International Court of Justice

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The Ivy League
Model United Nations Conference
Ninteenth Annual Session

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ILMUNC 2003
The Ivy League Model United Nations Conference

Delegates,

It is my pleasure to welcome you to the ninteenth annual session of the Ivy League Model United Nations conference. The staff of ILMUNC 2002 has been working sleeplessly to bring you a smooth-running, enjoyable conference. It is my hope that the conference proves to be an informative, engaging, yet exciting one.

Aside from my role as Undersecretary-General, I am a sophomore studying computer science and economics at the University of Pennsylvania's School fo Engineering and College of Arts and Sciences. Outside of the International Affairs Assocation, I am involved in the South Asian Society and am an avid hockey player among a full palate of other interests.

Seeing that this is the fourth conference in which I've participated since getting to college, please feel free to come up to me at any time during ILMUNC or contact me before the conference to relay your questions, comments, or concerns. I also designed our webpage, so please feel free to share commentary - both positive and negative (but hopefully positive) - about it. Having no committee of my own to chair, my purpose before and during ILMUNC is to help delegates get the most out of their conference experience. I look forward to seeing you in January.

Amit Vazirani
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Operations

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Esteemed Judges,

Welcome to the International Court of Justice (ICJ). My name is Nicholas Zwang, and I will serve as your President. The ICJ is truly unique among Model UN committees, and it will be a privilege for me to serve with you. We have an exciting docket for this conference that touches upon the complexities of interpreting international law.

Now for a bit about me…I grew up in Highland Park, IL, a suburb of Chicago, before attending Penn. I am currently a Third Year student studying Intellectual History, Biology, and Chemistry (my minors; I hope to attend medical school). When I am not doing Model UN, I sing in the University Choir, volunteer in the emergency room of the Hospital of the University of Pennsylvania, and serve on an advisory board to the dean of the college.

Although the "Oil Platforms" case is based on fact, I have perverted the "truth" for the purposes of simulation by altering facts and limiting the scope of the arguments, so you must treat this case as fictional. In both cases I have fixed the facts, they do not change and you must rely on me and the agents (the representatives of each side who will give a presentation during proceedings) for them. Although I have set the initial scope of the arguments for either side, I encourage you to evaluate these arguments, formulate your own, and interpret these cases and the law they involve creatively. The only caveat is that you must base your arguments on *your own legal reasoning*.

The research you do for this committee will be different from the research you may be used to. Rather than look up case law, expert legal opinions, or tomes on international law, you must become familiar with the treaties in question and with the cases themselves. There are many strategies for interpreting treaties, and good interpreters apply different strategies at different times. Most interpreters, however, agree that the *context* of an article or a clause is important. Thus, you must look up and become familiar with the treaties in question. Please contact me if you have difficulty accessing treaties. From your readings you may even develop arguments not mentioned in the cases—so long as they are your own.

Recall also that the ICJ, unlike the United States Supreme Court, does not rule based on precedents (with the exception of customary international law).. Instead, we recognize that each case and treaty is unique. Therefore, you should become familiar with the treaties in question and formulate arguments based on your interpretation of them. Your position papers should reflect your understanding of the legal complexities at hand and the questions that you think need to be answered.

The Rules of the Court are slightly complex, but we will have ample time to discuss those. Please do not worry about them right now.

My staff and I will do everything we can to ensure that the ICJ is both challenging and fun. Please contact me if you have any questions about the conference or the cases. I look forward to meeting you soon.

Sincerely,

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History of the Court

The creation of the International Court of Justice represented the culmination of a long development of methods for the pacific settlement of international disputes, the origins of which can be said to go back to classical times. Article 33 of the United Nations Charter lists the following methods for the pacific settlement of disputes between States: negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, and resort to regional agencies or arrangements, to which good offices should also be added. Among these methods, certain involve appealing to third parties. For example, mediation involves the influence of a third party which helps the original two resolve their dispute. Arbitration goes further, in the sense that the dispute is in fact submitted to the decision or award of an impartial third party, so that a binding settlement can be achieved. The same is true of judicial settlement, except that a court is subject to stricter rules than an arbitral tribunal in procedural matters, for example. Historically speaking, mediation and arbitration preceded judicial settlement. The former was known in ancient India and in the Islamic world, whilst numerous examples of the latter are to be found in ancient Greece, in China, among the Arabian tribes, in the early Islamic world, in maritime customary law in medieval Europe and in Papal practice.

The Modern Court

In 1942, the United States Secretary of State and the Foreign Secretary of the United Kingdom declared themselves in favor of the establishment or re-establishment of an international court after the war, and the Inter-American Juridical Committee recommended the extension of the PCIJ's jurisdiction. In early 1943, the United Kingdom Government took the initiative of inviting a number of experts to London to constitute an informal Inter-Allied Committee to examine the matter. This committee, under the chairmanship of Sir William Malkin (United Kingdom), held 19 meetings attended by jurists from 11 countries. In its report, which was published on 10 February 1944, it recommended —

-that the Statute of any new international court should be based on that of the Permanent Court of International Justice;

-that advisory jurisdiction should be retained in the case of the new Court;

-that acceptance of the jurisdiction of the new Court should not be compulsory;

-that the Court should have no jurisdiction to deal with essentially political matters.

Meanwhile, on 30 October 1943, following a conference between China, the USSR, the United Kingdom and the United States, a joint declaration was issued recognizing the necessity "of establishing at the earliest practicable date a general international organization, based on the principle of the sovereign equality of all peace-loving States, and open to membership by all such States, large and small, for the maintenance of international peace and security".

This declaration led to exchanges between the Four Powers at Dumbarton Oaks, resulting in the publication on 9 October 1944, of proposals for the establishment of a general international organization, that included an international court of justice. The next step was the convening of a meeting in Washington, in April 1945, of a committee of jurists representing 44 Nations. This Committee, under the chairmanship of G. H. Hackworth (United States), was entrusted with the preparation of a draft Statute for the future international court of justice. This was for submission to the San Francisco Conference, which, during the months of April to June 1945, was to draw up the United Nations Charter. The draft Statute prepared by the Committee was based on the Statute of the PCIJ, and was thus not a completely fresh text. The committee nevertheless felt constrained to leave a number of questions open which it felt should be decided by the Conference: should a new court be created? In what form should the court's mission as the principal judicial organ of the United Nations be stated? Should the court's jurisdiction be compulsory, and if so, to what extent? How should the judges be elected?

The final decisions on these points, and on the definitive form of the Statute, were taken at the San Francisco Conference, in which 50 Nations participated. The Conference decided against compulsory jurisdiction and in favor of the creation of an entirely new court, which would be a principal judicial organ of the United Nations, on the same footing as the General Assembly, the Security Council, the Economic and Social Council, the Trusteeship Council and the Secretariat, and with the Statute annexed to and forming part of the Charter. The chief reasons that led the members of the conference to decide to create a new Court were the following:

-As the Court was to be the principal judicial organ of the United Nations, it was felt inappropriate for this role to be filled by the Permanent Court of International Justice (which had up till then been linked to the disintegrating League of Nations.)

-The creation of a new Court was more consistent with the provision in the Charter that all Member States of the United Nations would *ipso facto* be parties to the Court's Statute.

-Several countries that were parties to the Statute of the PCIJ were not represented at the San Francisco Conference, and, conversely, several countries represented at the Conference were not parties to the Statute.

-There was a feeling in some quarters that the PCIJ formed part of an older order, in which European States had dominated the political and legal affairs of the international community. The creation of a new Court would make it easier for nations outside of Europe to play a more influential role. This in fact happened when the member-

ship of the United Nations grew from 51 in 1945 to 185 in 1996.

The members of the San Francisco Conference nevertheless showed some concern that all continuity with the past should not be broken, particularly as the Statute of the PCIJ had itself been drawn up on the basis of past experience, and it was felt better not to change something that had seemed to work well. The Charter therefore plainly stated that the Statute of the ICJ was based upon that of the PCIJ. At the same time, the necessary steps were taken for a transfer of the jurisdiction of the PCIJ so far as was possible to the ICJ. In any event, the decision to create a new Court necessarily involved the dissolution of its predecessor. The PCIJ met for the last time in October 1945,when it was decided to take all appropriate measures to ensure the transfer of its archives and effects to the new ICJ. This new court, like its predecessor, was to have its seat in the Peace Palace. The judges of the PCIJ all resigned on 31 January 1946, and the election of the first Members of the ICJ took place on 5 February 1946, at the First Session of the United Nations General Assembly. In April 1946, the PCIJ was formally dissolved. The ICJ, meeting for the first time, elected as its President Judge Guerrero, the last President of the PCIJ. It also appointed the members of its Registry (largely from among former officials of the PCIJ) and held an inaugural public sitting on the 18th of that month.

Statute and Rules of the Court

The Statute of the ICJ elaborates certain general principles laid down in Chapter XIV of the Charter. Whilst it forms an integral part of the Charter, it is not incorporated into the actually legal document, but instead it is an addition. This has avoided unbalancing the 111 articles of the Charter by the addition of the 70 articles of the Statute, and has facilitated access to the Court for States that are not members of the United Nations. The articles of the Statute are divided into five chapters: "Organization of the Court" (Arts. 2-33), "Competence of the Court" (Arts. 34-38), "Procedure" (Arts. 39-64), "Advisory Opinions" (Arts. 65-68) and "Amendment" (Arts. 69-70). It can be amended only in the same way as the Charter, i.e., by a two-thirds majority vote in the General Assembly and ratification by two-thirds of the States, including the permanent members of the Security Council — the only difference being that States parties to the Statute but are not members of the United Nations are allowed to participate in the vote in the General Assembly. Should the ICJ consider it desirable for its Statute to be amended, it must submit a proposal to this effect to the General Assembly by means of a written communication addressed to the Secretary-General. However, there has hitherto been no amendment of the Statute of the ICJ.

In pursuance of powers conferred upon it by the Statute, the ICJ has drawn up its own Rules of Court. These Rules are intended to supplement the general rules set forth in the Statute and to make detailed provision for the steps to be taken to comply with them. Since the Rules have been drawn up in pursuance of the Statute, they may not contain any provisions that are repugnant to the Statute or which confer upon the Court powers that go beyond those conferred by the Statute. The Rules of Court thus amplify the provisions of the Statute concerning the Court's procedure and the working of the Court and of the Registry, so that on certain points it is necessary to consult both documents. The ICJ is competent to amend its Rules of Court, and can thus incorporate into them provisions embodying its practice as this has developed. On 5 May 1946, it adopted Rules largely based on the latest version of the Rules of Court of the PCIJ, which dated from 1936. In 1967, in the light of the experience it had acquired and of the need to adapt the Rules to the changes that had taken place in the world, the court embarked upon a thoroughgoing revision of its Rules and set up a standing Committee for the purpose. On 10 May 1972, it adopted certain amendments that came into force on 1 September that year. On 14 April 1978, the Court adopted a thoroughly revised set of Rules that came into force on 1 July 1978. The object of the changes made — at a time when the Court's activity had undeniably fallen off — was to increase the flexibility of proceedings, making them as simple and rapid as possible, and help to reduce the costs to the parties, so far as these matters depended upon the Court.

From 1946 to 1996, the Court dealt with 47 contentious cases between States and delivered 61 judgments. It also gave 23 advisory opinions. After an initial period of uncertainty that led to a resolution by the General Assembly in 1947 concerning the need to make greater use of the Court, the Court's work at first assumed a tempo comparable to that of the PCIJ. Then, starting in 1962, all the signs were that the States which had created the ICJ were now reluctant to submit their disputes to it. The number of cases submitted each year, which had averaged two or three during the fifties, fell to none or one in the sixties; from July 1962 to January 1967 no new case was brought, and the situation was the same from February 1967 until August 1971. In the summer of 1970, at a time when the level of the Court's activity was in marked decline, the Secretary-General, in the introduction to his annual report, felt obliged to recall the importance of judicial settlement and 12 States suggested "that a study should be undertaken . . . of the obstacles to the satisfactory functioning of the International Court of Justice, and ways and means of removing them" including "additional possibilities for use of the Court that have not yet been adequately explored". The General Assembly placed on its agenda an examination of the Court's role and, after several rounds of discussion and written observations, it adopted a fresh resolution concerning the ICJ on 12 November 1974. From 1972, the number of new cases brought to the Court increased. Between 1972 and 1985, cases averaged from one to three each year. Since 1986, the Court has experienced a significant increase in the number of cases referred to it.

Over a period of some ten years, it has been asked to deal with 19 contentious cases and four requests for advisory opinions. At the end of July 1996, 9 contentious cases were pending before the Court. In its resolution 44/23 of 17 November 1989, the General Assembly declared the period 1990-1999 as the United Nations Decade of International Law, and considered that one of the main purposes of the Decade should be: "To promote means and methods for the peaceful settlement of disputes between States, including resort to and full respect for the International Court of Justice."

from A guide to the History, Composition, Jurisdiction, Procedure and Decisions of the Court *published 1996, available on the International Court of Justice webstie at www.icj-cij.org*

Rules of Procedure

Special thanks to Michael Suh, Director of the Court, MUNUC 2000

Rule 1 Language

English shall be the only working language of the Court

Rule 2 Courtesy

Judges shall show courtesy and respect to all staff and delegates. Judges shall be attentive to those who hold the floor and shall maintain decorum during all sessions of the Court. The President of the Court shall immediately call to order all Judges who fail to comply with this rule.

Rule 3 Statements by the Secretariat

The Secretary-General or any representative of the Secretariat may address the Court at any time. This rule takes precedence over all other rules except Rules 1 and 6.

Rule 4 Staff

The Court shall have a President. The court will also have Directors who are responsible to the President and who may, with the consent of the President, moderate Court Sessions for periods of time determined by the President.

Rule 5 Duties of the President

The President shall open and close each session, decide the propriety of any motion, moderate debate, recognize speakers, and enforce the observance of the Rules of Procedure.

Rule 6 Appeals of the Decision of the President

The decision of the President is subject to appeal unless otherwise indicated. A motion to appeal the decision of the President requires a second and a two-thirds majority. There are no abstentions on this vote.

Rule 7 Quorum and Roll

a) A quorum consists of three-fifths of the Judges. If a judge moves to call for a quorum, the President shall call roll. This motion takes precedence above a motion to vote.

b) The President must call roll at the opening of Committee and of each Committee Session.

c) The President may call roll at any time during a Session.

Rule 8 Voting

Only judges recognized by the latest call of roll may vote. There are no abstentions on substantive motions.

Rule 9 Majority

A simple majority exists when the number of votes in favor of a motion exceeds those opposed to a motion. A two-thirds majority exists when there are at least two times as many votes in favor of a motion as there are opposed to it.

Rule 10 Speeches

The President must recognize a judge in order for him or her to speak. There is no set speaking time limit (subject to qualification by parts a, b, and c)

a) Judges may elect to establish a speaking time limit. A motion to establish or remove a speaking limit must, in the case of the former, specify the time limit. This motion requires a two-thirds majority to pass.

b) The President may call to order a Judge whose speech is unreasonably long, repetitive, or irrelevant.

c) The President may terminate a speech that is unreasonably long, repetitive, or irrelevant. This decision is not subject to appeal.

Rule 11 Opening of Committee and Session

The President may call to order the Court when a quorum is present. This decision is not subject to appeal.

Rule 12 Setting the Agenda

Once the Court is called to order at the opening of Committee the only motion in order is one to set the Agenda. The Judge who moves to set the agenda must specify the order of the cases the Court is to hear. This motion requires a majority second and is debatable. This motion requires a majority to pass.

Rule 13 Procedure for the Court

The Court shall proceed through distinct phases. There are no abstentions on votes pertaining to phases. These phases shall proceed in the following precise order (see also Appendix to the Rules of the Court):

a) Written Proceedings (i.e., "position papers") begin prior to the Opening of Conference. Judges shall submit these papers prior to the opening of Committee.

b) Preliminary Deliberations begin immediately following the approval of an Agenda.

c) Oral proceedings begin with two-thirds approval of a motion to begin oral proceedings. The President shall set time limits for oral proceedings.

d) Deliberations begin immediately after oral proceedings end.

e) Notes begin with two-thirds approval of a motion to hear notes. The President shall set speaking time limits. Speakers shall read notes in random order.

f) Formal Deliberations begin once judges have read notes.

Rule 14 Points of Personal Privilege

These points regard matters of comfort (i.e., room temperature, supply of water, ability to hear a speaker). They take precedence over all other points and motions except Rule 9 and may interrupt a speaker.

Rule 15 Points of Order

These points regard objections to matters of procedure. They take precedence over all other points and motions except Rule 14. They may interrupt a speaker.

Rule 16 Points of Parliamentary Inquiry

These points regard questions of Court procedure. They take precedence over all other points and motions except Rules 14 and 15. They may not interrupt a speaker.

Rule 17 Moderated Caucus

A moderated caucus allows judges to address one question or one set of questions for a determined time without prejudice to Rules 10 or 13. A motion for a moderated caucus must include the purpose and duration of the proposed caucus. This motion requires a majority to pass.

Rule 18 "Round Robin"

A round robin allows each judge to answer a particular question in turn without prejudice ro Rules 10 or 13. Judges who "pass" have an opportunity to speak after one round. This motion requires a majority to pass.

Rule 19 Unmoderated Caucus

There are no formal speeches in an unmoderated caucus. Judges are free to leave the Chambers during such a caucus. A motion for an unmoderated caucus must specify the duration of the proposed caucus. This motion requires a majority to pass.

Rule 20 Suspension of the Rules

A motion to suspend the rules must specify the motion's purpose, rule(s) to suspend, and duration of the proposed suspension without prejudice to Rules 10 and 13. The President's decision to entertain a motion to suspend the rules is not subject to appeal. There are no abstentions on votes to suspend the rules.

Rule 21 Closure of Deliberations

A motion to close deliberations is in order after judges have engaged in sufficient formal debate. This motion requires unanimity for passage. There are no abstentions on this motion.

Rule 22 Vote of Judgment

A vote of judgment shall follow closure. Following a vote of judgment all Judges will begin work on opinion. The majority opinion requires a majority of the prevailing side to pass. To put a majority opinion to formal vote a majority of the Judges on the prevailing side must submit requests to vote on the majority opinion. See also Appendix to the Rules of the Court. There are no abstentions on any votes of judgment.

Rule 23 Suspension of Debate

This motion is in order only if the floor is open, fewer than thirty minutes remain in the current session, and the President rules it in order. This motion ends all Court functions until the opening of the next session. This motion is not debatable and, if in order, shall be put to an immediate vote. This motion requires a majority to pass. The decision of the President to rule this motion in order is not subject to appeal. There are no abstentions on votes to suspend debate.

Rule 24 Adjournment

This motion is in order only if the floor is open, fewer than thirty minutes remain in the last session of the Conference, and the President rules it in order. This motion ends all Court functions for the duration of the Conference. This motion is not debatable and, if in order, shall be put to an immediate vote. This motion requires a majority to pass. The decision of the President to rule this motion in order is not subject to appeal. There are no abstentions on votes to adjourn.

Appendix to the Rules of Court

Adapted from Suyash Paliwal, President of the Court UPMUNC 2000 and Michael Suh, Director of the Court MUNUC 2000

Nature of the Court

The ICJ is unique among United Nations bodies. Its focus is evaluating international law and determining the legality of international disputes. In this respect, its goal is not to arbitrate, to effect compromise, or to develop new law but rather to judge what is legal and what is not. Its fifteen judges are scholars of international law unlike traditional delegates who represent their respective nations or national policy goals. The Court's judgements are binding and have the force of international law. The Security Council is charged with executing these judgements, though the Council is conservative in its decisions to use force.

The *analysis of legal arguments* must guide ICJ deliberations. Each party submits what it believes is a just interpretation of international law. The Court is first responsible for deciding whether it has jurisdictional authority to hear the case (as per the Statute of the Court). If so, it is responsible for weighing legal arguments and interrogating both codified and common international law. The Court can interpret treaties in the broadest sense by judging the purposes and principles of a treaty; or, the Court can interpret treaties in the narrowest sense based on the definition of a single word according to the *Oxford Dictionary of the English Language* (Suh 2000). This international law is different from American law. The latter is generally written by a legislature and, when in conflict, is subject to a High Court's interpretation of this law based on precedent. In contrast, international law arises from instances of diplomacy, treaties, and universally accepted legal practices (e.g., "common" law). In this sense, international law is closer to contract law in that parties sign binding agreements that have the force of law.

Of course, the Court's judgments sometimes establish groundbreaking principles. "The 1969 *Iceland Fisheries* case, for example, established that a bilateral treaty becomes void without official nullification once a contracting party's national sovereignty is directly threatened by the other contracting party (Suh 2000)." Further, "customary laws, those laws that the international community considers universal" can guide the ICJ. "The maritime principle that a state's territory does not end at the coastline, but actually extends six miles into the sea is a classic example" (Such 2000).

The ICJ thus has a pivotal role in the world of diplomacy. It must legitimate and interpret a framework of law by which civilized nations must abide.

Procedure for the Court

The Court's format favors round table discussion rather than parliamentary procedure. In this respect, the Court's format is different from many Model United Nations committees. At the same time, however, the Court has a clear and robust set of rules to ensure orderly discussion in which all judges have the opportunity to express their views. The Court offers an intimate setting for debate. Judges may speak conversationally and are free to revise their views as they hear convincing evidence for one position or another.

The court proceeds according to several phases (a description of each follows):

-Written Proceedings (i.e., position papers)
-Preliminary Deliberations
-Oral Proceedings
-Deliberations
-Notes
-Formal Deliberations
-Opinions

Written Proceedings

Judges write position papers before conference. These papers should reflect their understanding of the legal complexities at hand and the questions they think need to be answered. They will most likely *not* point to a definite ruling, but rather they will reveal judges thinking processes regarding these cases

Preliminary Deliberations

Preliminary Deliberations begin once the Court formally convenes. During this time Judges begin to discuss the issues their position papers explore and some initial thoughts about the case at hand. Judges must develop a formal list of questions they feel the respective State Agents should answer during Oral proceedings. These questions involve clarification of arguments or facts and responses to particular arguments or interpretations that the Memorials do not address. The preliminary decisions are also important because the Court may develop a mental rubric of questions to consider and how the answers to these questions may affect the Court's consideration of the case. This rubric may be entirely mental or may involve literal sketches that are, of course, in no way binding on the Court. Nonetheless, the Court must clarify the issues that it be-

lieves are central to the case.

Oral Proceedings

During this time State Agents make formal presentations to the Court. These State Agents represent the Applicant then the Respondent. They attempt to address the relevant questions that arose from the preliminary deliberations and to address relevant arguments. With the President's permission and their own consent, these Agents have the opportunity to answer follow-up questions.

Deliberations

By the end of deliberations, Judges should be on the same page with respect to the facts and arguments at hand and their own views on which of these may be relevant. Agents should reconcile new information and clarifications with their previous understanding and outline of issues. Judges may indicate which side's legal arguments they believe most credible but do not need to indicate a preference for either side.

Notes

This is one of the most crucial steps in ICJ procedure. All judges will have time to write their preliminary opinion. They must present to these opinions to the Court and discuss them orally. The written note itself expresses the judge's views on the case, indicating:

-whether the Court should eliminate any questions which have been called to notice from further consideration or whether the Court need not, decide certain questions.

-the precise questions which the Court should answer

-the Judge's tentative opinion as to the answers to these questions and reasons for these opinions

-the Judge's tentative conclusion as the correct disposal of the case

Formal Deliberations

After the Judges present notes, the Court moves to formal deliberations. By this time the Judges should understand clearly the questions and arguments before the Court. These deliberations are an attempt to synthesize Judges various views and interpretations into robust judgments. Judges must propose answers to questions the notes put forth. This phase of Court procedure may not end until each judge decides of which party he or she will vote in favor and the rationale for this decision. In a vote of judgment, conducted in closed session, each judge votes either "in favor of the Applicant" or "in favor of the Respondent."

Opinions

Once a side is found to prevail, Judges are to write opinions in paragraph form. These opinions are the final product of deliberation in the Court. All judges are expected to participate in writing an opinion.

The *majority opinion* is the official decision of the Court. This document represents the opinion of the majority of judges of the prevailing side who agree upon the legal reasoning that guides the decision and the operative provisions as to the consequences or costs the defeated side must bear. The legal reasoning itself should reflect the majority of the judges of the prevailing side and must include an official vote to determine that a majority of those judges favoring the side supports the majority opinion (i.e., a majority of the majority). No other opinion may contain operative provisions. A judge must sign the majority opinion if he or she agrees on the operative provisions; he or she may write a separate opinion if he or she disagrees with the reasoning. All judges who vote in favor of the prevailing side must sign the majority opinion.

The Court may accept several *separate opinions* if their authors agree with the authors of the majority opinion as to which side should prevail but disagree with the legal reasoning of the final decision. The separate opinion must explain the rationale behind the difference in opinion. The Court may accept several separate opinions.

The Court may accept several *dissenting opinion*. The judges who vote against the prevailing side must write dissenting opinions and each may sign only one such opinion. The dissenting opinion should express the legal rationale for dissent against the majority.

The Islamic Republic of Iran v. The United States of America "Oil Platforms"

MEMORIAL SUBMITTED BY THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN

IN HIS EXALTED NAME

INTRODUCTION

1. This Memorial is submitted to the Court in pursuance of an Application submitted by the Islamic Republic of Iran on 2 November 1992.

2. This case is in regard to a dispute concerning primarily the Treaty of Amity, Economic Relations, and Consular Rights signed at Tehran on August 15, 1955, in regard to the destruction of Iranian oil platforms in the Persian Gulf and the legal obligation of the United States to make reparations for this destruction.

PART I. FACTS AND HISTORY OF THE CASE

3. On 19 October 1987, an attack was launched by four U.S. guided-missile destroyers, the *Young, Hoel, Kidd,* and *Leftwich* against the Iranian oil platforms Resalat and Reshadat, owned and operated by the National Iranian Oil Company in the Persian Gulf.

4. The Resalat and Reshadat platforms are located on part of the continental shelf within the exclusive economic zone of the Islamic Republic. They form part of a larger series of oil installations involving more than 100 producing wells and platforms essential to the Iranian commercial oil industry.

5. On 19 October 1987, a radio warning was issued by the U.S. naval force of the attack, informing personnel on the platform that U.S. ships would begin firing in 20 minutes. At 14:00 hours, the U.S. vessels began their attack using 5-inch guns, the largest naval artillery in the Persian Gulf at the time. The attack lasted for 90 minutes, and over 1,000 rounds of ammunition were used.

6. As a result of the attack, one platform was completely obliterated, and the other was 90 per cent destroyed. Because of this, Iran had to completely halt oil production from the underlying oilfields.

7. In statements made after the incident, the United States sought to justify the attack as a "lawful exercise of the right of self-defense" and as a "measured response" to an alleged Iranian missile attack against the U.S.-flagged Kuwaiti oil tanker *Sea Isle City* in the territorial waters of Kuwait.

8. The allegations of the U.S. claiming that the attack was self-defense are completely false. The oil platforms were commercial and not militarized. The Court must also recall that, at the time, the Islamic Republic was undergoing an 8-year Iraqi attack on its oil installations. Any so-called military establishment on the Islamic Republic's oil platforms was merely defensive military guards meant to protect these commercial platforms.

9. U.S. forces began another attack on the morning of 18 April 1988, after only 5 minutes warning to the oil workers on the platforms in the Persian Gulf owned and operated by the National Iranian Oil Company. The attack caused serious damage and killed one civilian worker and injured seven others.

10. These platforms were also in the exclusive economic zone of the Islamic Republic. The damage to these platforms reached an estimated half-billion dollars plus the loss of over 25,000 barrels of oil per day.

11. The U.S. again defended its actions as "necessary and proportionate self-defense" in response to an alleged Iranian attack against the USS *Samuel B. Roberts* that in reality had struck a mine and had been damaged in international waters in the Persian Gulf, four days earlier on 14 April 1988. The United States has also subsequently attempted to characterize the attacked oil platforms as "legitimate military targets in the Persian Gulf that have been used for attacks against non-belligerent shipping in the international waterways of the Persian Gulf."

12. The mine that damaged the USS Roberts was most likely an Iraqi mine—identical to an Iranian mine—that was planted during the hostilities initiated by Iraq toward Iran. In response to this second incident, as in the case of the first, the United States attacked *commercial* vessels in response to a *military* incident.

13. The Islamic Republic of Iran has denied both allegations. Moreover, the Islamic Republic will show that the alleged military value of the platforms is of no legal importance. The United States' investigation prior to the attacks was completely unsatisfactory and did not afford the U.S. time to determine the true commercial nature of the platforms. Furthermore, the United States made no diplomatic overtures that the law stipulates prior to these attacks.

PART II. THE LAW

CHAPTER 1: THE 1955 TREATY OF AMITY, ECONOMIC RELATIONS, AND CONSULAR RIGHTS

14. Article I of this treaty states, "There shall be firm and enduring peace and sincere friendship between the United States of America and Iran." By maliciously attacking Iranian oil platforms without any attempt to reach a diplomatic solution, the United States violated this term of the Treaty. The United States ignored Iranian claims of innocence and failed to conduct a thorough investigation or any diplomatic talks. Instead they immediately pursued an aggressive campaign against our people.

15. Article XXI(1) of the Treaty also calls for each High Contracting Party to "accord sympathetic consideration to, and...adequate opportunity for consultation regarding, such representations as the other High Contracting Party may make with respect to any matter affecting the operation of the present Treaty." Similarly, Article

XXI(2) calls for settlements of disputes by "pacific means." The United States= unwarranted aggression toward the Islamic Republic can hardly be considered "pacific." The United States was obliged to seek a diplomatic solution to this conflict, but it instead chose military aggression.

16. By its actions in adopting a threatening and provocative position vis-à-vis Iran with the deployment of substantial naval and air forces just off the shores of the Islamic Republic, and in attacking and destroying Iranian entities and oil installations, the United States has also breached Article X(1) of the treaty, which reads: "Between the territories of the two High Contracting Parties there shall be freedom of commerce and navigation." This applies to commerce of any sort within the jurisdiction of either High Contracting Party. The United States' aggression toward Iranian oil installments clearly inhibits the "freedom of commerce" of the Iranian oil industry.

17. When the U.S. attacked commercial, nonmilitary sites, it violated Article IV(1) of the said Treaty which reads: "Each High Contracting Party shall at all times accord fair and equitable treatment to nationals and companies of the other High Contracting Party, and to their property and enterprises; shall refrain from applying unreasonable or discriminatory measures that would impair their legally acquired rights and interests...." The National Iranian Oil Company is a highly respected commercial oil producer in the Islamic Republic. The treatment by the United States of this commercial interest in response to a military concern was neither "fair" nor "equitable"; furthermore, the United States acted "unreasonably" and in a discriminatory fashion toward this legal commercial enterprise.

CHAPTER II: APPLICABILITY OF THE 1955 TREATY OF AMITY, ECONOMIC RELATIONS, AND CONSULAR RIGHTS

17. Although the United States may claim that this Treaty does not apply to the events in question, Article XX(1d) clearly indicates that the "Treaty shall not preclude the application of measures...necessary to fulfill the obligations of a High Contracting Party for the maintenance or restoration of international peace and security, or necessary to protect its essential security interests." The case at hand addresses the question of "international peace and security" and therefore makes the Treaty applicable.

18. Moreover, the Treaty was clearly in effect during the said incidents. Article XXIII(3) provides for the nullification of the treaty by one High Contracting Party with "one year's written notice to the other High Contracting Party...at the end of the initial ten-year period." Neither the United States nor the Islamic Republic has submitted such a notice as of this date.

CHAPTER III: THE LAW OF THE SEA

19. Iran claims total innocence for the first incident, the missile fired upon the *Sea Isle City*. The attacks, however, occurred in Kuwaiti territorial waters. Article 21 of the 1982 Convention on the Law of the Sea dictates that "the coastal State may adopt laws and regulations in conformity with the provisions of this convention and other rules of international law in respect of all or any of the following: a) the safety of navigation and the regulation of maritime traffic." This implies that it is the obligation of Kuwait, the coastal State, to respond to this unfortunate attack. The flagging nation, the United States, had no right under international law to respond to the said attacks. The country of Kuwait was responsible for resolving the incident; a rash military response by the U.S. was uncalled for.

CHAPTER IV: THE UNITED NATIONS CHARTER

21. Even if this Court incorrectly believes that the Islamic Republic perpetrated either attack against the *Sea Isle City* or *Samuel B. Roberts*, there is no question that the United States was obliged to seek a diplomatic solution to the problem. Article II(3) of the UN Charter states, "All Members shall settle their international disputes by peaceful means in such a manner that international peace, security, and justice are not endangered." The United States made no attempt to settle its dispute by "peaceful means," and thus violated the central tenet of the United Nations Charter.

22. Article II(4) then states, "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity of political independence of any state." The United States clearly violated the territorial integrity of the Islamic Republic by entering the latter's territorial sea and attacking property within that area.

PART III: SUBMISSIONS

In view of Parts I and II of the present Memorial, may it please the court to adjudge and declare:

23. The United States of America's actions against the commercial oil platforms in the Islamic Republic of Iran violated the 1955 Treaty of Amity, Economic Relations, and Consular Rights and Article II of the United Nations Charter.

24. The United States' reactions regarding the *Sea Isle City* attack violated the Convention on the Law of the Sea.

25. The United States is under legal obligation to make reparations to the Islamic Republic of Iran for attacks on its commercial oil platforms.

MEMORIAL SUBMITTED BY THE UNITED STATES OF AMERICA

INTRODUCTION

1. This Memorial is submitted to the Court in response to the Application of the Islamic Republic of Iran.

2. This Case involves a clear question of the applicability of the 1955 Treat of Amity, Economic Relations, and

Consular Rights.

3. The facts of this case involve a dispute over the military nature of the said oil platforms and the reasonable determination on the part of the United States of Iran's guilt in perpetrating two attacks against American-flagged or American ships.

PART I. FACTS AND HISTORY OF THE CASE

1. On 4 November 1979, militant Iranian students and revolutionaries occupied the United States embassy in Tehran, taking American diplomats hostage and demanding the end of contact with the United States and the extradition of the Shah to Iran. This siege lasted 444 days. During this siege, the International Court of Justice ruled that the Iranian government must be held accountable for this incident.

2. Furthermore, previous case law (e.g., the Iceland Fisheries case) demonstrates that it is an established principle of international law that a material breach of a treaty is valid ground for its suspension or termination. A material breach has traditionally been defined as the violation of a provision essential to the accomplishment of the object or purpose of the treaty; the siege of our embassy is an apparent example of such a violation.

3. On 16 October 1987, an Iranian Silkworm missile hit the U.S.-flagged, Kuwaiti-owned, oil tanker *Sea Isle City* in Kuwaiti waters, injuring 18 crewmen. Iran denies that it fired the missile, but we have considerable evidence that suggests Iran was responsible for the attack.

4. The U.S. military experts who examined the *Sea Isle City* immediately following its attack concluded that it had been hit by a Silkworm missile fired from Iranian-occupied territory in the Persian Gulf.

5. Moreover, Iran committed an act of aggression in the Gulf before this attack. On 15 October 1987, just the day before, a U.S.-owned but Liberian-flagged tanker, the *Sungari* was hit by a Silkworm missile.

6. In retaliation for the unprovoked attack on a U.S.-flagged ship, the United States Navy destroyed two oil platforms that we believed to be commercially defunct and the bases for small, armed, Iranian gunboats used by the Iranian Revolutionary Guards to ambush merchant shipping in the gulf and to fire on U.S. military helicopters. It was clear to the United States that these oil platforms were the source of Iranian-sponsored pirating activities in the Persian Gulf

7. The United States Navy radioed the Iranians aboard the platform 20 minutes prior to the bombardment to ensure that there was no unnecessary loss of human life. The United States Navy intended only to destroy the source of illegal and aggressive pirating activities. By ensuring that no people were put in harm's way, the United States delivered a measured and appropriate response to an unprovoked Iranian attack.

8. The *Sea Isle City* was one of 11 tankers that Kuwait had asked the U.S. Navy to protect in 1986. Since Kuwait had aided Iraq financially and had allowed Iraq to purchase arms through Kuwaiti ports, Iran viewed Kuwait as a belligerent nation. This caused Kuwait to fear reprisals from Iran. Thus, the American government agreed to protect Kuwaiti ships regardless of their location.

9. On 14 April 1988, the *USS Samuel B. Roberts* struck an underwater mine in international waters in the central Gulf after escorting a different U.S.-flagged Kuwaiti oil tanker as part of the Navy's ongoing convoy operation. The frigate's hull was seriously damaged by the blast, and 10 sailors were injured.

10. Immediately following the attack, the U.S. highly suspected that Iran had planted the mines. In September of 1987, an Iranian mine-laying vessel was sighted in the region and attacked by American ships. Also, the U.S. Navy found and destroyed two mines on 15 April 1988, near the location of the *Roberts* explosion. These mines, a type Iran typically uses, were free of marine growth, indicating they had been placed recently. Moreover, expert examiners from the U.S. Navy noted that the serial numbers on these mines were made by Iran in 1987.

11. In response to the *Roberts* incident, President Reagan of the U.S. approved an attack on Iranian oil platforms 17 April, 1988. The U.S. Navy determined that these platforms were of little commercial worth; they were mainly used as command-and-control stations for Iranian-sponsored pirates. These pirates were suspected of attacking U.S., Kuwaiti, and Liberian commercial and military interests.

II. THE LAW

CHAPTER 1: APPLICABILITY OF THE 1955 TREATY OF AMITY, ECONOMIC RELATIONS, AND CONSULAR RIGHTS

12. Article XIII of the Treaty states, "Consular representatives of each High Contracting Party shall be permitted to reside in the territory of the other High Contracting Party...Consular officers and employees shall enjoy privileges and immunities accorded to officers and employees of their rank or status by general international usage and shall be permitted to exercise all functions of their rank or status by general international usage...in a manner no less favorable than other similar officers and employees of any third country." This clause was egregiously violated in 1979, and the International Court ruled that the Iranian Government was responsible.

13. The Iceland Fisheries case establishes the precedent that a material breach of a treaty such as this is valid ground for suspension or termination of a treaty. Following the embassy hostage situation, the treaty was de facto nullified by Iran. A formal declaration of termination was unnecessary as the actions of the Iranian Government made painfully clear.

14. Article IV(1) affirms that "each High Contracting Party shall at all times accord fair and equitable treatment to nationals and companies of the other High Contracting Party, and to their property and enterprises...." This deals

with the treatment by one Party of nationals and companies of the other Party that come within its territory for commercial or private purposes. That text cannot be read as a wholesale warranty by each Party to avoid all injury to the nationals and companies of the other Party, regardless of location of those nationals and companies.

15. Also, the word "commerce" in the title of the said Treaty does not refer to commerce *in general*, but rather to acts of purchase and sale *between the two High Contracting Parties*.

16. Furthermore, the Treaty aims to provide for the protection of the property and interests of American citizens and companies in the territory of the other Party (and vice versa) and to assure fair and nondiscriminatory treatment with respect to engaging in commercial, industrial, and financial activities in those countries, in return for like assurances for the nationals of those other parties in the territory of the United States. There is simply no relationship between these wholly commercial and consular provisions of the Treaty, and the allegations of unlawful uses of armed force.

17. Even with the broadest possible interpretation of the meaning of "commerce," there was no commerce in question here. The oil platforms were, in the U.S.' most sincere belief, militarized. The Treaty has no bearing on military ventures masquerading as commercial ones.

CHAPTER II: THE 1955 TREATY OF AMITY, ECONOMIC RELATIONS, AND CONSULAR RIGHTS

18. Article I of the treaty that provides for "firm and enduring peace and sincere friendship" merely expresses a general statement of aspiration that contains no standards. It corresponds to the common intention of the Parties and points to the circumstances in which the Treaty was concluded.

19. Iran reads far too much into Article I when it claims that this general statement of aspiration contains binding legal provisions. There are no standards for such a general statement.

20. Article X(2) dictates that "vessels under the flag of either High Contracting Party, and carrying the papers required by its law in proof of nationality, shall be deemed to be vessels of that High Contracting Party both on the high seas and within the ports, places, and waters of the other High Contracting Party." This Article indicates that the U.S.-flagged Kuwaiti *Sea Isle City* was to be treated as an American tanker by both Parties. Thus, the U.S. was justified in responding as if an American ship were attacked.

CHAPTER III: THE CONVENTION ON THE LAW OF THE SEA

21. Article 100 of the Convention on the Law of The Sea makes clear that "all states shall cooperate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any state." By attacking the pirates on the Iranian platforms, the U.S. was only fulfilling its obligations as per the Law of the Sea.

22. Article 91(1) states: "Every State shall fix the conditions for the grand of its nationality to ships...Ships have the nationality of the State under whose flag they are entitled to fly." Article 92(1) states: "Ships sail under the flag of one State only and. . .shall be subject to its exclusive jurisdiction on the high seas."

23. From these two Articles, it becomes clear that the flagging of the ship provides sole jurisdiction to the flagging nation. While it is indeed the duty of the flagging nation to ensure the safety of the ship, this nation also has the duty of ensuring safe passage of the individuals. By allying itself with the United States, Kuwait had merely chosen a way to ensure safe passage through its territorial waters. The response of the U.S. Navy in response to the *Sea Isle City* incident is a justified reaction as the U.S. was both protecting the rights of Kuwait to sail under American flags, and reacting as if the ship was its own—which is completely legal since it was a U.S. flagged ship.

CHAPTER IV: THE UNITED NATIONS CHARTER

24. The idea of peaceful resolution to a conflict is highly idealistic. Although nations should aspire to attain peaceful solutions, Article II of the UN Charter cannot be considered "law" in the same way the 1955 Treaty of Amity, Economic Relations, and Consular Rights might be considered "law." Article II has no clear standards for Parties' behavior. It is a general expression of hope for cooperation, but cannot be considered "binding" in the way a specific clause calling for action in a particular circumstance is "binding."

25. The U.S. did not violate Iran's territorial integrity. It merely conducted a measured response to Iranian aggression. This is common practice and cannot be considered a violation of sovereignty in the same way an extended military incursion into a nation is a violation of sovereignty.

PART III. SUBMISSIONS

In view of Parts I and II of the present Memorial, may it please the court to adjudge and declare:

26. The 1955 Treaty of Amity, Economic Relations, and Consular Rights is inapplicable to the Case at hand because the said Treaty addresses only commercial exchange between two nations, not military incidents such as those in question; and the treaty was effectively null at the time.

27. The United States acted in accordance with the said Treaty on both occasions of its Navy's firing on so-called oil platforms.

28. The United States is under no legal obligation to pay reparations to the Islamic Republic of Iran.

The Russian Federation v. The United Kingdom "Moon Nuclear Tests"

MEMORIAL SUBMITTED BY THE GOVERNMENT OF THE RUSSIAN FEDERATION

INTRODUCTION

1. This Memorial is submitted to the Court in pursuance of an Application submitted 20 August 2004 in accordance with Articles 38 and 40 of the Statute of the International Court of Justice.

2. This case is in regards to the testing of nuclear energy devices for peaceful purposes on the Moon.

PART I. FACTS AND HISTORY OF THE DISPUTE

3. Since 22 March 2003, the United Kingdom and the Russian Federation have maintained separate sites for peaceful scientific research on the Moon. The two research sites are approximately 6 miles apart.

4. The moon research stations are funded by their respective governments. On 5 January 2003, Russian and British officials exchanged information about the general nature of the research projects. It was known by both parties that the Russian scientists were conducting biophysical research and the British scientists were conducting energy and fuel efficiency research. It was not known by Russian officials that the British research project involved fissionable materials. By informal agreement, the two parties pledged to assist each other in the emergencies or during periods of technical difficulty and that Russian and British officials on Earth would remain in communication with each other during these times.

5. Indeed, Russian and British scientists aided each other in times of distress, satisfying the requirements of informal agreement, international law, and moral obligation. On 29 March 2003, an unmanned British supply vessel crashed into the main British sleeping quarters. British scientists informed Russian scientists of the difficulty, and communication was maintained among both countries' scientists on the Moon and officials on Earth. After the incident, Russian scientists shared their quarters with British scientists, and the former helped to repair the latter's damages.

6. On 9 February 2004, British medics provided emergency medical care to a Russian scientist who contracted botulism poisoning. In this instance, Russian scientists requested assistance from British scientists; communication was maintained among both parties' scientists on the Moon and officials on the Earth.

7. On 25 June 2004, a massive explosion rocked the British research station. The aftershocks of this explosion were felt in the ground of the Russian research site.

8. British scientists requested assistance, stating that 2 British scientists were killed and 4 more were injured. They also mentioned that the explosion involved radioactive materials. Furthermore, the British stated that they had contacted officials in London of the matter, but the immediate assistance of the Russian scientists was necessary.

9. This situation seemed highly unusual and dangerous to the Russian scientists. Upon communication with officials in Moscow, Russian scientists were advised to neither approach nor lend aid to the British scientists. After Russian scientists informed the British scientists of this order, there was no more communication over this matter between either parties' scientists or officials.

10. Since the use of fissionable material is generally prohibited in outer space, the Russian Government assumed that British scientists were involved in covert military research. This research, apparently under the guise of peaceful energy research, would be a flagrant violation of international law and a potential threat to Russian security. Moreover, if there was radioactive contamination as the British scientists claimed, Russian scientists could have faced a potential health risk. Guided by these legitimate fears, Russian officials refrained from contacting British officials until there was an official British explanation for the problem.

11. In an official announcement two weeks later, on 9 July 2004, British officials announced that 2 of the 4 injured scientists died. In total, 4 persons died and 2 persons suffered minor injuries. The British Government claimed that 2 of the 4 scientists who died could have been saved with the immediate assistance of Russian medics and scientists.

12. The British Government also admitted for the first time that the explosion was caused by the detonation of nuclear devices used for energy research, and the effects of it had been inadequately contained. They denied the rumor that the British were using the Moon to conduct tests of nuclear weapons.

13. The British Government censured Russian scientists for failing to assist British scientists during this emergency. Hence, the British government censured Russia for failing to assist British scientists in what appeared a violation of international law, a threat to Russian security, and a health risk to Russian scientists.

14. After intense negotiations, the British Government refused to cease its energy tests, and the Russian Government refused to compensate the British government for the deaths of two of its scientists. Hence, both parties agreed to take the case to the International Court of Justice.

Part II. THE LAW

CHAPTER I: THE RESPONSIBILITY OF THE BRITISH GOVERNMNENT FOR ITS RESEARCH ON THE MOON

15. According to Article VIII of the 1967 "Treaty on Principles Governing the Activities of State in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies" (Herein "Outer Space Treaty"),

"A State Party to the Treaty on whose registry an object launched into outer space is carried shall retain jurisdiction and control over such an object, and over any personnel thereof, while in outer space or on a celestial body."

16. Article VIII continues, "Ownership of objects launched into outer space, including objects landed or constructed on a celestial body, and of their component parts, is not affected by their presence in outer space…." According to this Article, the British Government bears responsibility for its scientists, research site, and research tests on the Moon. Thus, the British Government is accountable for its violations of international law in conducting nuclear tests.

17. Article IX stipulates that all parties, while studying on celestial bodies, shall "avoid their harmful contamination." By using fissionable materials and testing the explosion of nuclear fuels, the United Kingdom is clearly in violation of this Article. In fact, the accident of 25 June 2004, caused the very contamination this Article seeks to avoid.

18. Article XI also requires that states share, "to the greatest extent feasible and practicable…the nature, conduct, locations, and results" of their research activities. In its communications with the Russian Federation, the United Kingdom failed to mention that its energy tests involved fissionable materials. Although its discussion of its research was vague, this is a significant detail. Such a failure thus constitutes a violation of Article XI.

CHAPTER II: THE ILLEGALITY OF THE TESTING OF FISSIONABLE MATERIALS ON THE MOON

19. The 1963 "Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space, and Under Water" (herein NTBT) very clearly prohibits conducting nuclear explosions for any purpose in Outer Space. Article I(1) states (italics added):

"Each of the Parties to this Treaty undertakes to prohibit, to prevent, and not to carry out any nuclear weapon test explosion, *or any other nuclear explosion*, at any place under its jurisdiction or control…beyond its limits, including Outer Space…or in any other environment if such explosion causes radioactive debris to be present outside the territorial limits of the State under whose jurisdiction or control such explosion is conducted."

20. When they conducted test explosions on the Moon, even though they are for peaceful purposes, British officials violated the letter of the law. It is clear that the NTBT is aimed at preventing any type of nuclear explosion. The goal of such a prohibition is to prevent any type of radioactive decay from contaminating areas outside of a nation's borders. British nuclear tests on the Moon cause such contamination. The United Kingdom thus violates its obligations as stipulated by the NTBT by conducting its nuclear tests.

21. Article I(2) reaffirms the language of subsection 2 by again prohibiting "any nuclear weapon test explosion, or any other nuclear explosion." By using this language again, the NTBT indicates that all nuclear explosions are prohibited, and the treaty is not simply limited to banning nuclear weapons tests.

22. Although the United Kingdom many claim that other treaties allow its nuclear tests, the NTBT is the only treaty that *specifically* addresses nuclear tests in outer space. This is the most relevant treaty to this situation and hence must be at the center of the Court's judgment.

CHAPTER III: THE AGREEMENT ON THE RESCUE OF ASTRONAUTS, THE RETURN OF ASTRONAUTS, AND THE RETURN OF OBJECTS LAUNCED INTO OUTER SPACE (HEREIN ASTRONAUT RESCUE TREATY)

23. It is generally agreed upon that any national of a launching authority who is traveling to, is in, or is returning from outer space is considered an "astronaut." 24. According to the perambulatory clause of the Astronaut Rescue Treaty, the purpose of the said treaty is to provide "all possible assistance to astronauts in the event of accident, distress, or emergency landing…."

25. The context of this purpose is critical. Such an agreement is made only with respect to "international cooperation in the peaceful exploration and use of outer space." That is, the Astronaut Rescue Treaty is only applicable when considering peaceful research and exploration. The Russian Federation had good reason to believe that the United Kingdom's so-called research programme was aimed at promoting neither peace nor cooperation. Hence, the provisions of the Astronaut Rescue Treaty cannot be applicable to this case. If, after the explosion, British authorities had made clear that the situation involved peaceful research, or if the British had made such indication prior to the event, the Russian government would gladly have helped the British astronauts as it had before. Instead, it appeared that the British were involved in military research that could directly threaten Russia's security.

26. Moreover, the use of fissionable materials in outer space is prohibited by the NTBT. The United Kingdom was violating international law when it conducted nuclear explosions. It would be unreasonable for the United Kingdom to hold the Russian Federation to international law while the United Kingdom itself is violating its own treaty obligations.

PART III: SUBMISSIONS

In light of Parts I and II of the present Memorial, may it please the court to adjudge and declare:

27. The United Kingdom must cease all tests on the Moon involving fissionable materials because such tests are a violation of the NTBT and the Outer Space Treaty.

28. The United Kingdom must cease all its research activities on the Moon until suitable inspection may be made to ensure that no fissionable material is involved.

29. The Russian Federation bears no legal or financial responsibility for the deaths or injuries of any of the 4 astronauts injured after the explosion on 25 June 2004.

MEMORIAL SUBMITTED BY THE UNITED KINGDOM

INTRODUCTION

1. This Memorial is submitted to the Court in response to the Application of the Russian Federation.

2. This case is not about the legality of British nuclear tests, as they are for entirely peaceful purposes.

3. This is a case regarding the responsibility of the Russian Federation for lending assistance to distressed astronauts as international law stipulates.

PART I: FACTS AND HISTORY OF THE DISPUTE

4. The acceleration due to gravity of a freely falling body due on Earth is 9.8 meters per squared second. The gravitation constant on the Moon is approximately one sixth of this value, or 1.62 meters per squared second. The effect of this difference on the efficiency of nuclear explosions when used for energy purposes has not been tested adequately on Earth.

5. This question, among others involving both fissionable and non-fissionable fuels, was the subject of study on the British moon research site.

6. Since these questions were of tremendous commercial importance, the British Government aimed to present only *completed* research findings once they had been published in appropriate scholarly journals. To protect both the tremendous commercial and intellectual property value of these experiments, the British Government decided to wait until findings were complete before formally announcing details of such studies.

7. Similarly, the Russian Government spoke only in general terms about its biophysical research. The extent and possible medical applications of such research is still unknown outside of the Russian Federation.

8. The British scientists' tests themselves involved small-scale explosions of different types of nuclear fuel to test efficiency. These explosions were carried out in appropriate vessels; adequate safeguards were in place to prevent contamination of persons or of the Moon.

9. On 25 June 2004, an explosion exceeded projected efficiency estimates and thus the protective strength of the reaction vessels. As a result, an uncontained explosion occurred, killing 2 British astronauts and wounding 4 others.

10. During the two incidents of astronaut distress prior to 25 June 2004, the British scientists requested help from the Russian scientists who then asked their home government for permission. The Russian government then contacted the British launching authority to discuss the situation. On 25 March 2003, this chain of events occurred. A similar chain of events happened on 9 February 2004.

11. On 25 June 2004, Russian officials did not contact British officials. Distracted by the serious nature of events, and fearing negative public response, the British Government chose to ignore the insult and respond to the situation itself. British experts advised the astronauts on appropriate medical care and decontamination procedures.

12. British astronauts had contacted Russian astronauts and had requested assistance. The former warned the latter that there was a small risk of nuclear contamination, but also informed the latter of appropriate safety measures.

13. British physicians have reviewed the situation and believe that Russian medical assistance could have saved the lives of the 2 astronauts who died (of the 4 who were injured). The Russian government is responsible for neglecting these persons and not preventing their deaths. It was negligent because it neither attempted to lend aid to the distressed astronauts, nor to contact the British Government, or British launching authority.

PART II. THE LAW

CHAPTER I: THE RESPONSIBILITY OF THE RUSSIAN GOVERNMENT TO ASSIST DISTRESSED ASTRONAUTS

14. The Outer Space Treaty represents the foundation of the Astronaut Rescue Treaty. Article V of the Outer Space Treaty states, "In carrying on activities in outer space and on celestial bodies, the astronauts of one State Party shall render all possible assistance to the astronauts of other States Parties." Although the Russian Government and the British Government had fulfilled this obligation in the two incidents prior to 25 June 2004, the Russian Government chose to ignore its responsibilities on 25 June 2004. The explosions indeed represented an "event of accident [and] distress," but no help came.

15. The said Article also states, "States Parties to the Treaty…shall render to [astronauts] all possible assistance in the event of accident, distress, or emergency landing…." The Russian Government clearly neglected this obligation when it ignored British astronauts' calls for help.

15. Similarly, Article 1 of the Astronaut Rescue Treaty stipulates that a Contracting Party must "notify the launching authority" of any "conditions of distress…in any place not under the jurisdiction of any State." The Moon constitutes such a place, and it was the responsibility of Russian officials to contact British officials.

16. Article 3 also stipulates that "those Contracting Parties which are in a position to do so shall, if necessary, extend assistance in search and rescue operations" to distressed astronauts. Again, the Russian Federation violated this requirement.

17. If, as it claims, the Russian Federation was worried about a danger or threat posed by British tests in light of the explosion, Article 5(4) of the Astronaut Rescue Treaty states

"A Contracting Party which has reason to believe that a space object…discovered in territory under its jurisdiction or recovered by it elsewhere, is of a hazard or deleterious nature may so notify the launching authority, which shall immediately take steps, under the direction and control of the said Contracting Party, to eliminate possible danger of harm."

It is reasonable to interpret this Article in light of any perceived threat in outer space. Russian officials feared that British research operations were "hazardous or deleterious," and it had the right to contact British officials. Russian officials did not have the right to claim that they had no legal obligations as a result of the incident. This Article indicates again that Russian officials should have contacted British officials rather than remained aloof during the events of 25 June 2004.

CHAPTER II: LEGALITY OF BRITISH NUCLEAR ENERGY TESTS WITH RESPECT TO THE NTBT

18. The NTBT prohibits explosions by any Party to the treaty "at any place under its jurisdiction or control."

19. No place on the Moon can possibly be under the "jurisdiction or control" of the British Government. Article II of the Outer Space Treaty is clear regarding this matter: "Outer space, including the moon and other celestial bodies, is not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means." The area of the Moon in which British researchers were conducting tests does not meet the NTBT's standards for a "place under [Britain's] jurisdiction or control." Instead, no State has jurisdiction or control over any part of the Moon or any other celestial body. The Outer Space Treaty only stipulates responsibility for "objects" in Article VIII, but the NTBT clearly is concerned only with "places." Therefore, the NTBT is inapplicable to this conflict.

CHAPTER III: LEGALITY OF BRITISH NUCLEAR ENERGY TESTS WITH RESPECT TO THE TREATY ON THE NON-PROLIFERATION OF NUCLEAR WEAPONS (NPT)

20. The NPT came into force 5 March 1970. The NTBT came into force 10 October 1963. The NPT therefore came into force later than the NTBT. According to Article 30 the Vienna Convention on the Law of Treaties, "When all parties to the earlier treaty are parties also to the later treaty but the earlier treaty is not terminated or suspended…the earlier treaty applies only to the extent that its provisions are compatible with those of the later treaty." That is, when two treaties regarding the same issue conflict, the stipulations of the later treaty take precedence over those of the earlier treaty. This means that the NPT carries more weight than the NTBT.

21. Article IV(1) of the NPT indicates "nothing in this Treaty shall be interpreted as affecting the *inalienable right* of all the Parties to develop research, production, and use of nuclear energy for peaceful purposes…" (italics added). It is clear that The United Kingdom has an inalienable right to conduct nuclear energy tests, and no State or international body can deprive the United Kingdom of that right.

22. Furthermore, Article IV(2) also indicates that "parties to the Treaty in a position to do so shall also co-operate in contributing alone or together with other States or international organizations to the further development of the applications of nuclear energy for peaceful purposes…." It seems, then, that the United Kingdom has more than a right to conduct nuclear energy tests—it has an obligation to do so for the betterment of mankind.

23. In light of the NPT, which takes precedence over the NTBT because both address nuclear explosions, the United Kingdom is justified in conducting nuclear fuel tests for peaceful purposes on the Moon.

PART III. SUBMISSIONS

In view of Parts I and II of the present Memorial, may it please the court to adjudge and declare:

24. British nuclear fuel tests for peaceful purposes on the Moon are justified and in accordance with international law.

25. The Russian Federation violated its international obligations by denying assistance to British astronauts in distress on 25 June 2004.

26. For its negligence, the Russian Federation owes compensation to the British Government for the deaths of two British nationals whose lives could have been saved with Russian assistance.