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2016 PHILIP C. JESSUP INTERNATIONAL LAW MOOT COURT COMPETITION

One of the most famous and the largest "moot" competition in the world is the Philip C. Jessup International Law Moot Court Competition. Every year, students from more than 700 universities in almost 90 countries all over the world participate in the contest. The competition is a simulation of a hypothetical dispute between two fictional states before the International Court of Justice (hereinafter: ICJ). It requires the teams to prepare memoranda (written part) and then to take part in mock court proceedings (oral part) before a panel of three judges chosen from among international advocates, professors, members of doctrine or actual judges. Each team comprises of two to five members arguing for both the applicant and the respondent in the case. The competition is conducted in English, so fluent knowledge of that language is essential.

Most countries hold regional rounds to select the best team, which then represents it at the World Finals in Washington D.C. The Polish national rounds of the 57th edition took place on 10–12 February 2016 at the Supreme Court in Warsaw. The University of Silesia also participated in the contest, with a team made up of five ambitious and determined students: Dominika Iwan, Anna Muś, Kamil Plewnia, Aneta Chorągwicka and Magdalena Serocka, who prepared themselves under the supervision of Dr Ilona Topa.

The parties to the 2016 dispute were two neighbouring states: Amestonia and the Federal Republic of Riesland. They cooperated in many areas and cooperation in cultural relations was based on the 1992 Broadcasting Treaty. In 2013 and 2014, the activity of eco-terrorist groups was observed. In 2014, several terrorist attacks were successfully undertaken on the territories of both Amestonia and Riesland. Further attacks were prevented only thanks to intelligence delivered by the Rieslandic Secret Surveillance Bureau. However, in December 2014, Frederico Frost, a former employee of the Bureau revealed some top secret documents to the public. They revealed the existence of the "Verismo Programme" – the operation of remote information gathering, and the "Carmen Programme" – surveillance activities conducted through the Voice of Riesland TV station (established under the 1992 Treaty in order to promote cultural

relations). Both programmes could be attributed to Riesland. After the disclosure of this information, the VoR station was seized and its Head was arrested. In addition, the founder of the Amestonian Green Party was detained under the suspicion of terrorism after giving a speech in Riesland. His case is pending before the National Security Tribunal of Riesland and there have been no charges presented to him, although he has already been kept in captivity for 330 days. The evidence against him is closed materials. In March 2015, there were some computer attacks on the newspaper and law firm computers in Amestonia. It was established that they were conducted from the Rieslandic governmental computer infrastructure.

As can be noted after this short presentation of the facts of the case, it involves several challenging questions of current international law: state-sponsored information gathering (or espionage), cyber- attacks, the detention of suspected terrorists and some other important but difficult issues. One of the most interesting problems that had to be dealt with by the Jessup teams was the admissibility of evidence before the ICJ. It must be remembered that the ICJ Statute[1] contains scarce regulations relating to evidence and its admissibility. Some light on this matter is shed by Article 62 of the Rules of the Court[2], stipulating that the evidence must be "necessary for the elucidation of any aspect of the matters in issue". However, the question is whether documents without established authenticity and reliability can help to clarify the facts. Furthermore, the problem of whether they were obtained illicitly is of relevance, given the wording of Article 2(3) of the United Nations Charter, which sets out[3] that "[States – A.M.] settle […] disputes […] in such a manner that international peace and security, and justice, are not endangered". Here the question arises whether the fruit of a poisonous tree can indeed be in accordance with sense of justice? International law does not give straightforward answers to these questions and for the Jessup participants to find proper and convincing argumentation was not an easy task. But this was not the only challenging issue, the other was the (il)legality under international law of conducting mass surveillance programmes in cyberspace. Drawing the line between cyber-espionage and computer network exploitation is an extremely difficult task[4], and finding a clear-cut answer is hard if not impossible in the present-day stage of the development of international law. It is enough to say that espionage itself is not inconsistent with international law, which allows for effortlessly reaching antithetical conclusions. On the one hand there is a clear rule: if something is not prohibited it is allowed, on the other – one can look for some contradictions of espionage activities with fundamental principles of international law, e.g. the principle of non-intervention into internal affairs of states as established in Article 2(7) of the UN Charter, and expanded on in the UN General Assembly resolutions. Also, one should consider whether the cyber-attacks could violate Article 2(4) of the UN Charter, setting out a prohibition of the use of force. However, the term 'force' is generally understood by the Court[5] accordingly with its well-established definition as

[1] Statute of the International Court of Justice, 33 U.N.T.S. 993.

[2] Rules of the Court adopted on 14 April 1978, 17 ILM 1286.

[3] Charter of the United Nations, 24 October 1945, 1 U.N.T.S XVI.

[4] M.N. Schmitt (ed.), *Tallinn Manual on the International Law Applicable to Cyber Warfare*, 2013; M. Gervais: *Cyber Attacks and the Laws of War*, "Berkeley Journal of International Law" 2012, No. 30, issue 2.

[5] *Armed Activities on the Territory of the Congo* (Democratic Republic of the Congo v. Uganda), I.C.J. Reports 2005, p. 146.

an attack undertaken in tangible reality, kinetic and conducted by means of warfare. And only a progressive interpretation of international law can lead to another, more accurate to the contemporary times, conclusion. The last issue worth mentioning, as discussed by the Jessup's participants, is the question of provisional measures. These can be ordered by the Court pursuant to Article 41(1) of the ICJ Statute, but more precise premises can be found in the ICJ jurisprudence[6]. This issue is of particular interest also because of the increasingly extensive use of provisional measures in the practice of the Court in recent times[7].

Taking part in the Jessup Moot Court Competition is an excellent avenue to gain practical training in various issues of international law. It perfectly complements theoretical knowledge in a range of diverse areas of international law. It is highly recommended for all students seeking a career in litigation, not necessarily just internationally, but also on a domestic plane.

[6] *Fisheries Jurisdiction case* (Federal Republic of Germany v. Iceland), I.C.J. Reports 1972, para. 21. See also: B. Kempen, Z. He, *The Practice of ICJ on Provisional Measures: The Recent Development,* "Zeitschrift für ausländisches öffentliches Recht und Völkerrecht" 2009, issue 69.

[7] See e.g. *La Grand Case* (Germany v. United States of America*)*, I.C.J. Reports 2001; *Avena and Other Mexican Nationals (*Mexico v. United States of America), I.C.J. Reports 2004, *Gabčíkovo-Nagymaros Project* (Hungary v. Slovakia), I.C.J. Reports 1997.