NHSMUN50

National High School Model United Nations

ICJ

BACKGROUND GUIDE

NHSMUN
National High School Model United Nations

Email: info@imuna.org
Phone: +1 (212) 652-9992
Web: www.nhsmun.nyc

Dear Delegates,

My name is Nichole Poltinnikov, and I am so excited to be serving as your Director for the International Court of Justice for NHSMUN 2024! Joshua and I have chosen two topics that the ICJ will soon be debating in real life. Both are extremely important and will have major implications on international law and geopolitics moving forward. The first is a contentious case, *Albania v Islamic Republic of Iran*. At the conclusion of this case, the ICJ will have set the precedent for how cyber-operations can operate in the new digital age. The second is an advisory opinion on climate change. The Judges will analyze public international law to help guide States in mitigating ongoing crises, such as catastrophic flooding and fires, as well as to prevent further disaster. Regardless of whether you choose the contentious or advisory case, I have faith you all will bring in the high-level research these issues allow you to discuss and engage in respectful yet lively debate. I look forward to seeing what your investigations will produce.

I am currently a student at the Elliott School of International Affairs at the George Washington University in Washington, DC, studying international affairs and economics. Within international affairs, I am on the Russian language track, which will allow me to pursue a concentration in Europe and Eurasia studies. I am also a Naval ROTC commit, which means that I am up to date on military operations worldwide. If any of you have any questions in these areas, please feel free to reach out! I am very passionate about what I study, and I promise I don't bite.

I competed in Model United Nations for two years in high school. I found it to be invaluable in developing many skills, including leadership, research, writing, and diplomacy. My favorite committees were those that allowed me to conduct legal analyses, such as the Legal Sixth Committee and, you guessed it, the International Court of Justice. I am incredibly happy to have the opportunity to sit on the other side of the dais. I truly believe that competing at Model UN conferences doesn't just make you a better delegate but helps to develop you as a person as well. When I say I'm looking forward to chairing this committee, I mean it genuinely.

As you get closer to the conference, I understand very well the stress you may be feeling. I want to assure you that if you put in the proper preparation, you will get something valuable out of the experience no matter what. I am not here to make your week miserable. My goal is to make this experience as educational and rewarding as possible.

If you have any questions or concerns, please feel free to reach out! I've attached my email at the bottom. I am thrilled to see you in the Spring.

Sincerely,

Nichole Poltinnikov
Director, International Court of Justice
NHSMUN 2024, Session I
nhsmun.icj@imuna.org

NHSMUN
National High School Model United Nations

Email: info@imuna.org
Phone: +1 (212) 652-9992
Web: www.nhsmun.nyc

Dear Delegates,

My name is Joshua Gan, and I am thrilled to welcome you to the International Court of Justice for NHSMUN 2024! For this year's conference, Nichole and I have selected two timely topics for deliberation that will expose you to cutting-edge research in the field of public international law. The first case before the Court is *Albania v Islamic Republic of Iran,* a contentious case dealing with the implications of state-sponsored cyber operations in today's digital age. The second is the "Advisory Opinion on States' Obligations Regarding Climate Change."

Currently, I am a final-year law student at University College London. My research interests lie in energy, corporate finance, and public international law, so if you are passionate about any of these topics, I am very happy to have a chat about it! Outside of school, I enjoy cooking, golfing, and going to the gym.

I was always fascinated by the intersection of law, politics, and economics, and starting MUN in middle school allowed me to explore such interests further. Participating in a wide variety of conferences has also enabled me to experience the full spectrum of the MUN experience, from becoming a delegate to running a conference behind the scenes. MUN was an immensely enriching experience for me, and I hope that you will feel the same way at NHSMUN.

If you have any questions in the course of conducting your legal research, please do not hesitate to reach out and we will help out where we can. Good luck, and I look forward to meeting you all in March!

Best,

Joshua Gan
Director, International Court of Justice
NHSMUN 2024, Session II
nhsmun.icj@imuna.org

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A Note on the NHSMUN Difference

Esteemed Faculty and Delegates,

Welcome to NHSMUN 2024! We are Dennis Zhang and Christian Hernandez, and we are this year's Secretary-General and Director-General. Thank you for choosing to attend NHSMUN, the world's largest and most diverse Model United Nations conference for secondary school students. This year is particularly special as NHSMUN celebrates its **50th Anniversary**, and we are thrilled to welcome you to our hometown, New York City, this March for this landmark year!

As a space for collaboration, consensus, and compromise, NHSMUN strives to transform today's brightest thinkers, speakers, and collaborators into tomorrow's leaders. Our organization provides a uniquely tailored experience for all through innovative and accessible programming. We believe that an emphasis on education through simulation is paramount to the Model UN experience, and this idea permeates throughout numerous aspects of the conference:

Realism and accuracy: Although a perfect simulation of the UN is never possible, we believe that one of the core educational responsibilities of MUN conferences is to educate students about how the UN System works. Each NHSMUN committee is a simulation of a real deliberative body so that delegates can research what their country has said in the committee. Our topics are chosen from the issues currently on the agenda of that committee (except historical committees, which take topics from the appropriate time period). We also strive to invite real UN, NGO, and field experts into each committee through our committee speakers program. Moreover, we arrange meetings between students and the actual UN Permanent Mission of the country they are representing. Our delegates have the incredible opportunity to conduct first-hand research, asking thought-provoking questions to current UN representatives and experts in their respective fields of study. These exclusive resources are only available due to IMUNA's formal association with the United Nations Department of Global Communications and consultative status with the Economic and Social Council. No other conference goes so far to deeply immerse students into the UN System.

Educational emphasis, even for awards: At the heart of NHSMUN lies education and compromise. Part of what makes NHSMUN so special is its diverse delegate base. As such, when NHSMUN distributes awards, we strongly de-emphasize their importance in comparison to the educational value of Model UN as an activity. NHSMUN seeks to reward students who excel in the arts of compromise and diplomacy. More importantly, we seek to develop an environment in which delegates can employ their critical thought processes and share ideas with their counterparts from around the world. Given our delegates' plurality of perspectives and experiences, we center our programming around the values of diplomacy and teamwork. In particular, our daises look for and promote constructive leadership that strives towards consensus, as real ambassadors do in the United Nations.

Debate founded on strong knowledge and accessibility: With knowledgeable staff members and delegates from over 70 countries, NHSMUN can facilitate an enriching experience reliant on substantively rigorous debate. To ensure this high quality of debate, our staff members produce detailed, accessible, and comprehensive topic guides (like the one below) to prepare delegates for the nuances inherent in each global issue. This process takes over six months, during which the Directors who lead our committees develop their topics with the valuable input of expert contributors. Because these topics are always changing and evolving, NHSMUN also produces update papers intended to bridge the gap of time between when the background guides are published and when committee starts in March. As such, this guide is designed to be a launching point from which delegates should delve further into their topics. The detailed knowledge that our Directors provide in this background guide through diligent research aims to increase critical thinking within delegates at NHSMUN.

Extremely engaged staff: At NHSMUN, our staffers care deeply about delegates' experiences and what they take away from

their time at NHSMUN. Before the conference, our Directors and Assistant Directors are trained rigorously through hours of workshops and exercises both virtual and in-person to provide the best conference experience possible. At the conference, delegates will have the opportunity to meet their dais members prior to the first committee session, where they may engage one-on-one to discuss their committees and topics. Our Directors and Assistant Directors are trained and empowered to be experts on their topics and they are always available to rapidly answer any questions delegates may have prior to the conference. Our Directors and Assistant Directors read every position paper submitted to NHSMUN and provide thoughtful comments on those submitted by the feedback deadline. Our staff aims not only to tailor the committee experience to delegates' reflections and research but also to facilitate an environment where all delegates' thoughts can be heard.

Empowering participation: The UN relies on the voices of all of its member states to create resolutions most likely to make a meaningful impact on the world. That is our philosophy at NHSMUN too. We believe that to properly delve into an issue and produce fruitful debate, it is crucial to focus the entire energy and attention of the room on the topic at hand. Our Rules of Procedure and our staff focus on making every voice in the committee heard, regardless of each delegate's country assignment or skill level. Additionally, unlike many other conferences, we also emphasize delegate participation after the conference. MUN delegates are well researched and aware of the UN's priorities, and they can serve as the vanguard for action on the Sustainable Development Goals (SDGs). Therefore, we are proud to connect students with other action-oriented organizations to encourage further work on the topics.

Focused committee time: We feel strongly that face-to-face interpersonal connections during debate are critical to producing superior committee experiences and allow for the free flow of ideas. Ensuring policies based on equality and inclusion is one way in which NHSMUN guarantees that every delegate has an equal opportunity to succeed in committee. In order to allow communication and collaboration to be maximized during committee, we have a very dedicated administrative team who work throughout the conference to type up, format, and print draft resolutions and working papers.

As always, we welcome any questions or concerns about the substantive program at NHSMUN 2024 and would be happy to discuss NHSMUN pedagogy with faculty or delegates.

Delegates, it is our sincerest hope that your time at NHSMUN will be thought-provoking and stimulating. NHSMUN is an incredible time to learn, grow, and embrace new opportunities. We look forward to seeing you work both as students and global citizens at the conference.

Best,

Dennis Zhang
Secretary-General

Christian Hernandez
Director-General

A Note on Research and Preparation

Delegate research and preparation is a critical element of attending NHSMUN and enjoying the debate experience. We have provided this Background Guide to introduce the topics that will be discussed in your committee. We encourage and expect each of you to critically explore the selected topics and be able to identify and analyze their intricacies upon arrival to NHSMUN in March.

The task of preparing for the conference can be challenging, but to assist delegates, we have updated our **Beginner Delegate Guide** and **Advanced Delegate Guide**. In particular, these guides contain more detailed instructions on how to prepare a position paper and excellent sources that delegates can use for research. Use these resources to your advantage. They can help transform a sometimes overwhelming task into what it should be: an engaging, interesting, and rewarding experience.

To accurately represent a country, delegates must be able to articulate its policies. Accordingly, NHSMUN requires each delegation (the one or two delegates representing a country in a committee) to write a position paper for each topic on the committee's agenda. In delegations with two students, we strongly encourage each student to research each topic to ensure that they are prepared to debate no matter which topic is selected first. More information about how to write and format position papers can be found in the NHSMUN Research Guide. To summarize, position papers should be structured into three sections:

I: Topic Background – This section should describe the history of the topic as it would be described by the delegate. Delegates do not need to give an exhaustive account of the topic, but rather focus on the details that are most important to the delegate's policy and legal analysis.

II: Legal Background – This section should discuss the delegate's interpretation of the relevant treaties, conventions, and research. Their understanding of this research will shape their analysis. The analysis should be written in plain terms, if possible. Comparisons with similar cases are also appropriate here.

III. Legal Analysis – This section should detail the delegate's legal analysis of the topic. This analysis should be well-sourced and thorough. Each argument should clearly connect to topic and to the legal background. Delegates should also identify potential counterarguments and why they believe those counterarguments are incorrect.

Each topic's position paper should be **no more than 10 pages** long double-spaced with standard margins and font size. **We recommend 3–5 pages per topic as a suitable length**. The paper must be written from the perspective of your assigned country and should articulate the policies you will espouse at the conference.

Each delegation is responsible for sending a copy of its papers to their committee Directors via myDais on or before **February 23, 2024**. If a delegate wishes to receive detailed feedback from the committee's dais, a position must be submitted on or before **February 2, 2024**. The papers received by this earlier deadline will be reviewed by the dais of each committee and returned prior to your arrival at the conference.

Complete instructions for how to submit position papers will be sent to faculty advisers via email. If delegations are unable to submit their position papers on time, please contact us at info@imuna.org.

Delegations that do not submit position papers will be ineligible for awards.

Committee History

The International Court of Justice (ICJ) is the principal judicial organ of the United Nations. The ICJ was established in April 1946 at the United Nations Conference on International Organization.[1] The Court's purpose is to resolve legal disputes submitted to it by States and to offer advisory opinions on matters of international laws. The ICJ exercises jurisdiction over two categories of cases: contentious cases and advisory opinions.[2]

For contentious cases, the Court applies international treaties and conventions in force, international custom, the general principles of law, previous judicial decisions, and the teaching of the most dignified publicists to come to a final and binding decision over the dispute of consenting member states. Alternatively, when it comes to requesting an advisory opinion, only five organs and sixteen specialized agencies of the UN may do so. These opinions, while drawing upon case law and Article 38 of the UN Charter, are not binding.[3] For example, the UN General Assembly submitted a request for an advisory opinion on the Israeli-Palestinian conflict regarding the "Land for Peace" framework established by the UNSC and Oslo Accords.[4]

The ICJ is also distinct from other international or criminal courts. The jurisdiction to try individuals accused of war crimes or crimes against humanity belongs to the ad hoc international criminal tribunals whereas the InterAmerican Court of Human Rights deals with allegations of violations of the human rights conventions under which they were set up. Furthermore, the ICJ is not an appellate or supreme court, though it can rule on the validity of arbitral awards.[5]

The ICJ is composed of fifteen judges, who are elected for terms of office of nine years by the UN General Assembly and UNSC. The Court's operations are primarily governed by four legal documents: the Charter of the UN, the Statute of the Court, the Rules of the Court, and the Practice Directions. *The Charter* is a treaty that established the UN and serves as the constitutive text of the ICJ while the Statute of the Court, annexed to the Charter, organizes the Court's operations. For instance, under Article 36 of the UN Charter, any state may consent to the court's compulsory jurisdiction with the UN Secretary-General.[6] The Rules of the Court supplement the Statutes whereas the Practice Directions supplement the Rules of the Court.[7]

As all 193 member states of the UN are parties to its statute under Article 93(1) of the UN Charter, with special membership for non-member entities existing under Article 93(2), the ICJ plays a pivotal role in international law.[8] Since its inaugural case in 1949, it has adjudicated over 170 cases.[9] However, since its inception in 1946, dispute regarding the court's impartiality has led to statistical research in the field. While evidence suggests that judges favor the states that appoint them and states whose wealth is closely similar to that of their own, there is no doubt the ICJ will continue to face both support and opposition by defenders and critics alike. This is just one of the numerous challenges the ICJ has and will continue to face in its pursuit for global justice.[10]

1 Mingst, K.. "International Court of Justice." Encyclopedia Britannica, September 19, 2023. https://www.britannica.com/topic/International-Court-of-Justice.
2 "International Court of Justice." Legal Information Institute, 2023. https://www.law.cornell.edu/wex/international_court_of_justice.
3 "International Court of Justice."
4 Kittrie, Orde F, and Bruce Rashkow. "The Pending Israel-Palestine ICJ Advisory Opinion: Threats to Legal Principles and Security." Lieber Institute, August 24, 2023. https://lieber.westpoint.edu/pending-israel-palestine-icj-advisory-opinion-threats-legal-principles-security/.
5 "History." INTERNATIONAL COURT OF JUSTICE. Accessed September 23, 2023. https://www.icj-cij.org/history.
6 "Basic Documents: International Court of Justice." Basic Documents | INTERNATIONAL COURT OF JUSTICE. Accessed September 23, 2023. https://www.icj-cij.org/basic-documents
7 "Rules of the Court," International Court of Justice, Accessed September 23, 2023, https://www.icj-cij.org/en/rules.
8 "Practice Directions" International Court of Justice, Accessed September 23, 2023, https://www.icj-cij.org/en/practice-directions.
9 "Cases," International Court of Justice, accessed September 23, 2023, https://www.icj-cij.org/en/cases.
10 Posner, Eric A., and Miguel F. P. de Figueiredo. "Is the International Court of Justice Biased?" *The Journal of Legal Studies* 34, no. 2 (2005): 599–630. https://doi.org/10.1086/430765.

Simulation

The International Court of Justice is, by nature, a unique deliberative body. Although it is an organ of the United Nations, its procedures are distinct from the other organs. Accordingly, the ICJ at NHSMUN functions unlike any other committee. The most significant difference is that the ICJ's responsibility to agree on one decision, as opposed to producing a variety of resolutions. The Court's rules and procedures work to create an atmosphere that promotes discussion and compromise, allowing Judges to reach a comprehensive and united decision. This procedure is outlined at the end of this section and it is imperative that Judges familiarize themselves with it before the start of committee.

Role of the Delegate

Delegates on the ICJ represent Judges of the Court. They do not represent a country or any specific policy; instead, their opinions are based solely on their own legal experience and moral compass. Judges are chosen from a variety of countries in order to promote objectivity; however, they do not make decisions based on their country's policies. They are appointed to the Court as independent jurists, separate from any specific legal policy or national agenda. This means that it is possible for a Judge to make a decision that is contrary to their homeland's legal policies or moral practices. As Judges of the Court at NHSMUN, delegates are expected to make decisions based on their own belief system, not that of a specific country. This allows for a more objective decision on matters of international law. It also means that delegates must come to the conference with a well-articulated opinion on both topics and, once at the conference, must remain open to the opinions of other judges.

Because the Court writes one final decision, it is crucial that all Judges participate in discussion and debate. There is no formal speakers list in the ICJ, and communication among judges is conducted much like everyday conversation. If some judges are not participating, the Court may choose to voice their opinions round-robin-style, ensuring that everyone's ideas are heard. This requires that all Judges enter committee well prepared because everyone's knowledge affects the Court's ability to come to a collective decision.

In writing a decision, it is also important that delegates understand the types and applicability of international law, especially international criminal law. International law consists of both customary law and codified law (such as treaty law), and it is crucial that both are understood. Furthermore, it is important that Judges pay close attention to treaty law, judicial precedent, and the Vienna Convention on the Law of Treaties, beyond only those excerpts of international law discussed in this background guide.

Court Procedure

The Court may address two types of cases: advisory opinions and contentious cases. Although the format of the two cases is very different in the Background Guide, their deliberation in committee will be very similar.

The first thing that needs to be done in committee is the setting of the agenda. This will be done through a brief discussion among the delegates and will be followed by a vote to set the order in which the two topics will be debated. In the discussion, it is important for delegates to consider the following:

I. Which topic is timelier?

II. Which topic is more interesting to the judges at present?

III. Which case will result in a more effective decision?

After delegates set the agenda, judges will each be given the opportunity to voice their initial opinion on the verdict of the

cases. After each person expresses his or her views and justifies it with factual background, committee will move into formal deliberation. However, delegates are more than welcome to change their opinion over the course of the deliberation and do not need to feel tied to their initial opinion. One of the first steps of the deliberations will be to determine if the Court has jurisdiction in the case at hand, consulting the Memorials, the Statute of the Court, as well as other relevant legal instruments.

Unlike other NHSMUN committees, which utilize a speakers list as the default form of debate, the ICJ uses a semi-permanent moderated caucus. This moderated caucus has no set time limit or speaking time and will be reverted to as one would revert to a speakers list in a normal NHSMUN committee. In practice, the Court will often depart from this, and the chair may set speaking times if it determines that some Judges do not have sufficient opportunity to talk.

Judges may depart from the permanent moderated caucus using several motions. All the following are procedural and require a majority vote to pass:

- Motion to add a topic or speaking time to a moderated caucus.
- Motion for an unmoderated caucus.
- Motion for a straw poll—These informal votes are used to assess the Court's opinion on a given matter to evaluate the Court's current thoughts and alignments.
- Motion for a roundtable discussion—This is an unmoderated caucus where everyone stays in their seats but is free to discuss issues with each other as if in an unmoderated caucus.
- Motion for a round robin—This means that, for a given issue, each judge may speak one-by-one, proceeding in a circular order around the room with a set speaking time until all Judges have had the opportunity to speak.

The decision that the Court will write is voted on piece by piece. For each subtopic, Judges will submit "findings" as they are resolved during debate. These findings are the Court's opinion on a given subtopic of the case. Each finding will build upon the previous ones, so that by the end the decision is a comprehensive document outlining the Court's opinions on all aspects of the case brought before it.

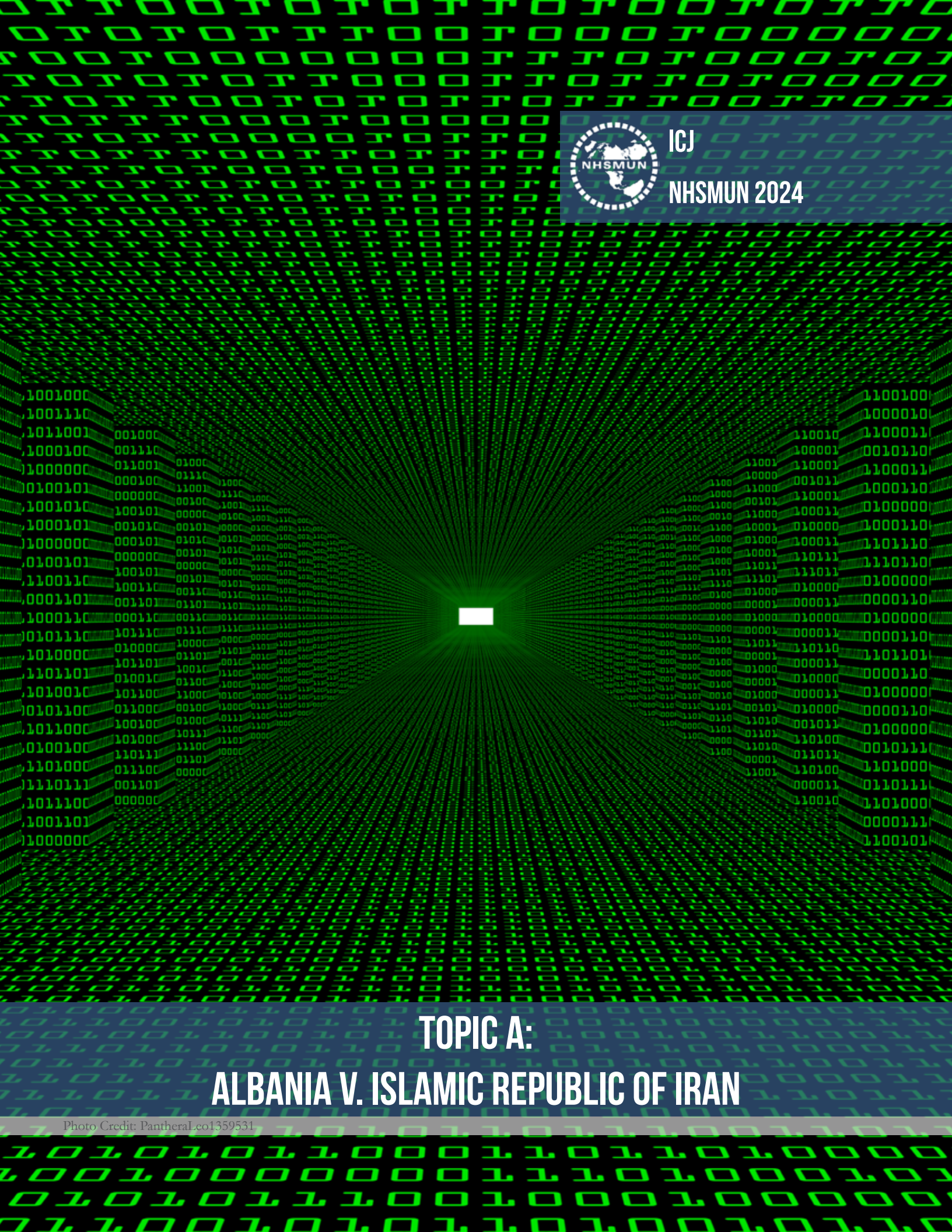
The voting on findings is relatively informal and will usually proceed along the following lines:

1. Judges write up their findings, collaborate on them, and debate them during both moderated and unmoderated caucuses.
2. Once a finding is written, it will be submitted to the dais, who may suggest any edits before allowing it to be introduced.
3. Once the dais has approved the introduction of the finding, a Judge may motion to introduce it to debate. This is a procedural vote. If accepted, Judges may then decide to debate the finding; if not, it will remain un-introduced until the Court decides otherwise.
4. Once Judges feel that the finding has been discussed sufficiently, they may move to vote on the finding. Again, this is a procedural vote.
5. If a majority of the Court votes in favor of a finding, that finding will become part of the "majority opinion" of the Court. The dais will record the names of those Judges who vote in favor of and vote against the majority opinion.
    a. Judges who vote against the majority opinion are encouraged to write up their own, contrary findings and submit them as "dissenting opinions."

b. Furthermore, Judges who vote in favor of the majority opinion are allowed to submit "concurring opinions," which agree in principle with the majority opinion but may cite somewhat different reasons than expressed in the majority finding or expand or clarify on the majority opinion.

c. Concurring and dissenting opinions will not be subject to vote but will include the names of all the Judges that agree with the respective opinion. In this way, the Court will make sure that every Judge's opinion is accounted for and represented in the final decision.

When the Court's decision is final, there will be a formal vote to vote on the decision in its entirety. This is the ICJ's equivalent of "voting procedure." Although there is room for both types of opinions in the final decision, it does not mean that both types of opinions have to or will be present in the decision. There is never any pressure to side with the majority, and it is encouraged that all Judges maintain their own views and do so with legitimate reasoning.



ICJ

NHSMUN 2024

TOPIC A:
ALBANIA V. ISLAMIC REPUBLIC OF IRAN

Photo Credit: PantheraLeo1359531

Memorial of the Republic of Albania

Chapter I: Introduction

1.1. This case was initiated by virtue of a Special Agreement dated November 7, 2022. It was filed with the International Court of Justice by the Republic of Albania on November 14, 2022.

1.2. Following a meeting held by the President of the Court with representatives of the Parties on November 25, 2022, the Court fixed June 25, 2023, as the time-limit for the filing by the Republic of Albania by Order dated November 29, 2022. This Memorial is submitted in accordance with that Order.

1.3. In accordance with Article 49 of the Rules of Court, this Memorial contains the following:

1.3.1. A statement of facts outlined in Chapter II;

1.3.2. A statement of law in Chapter III;

1.3.3. The Republic of Albania's submissions to the Court in Chapter IV, which sets out formal requests for relief.[1]

1.4. In this Memorial:

1.4.1. The International Court of Justice will be referred to either as the Court or the ICJ.

1.4.2. The Republic of Albania will be referred to as Albania.

1.4.3. The Islamic Republic of Iran will be referred to as Iran.

1.4.4. The International Covenant on Civil and Political Rights will be referred to as the ICCPR.[2]

1.5. Under Article 36(1) of the Rules of the Court, the ICJ ought to retain jurisdiction over this case since there is a Special Agreement in place.[3]

1.6. This Memorial seeks to establish that Iran is responsible for a series of cyberattacks launched against the Albanian government, rendering it in severe violation of international law since it intrudes upon Albania's sovereignty and contravenes the principle of non-intervention. It also demonstrates that Albania's defensive cyber responses to botnet threats were consistent with international law and its right to self-defense.

Chapter II: Statement of Facts

The Factual Background of the Case

2.1. On July 15, 2022, a cyberattack was launched against the Albanian government. The attack in question shut down online government services and websites in Albania.[4] Websites belonging to the Albanian Parliament and Prime Minister's Office could not be accessed. A web portal enabling residents to access public services was also taken offline.[5]

2.2. This cybercrime was achieved through two means. First, a distributed denial of service (DDoS) attack was launched, in which internet servers are overflooded with data, resulting in the server going offline.[6] Additionally, there was a ransomware attack, which is a form of malware where users are denied access to sensitive files unless they pay the hackers a sum of money.

2.3. A group allegedly based in Albania called "HomeLand Justice" claimed responsibility for the attack.[7] The at-

1 "Rules of the Court (1978)," *International Court of Justice* , April 14, 1978, https://www.icj-cij.org/rules.
2 "International Covenant on Civil and Political Rights," *United Nations Office of the High Commissioner for Human Rights,* December 16, 1966, https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights.
3 "Rules of the Court (1978)."
4 Llazar Semini, "Albania cuts diplomatic ties with Iran over July cyberattack," *Associated Press*, September 7, 2022, https://apnews.com/article/nato-technology-iran-middle-east-6be153b291f42bd549d5ecce5941c32a.
5 Claudia Glover, "Albania blames Iran for second cyberattack as Tehran denies involvement," *Tech Monitor*, September 12, 2022, https://techmonitor.ai/technology/cybersecurity/iran-albania-cyberattack-police.
6 "Global Programme on Cybercrime," *United Nations Office on Drugs and Crime*, accessed July 18, 2023, https://www.unodc.org/unodc/en/cybercrime/global-programme-cybercrime.html.
7 Semini, "Albania cuts diplomatic ties with Iran over July cyberattack."

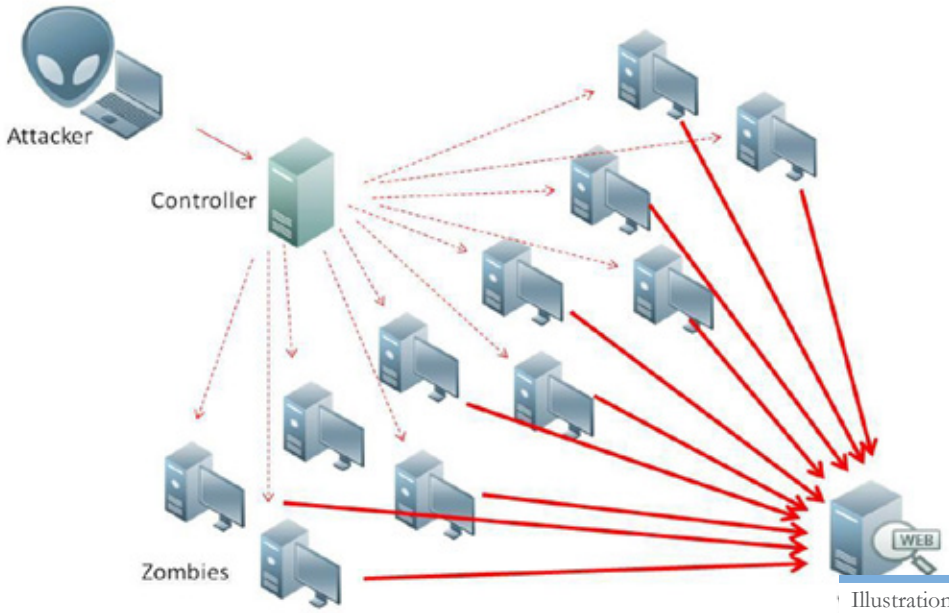


Illustration of a DDoS Attack
Credit: Nasanbuyn

tacks were accompanied by messages. They accused "the Albanian government of corruption and spreading" messages denouncing an Iranian political opposition group. This group is called the Mojahedin-e Khalq (MEK), or the People's Mujahedin of Iran.[8] Such messages are consistent with Iranian political goals. Thus implying that the group's motive is to support and advance Iranian interests in Albania. HomeLand Justice had also previously leaked a variety of confidential documents, including emails between government departments and diplomatic correspondence.[9]

2.4. Despite these claims, a deep investigation by the Albanian government subsequently uncovered that the cyberattack in question was orchestrated and sponsored by Iran.[10] This conclusion was supported by investigations conducted by the US Government. Microsoft's Security Threat Intelligence Center (MSTIC) and Detection and Response Team (DART) also came to this conclusion.[11]

2.5. Consequently, Albania took decisive measures against the Iranian embassy. The expelled all Iranian "embassy staff,…diplomatic and security personnel." They were told to do so within 24 hours on September 7, 2022. This notice was formally delivered to the Iranian Embassy through an official note.[12]

2.6. This severe measure was inevitable. The Albanian Foreign Minister stated, "the aggressiveness of the attack, the level of attack and moreover the fact that it was a fully unprovoked attack left no space for any other decision."[13] It severely hampered Albania's ability to effectively provide governmental services to its citizens.

2.7. Iran has vehemently denied responsibility for such cyberattacks so far. Iran's Permanent Mission to the UN rejected "the baseless accusations of the US and the UK…regarding an alleged cyberattack on Albania."[14]

2.8. The statement adds that Iran "rejects and condemns any

8 "Homeland Justice Operations Against Albania (2022)," *NATO Cooperative Cyber Defense Center,* accessed 19 August, 2023, https://cyberlaw.ccdcoe.org/wiki/Homeland_Justice_operations_against_Albania_(2022).
9 Vitjon Nina, "'Homeland Justice', is it a whole network of Iranian hackers with real threats to the Government? - The cyber security giant "Mandiant" explains it to Albanian Post," *Albanian Post*, accessed July 18, 2023, https://albanianpost.com/en/homeland-justice-is-it-a-whole-network-of-iranian-hackers-with-real-threats-to-the-government-the-cyber-security-giant-mandiant-explains-it-to-albanian-post/.
10 Semini, "Albania cuts diplomatic ties with Iran over July cyberattack."
11 "Diplomatic Crisis: Cyber Attack from Iran to Albania," *SOCRadar*, September 19, 2022, https://socradar.io/diplomatic-crisis-cyber-attack-from-iran-to-albania/.
12 Semini, "Albania cuts diplomatic ties with Iran over July cyberattack."
13 Semini, "Albania cuts diplomatic ties with Iran over July cyberattack."
14 Claudia Glover, "Albania blames Iran for second cyberattack as Tehran denies involvement."

use of cyberspace for attacking other countries."[15] However, there is extensive history of Iran's involvement in cyberwarfare (see section "Iran's Engagement in Cyber Warfare"). Therefore, the position taken by Iran is simply inaccurate and misleading.

2.9. After severing of diplomatic ties, Albania suffered another cyber-attack disrupting governmental services on September 10, 2022. The attack specifically targeted the state police's Total Information Management System (TIMS). This system processes the immigration data of those entering and leaving the country.

2.10. Despite the fact that TIMS was fully restored after only a day, its disruption was clear on the ground. There were increased border queues, and some ports of entry even had to "manually process the registrations of entries and exits."[16]

2.11. Such attacks constitute an established pattern of unacceptable behavior from the conduct of the Iranian state. In 2020 and 2018, Albania's government expelled multiple Iranian embassy staff and diplomats. Their reasoning was for "activity incompatible with their diplomatic status" and "damaging its national security."[17]

The Discovery of Botnets and the Albanian Response

2.12. In the course of the investigation into such cyberattacks, Albania had also collaborated with the United States Cyber National Mission Force. Their goal was to help find "malicious cyber activity" and "identify vulnerabilities on the country's critical networks" through operation "Hunt Forward".[18]

2.12.1. Through this, a botnet used by HomeLand Justice in the first cyberattack was identified. A botnet is a group of computers or devices "which have been infected by malware and have come under the control of a malicious actor."[19] So far, this specific botnet has infected over 25,000 Albanian devices and 3,500 Iranian devices. This allows the controller of the botnet to commit a variety of cybercrimes with potentially significant consequences such as "sending spam" or "stealing data."[20]

2.12.2. Further investigation by Albanian authorities revealed that the main server controlling the botnet was physically located in Iran. Even though there were attempts to mask its identity through the dark web, the location of the server was ultimately traced back to the headquarters of Iran's Ministry of Intelligence.

2.13. In order to mitigate this cyber threat, Albanian authorities launched "Operation Defensive Prowl" to disable the botnet. This operation was conducted in complete compliance with Albanian cyber laws. Aside from hacking the main control server, web shells were removed from all the affected devices. Web shells are computer scripts that allow the botnet controller to remotely access the device's network. Ultimately, Operation Defensive Prowl was successful in preventing further harm to Albania's domestic cyber networks.

2.14. While Iran contends that such an operation was illegal since no prior consent was obtained from the Iranian authorities, it is Albania's position that this was a necessary act of self-defense.

The Special Agreement

2.15. Following the successful takedown of the botnet by the Albanian authorities, Albania and Iran then convened to mitigate the rising tensions. To prevent further escalation of conflict, both parties agreed to submit the dispute to

15 Glover, "Albania blames Iran."
16 "Diplomatic Crisis: Cyber Attack from Iran to Albania," *SOCRadar*.
17 "Albania, host of Iranian dissident camp, expels two Iranian diplomats," *Reuters*, January 15, 2020, https://www.reuters.com/article/us-albania-iran-expulsion-idUSKBN1ZE27X.
18 Mihir Bagwe, "US Sends Cyber Team to Aid Albania's Cyber Defences," *Bank Info Security*, March 24, 2023, https://www.bankinfosecurity.com/us-sends-cyber-team-to-aid-albanias-cyber-defenses-a-21523.
19 "What is a DDoS botnet?" *Cloudfare*, accessed August 18, 2023, https://www.cloudflare.com/en-gb/learning/ddos/what-is-a-ddos-botnet/.
20 "What is a DDoS botnet?"

the ICJ. This was done so through a Special Agreement "concluded by the parties specifically for this purpose."[21]

2.16. The Special Agreement canvassed a wide variety of issues related to the matter at hand that was jointly agreed upon by Albania and Iran. Specifically, the Court is asked to determine the following questions:

2.16.1. Whether Iran is responsible for the cyberattacks launched against Albania by HomeLand Justice, as well as the corresponding botnets; and

2.16.2. Whether Albania violated international law by launching cyber operations to take down the botnets hosted on Iranian servers.

2.17. Instruments of ratification were subsequently exchanged through diplomatic channels, meaning that both parties officially declared their consent to be bound by the agreement.[22] The result of this was that the Agreement officially entered into force, making it legally binding on both Albania and Iran.

Iran's Engagement in Cyber Warfare

2.18. Apart from the clear, direct evidence linking Iran to the cyberattacks, the country is routinely involved in cyber warfare activities. This is evidenced in a report produced by the US Cybersecurity and Infrastructure Security Agency (CISA). It was determined that Iran conducts "cyber espionage and other malicious cyber operations. They target a range of government and private-sector organizations across sectors in Asia, Africa, Europe, and North America."[23]

2.19. Such initiatives are primarily employed to further Iran's geopolitical aims. For instance, Iran's sponsorship of a hacking collective named Abraham's Ax seeks to destabilize the efforts of the Abraham Accords—a series of peace agreements between Israel and the Gulf states—through leaks and hacks.[24]

2.20. One of the main ways that Iran engages in cyber warfare is through the use of advanced persistent threats (APTs). These are state-sponsored cyber groups that intrude computer networks without being detected, and can cause significant damage by stealing private information or disrupting routine system functions through ransomware.[25] This is precisely the method employed to disrupt Albanian cyberspace through HomeLand Justice.

The Link Between Albania and Iran

2.21. It is submitted that the reason for such hostilities from Iran is because of the MEK. The MEK is an opposition political movement representing the dissidents of the current Islamic regime in Iran.

2.21.1. Albania is home to a sizable population of the MEK. Since 2016, Albania has welcomed the relocation of MEK members with the help of the UN High Commission for Refugees.[26] Today, approximately 3,000 MEK members live in Camp Ashraf 3, situated 30 kilometers northwest of Tirana, Albania's capital city.[27]

2.21.2. Throughout the years, Iran has claimed that members of the MEK engaged in militant political acts such as assassinations of key government officials.[28] This, paired with its outspoken position against the current political regime and the large MEK population in Albania, likely prompted Iran to attack Albania to exert political control over the MEK.

21 "Basis of the Court's jurisdiction," *International Court of Justice,* accessed August 11, 2023, https://www.icj-cij.org/basis-of-jurisdiction#2.
22 "The difference between signing and ratification," *Government of the Netherlands* , accessed August 17, 2023, https://www.government.nl/topics/treaties/the-difference-between-signing-and-ratification.
23 "Iranian Government-Sponsored Actors Conduct Cyber Operations Against Global Government and Commercial Networks," *Cybersecurity & Infrastructure Security Agency*, February 24, 2022, https://www.cisa.gov/news-events/cybersecurity-advisories/aa22-055a.
24 Borzou Daragahi, "Iran is using its cyber capabilities to kidnap its foes in the real world," *Atlantic Council*, May 24, 2023, https://www.atlanticcouncil.org/blogs/iransource/iran-cyber-warfare-kidnappings/.
25 "Advanced Persistent Threats," *Cybersecurity & Infrastructure Security Agency*, accessed July 18, 2022, https://www.cisa.gov/topics/cyber-threats-and-advisories/advanced-persistent-threats.
26 Christian Mamo, "Albania and Iran's dissident MEK: A marriage made in the US," *Emerging Europe*, August 11, 2021, https://emerging-europe.com/news/albania-and-irans-dissident-mek-a-marriage-made-in-the-us/.
27 Semini, "Albania cuts diplomatic ties."
28 Mamo, "Albania and Iran's dissident MEK."

2.21.3. The constant threat towards the Iranian diaspora in Albania is particularly evident. In July 2022, the MEK had planned to hold the "Free Iran World Summit" at Camp Ashraf 3. However, it was summarily canceled "for security reasons and due to terrorist threats and conspiracies."[29]

Chapter III: Statement of Law

The Cyberattacks are Attributable to Iran

3.1. In order for the conduct of non-state actors to be attributable to a state under international law, it must be established that the state is in control of the entity in question.[30] The degree of control needed to establish attributability varies, and the International Law Commission has not yet endorsed any one test.[31]

3.2. Generally, there are two key tests of control. The first revolves around an "effective control" test, where the state gives a direct order to the non-state actor to engage in unlawful conduct or demonstrate effective control of the entity.[32] This means that the state actor should have "directed or enforced the perpetration of the acts."[33]

3.3. The second test revolves around the notion of "overall control," taken to imply the exercise of general authority over a group.[34] Examples of this within the cyber realm include the provision of technical or other support, though it requires a holistic evaluation of all available facts of the case to establish the link.[35] This arguably has a lower threshold to meet before establishing attributability, as compared to the effective control test.

3.4. Albania submits the overall control test should be applied in this and other cyberwarfare contexts rather than the effective control test. This is an inconsistency in the efficiency of the control group. Apart from the criticism, the uniquely virtual nature of cyberspace must be con-

29 Semini, "Albania cuts diplomatic ties."
30 Michael N. Schmitt, *Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations*. 2nd ed. Cambridge: Cambridge University Press, 2017, doi:10.1017/9781316822524, 95.
31 International Law Commission, "Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, " 2001, https://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf, 52.
32 *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina/Serbia and Montenegro),* ICJ Rep (2007), [400]-[401]; *Military and Paramilitary Activities in and Against Nicaragua*, ICJ Rep 14 (1986), [115].
33 Antonio Cassese, "The *Nicaragua* and *Tadić* Tests Revisited in Light of the ICJ Judgment on Genocide in Bosnia," 18 *European Journal of International Law* 4 (2007): 653.
34 *Prosecutor/Tadić*, Case No. IT-94-1-A, Appeal Judgment, 1999, *ILM* 38 (1999), [131].
35 Nicholas Tsagourias, "Cyber Attacks, Self-Defence and the Problem of Attribution," 17 *Journal of Conflict and Security Law* (2012): 238.

A MEK rally during the 2017 Human Rights Day in Paris
Credit: VOA Persian News Network

sidered.[36]

3.5. Generally, accountability can be easily evaded for cyber operations. This is because it is easy to conceal identities and the true nature of certain actions. Because the effective control test was not developed with modern technology in mind, the test should be updated. This would address the evidentiary challenges in proving control over cybercrime operations.[37]

3.6. The overall control test is satisfied in this case. Evidence from Microsoft's investigation demonstrates that the attackers used the same tools, hacking methods, and codes as other known Iranian attackers linked to its government.[38] This is further evident in the fact that the main command server controlling the botnet used in the first wave of cyberattacks originated from a server belonging to Iran's Ministry of Intelligence. This, at the very least, indicates that HomeLand Justice had received technical support from the Iranian government.

3.7. Even if the effective control test is applied, the evidence currently tendered can still meet the high threshold demanded by the test. The vast similarities in the hacking methods and tools employed by HomeLand Justice goes beyond mere coincidence; the cyber operations undertaken could have only succeeded through close cooperation with the Iranian government.

3.8. Accordingly, under either test, the cyberattacks can and should be attributed to Iran.

The Cyberattacks Constitute a Violation of Albania's Sovereignty

3.9. The principle of sovereignty is arguably the cornerstone of international law.[39] It revolves around the notion that a state holds ultimate authority over all matters within its territory. In the context of cyberspace, it means that states are entitled to safeguard and maintain their cyberspace in its entirety without any external interference.[40]

3.10. o establish a violation of sovereignty, there are two considerations. First, the degree of infringement upon the target's territorial integrity, Second, is whether there has been an "interference with or usurpation of inherently governmental functions."[41]

3.10.1. For the first consideration, physical damage to a country's servers, or even a loss of functionality of cyber infrastructure can satisfy this requirement.[42] For the second consideration, there is no universally accepted definition and depends on the factual circumstances.[43]

3.10.2. The waves of cyberattacks constitute a violation of Albania's sovereignty on several levels. There was no permanent or significant physical damage, but there was a severe loss of functionality. The cyberattack took down governmental web portals, and disabled the immigration information systems. This clearly qualifies as an infringement upon Albania's territorial integrity on the internet.

3.10.3. Moreover, the cyberattacks specifically targeted government functions. The Albanian government was temporarily unable to provide vital information and services to its citizens during the attack. In the case of the attack on the TIMS system, it severely disrupted Albania's border services, posing significant security risks to people in Albania.

3.11. Having considered all these factors, the Court should find that Iran has violated Albania's sovereignty through the cyberattacks in question.

36 Cassese, "The Nicaragua and Tadić Tests Revisited in Light of the ICJ Judgment on Genocide in Bosnia," 653-654.
37 Kubo Mačák, "Decoding Article 8 of the International Law Commission's Articles on State Responsibility: Attribution of Cyber Operations by Non-State Actors," 21 *Journal of Conflict and Security Law* (2016): 423.
38 "Microsoft investigates Iranian attacks against the Albanian government," *Microsoft*, September 8, 2022, https://www.microsoft.com/en-us/security/blog/2022/09/08/microsoft-investigates-iranian-attacks-against-the-albanian-government/.
39 United Nations, "United Nations Charter (full text)," accessed August 17, 2023, https://www.un.org/en/about-us/un-charter/full-text, Article 2(1).
40 "Sovereignty," *NATO Cooperative Cyber Defense Center*, accessed August 19, 2023, https://cyberlaw.ccdcoe.org/wiki/Sovereignty.
41 Schmitt, *Tallinn Manual 2.0*, 20.
42 Schmitt, *Tallinn Manual 2.0*, 20.
43 Schmitt, *Tallinn Manual 2.0*, 22.

The Cyberattacks Constitute a Violation of the Principle of Non-Intervention

3.12. Additionally, Albania further submits that Iran has violated other international obligations by conducting cyberattacks. Another norm under international law is the non-intervention principle. This underpins the obligations of states to not coercively interfere in the internal affairs of other states.[44]

3.13. Establishing a violation of the principle contains two elements: it must relate to issues revolving around the internal affairs of the target state, and it must be coercive in nature.[45]

3.14. The first element is related to the notion of domaine réservé, or "areas of State activity that are internal or domestic affairs of a State and are therefore within its domestic jurisdiction or competence."[46] For instance, the act in question must affect the affected state's "choice of a political, economic, social, and cultural system, and the formulation of foreign policy."[47]

3.14.1. The element of coercion revolves around depriving a state of its sovereign prerogative. The act should have the potential to compel the target state to act in a manner it otherwise would have not done.[48]

3.14.2. In this instance, the cyberattacks against Albania are linked to domaine resérvé because of the political backdrop. The hostile acts by Iran could be construed as an effort by the Iranian government to influence and change Albania's policy towards hosting refugees belonging to the MEK. This is particularly evident in the fact that the cyberattacks were accompanied by "anti-MEK messages" released by HomeLand Justice, and coincided with the "Free Iran World Summit," an event meant to provide a platform for Iran's political opposition to voice their concerns.[49]

3.14.3. [x.x.x.] The cyberattacks are clearly coercive in nature since it has the potential to strong-arm Albania into acceding to HomeLand Justice's demands. Had Albania not been able to counteract the cyber

44 United Nations, "United Nations Charter," Article 2(7); *Military and Paramilitary Activities in and Against Nicaragua*, [205].
45 "Prohibition of intervention," *NATO Cooperative Cyber Defense Center*, accessed August 19, 2023, https://cyberlaw.ccdcoe.org/wiki/Prohibition_of_intervention.
46 Katja Ziegler, "Domaine réservé," *Oxford Public International Law*, April, 2013, https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1398.
47 *Military and Paramilitary Activities in and Against Nicaragua*.
48 "Prohibition of intervention."
49 "Homeland Justice Operations Against Albania (2022)."

Immigration Channels in Hong Kong
Credit: N509FZ

threat with the assistance of its allies, the consequences would have been grave.

3.15. Accordingly, Iran should be found to have violated the principle of non-intervention, in addition to its incursions on Albanian sovereignty.

Albania's Botnet Mitigation Response Was Consistent with International Law

Principle of Non-Intervention

3.16. It is Albania's position that the defensive measures taken to mitigate the botnet were consistent with international law. First, the takedown of the command server in Iran and the removal of web shells from 3,500 Iranian devices did not violate the principle of non-intervention.

3.17. As previously established, the non-intervention principle concerns matters relating to a state's domestic affairs.[50] In principle, this should be taken to mean that it relates to matters that are not regulated by international law.[51]

3.18. However, cybercrime and botnet mitigation are matters regulated under international law. For example, the Budapest Convention on Cybercrime explicitly deals with these matters.[52] This means that the matters at hand are no longer matters solely belonging to the internal affairs of one particular state, hence the principle is not applicable.

3.19. Even if it is, no coercion was exercised on the part of Albania. For coercion to be established, the act must intend to affect actions of states in a particular way or change outcomes. According to the Tallinn Manual, a cyber operation that does not have the intent of changing behavior cannot be coercive.[53]

3.20. Here, the botnet was disabled with no intention of influencing Iran's conduct in any way, but merely to mitigate a threat posed to both Albanian and Iranian devices.

Sovereignty

3.21. There are two distinct responses that are relevant to the analysis here: the removal of web shells from 3,500 Iranian devices, and the takedown of the command server located in Iran.

3.22. For the first response, there is no violation of sovereignty since no infringement amounting to a violation of Iran's territorial integrity can be established. No physical damage was caused to the devices, nor was there any loss of functionality. The only effect was that the botnet's control server could no longer remotely (and illegally) control the devices in question.

3.23. For the second response, Albania does not dispute that there was a loss of functionality or physical damage. However, no violation of sovereignty can be found because it does not interfere with an inherently governmental function.

3.23.1. Iran could potentially argue that the takedown of the command center did interrupt government services. This would only be true if the server in question was being used by the Ministry of Intelligence to conduct cyberespionage operations directed at Albania or other countries. However, this argument is inconsistent with Iran's other claims, as Iran has categorically denied its involvement in any form of cybercrime. Yet, the main purpose of this server was to control a botnet for that exact purpose. If this was a government server, then Iran's statement denying involvement is inherently correct. If it was not a government server, then there is no violation of sovereignty.

3.24. Therefore, no violations of sovereignty can be established in any instance.

There were No Violations of Human Rights Laws

3.25. Albania and Iran are both parties to the ICCPR, which ensures that states respect a wide range of individual hu-

50 "Prohibition of intervention."
51 Council of Europe, "Guidance Note #2: Provisions of the Budapest Convention Covering Botnets ," October 8, 2013, https://rm.coe.int/16802e7132, 3-4.
52 Council of Europe, "Guidance Note #2: Provisions of the Budapest Convention Covering Botnets ."
53 Schmitt, *Tallinn Manual 2.0*, 318.

Illustration of machines affected by Stuxnet
Credit: Ulli1105

man rights.[54]

3.26. One relevant right in the current case is the protection of individuals' right to privacy.[55] Albania's botnet mitigation response did not seek to interfere with the data of individuals in any way. Rather, it merely aimed to remove web shells from Iranian devices. There is also no evidence that Albania collected the users' data from Iranian devices. Therefore, there was no infringement on any right to privacy as guaranteed under the ICCPR.

3.27. Alternatively, Iran might argue that Albania had violated the property rights of Iranian citizens by disabling the botnet. However, the right to property is not protected under the ICCPR.

3.27.1. Even if it is protected under the covenant, no destruction of property can be established. The botnet was merely disabled on the devices through the removal of web shells. The affected devices were still functional.

3.28. The ICCPR requires that states protect the rights of those within their jurisdiction, and "protect the human rights of individuals from abuse by third parties."[56] Yet, Albania does not exercise any authority over individuals in Iran.[57] There was simply no evidence of effective control for Albania to extraterritorially enforce human rights as canvassed under the ICCPR.

3.28.1. In fact, Albania had actually fulfilled this obligation towards its citizens by taking down the botnet to safeguard its citizens' right to privacy. This was especially the case since Homeland Justice's cyberattack involved data theft and the publication of confidential information.

3.28.2. Accordingly, Albania's botnet response did not violate international human rights laws.

Albania acted Lawfully Through the Defense of Necessity

3.29. Even if the actions were found to be in violation of Iran's international obligations, the wrongfulness of the actions can be precluded if a defense is raised.

3.30. Particularly, the state of necessity is a customary rule under international law, in which a state is permitted to

54 "International Covenant on Civil and Political Rights."
55 "International Covenant on Civil and Political Rights," Article 17.
56 Schmitt, *Tallinn Manual 2.0*, 196.
57 Schmitt, *Tallinn Manual 2.0*, 185.

undertake an act that otherwise would have been unlawful.[58]

3.31. There are narrow grounds under which this defense of necessity can be invoked: namely, that the act in question is the only way for the state to protect an "essential interest" from a "grave and imminent peril," and that the act must not "seriously jeopardize an essential interest of the state to which the obligation is owed."[59]

3.31.1. The takedown of the botnet was the only way for Albania to protect an "essential interest"—the safeguarding of Albanian cyberspace to ensure the well-functioning of its governmental websites and services for its citizens.

3.31.2. The presence of the botnet constitutes a "grave and imminent peril" since it can be used for a wide range of destructive cyberattacks with significant consequences. Albania has already faced the impacts of botnet attacks in the past, so this counter-hacking was justified as it prevented more devices from getting infected.

Chapter IV: Submissions

4.1. For the foregoing reasons, Albania respectfully requests the following prayers of relief from the ICJ.

4.2. May it please the Court to adjudge and declare that:

4.2.1. The Court has jurisdiction to hear this case;

4.2.2. The cyberattacks conducted by HomeLand Justice are attributable to Iran;

4.2.3. The cyberattacks in question constitute a violation of Albania's sovereignty;

4.2.4. In the alternative or otherwise, such attacks constitute a violation of customary international law principles like non-intervention;

4.2.5. Albania's actions to take down the botnet through Operation Defensive Prowl were consistent with international law.

58 *Gabčíkovo-Nagymaros Project (Hungary/Slovakia),* ICJ Rep (1997), [51].
59 International Law Commission, "Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries," 80.

Counter-Memorial of the Islamic Republic of Iran

Chapter I: Introduction

1.1. On November 14, 2022, the Republic of Albania notified the Registrar of a Special Agreement with the Islamic Republic of Iran giving rise to a dispute adjudicated before the International Court of Justice.

1.2. The Court fixed January 25, 2024, as the time-limit for the filing by the Islamic Republic of Iran. This Memorial is submitted in accordance with the stipulated timeline.

1.3. In accordance with Article 49 of the Rules of Court, this Memorial contains the following:

1.3.1. A statement of facts outlined in Chapter II;

1.3.2. A statement of law in Chapter III;

1.3.3. The Islamic Republic of Iran's submissions to the Court in Chapter IV, which sets out formal requests for relief.[60]

1.4. In this Counter-Memorial:

1.4.1. The International Court of Justice will be referred to either as the Court or the ICJ;

1.4.2. The Islamic Republic of Iran will be referred to as Iran;

1.4.3. The Republic of Albania will be referred to as Albania;

1.4.4. The International Covenant on Civil and Political Rights will be referred to as the ICCPR;[61]

1.5. It is Iran's contention that the ICJ does not retain jurisdiction over this case per Article 36 of the Statute of the ICJ.[62] Nevertheless, Iran has submitted a Counter-Memorial to the Court in good faith, reiterating its commitment "to strengthen and support the International Court of Justice to discharge its duty of pacific settlement of disputes as the principal judicial organ of the United Nations (UN)."[63]

1.6. This Counter-Memorial seeks to refute all claims of wrongdoing put forth by Albania. Iran does not engage in cyber warfare, and strongly condemns such practices. This Counter-Memorial also establishes that Albania has violated international law in its cyber operations against Iran.

Chapter II: Statement of Facts

Contentions against Albania's Construction of the Factual Matrix

2.1. Iran does not dispute the occurrence of the vicious cyberattack against the Albanian government and its digital infrastructure. It is regrettable that such an incident has happened, and Iran had even reached out to Albania to assist in mitigating the attack.[64]

2.2. The key contention lies in Albania's claim that such attacks were perpetrated by Iran. It has been established that a group called HomeLand Justice has taken responsibility for the first wave of cyberattacks in June.[65] Albania then summarily contended that Iran was the mastermind behind the group's actions. This is a grave accusation, and such allegations are decisively false and baseless.[66]

2.3. It was never the case that HomeLand Justice - or any other cyber groups with alleged links to Iran - were enti-

60 "Rules of the Court (1978)."
61 "International Covenant on Civil and Political Rights."
62 "Statute of the International Court of Justice," *International Court of Justice,* accessed August 17, 2023, https://www.icj-cij.org/statute.
63 "Declarations recognizing the jurisdiction of the Court as compulsory - Iran, Islamic Republic of," *International Court of Justice*, June 25, 2023, https://www.icj-cij.org/declarations/ir.
64 "Iran rejects involvement in recent Albania cyberattack," *Rudaw*, September 12, 2022, https://www.rudaw.net/english/middleeast/iran/120920222.
65 Semini, "Albania cuts diplomatic ties with Iran over July cyberattack."
66 Syed Zafar Mehdi, "Iran slams fresh US sanctions over alleged Albania cyberattack," *Anadolu Ajansi*, September 10, 2022, https://www.aa.com.tr/en/middle-east/iran-slams-fresh-us-sanctions-over-alleged-albania-cyberattack/2682106#.

ties controlled or led by the Iranian government. Iran vehemently condemns all states that consistently assert this tenuous link between the two parties.[67]

2.4. In the case of HomeLand Justice, it is entirely possible that the group is merely composed of Albanian nationals that are disgruntled with their government's immigration policies towards hosting Mojahedin-e Khalq (MEK) refugees.[68]

2.5. Moreover, the evidence linking Iran to HomeLand Justice is circumstantial at best, and conspiratorial at worst. Mandiant—a cybersecurity firm based in the United States, which has been historical hostile to Iran—established such a link with "reasonable confidence" based on various factors.However, these factors only include the attack's timing, similarities in the source code used, and "the content of a social media channel used to claim responsibility."[69]

2.6. It is submitted that such factors are insufficient in satisfying the burden of proof required to establish a rigorous link between HomeLand Justice and the Iranian government. The fact that this conclusion was even reached in the first place also demonstrates the bias present in the findings of third parties, rendering their judgments prejudiced.

2.7. Simply put, Albania—alongside its allies such as the US and US businesses like Microsoft—have come to inaccurate conclusions on their investigations in their attempts to pin this unfortunate attack on the Iranian state.

2.8. Furthermore, the sudden move on the part of the Albanian government to instantly sever all diplomatic relations was "injudicious" and "lacking in foresight."[70] By taking such drastic action, this denies both parties the opportunity to reconcile this on peaceful terms through proper diplomatic channels.

2.9. To assert that Iran was responsible for the second cyberattack on Albania's Total Information Management System (TIMS), is false. Iran reiterates that it "seriously and decisively reject accusations" regarding any of the cyberattacks against Tirana, the capital of Albania.[71] It is "unfortunate that the government of Albania, as a country that hosts a known organization and a terrorist organization," is making such unfounded claims.[72]

Unwarranted Incursions of Iranian Cyberspace by Albania

2.10. After unjustifiably severing diplomatic ties with Iran, Albania then proceeded to engage in conduct that sought to worsen relations with Iran further.

2.11. After an investigation by Iran authorities, it was discovered that Albania illegally launched a cyber operation. Called Operation Defensive Prowl, the operation affected a server belonging to the Iranian Ministry of Intelligence. Other than the Ministry, he operation also impacted 3,500 personal devices belonging to Iranian citizens.

2.12. Albania sought to justify its conduct by alleging that the server in question was host to a botnet that was used in the first wave of cyberattacks against them. This is a preposterous allegation, considering Iran's full denial of its involvement in any of the attacks.

2.13. This constituted a clear violation of international law. Albania conducted such operations without notifying Iran, nor did they seek to gain consent from Iran or the owners of the affected devices. This is an infringement of Iran's sovereignty, as well as the rights to privacy and property of Iranian citizens.

67 Alice Taylor, "Iran denies cyber attack on Albania," *Euractiv*, September 8, 2022, https://www.euractiv.com/section/politics/short_news/iran-denies-cyber-attack-on-albania/.
68 "Albania says Iranian hackers hit the country with another cyberattack," *Cyberscoop*, September 12, 2022, https://cyberscoop.com/iranian-cyberattack-albania-homeland-justice/.
69 Maryam Sinaee, "Iran rejects US, UK Accusations of Cyberattack Against Albania," *Iran International*, September 8, 2022, https://www.iranintl.com/en/202209080527.
70 Elona Elezi Tirana and Niloofar Gholami Bonn, "Albania blames Iran for cyberattacks," *Deutsche Welle*, September 16, 2022, https://www.dw.com/en/albania-once-again-the-target-of-cyberattacks-after-cutting-diplomatic-ties-with-iran-and-expelling-diplomats/a-63146285.
71 "Iran rejects involvement in recent Albania cyberattack."
72 "Iran rejects involvement in recent Albania cyberattack."

The Involvement of Third Parties

2.14. Following the cyberattack and expulsion of Iranian diplomats, various states showed different levels of support of Albania. Particularly, the United States immediately imposed sanctions on Iran's Ministry of Intelligence and its then-minister Esmail Khatib. The reasoning was based on the Ministry allegedly disregarding "norms of responsible peacetime state behavior in cyberspace."[73]

2.15. Iran strongly condemns such a response from the United States, especially given the fact that claims linking the attacks to Iran are baseless. In fact, "America's immediate support for the false accusation of the Albanian government...shows that the designer of this scenario is not the latter, but the American government."[74] It is possible that this was an orchestrated plot to "create political hype" against Iran.[75]

2.16. Moreover, Iran has always been a target for cyberattacks from Western state actors in the past. The United States has consistently conducted "sophisticated attacks on the computer systems that run Iran's main nuclear enrichment facilities."[76] The prime example of this was Stuxnet, a malicious malware that caused uranium-enrichment centrifuges to catastrophically malfunction.[77]

2.17. In those instances, Western state actors have either played a role in the cyberattacks or remained silent. As such, these third parties lack any legitimacy to level such accusations against Iran.[78]

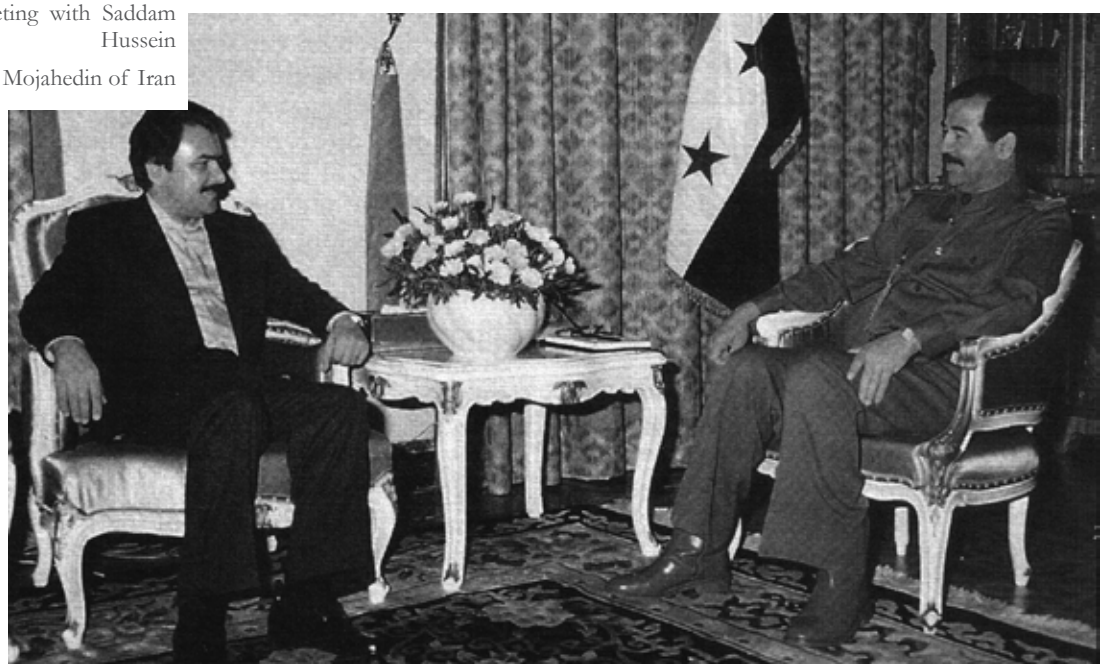
The Characterization of the Mojahedin-e Khalq ("MEK")

2.18. So far, Albania has characterized the MEK as merely an opposition political organization. However, this characterization is insufficient and does not describe the true nature of the MEK.

73 "Iran strongly condemns US sanctions over Albania hacking," *Arab News*, September 10, 2022, https://www.arabnews.com/node/2159821/middle-east.
74 "Iran strongly condemns US sanctions over Albania hacking."
75 "The Iranian Ministry of Foreign Affairs strongly condemns Albania's anti-Iran measure," *Islamic Republic of Iran Ministry of Foreign Affairs*, September 8, 2022, https://en.mfa.gov.ir/portal/newsview/692576.
76 Margherita D'Ascanio, "Iran, Victim of Cyber Warfare," *International Committee of the Red Cross* , 2015, https://casebook.icrc.org/case-study/iran-victim-cyber-warfare.
77 Kim Zetter, An Unprecedented Look at Stuxnet, the World's First Digital Weapon, *Wired*, November 3, 2014, https://www.wired.com/2014/11/countdown-to-zero-day-stuxnet/.
78 Sinaee, Iran rejects US, UK Accusations of Cyberattack Against Albania."

MEK Leader Massoud Rajavi meeting with Saddam Hussein

Credit: People's Mojahedin of Iran



2.19. The MEK is designated as a terrorist organization due to its past and continued actions against Iran.[79] Historically, the group has orchestrated a wide variety of terrorist attacks against Iran, ranging from direct military action during the Iran-Iraq War to raids on Iranian diplomatic missions worldwide.[80]

2.19.1. This characterization is supported by the fact that it was labeled as a terror organization by both the United States and the European Union up till the mid-2010s.[81]

2.20. Essentially, the MEK has "constantly served and still serves as a tool in the hands of [the] US to carry out acts of terror, cyberattacks, and wage psychosocial war against the Iranian government and nation."[82] This is conducted with the assistance of third-party involvement such as the United States, which has trained and equipped the MEK in cyber technology.[83]

2.20.1. Recent examples of such attacks against Iran include a cyberattack on Iran's Foreign Ministry's website through an affiliated hacker group called "Ghiam Sarnegouni." This resulted in the Ministry's website going offline, though "necessary measures" were made to restore access.[84]

2.20.2. This was not a one-off attack from MEK-affiliated groups. In 2022, the group also hacked thousands of security cameras and websites belonging to Tehran Municipality.[85] This demonstrates that the MEK still poses an active threat to the sovereignty of the Iranian state.

2.21. Because Albania continues to harbor MEK refugees, they are therefore complicit in facilitating the continued threats against the Iranian state. Consequently, Iran will be compelled to take action in order to safeguard the rights of its citizens.

Chapter III: Statement of Law

Jurisdiction

3.1. Iran contends that the ICJ does not have jurisdiction to rule over the matter. Under Article 36 of the Statute of the ICJ, there are generally three ways in which the Court's jurisdiction can be established. First, parties can refer cases to the Court through a special agreement, where the parties explicitly refer cases to the Court. Second, a treaty or convention has explicitly recognized the ICJ's authority in the event of a dispute between two signatory parties. Third, the states in question have accepted the ICJ's compulsory jurisdiction in legal disputes.[86]

3.2. Albania's claims have no jurisdictional basis to begin with. For instance, Albania's claims are not grounded in any violation of any treaties or conventions that contain a jurisdictional clause conferring jurisdiction on the Court. As a matter of fact, no multilateral convention relating to cyber warfare exists to begin with.[87] Moreover, claims revolving around the alleged ICCPR violations do not automatically grant the Court jurisdiction since neither of those covenants has a jurisdictional clause.[88]

3.3. Additionally, whilst there was a Special Agreement between the two parties submitted to the Court in regard to this specific matter, it is Iran's contention that Iran's subsequent conditional recognition of the Court's compulsory jurisdiction supersedes the standing of this

79 Syed Zafar Mehdi, Iran's Foreign Ministry confirms cyberattack but denies leak of documents," *Anadolu Ajansi*, May 8, 2023, https://www.aa.com.tr/en/middle-east/irans-foreign-ministry-confirms-cyberattack-but-denies-leak-of-documents/2891575.
80 Jonathan Masters, "Mujahadeen-e-Khalq (MEK)", *Council on Foreign Relations*, July 28, 2014, https://www.cfr.org/backgrounder/mujahadeen-e-khalq-mek.
81 Masters, "Mujahadeen-e Khalq (MEK)."
82 Mehdi, "Iran slams fresh US sanctions."
83 Mehdi, "Iran slams fresh US sanctions."
84 Mehdi, "Iran's Foreign Ministry."
85 Mehdi, "Iran's Foreign Ministry."
86 International Court of Justice, "Basis of the Court's jurisdiction," accessed August 11, 2023, https://www.icj-cij.org/basis-of-jurisdiction#2.
87 Duncan Hollis, "A Brief Primer on International Law and Cyberspace," Carnegie Endowment for International Peace. June 14, 2021, https://carnegieendowment.org/2021/06/14/brief-primer-on-international-law-and-cyberspace-pub-84763.
88 "Treaties," *International Court of Justice* , accessed August 17, 2023, https://www.icj-cij.org/treaties.

Agreement.

3.4. Iran has recognized the compulsory jurisdiction of the Court through a declaration dated June 25, 2023. This was done approximately 7 months after the Special Agreement was initially agreed upon. In the declaration, Iran stipulated that the recognition of the ICJ's jurisdiction as compulsory is only applicable in relation to disputes surrounding "the jurisdictional immunities of the State and State property" and "immunity from measures of constraint against State or State property."[89] Particularly, it noted that no other dispute shall be entertained by the Court.

3.5. Because the recognition of the Court's jurisdiction is not static and can be altered over time, the new declaration takes priority in establishing Iran's position of jurisdiction. Accordingly, the legal authority vested in the ICJ to adjudicate the dispute through the Special Agreement should be nullified.

3.6. The current dispute—which revolves around a cyberattack that is allegedly attributed to Iran—has no significance or relevance to the topic of jurisdictional immunities mentioned in the Special Agreement. Therefore, no jurisdiction can be established. The Court should not even have proceeded with entertaining the merits of this case in the first place.

The Cyberattacks are Not Attributable to Iran

3.7. Even if the ICJ's jurisdiction can be established, it is submitted that the cyberattacks conducted by HomeLand Justice are not attributable to Iran. Iran contends that the evidence presented linking HomeLand Justice to Iran is unreliable and fails to meet the standard of proof. Even if the evidence is considered to be reliable, the alleged cyber operations are still not attributable to Iran.

3.8. As previously introduced in Chapter I, Iran submits that the evidence tendered by Albania linking Iran to the cyberattacks lacks reliability. Apart from the Mandiant report citing similarities in the source code, Microsoft also relied on evidence such as the attackers being "observed operating out of Iran," and that various tools and digital certificates used by actors they refer to as "known Iranian attackers."[90]

3.8.1. Just because the attackers are geographically situated in Iran does not automatically mean that they are undertaking such acts for the Iranian government. Additionally, the comparison of the hacking techniques employed here to "known Iranian attackers" is problematic because it hinges on the allegation that those actors are definitively Iranian state actors. Iran reiterates once more that it does not engage in unlawful cyberspace conduct. Hence, all evidence tendered so far is circumstantial at best.

3.9. Second, state responsibility for the actions of HomeLand Justice cannot be established. According to the International Law Commission, the conduct of a non-state actor is only attributable to a state if the entity is "under the direction or control of that State."[91]

3.10. The threshold to finding this notion of "effective control" is extremely high. This is evident in this court's pronouncements in the prior case of The Republic of Nicaragua v. The United States of America (1986), such that even evidence of the United States "financing, organizing…operations of the Contras" were insufficient in meeting the threshold.[92] The evidence presented in this case is far weaker, and so this argument must also be rejected.

3.11. Even if the test of overall control is applied, as argued by Albania, no proper link can still be legally established between HomeLand Justice and Iran.

3.11.1. Albania argues that technical support is indicative

89 Declarations recognizing the jurisdiction of the Court as compulsory - Iran, Islamic Republic of."
90 "Microsoft investigates Iranian attacks against the Albanian government," *Microsoft*, September 8, 2022, https://www.microsoft.com/en-us/security/blog/2022/09/08/microsoft-investigates-iranian-attacks-against-the-albanian-government/.
91 International Law Commission, "Draft Articles on Responsibility of States for Internationally Wrongful Acts," 2001, https://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf, Article 8.
92 *Military and Paramilitary Activities in and Against Nicaragua.*

of overall control. Yet, mere evidence of technical support alone does not automatically mean that such control is present. Other factors need to be taken into account, especially since the idea of exercising general authority intuitively commands a relatively higher level of involvement than just merely providing support.

3.11.2. Accordingly, even though the botnet emanated from a server belonging to the Iranian Ministry of Intelligence, it does not mean that HomeLand Justice is controlled by Iran in any way. At worst, general technical assistance was provided by Iranian state actors, but HomeLand Justice was still acting independently of its own volition.

3.12. In any instance, HomeLand Justice is not an entity associated with the Iranian government. At best, it is a rag-tag team of Albanian citizens disgruntled with the policies of their government towards the refugees of the MEK. There is no basis to find that Iran exercised any sort of "effective control" or "overall control" over the group.

The Cyberattacks Do Not Constitute a Violation of Albania's Sovereignty

3.13. All claims that Iran violated Albania's sovereignty are baseless. Proving such a claim requires two things. The first is an infringement upon Albania's territorial integrity. The second is an "interference with or usurpation of inherently governmental functions."[93] One tenet of territorial integrity revolves around facets like a loss of functionality of cyber infrastructure.[94]

3.14. Iran contends that the current threshold of merely finding a loss of functionality is insufficient. Sovereignty is viewed as the cornerstone of international law.[95] As such, it could be imputed that any finding of a violation of sovereignty would be a serious and grave accusation. To this end, there should be high thresholds set for finding a violation of sovereignty.

3.15. Particularly, in the case of functionality within cyberspace, there should be a threshold that makes reference to the permanency or seriousness of the breach. Iran contends that the current cyberattacks should not count as a violation of Albania's sovereignty since the government websites were only temporarily shut down, and could be easily restored.

3.16. Moreover, the TIMS system was only down for a very short period of time. Routine technical errors have led to outages of similar severity and length.

3.17. To put it simply, the overall effect of such cyberattacks was minimal on Albania, such that it should not have constituted such grave labeling of a violation of sovereignty.

The Cyberattacks Do Not Constitute a Violation of the Principle of Non-Intervention

3.18. The principle of non-intervention prohibits coercive interference in the internal affairs of other states.[96] In this context, internal affairs primarily refer to the "choice of a political, economic, social, and cultural system, and the formulation of foreign policy" by the affected state.[97] Coercion refers to the act compelling the target State to act in a manner it otherwise would have not done.[98]

3.19. Iran submits that the cyberattacks do not violate the non-intervention principle because it does not directly and explicitly seek to force any political change in Albania. While the cyberattacks were allegedly conducted amid a tense political situation (largely of Albania's own making), the ransomware attacks stipulated that Albania had to change their governmental policies towards the hosting of MEK refugees for their files to be released.

3.20. Even if it is related to Albanian internal affairs, ransom-

93 Schmitt, *Tallinn Manual 2.0*, 20.
94 Schmitt, *Tallinn Manual 2.0*, 20.
95 United Nations, "United Nations Charter (full text)," Article 2(1).
96 United Nations, "United Nations Charter (full text)," Article 2(7); *Military and Paramilitary Activities in and Against Nicaragua*, [205].
97 *Military and Paramilitary Activities in and Against Nicaragua.*
98 Schmitt, *Tallinn Manual 2.0*, 20.

ware and DDoS attacks are mere nuisances that can be organized by individuals without much expertise in cyberattacks. Merely influencing the target state by causing a nuisance cannot qualify as coercion.[99] This court's docket would be saturated with cases alleging infringements of sovereignty if that was the case.

3.21. Another key facet of this principle is that coercive pressures cannot be reasonably resisted.[100] This is clearly not the case, as Albania could have easily counteracted such pressures by launching defensive cyber operations or strengthening their cybersecurity capabilities.

3.22. As such, no violation of the principle of non-intervention should be found by the Court.

Albania Violated International Law Through Operation Defensive Prowl

Violation of the Duty to Cooperate

3.23. A key norm under international law is the duty to cooperate where cross-border issues arise. This is enshrined in Article 1(3) of the UN Charter, espousing the principle of "international cooperation in solving international problems."[101]

3.24. This is further extended to the context of cyber operations, where the duty is established for states to collaborate with one another.[102] Such duties are also observed and adhered to in practice, as seen in the cooperation between states to take down other botnets like Emotet.[103]

3.25. Albania should have collaborated with Iran in its attempts to mitigate the discovered botnet prior to launching Operation Defensive Prowl to meet its international obligations in this regard.

3.26. Yet, Albania did not even make an attempt to cooperate or contact Iran at any point. This constitutes a violation of a critical duty under international law.

Violation of Sovereignty

3.27. Operation Defensive Prowl constitutes a violation of Iran's sovereignty. Part of the operation involved hacking into a computer server belonging to the Iranian Ministry of Intelligence and disabling it. Accordingly, there is a clear act of infringement amounting to an incursion of territorial integrity since there was a loss of functionality. The Iranian government—in the period that the server was disabled—could not use the server to carry out its intended functions.

3.28. Moreover, it is agreed upon by international experts that a state enforcing its own cyberspace laws in another state qualifies as a "usurpation of inherently governmental functions."[104] Because Albania had launched the operation in accordance with its own cyber laws, the act can be construed as an attempt to enforce its laws in Iran. This is precisely what international norms regarding sovereignty are intended to prevent, not minor nuisances. Therefore, this operation was in clear violation of Iran's sovereignty.

Violation of the Principle of Non-Intervention

3.29. Under the principle of non-intervention, a state is free to exercise its own sovereign prerogative to handle its internal affairs without coercive interference from other states.[105] In the particular context of cyberspace, this means that Iran should be able to freely regulate cyber activities within its jurisdiction.[106]

3.30. By directly hacking 3,500 Iranian devices to remove the web shells, Operation Defensive Prowl prevented Iran from freely regulating these devices located in the country. As such, it constitutes a coercive interference in the affairs of the Iranian state regarding cyberspace regula-

99 Schmitt, *Tallinn Manual 2.0*, 318.
100 Wood Jamnejad, "The Principle of Non-Intervention," 22 *Leiden Journal of International Law (2)* (2009): 348; Schmitt, *Tallinn Manual 2.0*, 317.
101 United Nations, "United Nations Charter (full text)," Article 1(3).
102 Jorge Viñuales, *The UN Friendly Relations Declaration at 50*, Cambridge: Cambridge University Press, 2020, 115-120.
103 US Department of Justice, "Emotet Botnet Disrupted in International Cyber Operation," January 28, 2021, https://www.justice.gov/opa/pr/emotet-botnet-disrupted-international-cyber-operation.
104 Schmitt, *Tallinn Manual 2.0*, 22.
105 "Prohibition of intervention."
106 Schmitt, *Tallinn Manual 2.0*, 13.

tion.

Violation of International Human Rights Laws

3.31. The ICCPR requires states to respect certain human rights. In particular, Article 17 sheds light on the right to privacy.[107] This right to privacy first applies to individuals located in the state's own jurisdiction, but it can also apply extraterritorially if effective control over the third-party individual is established.[108]

3.32. Effective control can be established when the state retains control over the individual's data through "direct tapping" of that data.[109] In this instance, by hacking into the 3,500 devices owned by Iranian individuals, Albania is obliged to uphold these individuals' rights to privacy.

3.33. Iran submits that Albania has violated the right to privacy since access to such devices provides Albania with metadata providing "ample opportunities for analyzing people's behavior."[110]

3.33.1. According to the UN High Commissioner for Human Rights, "interference with an individual's right to privacy is only permissible under international human rights law if it is neither arbitrary nor unlawful."[111] Whether an interference is lawful depends on whether it is legal, necessary, and proportionate.

3.33.2. Interference is only legal if the affected individuals were notified of the unauthorized access to data.[112] Here, Albania did not take any action to notify Iran or the owners of the affected devices of Operation Defensive Prowl. Moreover, the Operation was not proportionate since it involved both a server takedown and a hacking of 3,500 devices. Simply put, this was 'overkill' since one of those acts could have fulfilled its purpose of taking down the botnet.

3.34. Accordingly, the Court should find that Albania has violated the ICCPR through Operation Defensive Prowl.

Albania Cannot Justify its Conduct to Preclude Wrongfulness

3.35. Albania has argued that it can justify its conduct out of a state of necessity. However, in order to do so, it must prove that the actions relating to Operation Defensive Prowl were the only way for the state to protect an "essential interest" from a "grave and imminent peril."[113]

3.36. [x.x.] Iran submits that no defenses are open to Albania because there are other means to safeguard the integrity of its cyberspace that do not involve attacks on Iranian servers and property. Once again, Albania conducted both a server takedown and it hacked 3,500 Iranian devices. It could have easily attained its security goals by protecting its own equipment or even by only conducting one of those actions. Launching both operations through Operation Defensive Prowl was not the only option available to Albania.

3.36.1. Moreover, the possibility of cooperating with Iran to take down the botnet—in line with its obligations under customary international law—was another viable alternative. Hence, Albania cannot justify its conduct.

3.37. In any case, Albania also cannot classify Operation Defensive Prowl as a legal countermeasure under international law. A countermeasure justifies what would have been as unlawful conduct as lawful if it is "taken in response to a previous international wrongful act of another State and…directed against that State."[114]

3.38. There are three key requirements for a countermeasure to be valid: it must be conducted against a state respon-

107 "International Covenant on Civil and Political Rights," Article 17.
108 *The Wall (Advisory Opinion)*, ICJ Rep 136 (2004), [111]-[112].
109 A/HRC/27/37, "The Right to Privacy in the Digital Age," June 30, 2014, https://www.ohchr.org/sites/default/files/HRBodies/HRC/RegularSessions/Session27/Documents/A.HRC.27.37_en.pdf, [34].
110 A/HRC/34/60, "Report of the Special Rapporteur on the Right to Privacy," September 6, 2017, https://daccess-ods.un.org/tmp/1829798.22158813.html, [25].
111 A/HRC/27/37, [21].
112 A/HRC/27/37, [40].
113 International Law Commission, "Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, " 80.
114 Ugale Anastasiya and Zamir Noam, "Countermeasures," *Jus Mundi*, June 9, 2022, https://jusmundi.com/en/document/publication/en-countermeasures.

sible for an "internationally wrongful act," the response must be proportionate, and it cannot violate fundamental human rights.[115]

3.38.1. Albania fails to fulfill all three limbs. As previously argued, Iran is not in contravention of international law, even if state responsibility for the acts of HomeLand Justice is established. Moreover, Operation Defensive Prowl was not proportionate since it involved hacking both Iranian servers and the personal devices of private Iranian citizens when merely doing one of those acts was sufficient. Finally, the operation also violated the fundamental right to privacy, as enshrined under the ICCPR.

3.39. Even if it was a legal countermeasure, Albania should have fulfilled certain procedural requirements, such as "[calling] upon the responsible State…to fulfill its obligations" or "[notifying] the responsible State of any decision to take countermeasures and offer to negotiate with that State."[116] Because Albania did not do so, its conduct cannot be legally justified as a countermeasure.

Chapter IV: Submissions

4.1. For the foregoing reasons, Iran respectfully requests the following prayers of relief from the International Court of Justice:

4.2. May it please the Court to adjudge and declare that:

4.2.1. The Court does not have jurisdiction to hear this case;

4.2.2. Even if the Court's jurisdiction can be established over this matter, the conduct of HomeLand Justice is not attributable to Iran, hence Iran is not in violation of any international law;

4.2.3. Even if the cyberattack is attributable to Iran, the conduct in question does not exceed the lawful parameters of state behavior in cyberspace. Hence, Iran would not be in violation of Albania's sovereignty, nor did it derogate from the principle of non-intervention;

4.2.4. Albania violated its obligations under international law through its unlawful interference. They interfered with Iranian government servers and devices in Iranian territory.

115 *Gabčíkovo-Nagymaros Project*, ICJ Rep (1997), [50]-[51].
116 International Law Commission, "Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries," 135.

ICJ

NHSMUN 2024

TOPIC B:

ADVISORY OPINION ON STATES' OBLIGATIONS REGARDING CLIMATE CHANGE

Photo Credit: U.S. Forest Service—Pacific Northwest Region

Chapter I: Introduction

1.1. On March 29, 2023, the United Nations General Assembly (UNGA) adopted Resolution 77/276, during its 77th session. Resolution 77/276 was a formal request for an advisory opinion from the International Court of Justice (hereinafter the ICJ or the Court). The request was regarding the obligations of States with respect to climate change.[1] This report is prepared according to Article 65(2) of the Statute of the Court. Article 65(2) states that the ICJ may "give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request."[2] This document contains treaties, empirical studies, and other context which will help you to prepare your opinions for the questions before the Court. In addition to this introduction, the file is split up into the following sections:

1.2. Chapter II provides the text of the General Assembly's request for an advisory opinion and includes two similar cases before other courts.

1.3. Chapter III contains a verified copy of General Assembly Resolution 77/276. This resolution formally requests the advisory opinion of the Court.

1.4. Chapter IV guides the Court with a historical summary of the most relevant events related to legal obligations related to climate change.

1.5. Chapter V includes all the relevant matters for legal consideration. These will allow the Court to evaluate its jurisdiction and determine a reliable opinion with the utmost consideration of international law.

Chapter II: Request for Advisory Opinion

2.1. On March 29, 2023, the General Assembly made a formal request to the ICJ. The request posed the following questions:

"(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 (GHG) 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?"[3]

Chapter III: General Assembly Resolution A/RES/77/276

Text of the Resolution

The General Assembly,

Recognizing that climate change is an unprecedented challenge of civilizational proportions and that the well-being of present and future generations of humankind depends on our immediate and urgent response to it,

Recalling its resolution 77/165 of 14 December 2022 and all its other resolutions and decisions relating to the protection of the global climate for present and future generations of humankind, and its resolution 76/300 of 28 July 2022 on the human right to a clean, healthy and sustainable environment,

1 "Obligations of States in Respect of Climate Change" (International Court of Justice, April 20, 2023), https://www.icj-cij.org/sites/default/files/case-related/187/187-20230420-ORD-01-00-EN.pdf.
2 "Statute of the Court Of Justice," International Court of Justice, accessed September 7, 2023, https://www.icj-cij.org/statute.
3 Maria Antonia Tigre and Jorge Alejandro Carrillo Bañuelos, "The ICJ's Advisory Opinion on Climate Change: What Happens Now?."

Recalling also its resolution 70/1 of 25 September 2015 entitled "Transforming our world: the 2030 Agenda for Sustainable Development,"

Recalling further Human Rights Council resolution 50/9 of 7 July 2022 and all previous resolutions of the Council on human rights and climate change, and Council resolution 48/13 of 8 October 2021, as well as the need to ensure gender equality and empowerment of women,

Emphasizing the importance of the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, the United Nations Convention on the Law of the Sea, the Vienna Convention for the Protection of the Ozone Layer, the Montreal Protocol on Substances that Deplete the Ozone Layer, the Convention on Biological Diversity and the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, among other instruments, and of the relevant principles and relevant obligations of customary international law, including those reflected in the Declaration of the United Nations Conference on the Human Environment and the Rio Declaration on Environment and Development, to the conduct of States over time in relation to activities that contribute to climate change and its adverse effects,

Recalling the United Nations Framework Convention on Climate Change, the Kyoto Protocol and the Paris Agreement, as expressions of the determination to address decisively the threat posed by climate change, urging all parties to fully implement them, and noting with concern the significant gap both between the aggregate effect of States' current nationally determined contributions and the emission reductions required to hold the increase in the global average temperature to well below 2 degrees Celsius above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5 degrees Celsius above pre-industrial levels, and between current levels of adaptation and levels needed to respond to the adverse effects of climate change,

Recalling also that the United Nations Framework Convention on Climate Change and the Paris Agreement will be implemented to reflect equity and the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances,

Noting with profound alarm that emissions of greenhouse gasses continue to rise despite the fact that all countries, in particular developing countries, are vulnerable to the adverse effects of climate change and that those that are particularly vulnerable to the adverse effects of climate change and have significant capacity constraints, such as the least developed countries and small island developing States, are already experiencing an increase in such effects, including persistent drought and extreme weather events, land loss and degradation, sea level rise, coastal erosion, ocean acidification and the retreat of mountain glaciers, leading to displacement of affected persons and further threatening food security, water availability and livelihoods, as well as efforts to eradicate poverty in all its forms and dimensions and achieve sustainable development,

Noting with utmost concern the scientific consensus, expressed, inter alia, in the reports of the Intergovernmental Panel on Climate Change, including that anthropogenic emissions of greenhouses gases are unequivocally the dominant cause of the global warming observed since the mid-20th century, that human-induced climate change, including more frequent and intense extreme events, has caused widespread adverse impacts and related losses and damages to nature and people, beyond natural climate variability, and that across sectors and regions the most vulnerable people and systems are observed to be disproportionately affected,

Acknowledging that, as temperatures rise, impacts from climate and weather extremes, as well as slow-onset events, will pose an ever-greater social, cultural, economic and environmental threat,

Emphasizing the urgency of scaling up action and support, including finance, capacity-building and technology transfer, to enhance adaptive capacity and to implement collaborative approaches for effectively responding to the adverse effects of climate change, as well as for averting, minimizing and addressing loss and damage associated with those effects in developing countries that are particularly vulnerable to these effects,

Expressing serious concern that the goal of developed countries to mobilize jointly USD 100 billion per year by 2020 in the context of meaningful mitigation actions and transparency on implementation has not yet been met, and urging developed countries to meet the goal,

1. *Decides,* in accordance with Article 96 of the Charter of the United Nations, to request the International Court of Justice, pursuant to Article 65 of the Statute of the Court, to render an advisory opinion on the following question:

"Having particular regard to the Charter of the United Nations, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the United Nations Framework Convention on Climate Change, the Paris Agreement, the United Nations Convention on the Law of the Sea, the duty of due diligence, the rights recognized in the Universal Declaration of Human Rights, the principle of prevention of significant harm to the environment and the duty to protect and preserve the marine environment,

(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 gases 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?"

64th plenary meeting

29 March 2023[4]

Relevant Legislation

3.2. The request discusses specific pieces of legislation that the ICJ may use in its final opinion. On the last page of the request, several are mentioned. The Charter of the United Nations, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights are discussed. Similarly, the United Nations Framework Convention on Climate Change, the Paris Agreement, the United Nations Convention on the Law of the Sea, the duty of due diligence, [and] the rights recognized in the Universal Declaration of Human Rights are included. Additionally, the Convention on the Rights of the Child, the Vienna Convention for the Protection of the Ozone Layer, the Montreal Protocol on Substances that Deplete the Ozone Layer, the Convention on Biological Diversity, the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification," and previous UNGA resolutions are also cited. This list alone provides a vital starting point for research. More information on some of these agreements can be found in Chapter IV.

3.3. However, it is crucial that delegates do not assume that this precedent alone can be turned into an ICJ advisory opinion. Not every state has ratified every agreement. Ratification is the process that legally binds a State to implement an agreement. Signing only expresses an intention to follow a treaty.[5] The United States is the only UN member state that has not ratified the Convention on the Rights of the Child (UNCRC) and the Convention on Biological Diversity. This means that the United States is not legally obligated to follow the conventions. However, the United States is one of the world's biggest

4 António Guterres, "Letter from the Secretary General to the ICJ and A/RES/77/276," April 12, 2023, https://www.icj-cij.org/sites/default/files/case-related/187/187-20230412-APP-01-00-EN.pdf.
5 Ministerie van Buitenlandse Zaken, "The Difference between Signing and Ratification," Government of the Netherlands (Ministerie van Algemene Zaken, September 5, 2013), https://www.government.nl/topics/treaties/the-difference-between-signing-and-ratification.

polluters, which poses an issue for any effort to reduce global carbon emissions.[6] As such, these conventions are not perfect models for the ICJ to model. On the other hand, legislation such as the Montreal Protocol and UNFCCC are renowned for achieving universal ratification. This means that every member state of the UN ratified them.[7] Even so, significant achievements have not been made, even through universal ratification. New legislation must be created. That is the responsibility of the Court.

3.4. Agreements like the UNCRC are often called customary international law. If the vast majority of countries agree to a treaty, it becomes widely accepted internationally, even if a few countries don't ratify it. They will still be relatively bound by the agreement. However, this lacks precise definitions. It is difficult to determine the threshold for legislation to become customary law. The ICJ may face difficulties writing its opinion in a manner that proves customary international law has been established if a State refuses to abide by the terms of a treaty.[8]

Chapter IV: Facts and Background

Definition of Treaties

4.1. A bilateral treaty is an agreement between two countries. A multilateral treaty includes more than two states. A treaty is a legally binding agreement. You may also see references to Pacts, Accords, Conventions, and Protocols in this publication. These are also considered to be treaties, despite the different names. If a state ratifies a treaty, it consents to the terms of that treaty and becomes bound by it. This process varies between states, as treaty approval must be in accordance with governmental procedures. This entails an "instrument of ratification" being deposited at a central location, such as the UN headquarters in New York.[9] Ratification is preceded by signing the treaty. This happens when a country's authorized representative physically signs the treaty in New York. Amendments to treaties can and do occur, however if a state ratifies a treaty, that does not mean it is bound by the terms of the amendment. They must individually ratify amendments as well.[10]

The Science Behind the Necessity for Climate Action

4.2. The Intergovernmental Panel on Climate Change (IPCC) was established in 1988 by two organizations. These were the UN Environment Programme (UNEP) and the World Meteorological Association (WMO).[11] Its purpose is to provide the scientific background that states need in order to develop effective climate policy.[12] While the IPCC does not conduct its own research, it utilizes experts from around the globe to evaluate preexisting scientific reports each year. They summarize these studies and provide the necessary information in a comprehensive and succinct manner.[13] Climate scientists are largely in consensus that global temperatures are increasing at a rate not predicted by natural cycles. The IPCC's most recent Synthesis Report was published on March 20, 2023, and "summarises the state of knowledge of climate change, its widespread impacts and risks, and climate change mitigation and adaptation."[14] This is

6 "Ratification Status for CRC - Convention on the Rights of the Child," UN Treaty Body Database, accessed September 7, 2023, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CRC&Lang=en.
7 "International Actions - The Montreal Protocol on Substances That Deplete the Ozone Layer," United States Environmental Protection Agency, May 3, 2023, https://www.epa.gov/ozone-layer-protection/international-actions-montreal-protocol-substances-deplete-ozone-layer.
8 "Customary International Law," Legal Information Institute, accessed September 7, 2023, https://www.law.cornell.edu/wex/customary_international_law.
9 Legal and External Relations Division, Legal Services Section, "Signing and Ratifying the CTBT: Procedures, Depositary Requirements and Legal Consequences" (Comprehensive Nuclear-Test-Ban Treaty Organization, January 2022), https://www.ctbto.org/sites/default/files/Documents/SigRatGuide_ENGLISH.pdf.
10 "International Agreements," Administration for Strategic Preparedness & Response, February 15, 2018, https://www.phe.gov/s3/law/Pages/International.aspx.
11 "History of the IPCC," The Intergovernmental Panel on Climate Change, accessed September 7, 2023, https://www.ipcc.ch/about/history/.
12 "About the IPCC," The Intergovernmental Panel on Climate Change, accessed September 7, 2023, https://www.ipcc.ch/about/.
13 "About the IPCC."
14 Katherine Calvin et al., "IPCC, 2023: Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth

especially relevant for the ICJ advisory opinion. Sections of the Report include current progress and gaps in mitigation processes. It would be useful for the Court to incorporate some of the Synthesis Report into its final draft. However, most of the disagreement within the ICJ will focus on the legal responsibilities for climate change. This will not be a debate over whether or not climate change is actually occurring.

Financial Instruments

4.3. The General Assembly's request expresses concern about how "the goal of developed countries to mobilize jointly USD 100 billion per year by 2020 in the context of meaningful mitigation actions and transparency on implementation has not yet been met."[15] This is a direct reference to the commitments made at the UN Biodiversity Conference (COP 15) of 2009.[16] States committed themselves to financial contributions towards supporting climate action. Yet, the Organisation for Economic Co-operation and Development (OECD) found that results were less than stellar. In its 2020 analysis, the OECD found that although least developed countries (LDCs) and small island developing states (SIDS) were not entirely neglected, financing was only almost USD 17 billion short of the original goal. However, those finances were heavily concentrated in a small set of high-emitting countries.[17] Three quarters of global climate investments were used in East Asia & Pacific, Western Europe, and North America. Half went towards East Asia & Pacific, yet 81 percent of the investments in this region went towards China.[18] There was an unequal division of funds that ignored many countries who raised funds for the cause. The ICJ advisory opinion may wish to address this issue.

4.4. There are a few key points that will help inform this section of the Court's opinion. It will not be enough to simply ask developed countries again to raise money. Developed States previously asked the OECD to track their financial contributions, potentially to secure more funds in the future.[19] However, the OECD found that the lack of financial contribution is less of an issue than its distribution. Between 2016 and 2020, SIDS received two percent of total climate finance. LDCs received 17 percent of the total. Finally, low income countries (LICs) received eight percent. This directly contradicts the Paris Climate Agreement's recognition that LDCs and SIDs have an insufficient ability to generate capital and require significant public climate finance.[20]

4.5. One increasingly common form of climate financing is the use of something called debt generating instruments. People often take out loans from a bank to attend school or start a business, and repay that money over time with interest. Interest is additional money to each loan payment that represents the cost of the loan.[21] In a similar manner, developed states often give loans to developing states, with interest payments forcing additional financial burden on countries that can least afford it.[22]There was an eight percent increase in climate financing from 2019–2020.[23]

4.6. Judges may wish to study the difference between mitigation and adaptation finance. Mitigation finance is money

Assessment Report of the Intergovernmental Panel on Climate Change," First (Intergovernmental Panel on Climate Change (IPCC), July 25, 2023), https://doi.org/10.59327/IPCC/AR6-9789291691647.
15 António Guterres, "Letter from the Secretary General to the ICJ and A/RES/77/276."
16 "UN Biodiversity Conference (COP 15)," UN Environment Programme, April 7, 2022, http://www.unep.org/un-biodiversity-conference-cop-15.
17 *Climate Finance and the USD 100 Billion Goal: Insights to Date and Opportunities Looking Ahead*, 2022, https://www.oecd-events.org/cop27/session/f9ead97c-4e49-ed11-819a-000d3a45c4a7/climate-finance-and-the-usd-100-billion-goal-insights-to-date-and-opportunities-looking-ahead-.
18 Barbara Buchner et al., "Global Landscape of Climate Finance 2021," Climate Policy Initiative, December 14, 2021, https://www.climatepolicyinitiative.org/publication/global-landscape-of-climate-finance-2021/.
19 Barbara Buchner et al., "Global Landscape of Climate Finance 2021."
20 Leia Achampong, "Where Do Things Stand on the Global US$100 Billion Climate Finance Goal?," European Network on Debt and Development, September 7, 2022, https://www.eurodad.org/where_do_things_stand_on_the_global_100_billion_climate_finance_goal.
21 Utsav Mishra, "6 Types Of Debt Instruments | Analytics Steps," *Analytics Steps* (blog), March 31, 2022, https://www.analyticssteps.com/blogs/types-debt-instruments.
22 Leia Achampong, "Where Do Things Stand on the Global US$100 Billion Climate Finance Goal?."
23 Leia Achampong, "Where Do Things Stand on the Global US$100 Billion Climate Finance Goal?."

solely intended to aid efforts that reduce greenhouse gas emissions. Adaptation finance is "finance for actions that help communities reduce the risks they face… from climate hazards like storms or droughts."[24] Adaptation finance is much harder to track than mitigation finance because it includes so many different activities addressing risks in specific locations. The OECD DAC Rio Markers, and MDB Joint Methodology for Tracking Adaptation Finance are two of the most common tracking methods for adaptation finance.[25] There are two other types of finance that may become relevant: funding for loss and damage, and development financing. While "loss and damage" is a common phrase used in UN climate negotiations, there is no legal definition for what it means. It generally concerns repaying for the consequences of climate change that causes damage. For example, extreme weather events that have destroyed property, or the long-term consequences of rising sea levels.[26] It may be advisable for the ICJ to create a legal framework for loss and damage. This may clear up the current confusion surrounding eligibility for this type of financing. Development finance is intended to reduce the impact climate change can have on communities. Increasing a community's resilience to flooding by elevating roads can be such an example.[27]

Treaty Background

The Vienna Convention of 1985, Montréal Protocol of 1987, and Kigali Amendment of 2019

4.7. The Montreal Protocol was written to address ozone depletion.[28] Ozone is a gas made up of three oxygen atoms, and it is concentrated near the Earth's surface, and in the stratosphere. The stratosphere is most commonly referred to in discussions about the "ozone layer". The ozone layer absorbs harmful ultraviolet radiation from the sun, and is crucial to protecting life.[29] Nevertheless, it began to face significant damage due to the production and use of ozone-depleting substances (ODS) in products such as refrigerators. The Vienna Convention

24 Gaia Larsen, Carter Brandon, and Rebecca Carter, "Adaptation Finance: 11 Key Questions, Answered," World Resources Institute, October 25, 2022, https://www.wri.org/insights/adaptation-finance-explained.
25 Gaia Larsen, Carter Brandon, and Rebecca Carter, "Adaptation Finance: 11 Key Questions, Answered."
26 Preety Bhandari et al., "What Is 'Loss and Damage' from Climate Change? 8 Key Questions, Answered," World Resources Institute, December 14, 2022, https://www.wri.org/insights/loss-damage-climate-change.
27 Gaia Larsen, Carter Brandon, and Rebecca Carter, "Adaptation Finance: 11 Key Questions, Answered."
28 "4 Facts You Might Not Know about Ozone and the Montreal Protocol," National Oceanic and Atmospheric Administration, January 10, 2023, https://www.noaa.gov/stories/4-facts-you-might-not-know-about-ozone-and-montreal-protocol.
29 Hannah Ritchie, "What Is the Ozone Layer, and Why Is It Important?," Our World in Data, March 13, 2023, https://ourworldindata.org/ozone-layer-context.

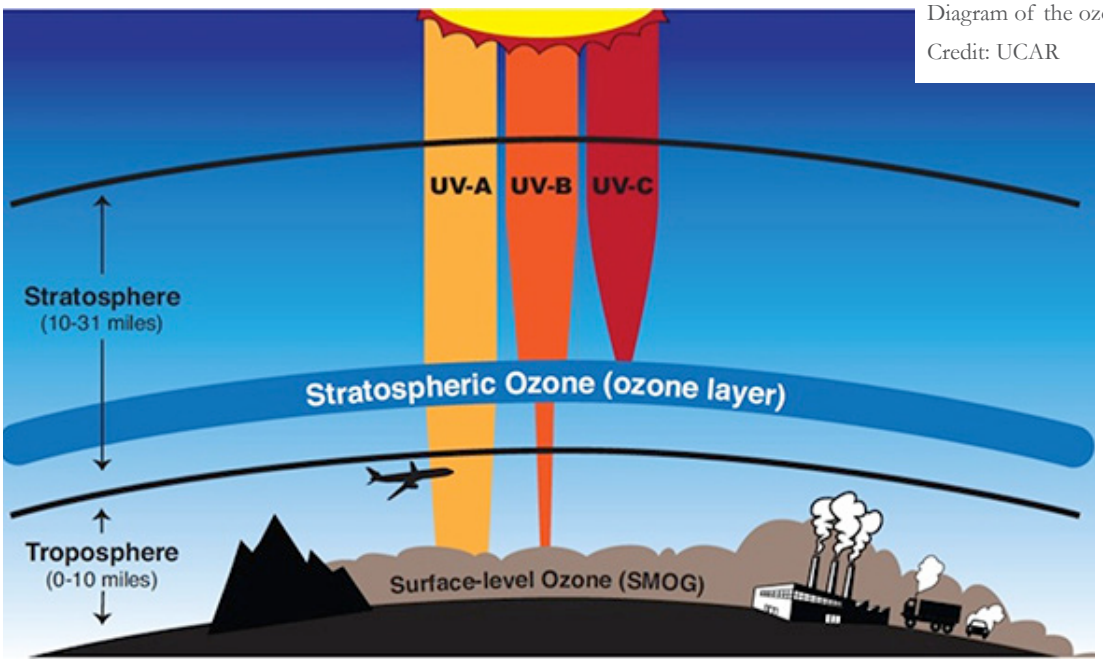


Diagram of the ozone layer
Credit: UCAR

of 1985 and the Montreal Protocol of 1987 phased out ODS and created incentives for chemical alternatives.

4.8. These steps were an enormous success. Since 1990, the world has phased out 98 percent of ODS.[30] In response, ozone levels have already begun recovering. A full recovery is predicted for the middle of this century.[31] A study published by The American Society of Photobiology found that this protocol prevented hundreds of millions of skin cancer cases around the globe.[32]

4.9. While this was a victory for the Vienna Convention, there was still more work to be done. ODS were replaced by hydrofluorocarbons (HFCs). HFCs are greenhouse gases more harmful than carbon dioxide in contributing to climate change. HFC emissions could kill the gains made by the Montreal Protocol.[33] HCFs are especially dangerous because they are intentionally manufactured molecules instead of just waste products. This means that it is a lot harder to convince industries to reduce HFC use, as it threatens their profits. HFCs are most often found in refrigerators, air conditioning, heating, and aerosols. However, there are many safer alternatives emerging. One major alternative is hydrocarbons such as R-290.[34]

4.10. The Kigali Amendment of 2019 is beginning to resolve this issue. Like the Montreal Protocol, the Kigali Amendment limits the production and consumption of HFCs in addition to ODS. This has tangible results. Without Kigali, surface temperature warming from HFCs could have been up to 0.5°C by 2100, and instead it is projected to be 0.06°C.[35]

UN Framework Convention on Climate Change (UNFCCC), 1992

4.11. The UN Framework Convention on Climate Change (UNFCCC), 1992 was a significant legislation. It was the first to focus on what we most often think of when discussing climate change: greenhouse gas emissions. The ultimate goal of the UNFCCC is to accomplish "the "stabilisation of greenhouse gas concentrations in the atmosphere at a level that would prevent … interference with the climate system."[36] There are a few key aspects of the UNFCCC. It was the first treaty to reference the principle of common but differentiated responsibilities (more on this in Chapter V). It also established major logistical structures to inform future climate action. This included the Conference of the Parties (COP). COP is the decision-making body of the UNFCCC that implements measures and researches their effects.[37] A body was designed to coordinate sessions of the COP, aid developing countries, and prepare reports. Subsidiary bodies were also constructed to provide scientific and technological advice. This is because the UNFCCC placed a heavy emphasis on informed knowledge building.[38] Its accomplishments are not as quantifiable as that of Montreal. However, that is because it is more often cited as what led to the eventual ratification of the Paris Agreement, Kyoto Protocol, Glasgow Climate Act, and more.

Copenhagen Summit of 2015

4.12. Some climate change agreements have been more successful than others. The Copenhagen Summit of 2015 (COP15) falls into the category of treaties that were ineffective. Its failure was due to its inability to turn the-

30 "About Montreal Protocol," OzonAction, October 29, 2018, http://www.unep.org/ozonaction/who-we-are/about-montreal-protocol.
31 "About Montreal Protocol."
32 Arjan Van Dijk et al., "Skin Cancer Risks Avoided by the Montreal Protocol-Worldwide Modeling Integrating Coupled Climate-Chemistry Models with a Risk Model for UV," *Photochemistry and Photobiology* 89, no. 1 (January 2013): 234–46, https://doi.org/10.1111/j.1751-1097.2012.01223.x.
33 "Recent International Developments under the Montreal Protocol," Other Policies and Guidance, United States Environmental Protection Agency, August 28, 2023, https://www.epa.gov/ozone-layer-protection/recent-international-developments-under-montreal-protocol.
34 "What Are Hydrofluorocarbons? - EIA US," Environmental Investigation Agency, accessed September 7, 2023, https://us.eia.org/campaigns/climate/what-are-hydrofluorocarbons/.
35 "What Is the Kigali Amendment?," European FluoroCarbons Technical Committee, accessed September 7, 2023, https://www.fluorocarbons.org/environment/climate-change/kigali-amendment/.
36 "What Is the UN Framework Convention on Climate Change (UNFCCC)?," Grantham Research Institute on Climate Change and the Environment, October 24, 2022, https://www.lse.ac.uk/granthaminstitute/explainers/what-is-the-un-framework-convention-on-climate-change-unfccc/.
37 "Conference of the Parties (COP)," United Nations Framework Convention on Climate Change, accessed September 7, 2023, https://unfccc.int/process/bodies/supreme-bodies/conference-of-the-parties-cop.
38 "What Is the UN Framework Convention on Climate Change (UNFCCC)?."

ory into practice. Vague mechanisms for accomplishing goals and incorporating methods that were unacceptable to States contributed to this collapse. The less consensus that exists within an accord, the less likely its goals will be realized. The COP15 ended with the Kunming-Montreal Biodiversity Framework (GBF) setting four goals to prevent biodiversity loss. However, the measures that were needed to fulfill those targets were unacceptable to the states that needed to implement them, so they did nothing.[39] For example, the commitment to declaring 30 percent of the Earth protected for biodiversity conservation by 2030. Part of the issues within this action had to do with states' refusal to recognize the importance of Indigenous peoples. Due to the abuse of this vulnerable population, they are hesitant to expand protected areas, and states are unwilling to put in the work to mitigate this. The situation adds another element to the climate crisis. The right to a healthy environment is harmed by the effects of climate change. Additionally, the lack of human rights protections within indigenous populations prevents measures that will help them with biodiversity conservation.[40]

Paris Agreement of 2015

4.13. The Paris Agreement was adopted at COP21 on December 12, 2015. The goal is to hold "the increase in the global average temperature to well below 2°C above pre-industrial levels". It is also important to limit temperature increase. The Paris agreement is a commitment to economic and social change. It works on a five-year cycle. Per the plan, action will become more ambitious after each round. Each state submits a report in order to provide details of what their contributions will be to continue increasing their climate efforts. These reports are called National Climate Action Plans, or Nationally Determined Contributions. They are supplemented with long-term low greenhouse gas emission development strategies (LT-LEDS). They are also tracked by the enhanced transparency framework (ETF).[41] There has been some progress after the adoption of this agreement. For example, more than 1000 companies have pledged to set emission reduction targets. These countries currently have a combined yearly carbon footprint that is larger than the annual emissions of the entire country of France.[42] A report published by the Science Based Targets Initiative in 2019 determined that 285 companies will eliminate 265 million metric tons of emissions from their operations. They will also drive investment of USD 18 billion in climate change mitigation efforts.[43] There have been many other important advancements made in recent years. However, it still has not been enough. Even with all of these steps, the global average temperature is still projected to eventually rise 1.5°C. This will cause catastrophic consequences, including extreme weather phenomena such as droughts and floods.[44]

Case Law

International Tribunal for the Law of the Sea Advisory Request

4.14. There are two similar cases being heard by other courts at this time. The first case is before the International Tribunal for the Law of the Sea (ITLOS). This case was filed on December 12, 2022. The Co-Chairs of the *Commission of Small Island States on Climate Change and International Law* filed this request. These Co-Chairs are Antigua & Barbuda, Vanuatu, Tuvalu, Nieu, St. Lucia, and Palau. They asked for guidance on whether there are specific obligations to the UN Convention on the Law of the

39 Sherman Tsui, "Did COP15 Succeed or Fail?," Earth.Org, December 23, 2022, https://earth.org/cop15-recap/.
40 "Biodiversity: COP15 Biodiversity Deal a 'Missed Opportunity' to Protect Indigenous Peoples' Rights," Amnesty International, December 19, 2022, https://www.amnesty.org/en/latest/news/2022/12/biodiversity-cop15-biodiversity-deal-a-missed-opportunity-to-protect-indigenous-peoples-rights/.
41 "The Paris Agreement," United Nations Framework Convention on Climate Change, accessed September 7, 2023, https://unfccc.int/process-and-meetings/the-paris-agreement.
42 Molly Bergen and Helen Mountford, "6 Signs of Progress Since the Adoption of the Paris Agreement," World Resources Institute, December 8, 2020, https://www.wri.org/insights/6-signs-progress-adoption-paris-agreement.
43 "Companies with More Greenhouse Gas Emissions than France and Spain Combined Reducing Emissions by 35%, in Line with the Paris Agreement," Science Based Targets, December 4, 2019, https://sciencebasedtargets.org/news/companies-with-more-greenhouse-gas-emissions-than-france-and-spain-combined-reducing-emissions-by-35-in-line-with-the-paris-agreement.
44 Lindsay Maizland, "Global Climate Agreements: Successes and Failures," Council on Foreign Relations, November 4, 2022, https://www.cfr.org/backgrounder/paris-global-climate-change-agreements.

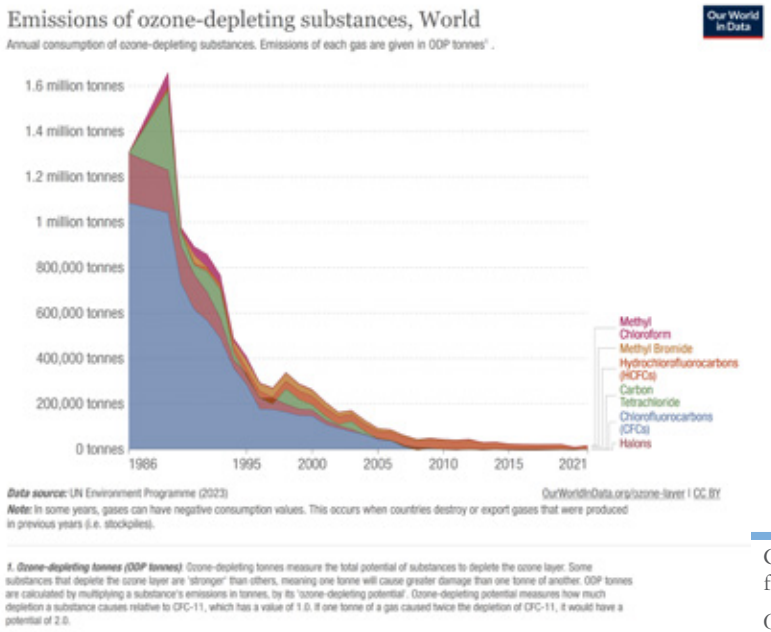
Photograph of pulp mills on the Uruguay River
Credit: Law Business Research

Sea to "prevent, reduce and control pollution of the marine environment …and protect and preserve the marine environment in relation to climate change." The opening hearing of the case is set for September 11, 2023.[45] More than 30 States have submitted individual opinions regarding the issue. These cover material ranging from the Convention on Biological Diversity of June 5, 1992 to the Principle of Common but Differentiated Responsibility.[46] This principle was formalized at the 1992 UN Conference on Environment and Development, and states that while there is a shared moral responsibility among States to address climate change, not all States have the same amount of responsibility.[47]

Inter-American Court of Human Rights Request for Opinion

4.15. The second request was to the Inter-American Court of Human Rights (IACtHR) from Chile and Colombia. This request was made on January 9, 2023.[48] It builds on previous opinions issued by the IACtHR. The argument began in 2017 with Advisory Opinion (OC-23/17).[49] This request clearly acknowledges that the right to a healthy environment is enshrined by the 1969 American Convention on Human Rights. The most recent request is one of clarification for the responsibilities states have. Particularly, the responsibilities they have to defend human rights from climate change. The IACtHR typically takes a year after the initial request to release an advisory opinion. This still leaves some months for the body to sort through the five topics that the two nations sought

45 "Request for an Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law," Climate Change Litigation Databases, accessed September 7, 2023, https://climatecasechart.com/non-us-case/18416/.
46 Italian Ministry of Foreign Affairs and International Cooperation, "Request for an Advisory Opinion Submitted by the Commission of Small Islands States on Climate Change and International Law - Written Statement of Italy" (International Tribunal for the Law of the Sea, June 15, 2023), https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2023/20230615_Case-No.-312022_opinion-1.pdf; Frédéric Jacquemont and Alejandro Caparrós, "The Convention on Biological Diversity and the Climate Change Convention 10 Years After Rio: Towards a Synergy of the Two Regimes?," *Review of European Community & International Environmental Law* 11, no. 2 (2002): 169–80, https://doi.org/10.1111/1467-9388.00315.; "Request for an Advisory Opinion Submitted by the Commission of Small Islands States on Climate Change and International Law - Written Statement of the Republic of Rwanda" (International Tribunal for the Law of the Sea, June 17, 2023), https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2023/20230617_Case-No.-312022_opinion.pdf.
47 Yanzhu Zhang and Chao Zhang, "Thirty Years with Common but Differentiated Responsibility, Why Do We Need It Ever More Today?," Blavatnik School of Government, May 4, 2022, https://www.bsg.ox.ac.uk/blog/thirty-years-common-differentiated-responsibility-why-do-we-need-it-ever-more-today.
48 Maria Antonia Tigre and Juan Sebastián Castellanos, "A Request for an Advisory Opinion at the Inter-American Court of Human Rights: Initial Reactions," Climate Law, February 17, 2023, https://blogs.law.columbia.edu/climatechange/2023/02/17/a-request-for-an-advisory-opinion-at-the-inter-american-court-of-human-rights-initial-reactions/.
49 State Obligations in Relation to the Environment in the Context of the Protection and Guarantee of the Rights to Life and to Personal Integrity: Interpretation and Scope of Articles 4(1) and 5(1) in Relation to Articles 1(1) and 2 of the American Convention on Human Rights, No. OC-23/17 (Inter-American Court of Human Rights November 15, 2017).



Graph of emissions of ozone-depleting substances from 1986-2021

Credit: Our World in Data

counsel on. As such, the opening hearing for this case has yet to be determined. However, the legal precedent that the climate emergency is clearly a human rights issue is an important implication for the ICJ.[50]

Pulps Mills on the River Uruguay (Argentina v. Uruguay)

4.16. On May 4, 2006, Argentina accused Uruguay of violating its obligations under the Statute of the River Uruguay of 1975.[51] The main goal behind the treaty was to create rules regarding the use of natural resources along the river.[52] One of the rules was an obligatory "notification and consultation" prior to any major activity in the area. This means that if one state wanted to conduct construction, it was required to notify the other state. Uruguay began building pulp mills on the river without Argentina's input. Thus, Argentina filed an application for Uruguay to halt construction. They cited that the pulp mills would pollute the river and cause "transboundary damage."[53] The dispute landed before the ICJ, marking one of the first environmentally-focused cases on the Court's docket.

4.17. The ICJ ruled that Uruguay violated its "notification and consultation" duties under the Statue of the River Uruguay. However, the Court held that there was no conclusive evidence of environmental harm. Thus, Uruguay had not violated its substantive obligations. The Court wrote that states "have a legal obligation…to promote the equitable utilization of the river."[54] They must protect its environment.

4.18. Additionally, the Court decided "the obligation to protect and preserve…has to be interpreted in accordance with a practice, which in recent years has gained so much acceptance among states that it may now be considered a requirement under general international law to undertake an environmental impact assessment(EIA)." The court held that EIAs are necessary when proposed industrial activity may impact national boundaries and resources.[55] As such, states must always take environmental effects into account. This is regardless of whether a specific treaty requires environmental considerations. However, the Court also ruled that each state is responsible for

50 Maria Antonia Tigre Natalia Urzola and Juan Sebastián Castellanos, "A Request for an Advisory Opinion at the Inter-American Court of Human Rights: Initial Reactions."
51 Pulp Mills on the River Uruguay (Argentina v. Uruguay) (International Court of Justice April 20, 2010).
52 "Statute of the River Uruguay" (1975), https://jusmundi.com/en/document/treaty/en-statute-of-the-river-uruguay-1975-statute-of-the-river-uruguay-1975-wednesday-26th-february-1975.
53 Pulp Mills on the River Uruguay (Argentina v. Uruguay).
54 Pulp Mills on the River Uruguay (Argentina v. Uruguay).
55 Pulp Mills on the River Uruguay (Argentina v. Uruguay).

determining what is needed for an EIA. Since there is no consensus definition yet, it is left up to national authorities. The Court found that there was not enough precedent to establish a universal definition.[56] Without global standards, the EIA may be only a performative step in practice.

Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)

4.19. This ICJ case originated from a dispute over a three kilometer wetland area in Isla Portillos. In 2010, Costa Rica accused the Republic of Nicaragua of damaging the rainforest during its attempts to build a channel. Nicaragua responded in 2011. They claimed that Costa Rica violated its sovereignty due to road construction along the border area between the two states.[57]

4.20. On February 2, 2018, the ICJ made several decisions regarding the case. First, it decided that there was damage to the environment, and Nicaragua was directly at fault. The Court focused on the inability of the environment to provide goods and services after Nicaragua's activities. Then, the ICJ determined it could obligate Nicaragua to pay the cost of restoring the damages to Costa Rica. They did so after conducting a valuation of how much money the damage actually cost—over USD 120,000. This is the principle "a breach of an obligation gives rise to an obligation to make reparation in adequate form." That principle is well established under international law. This case represented a large step for the ICJ. The ICJ's most significant decision for climate change was that the Court recognized ecosystem services specifically as part of the compensable damage.[58] Ecosystem services are defined as the "direct and indirect contributions of ecosystems to human well-being."[59]

Chapter V: Matters for Legal Consideration

Accountability Measures

5.1. International judicial bodies cannot force a state to do anything, even if it would help prevent irreversible tragedy. This is known as a "lack of coercive capacity."60 Even if the Court awards a country monetary damages through a case, it has no ability to compel the offending country to pay. That is the reality of all organs of the United Nations. However, keeping issues on the global stage is not completely irrelevant. No actions will be taken if no one is even thinking about climate change as an issue. Agenda setting by the ICJ—a very high-profile organization—will have important implications in encouraging change. This will still happen even if the ICJ is unable to implement direct penalties on the biggest polluters.

5.2. Based on precedent, the acceptance of this case to the ICJ is a large step for climate activism. The Deputy Permanent Representative of Mexico to the United States explains that "unlike the General Assembly and the Security Council, whose resolutions are often ignored…the vast majority of the rulings of the ICJ are implemented by the parties to the dispute and even recognized by third States."61 There is a high level of global participation within the ICJ. Many states voluntarily defer decisions to the Court and comply with its findings. There is a large level of respect and cooperation over rulings of the ICJ. Additionally, over one third of UN member States have accepted the Court's compulsory jurisdiction. As such, these States hold themselves to abiding by the Court's rulings even if those rulings disagree with their beliefs on the cases. The ICJ is powerful, and the Justices of the Court should not take their obligations lightly.

56 Pulp Mills on the River Uruguay (Argentina v. Uruguay).
57 "ICJ Renders First Environmental Compensation Decision: A Summary of the Judgment | IUCN," April 9, 2018, https://www.iucn.org/news/world-commission-environmental-law/201804/icj-renders-first-environmental-compensation-decision-summary-judgment.
58 Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) (International Court of Justice December 16, 2015).
59 Reagan Pearce, "What Are Ecosystem Services?," Earth.Org, January 3, 2023, https://earth.org/what-are-ecosystem-services/.
60 Juan Manuel Gómez-Robledo Verduzco, "The International Court of Justice: A Bright Light in Dark Times," Just Security, October 24, 2022, https://www.justsecurity.org/83723/the-international-court-of-justice-a-bright-light-in-dark-times/.
61 Juan Manuel Gómez-Robledo Verduzco, "The International Court of Justice: A Bright Light in Dark Times."

Legal Precedent in Novel Areas of Law

5.3. The concepts of Climate Change and World War II seem far removed from each other. However, there are similarities in their role in the law. They offered an exploration of new areas of international law. After the Holocaust, many high-profile Nazi leaders were put on trial by the International Military Tribunal for their crimes. Although many Nazis escaped justice and lived in hiding for decades, the Nuremburg Trials still saw many of the worst offenders held accountable for their actions.62

5.4. However, more than those short-term results, the trials were important because they broke new legal ground. Up to that point, there was little accountability for war crimes, which had started to be defined through the Geneva Conventions, among other agreements. Attempts to prosecute war crimes after World War I ended in failure. However, the Nuremburg Trials were unique because they focused on individuals rather than states. In other words, if a Nazi official committed crimes against humanity, they could not claim that Germany had committed the crimes because they acted as a representative of the German state. This was an entirely novel treatment, and some Nazi prisoners saw this as unfair at the time. However, the Nuremburg Trials would form the blueprint for later treaties and international courts, including the International Criminal Court.63

5.5. How the ICJ makes decisions regarding climate change can set a similar model for how similar global climate issues are dealt with in the future. The ICJ does not have the free license to create new international standards from nothing the way that the Nuremburg Trials did in their post-war setting. However, the Court is well within its charge to clarify based on existing treaties how countries should be held accountable for their commitments. There are two different types of strategies the ICJ can take. One is the obligations strategy, which provides standing for any state, regardless of whether or not they have faced negative effects yet, to stand before international courts. The other is rights strategy, which has to do with reparations remedying environmental damage that has already taken place.64 Because there is no existing substantive framework for the criminalization of environmental crimes as international crimes, there is room for novel thinking based on grounded evidence and precedent.65

Common but Differentiated Responsibilities and Intergenerational Equity

History of the Principle

5.6. The Common but Differentiated Responsibilities and Respective Capabilities (CBDR-RC) Principle was first established as Principle 7 of the 1992 Rio Declaration as part of the UN Framework Convention on Climate Change (UNFCCC), 1992. The direct text of CBDR-RC in the Rio Declaration is as follows:

5.7. "States shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth's ecosystem. In view of the different contributions to global environmental degradation, States have common but differentiated responsibilities. The developed countries acknowledge the responsibility that they bear in the international pursuit of sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command."66

62 "The Perfect Hideout: Jewish and Nazi Havens in Latin America," The Wiener Holocaust Library, accessed September 7, 2023, https://wienerholocaustlibrary.org/exhibition/the-perfect-hideout-jewish-and-nazi-havens-in-latin-america/; "Verdicts of the IMT," Memorium Nuremberg Trials, accessed September 7, 2023, https://museums.nuernberg.de/memorium-nuremberg-trials/the-nuremberg-trials/the-international-military-tribunal/verdicts.
63 "The Influence of the Nuremberg Trial on International Criminal Law," Robert H Jackson Center, accessed September 7, 2023, https://www.roberthjackson.org/speech-and-writing/the-influence-of-the-nuremberg-trial-on-international-criminal-law/.
64 Maiko Meguro, "Litigating Climate Change through International Law: Obligations Strategy and Rights Strategy," *Leiden Journal of International Law* 33, no. 4 (December 2020): 933–51, https://doi.org/10.1017/S0922156520000473.
65 Oliver Christian Ruppel et al., eds., *Climate Change: International Law and Global Governance*, 1. Edition (Baden-Baden: Nomos, 2013), https://www.jstor.org/stable/j.ctv941w8s.27.
66 "Common but Differentiated Responsibilities and Respective Capabilities (CBDRRC)," *Lawyers Responding to Climate Change* (blog), May 15, 2012, https://legalresponse.org/legaladvice/the-principle-of-common-but-differentiated-responsibilities-and-respective-capabilities-a-brief-summary/.

5.8. While this may seem like a complicated doctrine, once it is broken down into pieces, it is easy to understand. The "common" portion of the doctrine means that all states have baseline responsibilities towards the environment – there is not a single state that does not have anything to contribute to helping solve the climate crisis. "Differentiated" conveys that these responsibilities are not equal. Different states have caused varying degrees of harm to the environment. For example, LDCs have contributed almost nothing to global greenhouse gas emissions, yet they face a disproportionate amount of harm from the situation. Almost 70 percent of worldwide deaths caused by climate-related disasters in the past five decades have occurred in LDCs.67 This statistic directly leads into the phrase "respective capabilities." Not every state is uniformly equipped with the resources (financial, technological, etc.) to contribute to mitigating the effects of climate change. States with more resources have more duties directly related to how much they can feasibly contribute.

5.9. Intergenerational equity refers to the fact that climate change is a long-term issue with negative consequences for people who have not even been born yet. It is a powerful way to attach legal responsibility to actors, but it would be up to the Justices to decide how to apply it.68

CBDR-RC Principle After Rio and Specially Impacted States

5.10. 24 years after the CBDR-RC Principle was established, the Paris Agreement incorporated it in Article 2.2. However, the question of actually implementing this principle is still unanswered. It is one thing to talk about and understand CBDR-RC conceptually, and another thing entirely to apply it to real situations. For example, the transparency frameworks are considered accepted examples of the "common" portion of CBDR-RC. This is because all states should be open about the measures they are taking. In addition, the Paris Agreement acknowledges the differences of responsibilities between developed and developing states. Yet the blurred line between the two is murky territory.[69]

5.11. This is especially important because of the theme of specially impacted states. It was not the developed countries

67 UNCTAD, ed., *The Low-Carbon Transition and Its Daunting Implications for Structural Transformation*, The Least Developed Countries Report 2022 (New York: United Nations Publications, 2022), https://unctad.org/publication/least-developed-countries-report-2022.
68 "Courts Step up on Intergenerational Climate Justice," International Union for Conservation of Nature, August 4, 2021, https://www.iucn.org/news/environmental-law/202108/courts-step-intergenerational-climate-justice.
69 Tian Wang and Xiang Gao, "Reflection and Operationalization of the Common but Differentiated Responsibilities and Respective Capabilities Principle in the Transparency Framework under the International Climate Change Regime," *Advances in Climate Change Research* 9, no. 4 (December 2018): 253–63, https://doi.org/10.1016/j.accre.2018.12.004.

World leaders at the Rio Convention of 1992
Credit: United Nations

Protestors advocating for the Loss and Damage fund at COP27

Credit: Dejong/AP

that were fighting for climate change to go in front of international bodies, because they are not the ones facing most of the negative effects. It is developing states that are most at risk from climate related disasters such as rising sea levels. These are the states that are contributing the least to climate change, and have the least amount of resources to fight catastrophe.[70] Note that regulations for making development more sustainable overall are within the scope of the ICJ's jurisdiction.

Funding for Loss and Damages

5.12. The UN climate summit held in Sharm El Sheik, Egypt, was the 27th COP (COP27). Its defining achievement was the creation of a Loss and Damage Fund. It took over three decades for the idea to become a reality. The concept of a collective fund was first proposed in 1991 at the United Nations Framework Convention on Climate Change in Geneva, Switzerland.

5.13. The term "loss and damage" first appeared in official documentation at COP13 in 2007.[71] The Fund represents a major step in the fight for climate justice. Additionally, it addresses developed nations denying any responsibility for their actions' negative effects within the global community. However, it is incredibly difficult to operate this fund. Even if there were a formula for calculating the monetary impacts of climate change, it would still neglect the non-economic losses. An example of this is melting ice caps affecting the ability of indigenous groups to continue traditional hunting practices.[72] The questions of who is paying into this fund, how much is being placed into it, and its distribution are also still up for debate. A transitional committee is meeting about this in November 2023, however, the Justice should still craft their own opinions.[73]

5.14. One angle to not neglect during the discussion about specially impacted states is that many developing economies heavily rely on fossil fuels, and it would be hasty and unbalanced for the ICJ to force them to limit their carbon emissions when it would put their citizens at risk. For example, Oman, Qatar, Kuwait, Saudi Arabia, and Brunei Darussalam have 100 percent of their energy use

70 Louise van Schaik, Stefano Sarris, and Tobias von Lossow, "Fighting an Existential Threat: Small Island States Bringing Climate Change to the UN Security Council" (Clingendael Institute, March 1, 2018), http://www.jstor.org/stable/resrep17348.
71 "Kara Anderson, "What Is the COP27 Loss and Damage Fund?," Greenly Institute, May 25, 2023, https://greenly.earth/en-us/blog/company-guide/what-is-the-cop27-loss-and-damage-fund.
72 Deborah Campbell and Aaron Krol, "Loss and Damage," MIT Climate Portal, December 1, 2022, https://climate.mit.edu/explainers/loss-and-damage.
73 Deborah Campbell and Aaron Krol, "Loss and Damage."

dependent on fossil fuels.[74] The petroleum industry accounts for 90 percent of Nigeria's export value.[75] Balancing climate mitigation measures while simultaneously not destroying economies and ability to access reliable energy worldwide will be one of the many challenges Justices will face in creating the advisory opinion.

74 Jessica Dillinger, "Fossil Fuel Dependency By Country," WorldAtlas, April 25, 2017, https://www.worldatlas.com/articles/countries-the-most-dependent-on-fossil-fuels.html.
75 Doris Dokua Sasu, "Oil Industry in Nigeria - Statistics & Facts," Statista, June 29, 2023, https://www.statista.com/topics/6914/oil-industry-in-nigeria/.

Research and Preparation Questions

Your dais has prepared the following research and preparation questions as a means of providing guidance for your research process. These questions should be carefully considered, as they embody some of the main critical thought and learning objectives surrounding your topic.

Topic A

1. Jurisdiction and Consent: What are the different ways available to establish the Court's jurisdiction, and what role does consent play? What is the significance of Iran's declaration recognizing the ICJ's jurisdiction and its conditions?

2. Attribution of Cyberattacks: What are the challenges in attributing the actions of non-state actors to state actors? How can international norms and standards help in assessing attribution in cases like HomeLand Justice's cyberattacks?

3. Sovereignty and Cyber Operations: To what extent do cyberattacks violate a nation's sovereignty, and what is the threshold for assessing the gravity of such violations in cyberspace?

4. Non-Intervention Principle: How does the principle of non-intervention apply to cyber operations, and what distinguishes a coercive cyber interference from a mere nuisance or interference in internal affairs?

5. International Human Rights Laws in Cyberspace: How do international human rights laws, particularly the right to privacy, apply to cyber operations that affect individuals beyond a state's borders? What are the criteria for assessing the lawfulness, necessity, and proportionality of such operations?

6. Duty to Cooperate in Cyberspace: What obligations do states have to cooperate with each other in addressing cross-border cyber threats, and how does the lack of cooperation impact the legality of a state's cyber operations?

7. Countermeasures in Cyberspace: When can a state justify its cyber operations as countermeasures under international law, and what are the requirements and limitations for employing countermeasures in response to alleged cyber wrongdoing?

Topic B

1. Legal Framework and Precedent: What additional international legal frameworks and precedents exist related to restrictions due to climate change, and how do they inform the ICJ's advisory opinion? How has the ICJ dealt with cases encompassing the environment in the past?

2. Common but Differentiated Responsibilities (CBDR): How does the principle of CBDR apply to climate change, and what are the arguments for and against its application? How has CBDR evolved since its inception at the Rio Convention in 1992 and how do we contextualize the CBDR in the various sectors of society?

3. Accountability and Enforcement: What mechanisms–personal or impersonal–are available for holding nations accountable for climate change-related actions or inactions? How can the ICJ's advisory opinion contribute to accountability even without coercive powers?

4. Funding for Loss and Damages: What are the challenges and prospects of establishing a Loss and Damage Fund? How can the ICJ address issues related to funding for loss and damages, and how should it differentiate between/quantity economic and non-economic losses?

5. Specially Impacted States: How can the ICJ balance climate mitigation measures with the economic reliance on fossil fuels in developing economies, particularly in countries heavily dependent on the petroleum industry?

6. IPCC and Scientific Findings: How can the latest findings from the Intergovernmental Panel on Climate Change (IPCC) Synthesis Report inform the ICJ's advisory opinion, and what aspects of climate change mitigation and adaptation should be emphasized?

7. The Role of the ICJ: What impact can the ICJ's advisory opinion have on the global climate change agenda, considering its limited coercive capacity? How does it compare to other international judicial bodies in terms of enforcement and implementation of decisions?

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Topic B

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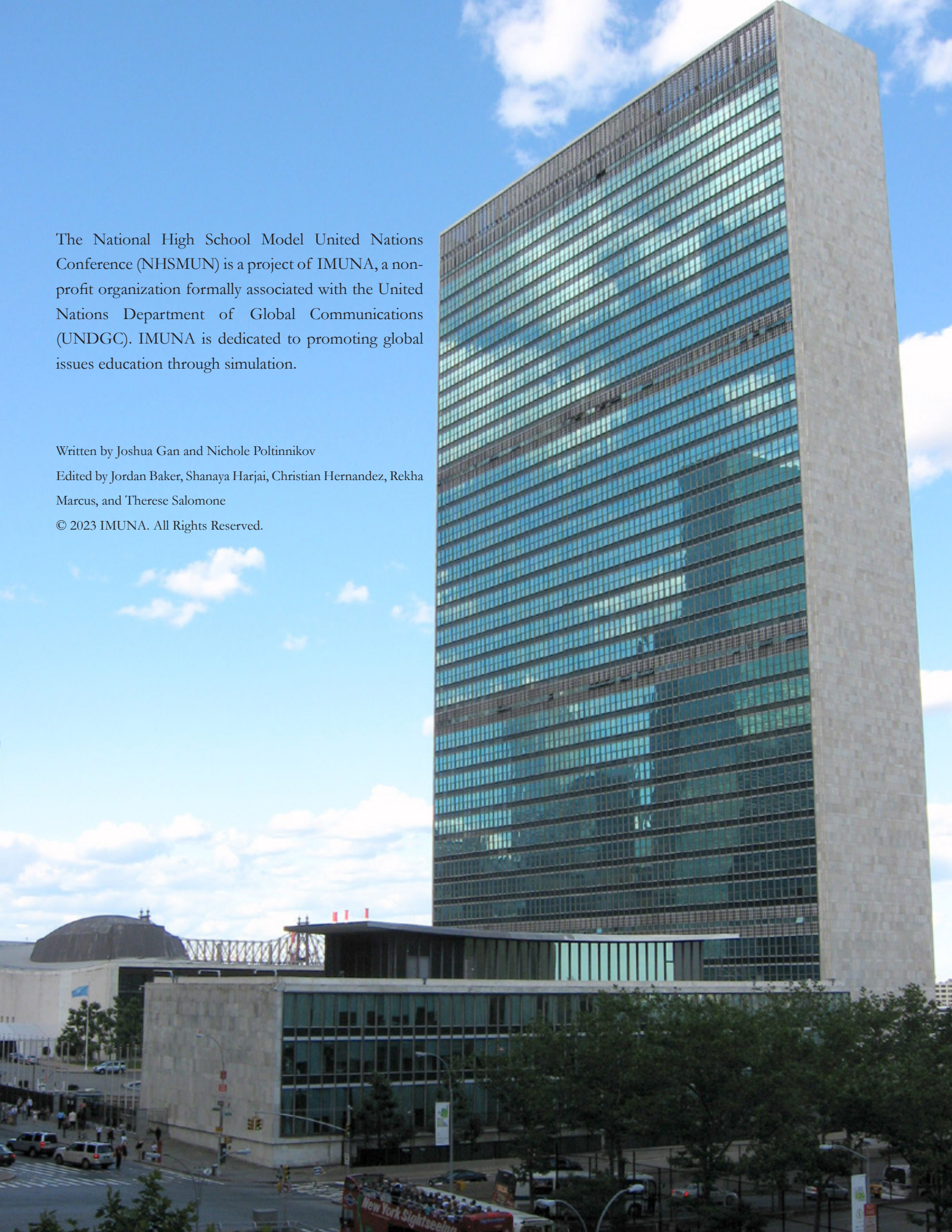

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Written by Joshua Gan and Nichole Poltinnikov

Edited by Jordan Baker, Shanaya Harjai, Christian Hernandez, Rekha Marcus, and Therese Salomone