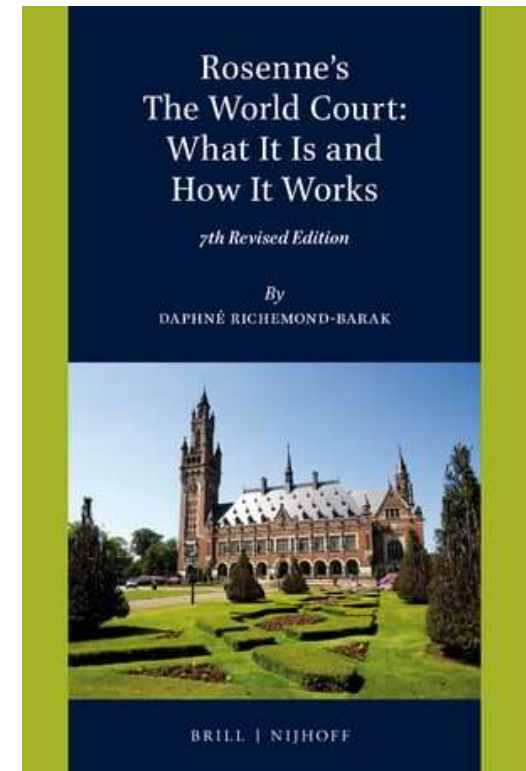



The Peaceful Settlement of International Disputes



Dr. Daphné Richemond-Barak

**Joint Program Postgraduate Diploma on Peaceful Coexistence:
Reinforcing Peace, Human Rights, and Development**





WHY THE PEACEFUL SETTLEMENT OF DISPUTES MATTERS

Introduction: the obligation to settle disputes peacefully

“All members shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered.”

Article 2(3) of the UN Charter

Introduction: Principle of free choice of means

“The parties to any dispute , the continuance of which is likely to endanger the maintenance of international peace and security shall, first of all, seek a solution by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.”

Article 33(1) of the UN Charter

“International disputes shall be settled on the basis of sovereign equality of states and in accordance with the principle of the free choice of means.”

Manilla Declaration on the Peaceful Settlement of International Disputes (UN GA, 1982)

Introduction: Two types of dispute settlement mechanisms

1. Diplomatic

2. Judicial

Judicial means of dispute settlement

- Arbitration
- International Court of Justice

(i) Arbitration

Advantages

- Process is quicker
- More discreet
- Can involve non-state entities (such as companies)

Disadvantages

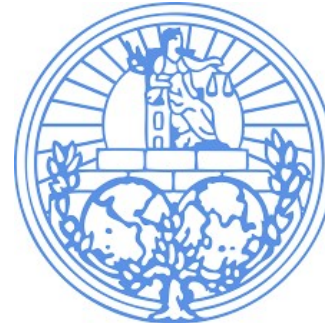
- All costs are incurred by the parties
- Choice of arbitrators can be difficult and further antagonize the parties

(i) Arbitration – Taba (1988)

- **Competence:** Egypt/Israel Peace Treaty (1979)
- **Composition:** 4+1
- **Arbitral award:** Binding!



(ii) The International Court of Justice (ICJ)



- Historical background – PCIJ; Article 37 of Statute
- Sits in The Hague, Netherlands
- Settles disputes among states; also has advisory jurisdiction
- Judgments are binding; no appeal
- Composition: 14 judges and a President
- Principle of consent

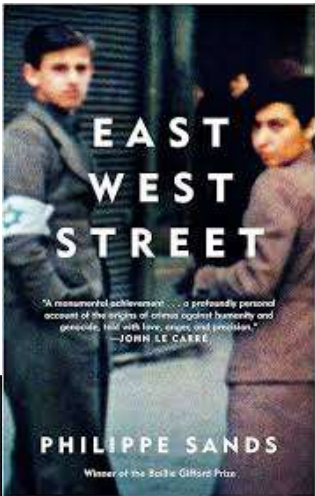
(ii) ICJ: Conferring contentious jurisdiction

- When the parties agreed to have any disputes settled by the ICJ **ahead of time**
 - In a treaty (ex: Genocide Convention)
 - In a declaration; often accompanied by certain conditions (in application of Article 36(2) – in an optional clause declaration – see examples)
- When the parties agree to have **this particular dispute** settled by the ICJ (on a one-time, *ad hoc*, basis)

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

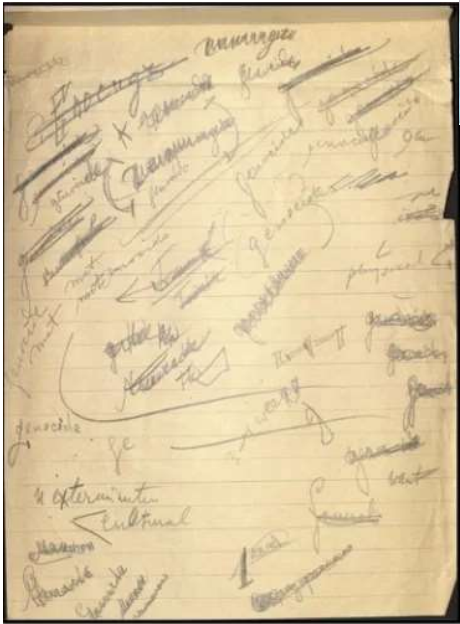
The purpose of this operation is to protect people who, for eight years now, have been facing humiliation and genocide perpetrated by the Kiev regime.

Vladimir Putin, February 2022



Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.

Article IX of the Genocide Convention (1948)



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

The Russian Federation **claims that acts of genocide have occurred** in the Luhansk and Donetsk oblasts of Ukraine, and has undertaken military and other actions against Ukraine...

Ukraine emphatically denies that any such genocide has occurred, and that the Russian Federation has any lawful basis to take action in and against Ukraine for the purpose of preventing and punishing genocide under Article I of the Convention.

A dispute has therefore arisen relating to **the interpretation and application of the Genocide Convention**, as Ukraine and Russia hold opposite views on whether genocide has been committed in Ukraine, and **whether Article I of the Convention provides a basis for Russia to use military force against Ukraine to “prevent and to punish” this alleged genocide.**

Accordingly, pursuant to Article 36 (1) of the Court’s Statute and **Article IX of the Genocide Convention**, the Court has jurisdiction to hear the claims submitted in the present Application by Ukraine against the Russian Federation.

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

More than 30 state interventions in the case



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

The French Republic files a declaration of intervention in the proceedings under Article 63 of the Statute

THE HAGUE, 14 September 2022. Yesterday, the French Republic, invoking Article 63 of the Statute of the Court, filed in the Registry of the Court a declaration of intervention in the case concerning *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*.

Pursuant to Article 63 of the Statute, whenever the construction of a convention to which States other than those concerned in the case are parties is in question, each of these States has the right to intervene in the proceedings. In this case, the construction given by the judgment of the Court will be equally binding upon them.

Article 63

1. Whenever the construction of a convention to which states other than those concerned in the case are parties is in question, the Registrar shall notify all such states forthwith.
2. Every state so notified has the right to intervene in the proceedings; but if it uses this right, the construction given by the judgment will be equally binding upon it.

1



2



The ICJ's Second Hat: Advisory Jurisdiction

- Legal advice given to a UN body

“The **General Assembly** or the **Security Council** may request the International Court of Justice to give an advisory opinion on any legal question.

Other organs of the United Nations and **specialized agencies**, which may at any time be so authorized by the General Assembly, may also request advisory opinions of the Court on legal questions arising within the scope of their activities.”

Article 96 of the UN Charter

- The ICJ is not obligated to give an advisory opinion

“The Court **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.”

Article 65 of the ICJ Statute



Legal advice
NOT
The resolution of
disputes

Advisory Opinion: *Obligations of States in respect of Climate Change*

Request for an ICJ Advisory Opinion on Climate Change (2023)

(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?"



Advisory Opinion: *Obligations of States in respect of Climate Change*

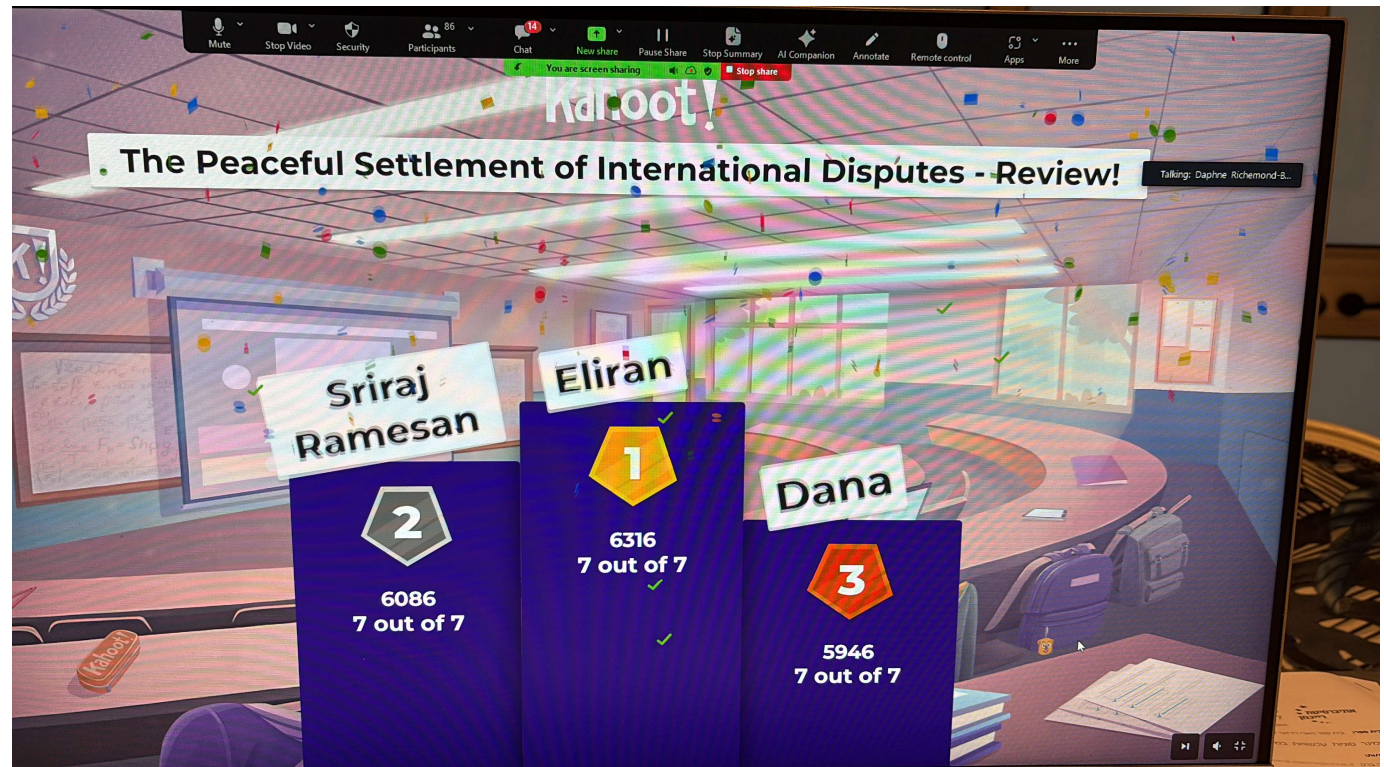
Obligations of States in Respect of Climate Change ICJ Advisory Opinion (2025)

- Climate change is an ‘**urgent and existential**’ threat
- States have a duty to prevent significant harm to the climate system by exercising **due diligence** and using all means at their disposal to prevent activities carried out within their jurisdiction or control from causing said harm, whether to other States, to present and future generations, or to areas beyond national jurisdiction
- Breaches of ‘any of the obligations’ identified could potentially constitute an internationally wrongful act, thereby potentially engaging the **international responsibility** of the state concerned
- Obligation to prevent significant transboundary harm are owed **erga omnes**
- **Cooperation** as a legal obligation, including in the context of sea-level rise



The Peaceful Settlement of International Disputes

Let's see how well you're doing!



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Summary

- ✓ **Obligation to settle disputes peacefully; free choice of means**
- ✓ **Two types of judicial mechanisms for the peaceful settlement of international disputes: arbitration & ICJ**
- ✓ **Two types of competence of the ICJ: contentious & advisory**
- ✓ **Conferring competence to the ICJ – only via consent**
- ✓ **Assessment of the role of the ICJ**
- ✓ **Looking ahead:** Should peaceful settlement evolve to include non-State actors, environmental obligations, judicial review? Should states *not* affected be entitled to bring action before the ICJ?