



LXIV
SIXTY-FOURTH SESSION



International Court of Justice

Berkeley Model United Nations



Dear Delegates,

It is a distinct honor to welcome you to the 64th session of Berkeley Model United Nations and my great pleasure to introduce myself as your head chair for the International Court of Justice. My name is Elizabeth Zarka, and I am a senior at Berkeley studying Philosophy and Political Science with a concentration in International Relations. As a student who is very interested in legal theory, and has a particular affinity for post-Soviet Russia, I cannot wait to see how delegates approach the challenge of using research and ad lib analysis to come up with a verdict to one of the most complicated legal issues facing the international community today: Russia's annexation of Crimea.

This year marks my eighth year in the MUN circuit, and my fourth and final year as a member of the beloved Berkeley Model United Nations club. Outside of my studies and my work in BMUN, I'm involved in a number of different organizations: I'm currently training as a reporter for KPFA, a progressive music and talk radio located in downtown Berkeley, and working at Hesperian Foundation, a non-profit publisher that produces and distributes teaching materials for Peace Corps Volunteers. In my free time, I love to go to comedy shows and concerts throughout the Bay Area, read, write, and sometimes (though not well) sing and play the guitar. Now, a word from your vice chairs:

Hi Everyone! My name is Colin and I'm a Senior Math & Computer Science double major. I'm involved in BMUN, BEAM (Berkeley Engineers & Mentors), was a GSI (Graduate Student Instructor) for Multivariable Calculus last semester, and currently work for Salesforce as a Software Engineer. In my free time I enjoy watching movies, reading for my book club, and eating.

Hey y'all, I'm Jake Moskowitz and I'm a sophomore at Cal studying Computer Science, Cognitive Science, and Psychology. In my free time, I like to run, rock climb, photosynthesize, and find new music and movies. Running is great in Berkeley unless it's in the fire trails; they're too steep for my puny little hot dog legs. I've also become my dad because I always find myself looking for places with cool views in the area. Lastly, I'm super excited to see all y'all at conference and see committee develop into a beautiful display of debate, critical thinking, and problem solving. Cheers.

Hi, I'm Michael! Currently, I am a first-year student at UC Berkeley intending to major in Computer Science. Among my interests is a passion for current events (hence my involvement in Berkeley Model UN), especially with regards to foreign affairs. In my free time I love to hike and read classic literature.

Well there you have it; that concludes our Dias introductions! Once again, I am absolutely delighted to be your head chair this year, and I can guarantee you that my vice chairs and I are committed toward putting together the most insightful, engaging, and memorable weekend together as is humanly possible.

Warmest regards,



Elizabeth Zarka, Head Chair
Berkeley Model United Nations, The 64th Session



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Overview

Jurisdiction of Court

Jurisdiction of the ICJ as it pertains to this case is a complicated but interesting matter worthy of some explanation. As a corollary of the “sovereignty” of states, the judicial settlement of disputes through the World Court is based on the consent of the parties. The consensual basis of the Court's jurisdiction has been affirmed on various occasions. For instance, in the Peace Treaties case between Bulgaria, Hungary and Romania the Court held that: "The consent of States, parties to a dispute, is the basis of the Court's jurisdiction in contentious cases" (Heinze). This consent can be established through a formal agreement called a *compromis*, or through statutes within bilateral agreements existing between the two countries in question.

Unfortunately, the bilateral agreements between Russia and Ukraine that could be interpreted to establish the jurisdiction of the ICJ in matters of contention between the two states do not explicitly invoke the ICJ. Therefore, it is highly unlikely that Russia would consent to appear in front of the court. The Russian government would likely reject Ukraine's application of the case to the ICJ, just as they did in a similar case submitted by Georgia in 2011. Furthermore, even if Russia did sign a *compromis* and accepted the court's jurisdiction, ICJ rulings are enforced by the UN Security Council. Russia would likely ignore the mandates of the court through an exercise of their veto power within the Security Council.

To run this committee as realistically as possible, we will consider a delegate ruling an “advisory opinion” to the United Nations. In addition to functioning as a forum for the settlement of disputes between states, the Charter of the United Nations establishes a specific institutional role of the Court. According to Article 96 of the Charter: “The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question” (Heinze). Our committee will run under the assumption that the General Assembly has voted on and passed a writ to obtain this opinion of the court. While the advisory opinion is legally non-binding, it would have serious implications on the future calculus of international



law if Russia amplified their involvement in the region. A country would less likely to continue pursuing foreign policy actions that were already considered illegal in a court of international law (Schweigman).



Disputes in Matter

Based on a series of events between Ukraine and Russia that will be described at length in the section below, Ukraine is challenging Russia through the auspice of the United Nations. According to the Ukrainian Association of International Law, the movement of Russian military troops into the territory of Ukraine breached the United Nations Charter (article 2(4)) which prohibits "the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations" (Alter).

Additionally, Ukrainian officials believe that the actions of Russian Federation in 2014 violated the Helsinki Final Act of the Conference on Security and Cooperation in Europe of 1975 (the Helsinki Accords) which "reaffirms the obligation of its signatories to respect each other's territorial integrity and border as inviolable in addition to refraining from the threat of use of force."

In review of the bilateral treaties between Ukraine and Russia, Ukraine also claims that Russia failed to observed the Agreement Between the Russian Federation of Ukraine on the Status and Conditions of the Russian Federation Black Sea Fleet's Stay on Ukrainian Territory (1997). Paragraph 1 article 6 of this document states: "Military units shall conduct their operations in the areas of disposition in accordance with the legislation of the Russian Federation, respect Ukraine's sovereignty, obey its legislation and refrain from interference with Ukraine's domestic affairs." Finally, Ukraine accuses Russia for breaking article 3 of the Treaty on Friendship, Cooperation and Partnership between Ukraine and the Russian Federation, which affirms "self-determination, non-interference in internal affairs, respect for human rights and fundamental freedoms, cooperation between States, the faithful fulfillment of international obligations, and other generally recognized norms of international law."



Charges

The court will be charging the Russian Federation with breach of the following treaty obligations under:

- Article 2 (4) of the United Nations Charter
- Article 1 a III of the The Final Act of the Conference on Security and Cooperation in Europe (Helsinki Accords)
- Article 6 of the Agreement Between the Russian Federation of Ukraine on the Status and Conditions of the Russian Federation Black Sea Fleet's Stay on Ukrainian Territory
- Article 3 of the Treaty of Friendship, Cooperation and Partnership between Ukraine and the Russian Federation



Timeline of Events

1940

In the early years following the Bolshevik revolution, Joseph Stalin heads the People's Commissariat For Nationality Affairs, assigning territorial units of the Soviet Union to particular ethnic groups. Moscow, the largest of the 15 territorial units that make up the Soviet socialist republics, is designated the center of political leadership (Mankoff).

1944

Crimean Tatars, the native population in the Crimean Peninsula, and one fifth of the population of the Crimean Peninsula in 1944, are deported to Central Asia for allegedly collaborating with the German Nazi party (Mankoff).

1954

Soviet Premier Nikita Khrushchev attains control over the Crimean Peninsula, establishing a concentrated Russian minority in the Ukrainian Soviet Socialist Republic (Mankoff).

1991

The Stalin-era strategy of placing Russian minorities within non-Russian republics proves to be a success. The minority groups within the territorial units of Soviet Union largely support the maintenance of the Soviet Union thereby offsetting opposition posed by larger ethnic groups. Local officials in Abkhazia, South Ossentia, and Transnistria support the August 1991 coup against Gorbachev, who they believe would speed up the dissolution of the Soviet Union (Ukraine Crisis: Timeline).



December 1991

54 percent of voters in Crimea approve of Ukrainian independence from Russia. This is the lowest rate in any territory within Ukraine.

August 1991

In a nationwide referendum, Ukrainian parliament declares independence from the USSR. 90% of the voting population approves of the split.

1992

During the dissolution of the Soviet Union, Moscow uses violence and political unrest in the former Soviet territories as an opportunity to maintain a military foothold in these regions. Pro-Russian paramilitary units take over Moldovan government buildings. When violence breaks out between separatists and a newly independent Moldova, Russian military forces stationed in the area from before the collapse of the Soviet Union aid the separatists.

2004

Pro-Russian candidate Viktor Yanukovich wins the Ukrainian presidential election. After reports of widespread vote-rigging surface, opposition candidate Viktor Yushchenko leads mass street protests and public demonstrations of civil disobedience known as the “Orange Revolution”. Ukrainian supreme Court annuls the result of the poll.

2010

Viktor Yanukovich is elected president in a national election deemed “free and fair”.

November 21, 2013

Small protests break out in Ukraine when President Yanukovich’s cabinet abandons an agreement on closer trade ties with the EU, opting for policies that support a closer economic cooperation with Russia. By late November, protests grow significantly; 100,000 people attend a demonstration in Kiev to oppose presidential leadership. By



December, 800,000 Ukrainian citizens rally in Kiev, and occupy Kiev city hall and Independence Square.

December 2013

Russian president Vladimir Putin supports Yanukovych by purchasing \$15 billion of Ukrainian debt, and reducing the price of Russian gas by about a third.

January 16-23 2014

Ukrainian parliament passes restrictive anti-protest laws. Protesters respond by storming regional government offices. In the next month, hundreds of protestors are arrested, and hundreds are killed by the elite Berkut police unit. The unit is disbanded throughout the following months for the use of disproportionate violence against the protestors.

February 2014

President Yanukovych disappears from public eye. Protesters storm and occupy presidential administration buildings. Parliament votes to remove the president and set new elections in May. Yulia Tymoshenko, former Prime Minister and political rival of Yanukovych, delivers an emotional speech to protestors in Independence Square. In the following month, Parliament appoints speaker Olexander Turchynov as the interim president and Arseniy Yatsenyuk as the Prime Minister.

In response to negotiation over a parliament vote to ban Russian as the second official language, waves of anger erupt in Russian-speaking regions. Pro-Russian gunmen seize key buildings in Simferopol, the Crimean capital. Unidentified gunmen in combat uniforms appear outside of Crimea's main airports.

March

Russian Parliament approves Putin's request to employ force in Ukraine to protect Russian foreign interests. 97% of voters in Crimea say that they approve of the referendum vote to succeed from Ukraine to join Russia. The vote is condemned by



western foreign powers as a sham. In response to the referendum, government officials in the EU and U.S. impose travel bans on officials from Russia and Ukraine.

Putin signs a bill to absorb Crimea into the Russian Federation. Pro-Russian separatists in eastern Ukraine barricade the regional state administration buildings, demanding that the Ukrainian government allow the realignment.

April 15

President Tychynov announces the start of an “anti-terrorist operation” against pro-Russian separatists and orders the launch of military operations against pro-Russian militants in the east.

May

Clashes in the Black Sea city of Odessa between pro-Russian activists and Ukrainian military leave 42 people dead. Pro-Russian separatist movements in the eastern cities of Donetsk and Luhansk declare independence after referendums to secede from Ukraine remained unrecognized by the Ukrainian government.

On May 25th, Petro Poroshenko wins the Ukrainian presidential election.

June 14

Pro-Russia separatists shoot down a military plane flying over eastern Ukraine, leaving 49 people dead.

July 17

Malaysian Airlines flight MH17 traveling from Amsterdam is shot down near the rebel-held territory of Grabove, leaving 298 dead. EU and U.S. officials announce new sanctions against Russia.



August

Ten Russian soldiers who crossed the border “by accident” are captured by Ukrainian government. By now, more than 2,000 people have died in months of fighting between separatists and Ukrainian forces. The Donetsk and Luhansk regions have declared independence from Kiev following Russia’s annexation of the southern Crimean peninsula in March. According to Russian defense ministry “The soldiers really did participate in a patrol of a section of the Russian-Ukrainian border, crossed it by accident on an unmarked section, and as far as we understand showed no resistance to the armed forces of Ukraine when they were detained” (Captured Russian Troops).

By the end of the month, the Ukrainian government claims that 700 Ukrainian soldiers have been taken prisoner as pro-Russian rebels advance within the east.

September 9

Dutch experts find that Malaysia Airlines flight MH19 broke up in mid-air after being hit by “objects” that “pierced the plane at high velocity.” The report made no mention or inference on who might have fired the objects. Ukraine’s government and several Western leaders make public statements saying there is strong evidence to suggest that pro-Russian separatists shot down the plane with an anti-aircraft system known as “Buk” (MH17 Crash).

October

President Putin orders the return of thousands of troops from the Ukrainian border on “military training” to their bases. Russia previously announced troop withdrawals that U.S. and NATO officials claim were not actually carried out. Russia continues to deny claims that it supplied troops and weapons to the separatists rebels.

Human Rights Watch announces that it has strong evidence that Ukraine attacked population areas of Donetsk with cluster bombs, which are banned by many other states (Ukraine Crisis: Troop Pullback).



November 12

NATO commander reports that Russian military equipment and combat troops have been seen entering Ukraine in columns. The Russian defense minister denies sending troops to eastern Ukraine to aid pro-Russian separatists (Ukraine Crisis: Russian Troops Crossed Border).



UN Involvement

In immediate aftermath of the 2014 crisis in Crimea, the United Nations took two major actions. The first was a vote in the Security Council in March 2014 on a draft resolution condemning the referendum to have Crimea separate from Ukraine to join Russia. Unsurprisingly however, the resolution was swiftly vetoed by Russia. The representative from China abstained from voting (Nekrassov).

In response to the allegations that Russian troops were advancing along the eastern Ukrainian border, on March 1, 2014 a spokesman for Ban Ki Moon delivered a statement saying that he was "gravely concerned about the deterioration of the situation" in Ukraine and planned to speak shortly with Putin (SC Holds Urgent Talks). It also called for "full respect for and preservation of the independence, sovereignty and territorial integrity of Ukraine" and demanded "immediate restoration of calm and direct dialogue between all concerned" (SC Holds Urgent Talks).

Along the same vein, the Visegrád Group (V4) between Czech Republic, Hungary, Poland and Slovakia the group issued a joint statement on March 4, expressing that their countries are "appalled to witness a military intervention in 21st century Europe akin to their own experiences in 1956, 1968 and 1981", pressuring Russia to respect Ukraine's territorial integrity and for Ukraine to take into account its minority groups to not further break fragile relations (Belkin). The group urged Russia to act in full respect of what it called Ukrainian and international law and in line with the provisions of the 1994 Budapest Memorandum.

The second major action taken by the UN was a draft resolution passed on March 27 within the General Assembly calling on nations to disregard the legitimacy of the Crimean referendum. With 100 countries approving of the resolution, 11 rejecting and , 58 abstentions, this convening of states demonstrated that the international community disapproved of the change in status of the territory. On March 16, 2014, the same day that the referendum was passed, Putin signed a bill to absorb the peninsula into Russia. Following suit with the G.A. resolution, the Ukrainian government, all 28 member states



of the European Union, NATO, the Venice Commission, the G7 and several other supranational bodies ignored the legitimacy of the referendum and issued public statements declaring it a violation of international law (Backing Ukraine's Integrity).



Ukraine's Side (Prosecution's Side)

The authorization to deploy Russian troops on the territory of Ukraine granted by the Russian Parliament on March 1, 2014 was characterized by legal experts in many countries as a “*threat* to the sovereignty, independence and territorial integrity of Ukraine” (Tancredi).

An OSCE (Organization for Security and Co-Operation in Europe) observer team invited by the Ukrainian authorities that had been denied access to the Crimea by armed men who threatened to shoot at them, observed in a report leaked to the press that “significant evidence of equipment consistent with the presence of Russian Federation military personnel in the vicinity of the various roadblocks encountered had been collected during the March 5-8 period” (Tancredi). On March 1, 2014 the New York Times reported that “Russian troops stripped of identifying insignia but using military vehicles bearing the license plates of Russia’s Black Sea force swarmed the major thoroughfares of Crimea [...] and encircled government buildings, closed the main airport and seized communication hubs”, making Russia’s initially covert operation the subject of international headlines (Tancredi).

On 17 April 2014, when pressed to identify who the “little green men” were that the OSCE observers encountered along the Crimean border, Russian President Putin stated to the press “We didn’t want any tanks, any nationalist combat units or people with extreme views armed with automatic weapons. Of course, the Russian servicemen did back the Crimean self-defense forces.” He seemed offended by a reporter’s use of the phrase “little green men”, and warned “one cannot apply harsh epithets to the people who have made a substantial, if not the decisive, contribution to enabling the people of Crimea to express their will. *They are our servicemen*” (emphasis added). These public statements are important for two reasons: firstly, President Putin admitted that Russian troops had their “boots on the ground” and secondly, he acknowledged that the armed forces operating in the Crimea were not Crimean. This provides strong evidence for Russia’s indirect use of force (Tancredi).



To find Russia guilty of other legal questions facing the court, including if Russia is guilty of using direct force, and is in violation of various other bilateral treaties, would require the justices to research and analyze several additional factors. These include the level of weaponry used by the Russian forces, the nature of President Putin's request to the Duma for permission to use force on Ukrainian territory, and considering the implications that could have potentially arisen if Russia's military actions were *not* classified as an armed attack (i.e that Ukrainian military could not lawfully use defensive force against the Russian encroachers). Other helpful matters to consider when evaluating the prosecution's argument include the definition of use of force as defined by both international law and previous cases brought before international legal tribunals, Ukraine's response to Russia's initial invasion as outlined above, as well as the substance of the specific treaties that Ukraine is accusing Russia of violating.



Russia's Side (Defense's Side)

President Vladimir Putin has offered several different justifications for the armed intervention in Crimea. The most widely espoused is the justification on the grounds that Russian forces were protecting Russian citizens. In the past, for example, in the U.S. intervention at the embassy in Tehran, international law has respected the “defense of nationals” as a legitimate reason for the use of force against a territorial state, and says that “one state may enter another state without authorization to protect its nationals against threat, where the territorial state is either unable or unwilling to protect these nationals themselves.” According to the 2001 census, of the 2.3 million people living on the peninsula, around 1.2 million, or about 58.3 percent of the population of Crimea identifies as ethnic Russians, and 97% of the Crimean population use Russian as their main language (Facts About Crimea). While few would agree that there is substantial evidence of “imminent threat” to the citizens of Crimea, or even pro-Russian Crimeans on behalf of the Ukrainian government, Putin notes that the interim Kiev government holding power during the crisis revoked a law allowing Russian and other “minority” languages other than Ukrainian to be recognized as official in multicultural regions such as Crimea, which can be viewed as an attack on the rights of these citizens.

President Putin also justifies the presence of Russian troops in Crimea by citing a request for “assistance” he received from Mr. Aksyonov, Prime Minister of Crimea and from the ousted Ukrainian President Yanukovich, who while in exile in Russia, asked the Russian Federation “to establish legitimacy, peace, law and order, stability and defend the people of Ukraine” (Yanukovich Letter to Putin). In order to serve as a successful defense of Russia’s military advancements, the validity of Putin’s claims will first have to be proven, and then weighed against the relevant treaty documents to see if this response to the request for assistance trumps the possibility that the actions may be considered a form of aggression.



In response to accusations that Russia's actions constituted an "actual use of force", the internationally prohibited use of force requires the "actual use" of military weapons. Otherwise, an armed intrusion or the exercise of coercion would be more likely to be considered a violation of sovereignty or the territorial authority of another State than a prohibited use of force. Because Russia did not actually open fire but clearly participated in military operations, evaluating which, if any, international treaties that have been cited by the prosecution have been broken will require an evaluation of the definitions and parameters provided by the documents alongside the specific events and contexts of the invasion.

Finally, it is likely that a Russian defense would vehemently deny that it violated the Agreement Between the Russian Federation of Ukraine on the Status and Conditions of the Russian Federation Black Sea Fleet's Stay on Ukrainian Territory. The treaty establishes conditions of Russia leasing the naval territory from Ukraine for an annual 97 million, including allowing the stationing of 25,000 troops, 132 armored vehicles and 24 artillery pieces (Alter).



Questions to Consider

1. Should the ethnic Russians living on the Crimean peninsula be considered “Russian citizens” as Putin has described them? How would this judgment affect your rulings on the different charges?
2. The Council of Europe has been a major force in keeping track of human rights violations throughout Europe. It has had no less than 17 requests filed to condemn the actions of Russia in Ukraine in 2014. How should European justices respond to this rising threat in the East, that shows signs of stirring up the kinds of border disputes that gave rise to both world wars?
3. Do you believe that pro-Russia Ukrainian citizens were being oppressed by the Ukrainian central authorities and police in 2014? How do you think this would affect Russia’s defense arguments?
4. How does the international response to the 2008 military conflict between Russia and Georgia inform your judgement about the events of the Crimean crisis? What parallels can be drawn between the two conflicts?



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