5, 2020. <https://spheresofinfluence.ca/the-rohingya-genocide-is-rooted-in-british-colonial-legacy/>.

⁵⁶ Dorothy Settles, “The Rohingya Genocide Is Rooted in British Colonialism.”

⁵⁷ “Historical Background.” *Human Rights Watch*, Accessed January 17, 2025. <https://www.hrw.org/reports/2000/burma/burm005-01.htm>.

⁵⁸ “Historical Background.” *Human Rights Watch*

⁵⁹ “Historical Background.” *Human Rights Watch*

⁶⁰ “Historical Background.” *Human Rights Watch*

⁶¹ “Historical Background.” *Human Rights Watch*

⁶² “Historical Background.” *Human Rights Watch*

⁶³ “Historical Background.” *Human Rights Watch*

⁶⁴ Engy Abelkader, “The Rohingya Muslims in Myanmar: Past, Present, and Future,” *Oregon Review of International Law*, Volume 15, Accessed January 17, 2025. <https://scholarsbank.uoregon.edu/xmlui/bitstream/handle/1794/17966/Abdelkader.pdf;sequence=1>

⁶⁵ Engy Abelkader, “The Rohingya Muslims in Myanmar: Past, Present, and Future,”

⁶⁶ “Historical Background.” *Human Rights Watch*

⁶⁷ Nehginpao Kipgen, “The Rohingya Crisis: The Centrality of Identity and Citizenship.” *Journal of Muslim Minority Affairs* 39 (1): 61–74, March 2019, doi:10.1080/13602004.2019.1575019.

⁶⁸ Nehginpao Kipgen, “The Rohingya Crisis: The Centrality of Identity and Citizenship.”

⁶⁹ Nehginpao Kipgen, “The Rohingya Crisis: The Centrality of Identity and Citizenship.”

⁷⁰ UN Office for the Coordination of Humanitarian Affairs, “Myanmar: Humanitarian Bulletin, Issue 4”, January 30, 2017, accessed October 10, 2024, <https://reliefweb.int/report/myanmar/myanmar-humanitarian-bulletin-issue-4-october-2016-january-2017-enmy>.

⁷¹ UN Office for the Coordination of Humanitarian Affairs, “Myanmar: Humanitarian Bulletin, Issue 4”.

access.⁷² As military operations further intensified, the Rohingya refugee crisis began to take shape in August of 2017, when an estimated 742,000 people fled the Rakhine State into the People’s Republic of Bangladesh to seek refuge.⁷³ These actions were condemned by the international community, with some labeling these actions as a form of ethnic cleansing.⁷⁴

Statement of Facts

According to the Gambia’s initial Application, as early as September of 2016, the ethnic minority group known as the Rohingya were terrorized by armed groups within Myanmar in violation of the Genocide Convention.⁷⁵ The Rohingya were terrorized and suffered multiple human rights violations, including: mass murder, rape and other forms of sexual violence, and the razing of Rohingya villages with numerous accounts of inhabitants still being locked inside as the homes were burned.⁷⁶ The justification of the perpetrators of such listed violent actions were encouraged under the government of Myanmar’s “clearance operations” to destroy the Rohingya group either in whole or in part.⁷⁷ This information was received by the Organization of Islamic Cooperation by a number of sources of “multiple UN investigations” and other eyewitness and victim accounts of the ongoing acts of violence.⁷⁸

In addition to the genocidal acts permitted by the government of Myanmar, the Rohingya are also subject to political restrictions.⁷⁹ Rights to marry, have children, freedom of movement, mandatory curfew observance, removal to displacement camps along with other Muslim minority groups, and other issued practices of segregation and oppression have been enacted since around the same time period.⁸⁰ Social tolerance, in large part due to government-relayed propaganda against the Rohingya, has seen damaging results towards the Rohingyas and other ethnic minorities, encouraging the people of Myanmar to see the Rohingya as “othered”.⁸¹

The United Nations, despite initial resistance by the Myanmar government, has produced data that would seem to support the Gambia’s accusations.⁸² The UN Special Rapporteur on the situation of human rights in Myanmar reported several attacks upon Rohingya individuals, family units, and villages en masse, acted out by Myanmar security forces.⁸³ In a similar fact-finding mission, the UN Special Advisor on the Prevention of Genocide conducted interviews with refugees from the State of Rakhine about the ongoing humanitarian crisis and came to a similar conclusion that both the actions and inactions of the Myanmar government “would constitute the crime of genocide”.⁸⁴ The Human Rights Council (HRC) took note of the allegations and established the “UN Human Rights Council’s Independent Fact-Finding Mission on Myanmar” on March 24, 2017.⁸⁵ Their fact-finding mission resulted in a 2019 report that was similar to the two others named above: that there was significant evidence to show that there was “genocidal intent” against the Rohingya people.⁸⁶ The HRC’s Fact-Finding Mission on Myanmar uncovered that human rights and humanitarian law violations previously identified in the UN’s previous report not only remained in place but worsened.⁸⁷ The HRC identified inadequate access to basic services including education

⁷² UN Office for the Coordination of Humanitarian Affairs, “Myanmar: Humanitarian Bulletin, Issue 4”.

⁷³ USA for UNHCR: The UN Refugee Agency, “Rohingya Refugee Crisis Explained”.

⁷⁴ USA for UNHCR: The UN Refugee Agency, “Rohingya Refugee Crisis Explained”.

⁷⁵ International Court of Justice, “Application Instituting Proceedings and Request for Provisional Measures”, November 11, 2019, accessed August 19, 2024, <https://www.icj-cij.org/sites/default/files/case-related/178/178-20191111-APP-01-00-EN.pdf>.

⁷⁶ International Court of Justice, “Application Instituting Proceedings and Request for Provisional Measures”.

⁷⁷ International Court of Justice, “Application Instituting Proceedings and Request for Provisional Measures”.

⁷⁸ International Court of Justice, “Application Instituting Proceedings and Request for Provisional Measures”.

⁷⁹ International Court of Justice, “Application Instituting Proceedings and Request for Provisional Measures”.

⁸⁰ International Court of Justice, “Application Instituting Proceedings and Request for Provisional Measures”.

⁸¹ International Court of Justice, “Application Instituting Proceedings and Request for Provisional Measures”.

⁸² International Court of Justice, “Application Instituting Proceedings and Request for Provisional Measures”.

⁸³ International Court of Justice, “Application Instituting Proceedings and Request for Provisional Measures”.

⁸⁴ International Court of Justice, “Application Instituting Proceedings and Request for Provisional Measures”.

⁸⁵ International Court of Justice, “Application Instituting Proceedings and Request for Provisional Measures”.

⁸⁶ International Court of Justice, “Application Instituting Proceedings and Request for Provisional Measures”.

⁸⁷ “UN Independent International Fact-Finding Mission on Myanmar Calls on UN Member States to Remain Vigilant in the Face of the Continued Threat of Genocide | OHCHR.” *United Nations Human Rights*, October 23, 2019. <https://www.ohchr.org/en/press-releases/2019/10/un-independent-international-fact-finding-mission-myanmar-calls-un-member?LangID=E&NewsID=25197>.

and healthcare as well as continued sexual and gender based violence.⁸⁸ Additionally the HRC recommended that Myanmar’s military disengage in order to deter any further human rights violations and recommended action be taken by the United Nations Security Council.⁸⁹

Following the release of the UN’s Fact Finding Report, Myanmar alleged that the UN’s Fact Myanmar claimed the report was biased and based on mere accusations.⁹⁰ The Myanmar government continues to deny allegations of genocide and human rights violations, claiming that any security campaigns have been conducted to ensure stability within the Rakhine state and protect domestic stability.⁹¹ As a result Myanmar does not consider this internal matter to fall under the purview of international law.⁹² However, Article VIII of the Genocide Convention states “[a]ny Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in article III”.⁹³

Procedural History

The conflict between the Gambia and Myanmar is of historic importance as this is the first recorded case of a State not being directly affected by the actions of another State.⁹⁴ The Gambia brought forward a case against Myanmar to the ICJ, alleging human rights violations and genocide against the Muslim minority group located within Myanmar.⁹⁵ The Gambia’s actions in bringing forward this case highlights the obligations States have to address on the acts of genocide even if they are not directly impacted by these acts of genocide. Myanmar did make such objections as the Gambia was not a directly affected party to the alleged violations.⁹⁶ Despite these arguments by Myanmar, the International Court of Justice (ICJ) did thereafter reject them, finding that they had jurisdiction under Article IX of the Convention on the Prevention and Punishment of the Crime of Genocide, commonly recognized as the “Genocide Convention”.⁹⁷

On November 11, 2019, the Gambia filed the application to admit their case to the ICJ against Myanmar in their alleged violations under the Genocide Convention.⁹⁸ In their plea, the Gambia sought a declaration from the ICJ that Myanmar had violated their obligations under the Genocide Convention under several articles and therefore must rectify their own behavior, punish those who committed such acts of genocide by a “competent tribunal”, complete acts of reparations to victims of the genocide, reaffirm their guarantees as a State under the Genocide Convention.⁹⁹ The articles listed to be in violation were as follows: Article I, Article III(a): Genocide, Article III(b): Conspiracy to commit genocide, Article III(c): Direct and Public incitement to commit genocide, Article III(d): Attempt to commit genocide, Article III(e): Complicity in genocide,, Article IV, Article V, and Article VI.¹⁰⁰ Additionally, the Gambia requested provisional measures from the ICJ for Myanmar to “immediately... take all measures within its power to prevent acts that amount to or contribute to the crime of genocide,” reaffirm control over domestic military, paramilitary, or other armed groups to prevent continued acts of violence and genocide, maintain evidence regarding

⁸⁸ “UN Independent International Fact-Finding Mission on Myanmar,” *United Nations Human Rights*,

⁸⁹ “UN Independent International Fact-Finding Mission on Myanmar,” *United Nations Human Rights*,

⁹⁰ International Court of Justice, “Application Instituting Proceedings and Request for Provisional Measures”.

⁹¹ International Court of Justice, “Application Instituting Proceedings and Request for Provisional Measures”.

⁹² International Court of Justice, “Application Instituting Proceedings and Request for Provisional Measures”.

⁹³ International Court of Justice, “Application Instituting Proceedings and Request for Provisional Measures”.

⁹⁴ United Nations Human Rights Council, “ICJ - The Gambia v. Myanmar”.

⁹⁵ Global Justice Center, “(Updated) Q&A: The Gambia v. Myanmar - Rohingya Genocide at The International Court of Justice”, May 20, 2020, accessed August 18, 2024, <https://www.globaljusticecenter.net/updated-q-a-the-gambia-v-myanmar-rohingya-genocide-at-the-international-court-of-justice-2/>.

⁹⁶ International Court of Justice, “Preliminary Objections of the Republic of the Union of Myanmar”, January 20, 2021, accessed August 18, 2024, <https://www.icj-cij.org/sites/default/files/case-related/178/178-20210120-WRI-01-00-EN.pdf>.

⁹⁷ International Court of Justice, “Summary of the Judgment of 22 July 2022”, July 22, 2022, accessed August 18, 2024, <https://www.icj-cij.org/sites/default/files/case-related/178/178-20220722-SUM-01-00-EN.pdf>.

⁹⁸ International Court of Justice, “The Republic of The Gambia institutes proceedings against the Republic of the Union of Myanmar and asks the Court to indicate provisional measures”, November 11, 2019, accessed August 19, 2024, <https://www.icj-cij.org/sites/default/files/case-related/178/178-20191111-PRE-01-00-EN.pdf>.

⁹⁹ International Court of Justice, “The Republic of The Gambia institutes proceedings against the Republic of the Union of Myanmar and asks the Court to indicate provisional measures”.

¹⁰⁰ International Court of Justice, “The Republic of The Gambia institutes proceedings against the Republic of the Union of Myanmar and asks the Court to indicate provisional measures”.

the alleged genocide, maintain the integrity of the dispute to not further complicate proceedings or investigations, and to provide a report to the ICJ on the effectiveness in applying said measures.¹⁰¹ The hearings to evaluate the application took place in December of 2019, with the ICJ publishing their agreement to hear the case on January 23, 2020.¹⁰²

Preliminary objections of Myanmar were filed on January 20, 2021, of which four objections were made.¹⁰³ The first objection asserted that the suit filed lacked a jurisdictional basis to be heard before the ICJ as the Gambia had no basis to file, but instead should have been the Organization of Islamic Cooperation.¹⁰⁴ The second objection asserted that the Gambia lacked standing to file the case, as they suffered no direct harm.¹⁰⁵ The third objection asserted that the Gambia's jurisdictional claims in relation to Article VIII of the Genocide Convention were illegitimate before the ICJ.¹⁰⁶ Fourthly and finally, Myanmar objected to the jurisdiction arguments from the Gambia under the argument that there was no dispute between the parties at the point in which the Application was filed.¹⁰⁷ The preliminary objections were heard before the ICJ and all four were subsequently rejected on July 22, 2022.¹⁰⁸

The Court ruled that, on the basis of jurisdiction, the Gambia correctly filed under Article 36, paragraph 1 of the Statute of the ICJ that granted *prima facie* jurisdiction.¹⁰⁹ As both States were parties to the Genocide Convention with no reservations to Article IX (which certified the ICJ as the proper jurisdiction for disputes as regarding the convention), the Court found that the jurisdictional objections from Myanmar were unconvincing.¹¹⁰

Latest Developments

On November 15, 2023, six States-- Canada, the Kingdom of Denmark, the French Republic, the Federal Republic of Germany, the Kingdom of the Netherlands, and the United Kingdom of Great Britain and Northern Ireland-- jointly filed a declaration of intervention on behalf of the Gambia to relay their support of the Genocide Convention and submit their observations on the case.¹¹¹ Independently from this joint declaration and upon the same date, the Republic of the Maldives also filed a declaration of intervention in their own support of the Genocide Convention, raising concerns about the conduct being performed in Myanmar in violation of the Convention.¹¹² On July 3, 2024, the ICJ declared that both declarations of intervention were to be admissible before the Court as they related to the present case further emphasizing international concern over the alleged violations occurring in Myanmar.¹¹³

Committee Directive

¹⁰¹ International Court of Justice, "The Republic of The Gambia institutes proceedings against the Republic of the Union of Myanmar and asks the Court to indicate provisional measures".

¹⁰² International Court of Justice, "Application on the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar): Request for the indication of provisional measures", January 23, 2020, accessed August 19, 2024, <https://www.icj-cij.org/sites/default/files/case-related/178/178-20200123-SUM-01-00-EN.pdf>.

¹⁰³ International Court of Justice, "Preliminary Objections of the Republic of the Union of Myanmar", January 20, 2021., <https://www.icj-cij.org/sites/default/files/case-related/178/178-20210120-WRI-01-00-EN.pdf>.

¹⁰⁴ International Court of Justice, "Preliminary Objections of the Rr".

¹⁰⁵ International Court of Justice, "Preliminary Objections of the Republic of the Union of Myanmar".

¹⁰⁶ International Court of Justice, "Preliminary Objections of the Republic of the Union of Myanmar".

¹⁰⁷ International Court of Justice, "Preliminary Objections of the Republic of the Union of Myanmar".

¹⁰⁸ International Court of Justice, "Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar): Summary of the Judgment of 22 July 2022", July 22, 2022, accessed August 19, 2024, <https://www.icj-cij.org/sites/default/files/case-related/178/178-20220722-SUM-01-00-EN.pdf>.

¹⁰⁹ International Court of Justice, "Request for the indication of provisional measures", January 23, ,<https://www.icj-cij.org/sites/default/files/case-related/178/178-20200123-ORD-01-00-EN.pdf>.

¹¹⁰ International Court of Justice, "Request for the indication of provisional measures".

¹¹¹ International Court of Justice, "Joint declaration of intervention of Canada, Denmark, France, Germany, the Netherland and the United Kingdom", November 15, 2023, <https://www.icj-cij.org/sites/default/files/case-related/178/178-20231115-wri-01-00-en.pdf>.

¹¹² International Court of Justice, "Declaration of intervention of Maldives", November 15, 2023, , <https://www.icj-cij.org/sites/default/files/case-related/178/178-20231115-wri-02-00-en.pdf>.

¹¹³ International Court of Justice, "The Court decides that the declarations of intervention filed by seven States are admissible", July 3, 2024, accessed August 19, 2024, <https://www.icj-cij.org/sites/default/files/case-related/178/178-20240703-pre-01-00-en.pdf>.

The Court must consider multiple fronts upon the present case. With the available facts, interventions, and the Application from the Gambia, the Court may decide to publish an advisory opinion on the Gambia v. Myanmar. Based upon the delegation, are there more declarations of intervention to consider or objections to contend with? The Court may consider how any decision, if any, will be applicable to the broader subjects that may be impacted by this dispute of international law and custom.

Case II: Obligations of States in respect of Climate Change

Introduction

Climate change is an internationally-recognized crisis that impacts all States.¹¹⁴ The United Nations General Assembly (UNGA), along with various other committees, sub-committees, non-government organizations (NGOs), and other groups, aim towards the development of sustainability measures and other actions to maintain the Earth for both present and future generations.¹¹⁵ The United Nations (UN) bolsters this request under prior works such as the United Nations Framework Convention on Climate Change, the Kyoto Protocol, and the Paris Agreement.¹¹⁶ The UNGA, in exercising their right under Article 96 of the United Nations Charter, requested an advisory opinion from the Court regarding climate change and any legal obligations of states under the previously mentioned treaties.¹¹⁷ This advisory opinion is needed for guidance on the extent of States obligations and responsibilities on measures to mitigate climate change and its impact.

Under Article 96 of the Charter of the UN, both the General Assembly and the Security Council are permitted to request an advisory opinion from the ICJ on “any legal question”.¹¹⁸ NGOs, subcommittees, and other committees within the United Nations therefore do not have the legal authority to bring forth a request for an advisory opinion before the ICJ unless they are first authorized to do so.¹¹⁹ To the current sixteen specialized agencies and five organs of the United Nations that are currently authorized to seek advisory opinions from the Court, they are currently held to the limitation of questions that pertain “within the scope of their activities”.¹²⁰ This current request from the UNGA further emphasizes the urgent need for clarity and guidance on State responsibilities in the fight for Climate Change.

History of Conflict

There has not yet been a statement by the ICJ on the topic of climate change. In accordance with several conventions and treaties that are in place towards the goal of climate protection schemes.¹²¹ The conventions listed are as follows: the Charter of the UN, the International Covenant on Civil and Political Rights, the UN Framework Convention on Climate Change, the Paris Agreement, the UN Convention on the Law of the Sea, and the Universal Declaration of Human Rights.¹²² This advisory opinion would allow for further clarity as to the legal obligations of States under international agreements and their duties in relation to climate change. Additionally, with this advisory opinion, States can have a more unified interpretation that will allow for conventions and treaties to work and interact more closely and efficiently.

Statement of Facts

Climate change is a critical area that has been addressed in various documents that were submitted to the ICJ for their review.¹²³ These documents include multilateral treaties on the subject matters of climate change, desertification, biological diversity, protection of the ozone layer, law of the sea, and human rights. Other documents to be submitted are scientific reports from the Intergovernmental Panel on Climate Change (IPCC), the United

¹¹⁴ International Court of Justice, “Request for Advisory Opinion”, *General Assembly Plenary*, March 29, 2023, accessed August 21, 2024, <https://www.icj-cij.org/sites/default/files/case-related/187/187-20230412-app-01-00-en.pdf>.

¹¹⁵ International Court of Justice, “Request for Advisory Opinion”.

¹¹⁶ International Court of Justice, “Request for Advisory Opinion”.

¹¹⁷ International Court of Justice, “Request for Advisory Opinion”.

¹¹⁸ United Nations, “United Nations Charter, Chapter XIV: The International Court of Justice”, *United Nations*, accessed October 11, 2024, <https://www.un.org/en/about-us/un-charter/chapter-14#:~:text=Article%2096,opinion%20on%20any%20legal%20question>.

¹¹⁹ United Nations, “United Nations Charter, Chapter XIV: The International Court of Justice”.

¹²⁰ United Nations, “United Nations Charter, Chapter XIV: The International Court of Justice”.

¹²¹ International Court of Justice, “Request for Advisory Opinion”.

¹²² International Court of Justice, “Request for Advisory Opinion”.

¹²³ International Court of Justice, “Obligations of States in respect of Climate Change”, *International Court of Justice*, updated August 16, 2024, accessed August 22, 2024, <https://www.icj-cij.org/case/187>.

Nations Environmental Programme (UNEP), and the World Meteorological Organization (WMO).¹²⁴ Still more documents include relevant materials to international law and documents and resolutions from the United Nations as a whole under the topic of “[p]rotection of the climate system and other parts of the environment”.¹²⁵ Documents relevant to the law of the sea and the relationship between human rights and climate change are also to be submitted to the Court to further guide their advisory opinion.¹²⁶ Several branches of the United Nations have sought to address growing concerns for this area of legislation and law, including but not limited to: the General Assembly, the Human Rights Council, the Millennium Summit and Sustainable Development Conferences, the Rio conventions, the Intergovernmental Panel on Climate Change, and various other multilateral treaties.¹²⁷

Procedural History

On March 29, 2023, UNGA adopted resolution 77/267 requesting an advisory opinion from the ICJ on the topic of what obligations of Member States are in regards to climate change.¹²⁸ The following questions were proposed within this request:

- “(a) *What are the obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gasses for States and for present and future generations;*
- (b) *What are the legal consequences under these obligations for States where they, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment with respect to:*
 - (i) *States, including, in particular, small island developing States, which due to their geographical circumstances and level of development, are injured or specially affected by or are particularly vulnerable to the adverse effects of climate change?*
 - (ii) *Peoples and individuals of the present and future generations affected by the adverse effects of climate change?”*¹²⁹

The ICJ accepted the request on April 20, 2023 and declared an initial deadline of October 20, 2023 for written statements on the above questions to be submitted to the Court and the deadline of January 22, 2024 for the publishing of written comments on the statements.¹³⁰

Over the next three months, the ICJ authorized the participation of the International Union for Conservation of Nature and the Commission of Small Island States on Climate Change and International Law on the proceedings.¹³¹ Other groups that have subsequently been permitted to join are as follows: the European Union, the African Union, the Organization of the Petroleum Exporting Countries, the Organisation of African, Caribbean and Pacific States, the Melanesian Spearhead Group, the Forum Fisheries Agency, the Pacific Community, the Pacific Islands Forum, the Alliance of Small Island States, the Parties to the Nauru Agreement Office, and the World Health

¹²⁴ International Court of Justice, “Introductory Note (documents received from the Secretariat of the United Nations)”, *Secretariat of the United Nations*, June 30, 2023, accessed October 11, 2024, <https://www.icj-cij.org/sites/default/files/case-related/187/187-20230630-req-01-00-en.pdf>.

¹²⁵ International Court of Justice, “Introductory Note (documents received from the Secretariat of the United Nations)”.

¹²⁶ International Court of Justice, “Introductory Note (documents received from the Secretariat of the United Nations)”.

¹²⁷ International Court of Justice, “Obligations of States in respect of Climate Change”.

¹²⁸ International Court of Justice, “Request for Advisory Opinion”.

¹²⁹ International Court of Justice, “Request for Advisory Opinion”.

¹³⁰ International Court of Justice, “Order fixing time-limits”, April 20, 2023, accessed August 21, 2024, <https://www.icj-cij.org/sites/default/files/case-related/187/187-20230420-ORD-01-00-EN.pdf>.

¹³¹ International Court of Justice, “Obligations of States in respect of Climate Change”, *International Court of Justice*, updated August 16, 2024, accessed August 22, 2024, <https://www.icj-cij.org/case/187>.

Organization.¹³² On June 30, 2023, the Secretariat of the United Nations last submitted a five-part grouping of documents that included information on the resolution passed, speeches given, and other valuable information that provided comprehensive evaluations of existing treaties and scientific evidence to demonstrate the urgency for action.¹³³ This grouping of documents was submitted in order to provide the ICJ with the necessary information to allow for a thorough and well informed advisory opinion.

Latest Developments

Recently, the filing of the written comments' deadline has come to pass, of which ninety-one comments in total were filed.¹³⁴ The public hearings on the request will not be heard until December 2, 2024. While widely speculated on what kind of advisory opinion the Court will give, there is a baseline established of "due diligence" from the International Tribunal for the Law of the Sea (ITLOS).¹³⁵ Although the opinion that ITLOS made may be persuasive to the ICJ, they have no further clarifications that the ICJ may be able to answer and clarify for States. The opinion for the ITLOS emphasized the need for States to take the necessary precautions to prevent harm to the environment and ensure actions are effective in mitigating climate related harm.¹³⁶

Committee Directive

The Court is tasked with analyzing the information furnished to them, be aware of written statements and written comments, and consider the request for the advisory opinion by the General Assembly Plenary. The Court should keep in mind the implications of the advisory opinion that they may publish and how it may directly impact non-governmental organizations and several blocs of the United Nations within several committees. "Due diligence" can be argued to be an over-broad term that negatively impacts the capabilities of UN bodies and NGOs in their missions to prevent climate change.

¹³² International Court of Justice, "Filing of written comments", August 16, 2024, accessed August 21, 2024, <https://www.icj-cij.org/sites/default/files/case-related/187/187-20240816-pre-01-00-en.pdf>.

¹³³ United Nations General Assembly, "Report of the International Court of Justice", March 1, 2023, accessed August 21, 2024, <https://www.icj-cij.org/sites/default/files/case-related/187/187-20230630-req-03-00-en.pdf>.

¹³⁴ International Court of Justice, "Filing of written comments", August 16, 2024, accessed August 21, 2024, <https://www.icj-cij.org/sites/default/files/case-related/187/187-20240816-pre-01-00-en.pdf>.

¹³⁵ Silverman-Roati, Bönnemann, "The ITLOS Advisory Opinion on Climate Change: An introduction into the joint blog symposium", May 22, 2024, accessed October 11, 2024, <https://blogs.law.columbia.edu/climatechange/2024/05/22/the-itlos-advisory-opinion-on-climate-change-an-introduction-into-the-joint-blog-symposium/#:~:text=The%20obligation%20to%20take%20all,effectiveness%20of%20that%20system%20>.

¹³⁶ Silverman-Roati, Bönnemann, "The ITLOS Advisory Opinion on Climate Change:

Case III: Allegations of Genocide under the Convention on Prevention and Punishment of Genocide (Ukraine v. Russian Federation: 32 States Intervening)

Introduction

On February 26, 2022, Ukraine filed proceedings against the Russian Federation, alleging a dispute over the interpretation and application of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, and henceforth, the Genocide Convention.¹³⁷ The 1948 Genocide Convention was one of the first internationally accepted United Nations (UN) agreements addressing humanitarian concerns and was adopted in response to World War II atrocities; the UN officially recognized that the act of genocide is an international crime, holding individuals and Member States responsible.¹³⁸ Per Ukraine's allegations, the Russian Federation falsely claimed that acts of genocide had occurred in the Luhansk and Donetsk oblasts of Ukraine and declared and implemented a "special military operation" against Ukraine to punish them for these alleged crimes.¹³⁹ Ukraine seeks to find the Court's jurisdiction based on Article 36, paragraph 1 of the Court's statute, and Article IX of the Genocide Convention.¹⁴⁰ Article 36 paragraph 1 of the Court's statute indicates the Court's jurisdiction in which it can resolve disputes, which are cases involving the Charter of the UN or any treaties and conventions in force.¹⁴¹ Article IX of the Genocide Convention indicates that, at the request of any party involved, any disputes between Member States relating to the interpretation and application of the Convention shall be submitted to the Court.¹⁴² Ukraine submitted its Memorial on July 1, 2022.¹⁴³ On October 3, 2022, Russia raised preliminary objections to the Court's jurisdiction and the admissibility of Ukraine's application.¹⁴⁴

History of Conflict

Conflict between Ukraine and the Russian Federation began in 2013, in which a protest evolved from the city of Kyiv against former Ukrainian President Viktor Yanukovich's decision to reject a European Union (EU) integration deal.¹⁴⁵ This decision was met with a 'violent crackdown' from Ukrainian citizens, which escalated the conflict, leading Yanukovich to leave Ukraine in February 2014.¹⁴⁶ After his flight, in March of 2014, the Russian Federation's military forces seized control of the Ukrainian region of Crimean Peninsula, claiming the need to protect Russian citizens.¹⁴⁷ After a direct vote from citizens in the Crimea region to join Russia, Crimea was then formally annexed by the Russian Federation.¹⁴⁸ After the crisis, ethnic tensions grew and by May 2014, pro-Russian separatists in the eastern Ukraine regions of Donetsk and Luhansk held their own independence referendums, officially becoming the Donetsk People's Republic (DPR) and Luhansk People's Republic (LPR).¹⁴⁹

¹³⁷ "Summary of the Judgement of 2 February 2024", The International Court of Justice, February 2, 2024, https://www.icj-cij.org/sites/default/files/case-related/182/182-20240202-sum-01-00-en.pdf?_cf_chl_tk=TbIY6l2cIMs4vzwmChNO0W9YAAW.ioo.ut.5DjG6m4g-1723891276-0.0.1.1-4778

¹³⁸ "Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948", International Committee of the Red Cross, accessed September 30, 2024, <https://ihl-databases.icrc.org/en/ihl-treaties/genocide-conv-1948>.

¹³⁹ "Application Instituting proceedings", The International Court of Justice, February 26, 2022, <https://www.icj-cij.org/sites/default/files/case-related/182/182-20220227-APP-01-00-EN.pdf>

¹⁴⁰ "Summary of the Judgement of 2 February 2024", The International Court of Justice

¹⁴¹ "Statute of the International Court of Justice", The International Court of Justice, accessed January 8, 2025, https://www.icj-cij.org/statute#CHAPTER_II

¹⁴² "Convention on the Prevention and Punishment of the Crime of Genocide", adopted by the General Assembly of the United Nations on December 9, 1948, *United Nations Treaty Collection* 79, no. 1021 (1951): 282, <https://treaties.un.org/doc/publication/unts/volume%2078/volume-78-i-1021-english.pdf>

¹⁴³ "Summary of the Judgement of 2 February 2024", The International Court of Justice

¹⁴⁴ "Summary of the Judgment of 2 February 2024", The International Court of Justice

¹⁴⁵ Center for Preventive Action, "War in Ukraine", *Council of Foreign Relations*, May 20, 2024, <https://www.cfr.org/global-conflict-tracker/conflict/conflict-ukraine>

¹⁴⁶ "Center for Preventive Action, "War in Ukraine"

¹⁴⁷ "Center for Preventive Action", War in Ukraine"

¹⁴⁸ "Center for Preventive Action", War in Ukraine"

¹⁴⁹ "Center for Preventive Action", War in Ukraine"

In May 2014, Petro Poroshenko won the Ukrainian presidential election.¹⁵⁰ President Poroshenko vowed to intensify efforts to reclaim occupied territories, but the conflict between Russia and Ukraine continued.¹⁵¹ Despite reclaiming some cities, including Mariupol, the conflict persisted, and in July 2014, separatist forces shot down Malaysia Airlines flight MH17, which resulted in the death of 298 Ukrainians.¹⁵² As a result, the United States and the EU increased sanctions on Russia, freezing its bank accounts and banning travel by prominent officials.¹⁵³ However, by August 2014, Russia invaded Ukraine, killing hundreds, despite the claim that its purpose was not to intervene in Ukraine.¹⁵⁴ A cease-fire was signed in September 2014 by Ukraine, Russia, the Organization for Security and Cooperation in Europe (OSCE), DPR, and LPR, formally known as the Minsk Protocol; but, violations of that agreement continued on both sides.¹⁵⁵

The Russian Federation reinforced the DPR and LPR regimes to make them “invulnerable to renewed pressure from Ukraine” by reorganizing their militia into a more disciplined armed force and replacing the leaders with locals. To ensure its legitimacy, the Russian Federation held elections on November 2, 2014, before the agreed date in the Minsk I protocol, therefore violating the agreement.¹⁵⁶ The Ukrainian government, in response to Russia’s actions, cut economic and financial ties with the DPR and LPR, which limited their crossing points and reinforced military positions along the contact line.¹⁵⁷ The fighting continued and by year’s end, more than 4,700 people were killed and 10,000 others were severely injured.¹⁵⁸

On February 12, 2015, the leaders of Ukraine, the Russian Federation, France, and Germany, agreed on a 13-point peace plan, known as Minsk II.¹⁵⁹ The Minsk II agreement was a “package of measures for the implementation of the Minsk Agreements”.¹⁶⁰ Minsk II proposed “the cessation of fighting, the withdrawal of heavy weapons, the release of prisoners, and the removal of foreign troops from Ukrainian territory”.¹⁶¹ Despite some progress in the peace plan, frequent violations of the agreement resulted in over 9,000 deaths by the end of 2015.¹⁶² In April 2016, The North Atlantic Treaty Organization (NATO) deployed four battalions to Eastern Europe to deter Russian aggression and by January 2018, the United States (US) imposed new sanctions on 21 individuals, mostly Russian officials.¹⁶³

In 2019, Volodymyr Zelensky was elected President of Ukraine with the promise to end the Donbas conflict.¹⁶⁴ In 2020, Zelensky approved a “new national security strategy that unambiguously labeled Russia as an aggressor and identified NATO membership as one of Ukraine’s key defense and foreign policy goals”.¹⁶⁵ The Ukrainian National Security Strategy (NSS) aimed to raise the costs of the use of force by the Russian Federation and maintain international pressure on said Member State in order to deter armed aggression.¹⁶⁶ However, the Russian Federation continued with its attacks against Ukraine; therefore, the NSS was diminished to “mediated talks between the two governments rather than any attempts at bilateral engagement”.¹⁶⁷

¹⁵⁰ Michael Ray, “Russia-Ukraine War”, *Britannica Encyclopedia*, August 18, 20204, <https://www.britannica.com/event/2022-Russian-invasion-of-Ukraine>

¹⁵¹ Michael Ray, “Russia-Ukraine War”

¹⁵² Michael Ray, “Russia-Ukraine War”

¹⁵³ Michael Ray, “Russia-Ukraine War”

¹⁵⁴ Michael Ray, “Russia-Ukraine War”

¹⁵⁵ Michael Ray, “Russia-Ukraine War”

¹⁵⁶ Duncan Allan, “The Minsk Conundrum: Western Policy and Russia’s War in Eastern Ukraine”, December 17, 2020, <https://www.chathamhouse.org/2020/05/minsk-conundrum-western-policy-and-russias-war-eastern-ukraine-0/minsk-1-agreement>

¹⁵⁷ Duncan Allan, “The Minsk Conundrum: Western Policy and Russia’s War in Eastern Ukraine”

¹⁵⁸ Michael Ray, “Russia-Ukraine War”

¹⁵⁹ Michael Ray, “Russia-Ukraine War”

¹⁶⁰ Duncan Allan, “The Minsk Conundrum: Western Policy and Russia’s War in Eastern Ukraine”

¹⁶¹ Michael Ray “Russia-Ukraine War”

¹⁶² Michael Ray, “Russia-Ukraine War”

¹⁶³ Center for Preventive Action, “War in Ukraine”

¹⁶⁴ Michael Ray, “Russia-Ukraine War”

¹⁶⁵ Michael Ray, “Russia-Ukraine War”

¹⁶⁶ “Ukraine’s New National Security Strategy”, The Polish Institute of International Affairs, October 30, 2020, https://pism.pl/publications/Ukraines_New_National_Security_Strategy

¹⁶⁷ Michael Ray, “Russia-Ukraine War”

The Russian Federation began their significant military buildup along the Ukrainian border between October and November of 2021.¹⁶⁸ Over the following months, more forces were deployed to allies and occupied nations of Russia.¹⁶⁹ By February 2022, approximately 190,000 Russian troops were positioned around Ukraine, signaling an imminent invasion.¹⁷⁰ The Russian Federation denied claims of an invasion, stating that their actions were pre-planned exercises.¹⁷¹ However, actions were still being taken to prevent the inevitable invasion.¹⁷² In response, the Russian President, Vladimir Putin, issued demands, including obtaining “*de facto* veto power over NATO expansion and the containment of NATO forces” to Member States that have been a part of NATO before 1997.¹⁷³ These demands, which would limit the protection around Eastern Europe and the Baltic States, were firmly rejected.¹⁷⁴ International intelligence agencies took the rare step of “pre-bunking” the Russian Federation’s act of war by publicly revealing classified information about their plans.¹⁷⁵

Statement of Facts

On February 21, 2022, the Russian Federation signed an executive order for DPR and LPR, stating that it “considered it necessary to take a long overdue decision and to immediately recognize the independence and sovereignty of the Donetsk People’s Republic and the Luhansk People’s Republic”.¹⁷⁶ The Russian Federation claimed that the decision was made due to the continuous armed conflict between both States and the acts of genocide faced by millions.¹⁷⁷ On February 24, 2022, Russia declared a special military operation against Ukraine.¹⁷⁸ Russia claimed that “its purpose was to protect people who had been subjected to abuse and genocide by the Kiev regime for eight years”.¹⁷⁹ Russia did not provide the Court any evidence to support its allegation.¹⁸⁰ However, verified and credible information collected from primary and secondary sources, including the Office of the United Nations High Commissioner for Human Rights (OHCHR), were submitted to the Court asserting that there is no evidence of genocide in Ukraine.¹⁸¹

Procedural History

On February 26, 2022, Ukraine filed an Application with the Court, claiming that the allegations of genocide from the Russian Federation were false.¹⁸² In Ukraine’s application, Ukraine claims that Russia’s declaration is “incompatible with the [Genocide] Convention and violated Ukraine’s right to be free from unlawful actions, including military attacks”.¹⁸³ Ukraine also claims that Russia’s actions violate the duty, as mandated in Article I of the Convention, to “prevent and punish” the act of genocide.¹⁸⁴

On October 3, 2022, in response to Ukraine’s claims, Russia raised six preliminary objections to Ukraine’s application, stating the following:

- (1) *The Court lacks jurisdiction as there was no dispute between the parties under the Genocide Convention when the Application was filed (first preliminary objection) ;*
- (2) *the Court lacks jurisdiction based on the subject matter (second*

¹⁶⁸ Michael Ray, “Russia-Ukraine War”

¹⁶⁹ Michael Ray, “Russia-Ukraine War”

¹⁷⁰ Michael Ray, “Russia-Ukraine War”

¹⁷¹ Michael Ray, “Russia-Ukraine War”

¹⁷² Michael Ray, “Russia-Ukraine War”

¹⁷³ Michael Ray, “Russia-Ukraine War”

¹⁷⁴ Michael Ray, “Russia-Ukraine War”

¹⁷⁵ Michael Ray, “Russia-Ukraine War”

¹⁷⁶ “Application Instituting Proceedings”, The International Court of Justice

¹⁷⁷ “Application Instituting Proceedings”, The International Court of Justice

¹⁷⁸ Andrew Osborn & Polina Nikolskaya, “Russia’s Putin Authorizes ‘special military operation’ against Ukraine”, *Reuters*, February 24, 2022, accessed August 12, 2024, <https://www.reuters.com/world/europe/russias-putin-authorises-military-operations-donbass-domestic-media-2022-02-24/>.

¹⁷⁹ “Summary of the Judgement of 2 February 2024”, The International Court of Justice

¹⁸⁰ “Application Instituting Proceedings”, The International Court of Justice

¹⁸¹ “Application Instituting Proceedings”, The International Court of Justice

¹⁸² “Application Instituting Proceedings”, The International Court of Justice

¹⁸³ “Application Instituting Proceedings”, The International Court of Justice

¹⁸⁴ “Application Instituting Proceedings”, The International Court of Justice

preliminary objection); (3) the newly made claims by Ukraine in the Memorial should be found inadmissible (third preliminary objection); (4) Ukraine's claims are inadmissible due to an ineffective possible judgement given by the Court (fourth preliminary objection); (5) Ukraine's request for a declaration that it did not violate its obligations under the Genocide Convention should be inadmissible (fifth preliminary objection); and (6) Ukraine's application in its entirety is inadmissible as it constitutes an abuse of process (six preliminary objection).

The Court recognizes two distinct aspects of the dispute and therefore, considers them necessary to be examined separately. (1) Ukraine seeks a “judicial finding that it has itself not committed the wrongful acts that the Russian Federation has imputed”, and (2) Ukraine seeks to “invoke the international responsibility of the Russian Federation by imputing international wrongful conduct to it”.¹⁸⁵ In terms of the first aspect, the Court recognizes that Ukraine seeks a judgement in its favor without holding Russia responsible for any wrongful acts.¹⁸⁶ In terms of the second aspect, the Court recognizes that Ukraine urges the Court to hold Russia accountable for its wrongful actions and seek reparations.¹⁸⁷ For both aspects of the dispute, the Court examines, respectfully, the issue of jurisdiction and admissibility raised by the six preliminary objections of the Russian Federation.¹⁸⁸

The Court stated that, for jurisdiction under a treaty, the actions in question must fall within its scope.¹⁸⁹ Ukraine accused the Russian Federation of falsely alleging genocide and abusing the Genocide Convention to justify military actions, claiming violations of Articles I and IV.¹⁹⁰ The Court found that, even if those claims were true, they would not violate the Convention, and Ukraine's argument concerning the Russian Federation's action exceeding international law does, in fact, fall outside the Conventions scope.¹⁹¹ The Court therefore determines that the Russian Federation's second preliminary objection—the Court lacking jurisdiction *ratione materiae* (subject matter), to entertain the claims in submissions (c) and (d) presented by Ukraine in paragraph 178 of its Memorial—must be upheld, but rejects the remaining five preliminary objections.¹⁹²

After careful deliberation and discussion, on February 2, 2024, the Court decided that submissions (c) and (d) in Ukraine's Memorial do not fall within the Court's jurisdiction and it will not deal with them on the merits.¹⁹³ However, the Court did decide that submission (b)—“whether there is credible evidence that Ukraine is responsible for committing genocide in violation of the Genocide Convention in the Donetsk and Luhansk oblasts of Ukraine”—in the Memorial does fall within the Courts jurisdiction and is admissible; the claim will be examined on the merits in the next stage of the proceedings.¹⁹⁴

Latest Developments

Further into its judgment made on February 2, 2024, the Registrar of the Court invited Member States that had previously filed declarations of intervention applications by way of Article 63 of the Statute of the Court, to indicate by August 2 of the same year if they wish to file a new declaration, adjust their current declaration, or maintain the original declaration.¹⁹⁵ Per Article 63 of the Statute, Member States have the right to intervene in case proceedings when the “construction of a convention to which States other than those concerned in the case are parties is in question”.¹⁹⁶

¹⁸⁵ “Summary of the Judgement of 2 February 2024”, The International Court of Justice

¹⁸⁶ “Summary of the Judgement of 2 February 2024”, The International Court of Justice

¹⁸⁷ “Summary of the Judgement of 2 February 2024”, The International Court of Justice

¹⁸⁸ “Summary of the Judgement of 2 February 2024”, The International Court of Justice

¹⁸⁹ “Summary of the Judgement of 2 February 2024”, The International Court of Justice

¹⁹⁰ “Summary of the Judgement of 2 February 2024”, The International Court of Justice

¹⁹¹ “Summary of the Judgement of 2 February 2024”, The International Court of Justice

¹⁹² “Summary of the Judgement of 2 February 2024”, The International Court of Justice

¹⁹³ “Summary of the Judgement of 2 February 2024”, The International Court of Justice

¹⁹⁴ “Summary of the Judgement of 2 February 2024”, The International Court of Justice

¹⁹⁵ “Declarations of intervention under Article 63 of the Statute of the Court for the purposes of the merits stage of the proceedings”, the International Court of Justice, August 6, 2024, <https://www.icj-cij.org/sites/default/files/case-related/182/182-20240806-pre-01-00-en.pdf>

¹⁹⁶ “Declarations of Intervention under Article 63 of the Statute of the Court”, The International Court of Justice

By August 2, 2024, six Member States indicated that they wished to maintain their original declaration without adjustments, eight Member States had filed their adjusted declarations, and nine Member States had filed new declarations of intervention.¹⁹⁷ According to the Rules of the Court, Article 83 paragraph 1, Ukraine and the Russian Federation are able to submit observations on the admissibility of these interventions.¹⁹⁸ In the case that any objections are raised, a further round of written observations will occur before the Court makes its decision based on merits.¹⁹⁹

Committee Directive

The Court is tasked with two decisions: to first decide if there is credible evidence against Ukraine regarding the alleged claim of genocide in the Donetsk and Luhansk oblasts and to decide if, under the Genocide Convention, the claims against Ukraine of the crime of genocide are true. The Court is further asked to consider all 32 Member States declarations of intervention in this case under Article 63, paragraph 2, of the Statute of the Court.

¹⁹⁷ “Declarations of Intervention under Article 63 of the Statute of the Court”, The International Court of Justice

¹⁹⁸ “Declarations of Intervention under Article 63 of the Statute of the Court”, The International Court of Justice

¹⁹⁹ “Declarations of Intervention under Article 63 of the Statute of the Court”, The International Court of Justice

Case IV: Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan)

Introduction

On September 16, 2021, Armenia filed an application of proceedings against Azerbaijan, alleging violations of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), specifically Articles 2 through 7.²⁰⁰ The CERD was adopted in 1965 and entered into force 1969 and remains the “principle international human rights instrument defining and prohibiting racial discrimination in all sectors of private and public life”.²⁰¹ Per this case, Armenia claims that Azerbaijan has subjected Armenians to racial discrimination for decades, resulting in horrendous crimes such as mass killings, torture, and systemic discrimination.²⁰² According to their proceedings, Armenia claims that these actions specifically target those of Armenian ethnic or national origin, regardless of their nationality.²⁰³ Armenia further claims that Azerbaijan violated article 2-4, which state that governments shall condemn racial discrimination, segregation, and racist propaganda and avoid it in policy and practice; article 5, in which racial policies will be eliminated and governments will ensure equality; article 6, in which governments will protect its citizens from racial discrimination; and article 7, in which governments will promote tolerance through education.²⁰⁴ Along with their claim, Armenia requests for provisional measures to “protect and preserve Armenia’s rights and the rights of Armenians from further harm and to prevent the aggravation or extension of the dispute, pending the determination of the merits of the issues raised in the Application”.²⁰⁵

History of Conflict

The conflict between Armenia and Azerbaijan began after the independence of Nagorno-Karabakh, a region located in Armenia and Azerbaijan territory, in 1991.²⁰⁶ Armenia is in the South Caucasus region and is bordered by Turkey, Georgia, Azerbaijan, and Iran.²⁰⁷ In previous conflicts, Azerbaijan has engaged in persecution and massacres of Armenians in the region, including Nagorno-Karabakh.²⁰⁸ In the early 20th century, the Armenian Genocide involved mass killings, deportations, and persecution of Armenians located within the Ottoman Empire and the South Caucasus.²⁰⁹ In September 1918, the “Army of Islam” led by Enver Pasha invaded the region of Baku from the Russian Federation, the Armenian, and British armed forces; this in turn resulted in a massacre of the Armenian population that resulted in over 200,000 deaths.²¹⁰ In March 1920, Azerbaijani troops initiated a massacre of Armenians in Shushi, a major city in the Nagorno Karabakh region.²¹¹ Soon after, Azerbaijan was incorporated into the Soviet Union as the Azerbaijan SSR, which pursued policies aimed at erasing Armenian presence, especially in the Nagorno-Karabakh region, through demographic manipulation and destruction of Armenian cultural heritage.²¹²

²⁰⁰ “Request for the Indication of provisional measures”, The International Court of Justice, July 6, 2023, <https://www.icj-cij.org/sites/default/files/case-related/180/180-20230706-ord-01-00-en.pdf>

²⁰¹ Gay McDougall, “International Convention on the Elimination of All Forms of Racial Discrimination”, February 2021, <https://legal.un.org/avl/ha/cerd/cerd.html>

²⁰² “Request for the Indication of provisional measures”, The International Court of Justice

²⁰³ “Request for the Indication of provisional measures”, The International Court of Justice

²⁰⁴ “International Convention on the Elimination of All Forms of Racial Discrimination, adopted December 21, 1965, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-elimination-all-forms-racial>

²⁰⁵ “Request for the Indication of provisional measures”, The International Court of Justice

²⁰⁶ Center for Preventative Action, “Nagorno-Karabakh Conflict”, *Global Conflict Tracker: Council on Foreign Relations*, October 26, 2023, accessed August 12, 2024, <https://www.cfr.org/global-conflict-tracker/conflict/nagorno-karabakh-conflict>.

²⁰⁷ “Application Instituting Proceedings”, International Court of Justice, September 16, 2021, <https://www.icj-cij.org/sites/default/files/case-related/180/180-20210916-APP-01-00-EN.pdf>

²⁰⁸ “Application Instituting Proceedings”, The International Court of Justice

²⁰⁹ “Application Instituting Proceedings”, The International Court of Justice

²¹⁰ “Application Instituting Proceedings”, The International Court of Justice

²¹¹ “Application Instituting Proceedings”, The International Court of Justice

²¹² “Application Instituting Proceedings”, The International Court of Justice

During the age of the Soviet Union, Armenians in Nagorno-Karabakh resisted Azerbaijani control.²¹³ Protests were met with much violence, imprisonments, and threats, forcing many Armenians into exile.²¹⁴ In 1988, as the Soviet Union neared collapse, Nagorno-Karabakh demanded unification with Armenia, leading to violent conflict that escalated into war, lasting until 1994.²¹⁵ This war, also known as the first Karabakh war, resulted in approximately 30,000 deaths and the displacement of millions, ending with Armenian victory.²¹⁶ The Organization for Security and Cooperation in Europe (OSCE) attempted to bring this conflict to an end by creating the Minsk Group to lead negotiation and mediation strategies; however, the attempt failed to end the conflict permanently.²¹⁷ The Minsk Group, created in 1994, was composed of the Russian Federation, the French Republic, and the United States of America, to “provide a forum for negotiations towards peaceful settlement”.²¹⁸ Additionally, in 1994, Russia brokered a ceasefire known as the Bishkek Protocol, which left Nagorno-Karabakh de facto independent, meaning having a self-proclaimed government but still having economic, political, and military ties to Armenia.²¹⁹ This 1994 ceasefire formally remained in effect until September of 2020.²²⁰ Despite the 1994 ceasefire, tensions between Armenia and Azerbaijan continued.²²¹

On April 2, 2016, Azerbaijan’s forces launched an attack into territories controlled by Armenian forces in Nagorno-Karabakh, claiming that the attack was a response to Armenia “shelling civilian sites” on its [Azerbaijan] territory.²²² Both parties used a range of weaponry, including tanks, artillery, and rocket launchers, and engaged in shelling of civilian targets, as well as threatening capital cities and oil facilities, leading to multiple casualties.²²³ From 1994 to 2020, sporadic deadly incidents, involving attack drones, heavy weaponry, and special operation forces along the front lines, demonstrated the risk that war would reignite between Armenia and Azerbaijan.²²⁴

Statement of Facts

On July 12, 2020, Azerbaijan launched another attack against civilians and military personnel in Armenia’s Tavush province after its government publicly threatened the use of force against Armenia and criticizing the Minsk Group’s efforts to negotiate peace.²²⁵ In September of 2020, a full-scale war resumed in the region, known as the second Nagorno-Karabakh war.²²⁶ This war, considered the deadliest in three decades and resulted in approximately 7000 military and 170 civilian deaths, lasted six weeks and ended on November 10 with the Russian Federation calling for a ceasefire.²²⁷ This ceasefire agreement was also known as the Trilateral Statement, which allowed Armenian refugees and internally displaced persons to return to Nagorno-Karabakh and other areas controlled by the UN High Commissioner for Refugees as well as exchanging prisoners of war and other detained persons.²²⁸

Armenia claims that Azerbaijan frequently uses and tolerates racist and derogatory hate speech toward Armenians, using words such as “bandits”, “vandals”, “fascists”, and “barbarians”, and other words in their language.²²⁹ The European Commission against Racism and Intolerance (ECRI) observed that “Azerbaijan’s leadership, education

²¹³ “Application Instituting Proceedings”, The International Court of Justice

²¹⁴ “Application Instituting Proceedings”, The International Court of Justice

²¹⁵ “Application Instituting Proceedings”, The International Court of Justice

²¹⁶ Mathieu Droin, et. al., “A Renewed Nagorno-Karabakh Conflict: Reading Between the Front Lines”, *Center for Strategic & International Studies*, September 22, 2023, accessed August 12, 2024, <https://www.csis.org/analysis/renewed-nagorno-karabakh-conflict-reading-between-front-lines>.

²¹⁷ Center for Preventative Action, “Nagorno-Karabakh Conflict”

²¹⁸ “Application Instituting Proceedings”. The international Court of justice

²¹⁹ Center for Preventative Action, “Nagorno-Karabakh Conflict”

²²⁰ Center for Preventative Action, “Nagorno-Karabakh Conflict”

²²¹ Center for Preventative Action, “Nagorno-Karabakh Conflict”

²²² Aleksandra Jarosiewicz & Maciej Falkowski, “The four day war in Nagorno-Karabakh”, *Centre for Eastern Studies*, April 6, 2016, <https://www.osw.waw.pl/en/publikacje/analyses/2016-04-06/four-day-war-nagorno-karabakh>

²²³ Aleksandra Jarosiewicz & Maciej Falkowski, “The four-day war in Nagorno-Karabakh”

²²⁴ “The Nagorno-Karabakh Conflict: A Visual Explainer”, *International Crisis Group*, September 16, 2023, accessed August 12, 2024, <https://www.crisisgroup.org/content/nagorno-karabakh-conflict-visual-explainer>.

²²⁵ “Application Instituting Proceedings”, The International Court of Justice

²²⁶ “The Nagorno-Karabakh Conflict: A Visual Explainer”, *International Crisis Group*

²²⁷ “The Nagorno-Karabakh Conflict: A Visual Explainer”, *International Crisis Group*

²²⁸ “Application Instituting Proceedings”, The International Court of Justice

²²⁹ “Application Instituting Proceedings”, The International Court of Justice

system, and media are very prolific in their denigration of Armenians”.²³⁰ Likewise, the Committee on the Elimination of Racial Discrimination (CERD Committee) observed Azerbaijan’s “repeated and unpunished use of inflammatory language” in regard to Armenian citizens.²³¹ Armenia, furthermore, makes multiple claims against Azerbaijan in regards to their [Azerbaijanis] policies of ethnic cleansing, destroying Armenian heritage, failure to take effective measures to eliminate racial discrimination and protect Armenian citizens.²³²

Procedural History

On September 16, 2021, Armenia filed a case against Azerbaijan, alleging that they violated the CERD.²³³ Armenia claimed that Azerbaijan had subjected Armenians to systemic discrimination and violence and therefore, has requested provisional measures to protect Armenians to prevent racial hatred and protect their cultural heritage.²³⁴ The Court acknowledges that this request is referenced to Article 41 of the Statute and to Article 73, 74, and 75 of the Rules of Court (the “first Request”).²³⁵ The Court indicated two provisional measures: (1) the Republic of Azerbaijan is to protect the citizens from the 2020 conflict and protect and preserve their culture and legal equality and (2) both parties are to refrain from any actions that might extend the issue before the Court or hinder its resolve.²³⁶

The Court also acknowledges that Armenia requested the modification of the Court’s Order of 7 December 2021 (the Second Request).²³⁷ The Court declined to modify the order on October 12, 2022, due to the circumstances of the case not changing enough to justify modifying the Court’s earlier decision in the Order of 7 December 2021.²³⁸ The Court also restated the provisional measures in the Order written in 2021, specifically that both parties “refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve”.²³⁹ Armenia filed a new request (the ‘third request’) for provisional measures in December of the same year.²⁴⁰

In its Third Request, Armenia claims that Azerbaijan had orchestrated a blockade of the Lachin Corridor, the only road connecting approximately 120,000 ethnic Armenians in Nagorno-Karabakh to other parts of the world.²⁴¹ Armenia requests that the Court orders Azerbaijan to end the blockade to ensure safe movement for the citizens and that Azerbaijan restore and maintain the provision of natural gas and other essential utilities to Nagorno-Karabakh.²⁴² Due to these new circumstances presented to the Court, it acknowledges, per the Rules of the Court Article 75 and 76, that the situation in Armenia warrants examination by the Court.²⁴³ For context, the Rules of the Court Article 75 and 76 suggests that decisions on provisional measures can be modified if a change in circumstances justifies it and allows a party to submit a new request based on new facts, even if the previous request was rejected.²⁴⁴

On February 22, 2023, the Court indicated a provisional measure granting Armenia to “take all measures at its disposal to ensure unimpeded movement of persons, vehicles and cargo along the Lachin Corridor in both directions”.²⁴⁵ On May 12, 2023, Armenia requested that the Court modify their provisional measure made in February (the Fourth Request).²⁴⁶ The Court found that the circumstances at the time of the Order did not require

²³⁰ “Application Instituting Proceedings”, The International Court of Justice

²³¹ “Application Instituting Proceedings”, The International Court of Justice

²³² “Application Instituting Proceedings”, The International Court of Justice

²³³ “Request for the Indication of provisional measures”, The International Court of Justice

²³⁴ “Request for the Indication of provisional measures”, The International Court of Justice

²³⁵ “Request for the Indication of provisional measures”, The International Court of Justice

²³⁶ “Request for the Indication of provisional measures”, The International Court of Justice

²³⁷ “Request for the Indication of provisional measures”, The International Court of Justice

²³⁸ “Request for the Indication of provisional measures”, The International Court of Justice

²³⁹ “Request for the Indication of provisional measures”, The International Court of Justice

²⁴⁰ “Request for the Indication of provisional measures”, The International Court of Justice

²⁴¹ “Request for the Indication of provisional measures”, The International Court of Justice

²⁴² “Request for the Indication of provisional measures”, The International Court of Justice

²⁴³ “Request for the Indication of provisional measures”, The International Court of Justice

²⁴⁴ “Request for the Indication of provisional measures”, The International Court of Justice

²⁴⁵ “Request for the Indication of provisional measures”, The International Court of Justice

²⁴⁶ “Request for the Indication of provisional measures”, The International Court of Justice

them to modify the measure and reaffirmed that measure in June of that same year due to their being no reason for change.²⁴⁷

Latest Developments

On September 28, 2023, Armenia filed a new request (the fifth request) for provisional measures with the Court following Azerbaijan's military assault on Nagorno-Karabakh on September 19, 2023.²⁴⁸ Armenia claims that the attack led to hundreds of their citizens being killed or severely injured and displaced thousands more.²⁴⁹ In this request, Armenia asks the Court to order Azerbaijan to set in motion provisional measures, including withdrawing military personnel from civilian areas in Nagorno-Karabakh, facilitating UN access to ethnic Armenians in the region, and avoiding punitive actions against former and current Nagorno-Karabakh representatives or military personnel.²⁵⁰ Armenia also requested that the Court reaffirm Azerbaijan's obligations under its previous orders.²⁵¹

The Court acknowledged this request; however, it also exercised its power to indicate provisional measures that are other than those requested as stated in Article 75 Paragraph 2 of the Rules of Court and therefore, chose to exercise its power in this case.²⁵² The Court indicated the following provisional measures for Azerbaijan: ensure the safety of the people of Nagorno-Karabakh who left and are wishing to return, who wish to depart, and who wish to stay after September 19, 2023.²⁵³ The Court also ordered for Azerbaijan to submit legislation and reports within an eight-week period on the steps taken to implement the provision measures developed by the Court.²⁵⁴ Additionally, the Court reaffirmed the provisional measures indicated in its previous Orders from December 7, 2021 and February 22, 2023.²⁵⁵

On April 15, 2024, both parties in this case requested that the Court make judgements in their favor.²⁵⁶ Azerbaijan requested that the Court dismiss Armenia's application in its entirety, arguing that Armenia failed to meet the negotiation requirements under Article 22 of CERD.²⁵⁷ For context, Article 22 of CERD states that "any dispute between two or more States Parties with respect to interpretation or application of this Convention...not settled by negotiation or by the procedures...shall be referred to the International Court of Justice for decision..."²⁵⁸

Azerbaijan also declared that the Court lacks jurisdiction over Armenia's claims concerning the alleged violations of CERD during armed conflict, including the racial discrimination acts against Armenian civilians.²⁵⁹ In respect to Armenia, the Court was asked to reject the first and second preliminary objection raised by Azerbaijan or, alternatively, decide that the second objection does not have an exclusively preliminary character.²⁶⁰ On April 19, 2024, this hearing was concluded and the Court is currently in deliberation.²⁶¹

Committee Directive

²⁴⁷ "Request for the Indication of provisional measures", The International Court of Justice

²⁴⁸ "Request for the indication of provisional measures", The International Court of Justice

²⁴⁹ "Request for the indication of provisional measures", The International Court of Justice

²⁵⁰ "Request for the indication of provisional measures", The International Court of Justice

²⁵¹ "Request for the indication of provisional measures", The International Court of Justice

²⁵² "Request for the indication of provisional measures", The International Court of Justice

²⁵³ "Request for the indication of provisional measures", The International Court of Justice

²⁵⁴ "Request for the indication of provisional measures", The International Court of Justice

²⁵⁵ "Request for the indication of provisional measures", The International Court of Justice

²⁵⁶ "Conclusion of the public hearings held from Monday 15 to Friday 19 April 2024", The International Court of Justice, April 19, 2024, <https://www.icj-cij.org/sites/default/files/case-related/180/180-20240419-pre-01-00-en.pdf>

²⁵⁷ Conclusion of the public hearings held from Monday 15 to Friday 19 April 2024", The International Court of Justice

²⁵⁸ "International Convention on the Elimination of All Forms of Racial Discrimination", adopted and opened for signature December 21 1965, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-elimination-all-forms-racial>

²⁵⁹ Conclusion of the public hearings held from Monday 15 to Friday 19 April 2024", The International Court of Justice

²⁶⁰ Conclusion of the public hearings held from Monday 15 to Friday 19 April 2024", The International Court of Justice

²⁶¹ Conclusion of the public hearings held from Monday 15 to Friday 19 April 2024", The International Court of Justice

The Court must conclude if it has jurisdiction to pass judgement on the alleged violation claim made by Armenia concerning Azerbaijan under Articles 2, 4, and 5 of the CERD. The Court also must then conclude whether Armenia's claims are dismissible due to their failure to negotiate as required under Article 22 of the CERD. Furthermore, the Court should decide whether it is beneficial to the final judgement to use similar disputes regarding racial discrimination as precedent.

Annotated Bibliography

Case I: Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar; 7 States intervening)

“The Gambia brings historic genocide case against Myanmar”, *International Bar Association*, <https://www.ibanet.org/article/02A82017-63C8-4C20-A9EB-BC9DBFCF26BC>

This article from the International Bar Association, provides a commentary on the present case, noting the historic significance of the case being brought in front of the ICJ. It notes in particular that this is the first time that a State that has not been directly harmed or otherwise affected by the alleged offending State has been raised in an international court of law. This is significant as it has already set a precedent for potential future cases that the jurisdiction of the International Court of Justice will be able to have cases presented from a wider pool of States than those who are directly impacted by a particular crisis or legal dispute. This article also provides an official statement by the organization, which provides an insight as to one of many NGOs that are watching this case closely.

“Developments in Gambia’s Case Against Myanmar at the International Court of Justice”, *Human Rights Watch*, <https://www.hrw.org/news/2022/02/14/developments-gambias-case-against-myanmar-international-court-justice>

This Q&A-formatted document published by Global Justice Center addresses key questions and the pertaining answers to the ongoing case of *The Gambia v. Myanmar*. In addition to providing information about the background of the case, it also goes into the jurisdiction for the ICJ to hear this case and why it is important that it will be addressed in an international court of law. It is worth noting that this document does not make an effort to be neutral about the ongoing case and instead leans towards supporting the Gambia.

SG/SM/19946, “Secretary-General Welcomes International Court of Justice Order on The Gambia v. Myanmar Genocide Convention Case”, <https://press.un.org/en/2020/sgsm19946.doc.htm>

This public statement, published by the Spokesman for the UN Secretary-General António Guterres, emphasizes the UN’s stance on allowing the ICJ to settle international disputes in a public, peaceful forum. Secretary-General Guterres encourages Myanmar to handle their domestic problems with the Rohingya group to the best of their abilities, indicating a present and active recognition of the crisis that led to the case being brought before the ICJ. This statement emphasizes the importance of the case itself being before the court, in addition to making note that the Court unanimously ordered Myanmar’s cooperation with the Genocide Convention, which can likely be an indication as to how the ICJ will move forward with their analysis of the case.

“UN Documents for Myanmar”, *Security Council Report*, <https://www.securitycouncilreport.org/un-documents/myanmar/>

This list of documents, issued by the United Nations Security Council, details the most recent resolutions, presidential statements, secretary-general’s reports, SC letters, SC meeting records, press statements, General Assembly documents, Human Rights Council documents, Working Group on Children and Armed Conflict documents, and various other selected documents pertaining to Myanmar and the present case. It is imperative that these documents and other pieces of media are examined closely for data points and previous statements regarding the background of the present case just as the Court will be paying attention to the same documents.

Rizwanul Islam, “The Gambia v. Myanmar: An Analysis of the ICJ’s Decision on Jurisdiction under the Genocide Convention”, <https://www.asil.org/insights/volume/26/issue/9>

This article from the American Society of International Law, is an in-depth analysis on the ICJ’s opinion, split into five distinct sections. The sections are as follows: the jurisdictional challenge faced by the Gambia, the admissibility of the case before the ICJ as a body, the existence of the alleged dispute,

Myanmar's reservations under the Genocide Convention, and the Gambia's lack of standing as an uninjured party. This article analyzes each section of the published opinion by the ICJ and their justifications under each. Additionally to that, the article analyzes the dissenting opinion and the events to come as a result of this published opinion. The importance is that it comes from a non-UN source and provides an in-depth analysis of the opinion and dissent both rather than creating a clear support around one or the other.

Case II: Obligations of States in respect of Climate Change

Maria Antonia Tigre, Jorge Alejandro Carrillo Bañuelos, “The ICJ’s Advisory Opinion on Climate Change: What Happens Now?”, <https://blogs.law.columbia.edu/climatechange/2023/03/29/the-icjs-advisory-opinion-on-climate-change-what-happens-now/>

This Sabin Center blog post under the Columbia Law School asks lingering questions after the ICJ’s published advisory opinion. Within this document are the questions that were raised by the United Nations General Assembly (UNGA), analyzes the importance of the questions and the opinion itself, and asks what the ramifications are now that the opinion has been published. Further, it asks where the opinion affects not only scientific missions, but also legal fields, and other areas of international law such as human rights. This document additionally outlines how the UNGA’s original resolution was raised and how the process was conducted through to the conclusion of the ICJ. As these are all considerations that the Court will be examining, it is imperative to understand the scope of the case and how it will be taken into account.

Payan Akhavan, Rozemarijn Roland Holst, “What are the Legally Binding Obligations of States in Respect of Climate Change?”, <https://sdg.iisd.org/commentary/guest-articles/what-are-the-legally-binding-obligations-of-states-in-respect-of-climate-change/>

This article from the International Institute for Sustainable Development delves into the background of the widespread recognition for the need of a legal standard for climate change litigation, as well as highlighting the importance of the advisory opinion’s procedural history. This article additionally takes note of specific organizations, such as the Commission of Small Island States on Climate Change and International Law (COSIS) that provided important arguments and an agreement on the right of the ICJ to answer legal questions raised by the international community regarding marine environments. Within the article also lists some of the other legal questions raised before the ICJ when considering their advisory opinion, including but not limited to: greenhouse gasses, obligations of States under different Articles in the agreement to protect marine environments, and several other questions that were raised.

Climate Change Litigation Databases, “Request for an advisory opinion on the obligations of States with respect to climate change”, <https://climatecasechart.com/non-us-case/request-for-an-advisory-opinion-on-the-obligations-of-states-with-respect-to-climate-change/>

This document from the Sabin Center for Climate Change Law analyzes the resolution from the United Nations General Assembly that requested the advisory opinion from the ICJ about the present case. In addition, this document provides a timeline from the advisory opinion request, through the initial press release from the ICJ, through the written statements from States, specialized UN committees, and NGOs alike about information, opinions, data points, and other important pieces of literature to inform the ICJ about this area of law. These statements are critical in understanding which organizations have a greater interest in the advisory opinion and how it could impact their functions and missions.

Jessica Wentz, Ama Francis, “Climate Change, Health Impacts, and State Obligations under International Law”, <https://blogs.law.columbia.edu/climatechange/2024/06/24/climate-change-health-impacts-and-state-obligations-under-international-law/>

This article gives context to the reports published by the Sabian Center to the ICJ in their course in examining *The Gambia v. Myanmar* on the charges of genocide. In doing so, it emphasizes the scientific need for international law to have an opinion on this topic due to wider public health implications in addition to the overall concerns with global climate change. The pair of reports that were published are simplified within this article, allowing for an in-depth understanding of the data points that are being delivered to the Justices. This article also provides links to such reports themselves, providing an information highway to utilize.

Case III: Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)

Denys Azarov et. at., “Understanding Russia’s Actions in Ukraine as the Crime of Genocide”, *Journal of International Criminal Justice* 21, no. 2 (2023): 233-264, <https://doi.org/10.1093/jicj/mqad018>

This article examines Russia’s aggression against Ukraine in February 2022, which resulted in heavy armed conflict within the region and potential breaches of international law. Azarov, as well as other authors, through the lens of genocide, examined the violations of international and human rights laws and contextualizes the arguments for the existence of genocidal intent behind the seemingly unrelated crimes committed by the armed forces of the Russian Federation all over Ukraine. The authors also access specific genocidal acts, from excessive use of force, to murder, to forcible transfer of Ukrainian children and conclude that these actions provide reasonable grounds to assume Russian’s intent to destroy the Ukraine nation. As this is the basis for the case, it is imperative to have a comprehensive background on what the allegations are.

Katy Malloy, “Ukraine v. Russia: A Case for Change in International Enforcement”, *William and Mary Law Review* 65, no. 5 (2023-2024): 1231-1264, <https://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=4032&context=wmlr>

This article from William and Mary Law Review analyzes Russian President Vladimir Putin’s invocation of Article 51 of the UN Charter to justify the 2022 Ukraine invasion, arguing that those actions were defensive and necessary to protect ethnically Russian Ukrainians. Malloy critiques Russia’s claim under international law and explores the challenges posed by such violations to the international legal order. With this evaluation, Malloy provides recommendations for improving the enforcement of international law, with emphasis on reforming the U.N. Security Council.

Yulia Loffe, “Forcibly Transferring Ukrainian Children to the Russian Federation: A Genocide?”, *Journal of Genocide Research*, 25 (2023): 315-351, <https://doi.org/10.1080/14623528.2023.2228085>

Within the context of international law and the Genocide Convention, this article examines the forcible transfer of Ukrainian children to Russia, beginning on February 24, 2022. This article reviews evidence from regional and international organizations and NGOs and highlights the systematic nature of these transferred and how, under international law, it is considered as genocide. Loffe explores the variables required to prove the crime of genocide and argues that Russian actions against Ukraine, more specifically the transferring of children, is, in fact, criteria for genocide. Loffe further evaluates the ongoing legal case and the potential for further litigation. It narrowly focuses on one of the issues being brought before the court, emphasizing the contentious nature of how genocide is defined.

Roy Allison, “Russia’s Case for War against Ukraine: Legal Claims, Political Rhetoric, and Instrumentality in a Fracturing International Order”, *Problems of Post-Communism*, 71 (2024): 271-282, <https://doi.org/10.1080/10758216.2023.2254915>

This article examines and analyzes Russia’s justification of war related crimes against Ukraine and focuses on deconstructing the legal and normative claims made by them. In this research, Allison poses two analytical questions: (1) how far the Russian invasion of Ukraine violates the UN Charter-based global legal order as well as European established security principles and norms; and (2) what motivated Russian claims and the role of instrumentality versus belief, with the “historic Russian regions” used as a tool to justify Russian actions. This article concludes that Russia’s manipulation of legal discourse poses a threat to global rules and norms.

Case IV: Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan)

Francoise J. Companjen, "Nagorno-Karabakh: Embedded in Geopolitics", *Atlantische Perspectief*, 34, no.4(2010): 9-14., <https://www.jstor.org/stable/48580809>

This article addresses the current sovereignty conflict of the Nagorno-Karabakh region between Armenia and Azerbaijan. Companjen highlights multiple issues and layers within the situation, including alleged genocide, sovereignty, and ethnic and racial discrimination. Companjen further highlights historical analysis regarding the region and points out areas to which should be prioritized. The analysis provided is crucial for understanding the foreign relationship between the two Member States and their current diplomatic stance.

Kamal Makili-Aliyev, "An Illegal Republic: the formation and continuity of the collective legal identity of Karabakh Armenians", *Citizenship Studies*, 27. (97), 799-816. <https://doi.org/10.1080/13621025.2024.2321715>

This publication explores the ethnic and legal identity of the citizens of the Nagorno-Karabakh region, a region that lacks both statehood and international recognition. Following the dissolution of the Soviet Union and the ongoing conflict between Azerbaijan and Armenia, Makil-Aliyev examines the aspects of their legal identity, highlighting the challenges they face and the ongoing state of vulnerability in which they find themselves. This background gives a much-needed understanding to what and how the case came to be.

Tracey German, "The Nagorno-Karabakh Conflict between Azerbaijan and Armenia: Security Issues in the Caucasus", *Journal of Muslim Minority Affairs* 32, no. 2 (2012), 216-229, <http://dx.doi.org/10.1080/13602004.2012.694666>

Addressing the unresolved dispute between Azerbaijan and Armenia over the Nagorno-Karabakh region, this paper provides a comprehensive analysis on the effect it has on regional security. German explores the persistent tensions between these Member States and how their contribution to instability across the Caucasus and the broader Black Sea region. The analysis delves into the multifaceted nature of the conflict, emphasizing its complexity and the obstacles it poses to regional cooperation and economic development.

Erik Davtyan, "Lessons that Lead to War: Foreign Policy Learning and Military Escalation in the Nagorno-Karabakh Conflict", 71 (1), 26-36, <https://doi.org/10.1080/10758216.2023.2183410>

This article examines Azerbaijan's decision to launch a military attack in Nagorno-Karabakh in 2020, with a particular emphasis on the responses of key regional actors in the South Caucasus and the escalating tensions with Armenia over two decades. Davtyan highlights specific arguments in favor of Azerbaijan, noting that the lack of international intervention in the historic crisis emboldened Azerbaijan to initiate the 2020 attack. The article provides critical insights into how perceived indifference from the international community can influence a nation's decision to engage in conflict.