International Court of Justice – Background Guide

Oakridge MUN 2022

The International Court of Justice, located at The Hague, was founded in 1946 and is an integral part of the UN Organization. Its foundational documents are the 1945 Charter of the United Nations and Statute of the Court, the 1978 Rules of Court, and 2002 Practice Directions. While these are important and participants should be aware of how the Rules determine the composition of the Court, we will be primarily relying on a combination of American and English procedure for familiarity.

The size of the court will vary, although there are fixed roles. The court will include three officers: President, Deputy President, and Registrar. The President and Deputy will supervise and direct the work of the court. The Registrar is responsible for the evidence, swearing in witnesses, maintains minutes, and other duties the President may delegate. Officers also exercise powers as judges. Two teams of two advocates each represent the concerned states in the contentious case (Croatia v. Serbia). Typically, around twelve or thirteen judges make up the remainder of the court. They hear the case, ask relevant questions, deliberate in committee sessions, and write the verdict/opinions.

As previously mentioned, the Court hears a contentious case between State Parties. Depending on time constraints, the Court may also organize an advisory opinion on an unresolved topic of international legal significance and general interest, for example, discussing the legal status of a recent newsworthy event.

ROLES WITHIN THE ICJ

The Court is composed of 15 Judges and representatives of both the Applicant and the Respondent. Judges in the ICJ have the task to listen to the presentation of both parties. They have to remain neutral until the end of the public proceedings. They are allowed to ask questions to both parties, but they cannot investigate themselves. Ultimately, the judges “just” have to answer the questions the Applicant asked in the application. Having listened to the arguments presented and the evidence submitted, they determine what the law says by applying international law to the case at hand. It is important to note that the ICJ does not have the power to create law – it will, however, determine what the law says.

The Counsel for the Applicant presents the legal views of the country that brought the case to the Court. Consequently, the representatives for the Respondent present the views of the state that has been accused of the

wrongdoing. If you want to find out more about the roles and what you can do to prepare for them, continue with the next section.

Justices

The role of a Justice is much different from the traditional role as an MUN delegate, and significantly distinct from that of an Advocate. As a Justice, you have several responsibilities. All 15 ICJ Justices are responsible for reading the briefs and hearing arguments on each of the 3 cases. You will then deliberate to analyze and discuss the cases and arguments in order to determine the appropriate applications of international law in each case. Justices are also responsible for writing opinions for each case. Preparation for this role is very important. Please familiarize yourself with the relevant law surrounding each case. Coming to a conference with a strong working knowledge of each case is a key element to a successful and rewarding simulation. A well-prepared Justice is well versed in the laws surrounding each case, familiar with ICJ procedures, and able to write a legal opinion.

Despite your formal membership in a delegation to the conference, your responsibilities
and the approach will be very different. Unlike the ICJ at The Hague, to which Justices are elected with regard to Member States' legal traditions, Judges will not represent a country, organization, or delegation. Unlike a delegate in other committees, Judges should not view their work as compromise or negotiation, and instead must follow uniform general principles of law whose rules cannot be bent to satisfy "both sides".

The question of the fact/law relationship must be clarified here. Like many legal principles, it is very conceptual. When there is a jury (there is none in the ICJ), all issues or questions of fact are determined by the jury. All issues or questions of law are
determined by the judge(s). When there is no jury, as in the case of the ICJ, the judges
take on both roles as "finders of fact" and "triers of law".

For example, what evidence is admissible (documents, tangible evidence or testimony) is a question of law. The advocates present evidence to the judges. When an advocate objects to the attempted presentation of certain evidence, i.e., "I object, your honor, Hearsay," usually, the advocate is objecting to the

admissibility of the evidence. If the objection is sustained, the judge(s) agree with the advocate making the objection, and the statement, document, etc. cannot be heard/seen, or "admitted into evidence". If the objection is overruled, the judges refuse the objection, and the statement, document, etc., can be heard/seen or considered as evidence by the "finders of fact" (again, in our case, the judges themselves). In some jurisdictions, the legal issues, determined by the judges, are presented to the jury at the end of a case in the form of written instructions, which the jury must consider. Also, the degree to which the evidence can be considered is often discussed in jury instructions, and it is referred to as the "weight" given to the evidence, sometimes a lot, sometimes only in relation to other factors and, therefore, just a little. Since, as stated above, there is no jury in the ICJ, the judges are the triers of law and the finders of fact, the arbiters of both roles. Note that in our circumstances, the president or co-presidents will rule on objections, although the other judges should be consulted on complex matters. Presidents, sitting as judges, have the last word in all rulings.

1. Judges should be addressed as "Judge (surname)" or "Your Honor".

2. Judges must take copious notes of the proceedings, including procedural details. While the Registrar will record minutes, the Court should not rely on them alone, and no judge will simply remember everything that is presented. a. Judges should make note of questions they wish to ask during the designated periods, and of issues crucial to the case (these will be listed for consideration during judges' deliberations).

3. Judges can, and should, read all materials sent to them by the ICJ program. They are also allowed to read the original proceedings on www.icj-cij.org, but they are not considered evidence. Ordinarily, judges should not attempt to substitute themselves for advocates and conduct extensive investigations. However, to properly inform your work before the conference, judges are encouraged to do some independent reading on the context of the case issues and imagine what questions will arise. a. At the same time, judges must remain as objective as possible and NOT pre-judge the case. Both sides must formally introduce their evidence and present their cases before any proper determination can be made. b. Judges cannot (practically and in principle) discuss

issues with the advocates until the conference, nor should they speak to any witnesses, etc.

4. Judges should not discuss/debate the case with other judges until the deliberation phase of the trial.

5. Judges are required to speak, even for procedural issues, loudly and clearly enough that all present may hear them.

Advocates

The role of an Advocate is a very stimulating role at Conference. Your Advocate role is in addition to your Committee/Council assignment with the privilege of representing your country by arguing a case before the ICJ. Preparing for this role can be time consuming, as it not only involves dedicated research and writing, but it also requires an oral presentation before the Court. Appropriate preparation is essential to a rewarding and successful simulation of the ICJ. It is important that all Advocates properly prepare and submit Memorials on time. In addition, please use the lead up time to Conference wisely by drafting and practicing your Oral Arguments. The Justices will be reading your Memorials for your country's position; however, your presentation during your Oral Argument is also a key part of the Justice's decisions. Please come to the Conference having turned in your Memorial on time, and ready to argue your case before the Court.

As discussed during the hiring procedures, there are several documents which must be submitted during pre-conference preparation. There are also responsibilities left to advocates' discretion as a pair. We must also discuss the rules and principles to follow during this whole process and the conference specifically.

First, the statements of advocates are not evidence. They present evidence to the Court in the form of tangible items (stipulations, other documents, images, etc.) and statements elicited from witnesses. These are the only evidence the Court may consider. This does not mean that advocates misrepresent the evidence or otherwise lie to judges. The work of advocates should be interpreted as a form of biased teaching, paid for by a State Party, to persuade skeptical judges of their position.

Second, ICJ cases are civil, not criminal, matters. In most circumstances, the two general issues are liability (responsibility) and damages (if any). The Moving Party, or Applicant, has the ultimate burden of proof. It is neither Beyond a Reasonable Doubt (since ours are not criminal cases) nor Clear and Convincing (as in administrative hearings). The burden of proof is Preponderance of the Evidence, which is the lowest burden possible. This means that the Applicant must persuade a simple majority of the judges that its position carries its weight or is persuasive by at least a majority, or 50% plus one.

The same applies to each piece of evidence presented by each side. Regardless of which side is requesting its admissibility, the question can be asked about an individual piece of evidence: “Is it persuasive by 50.1%”? Then the totality of evidence is “weighed” in the same manner at the end of the case. Of course, some evidence is given more weight or credence than others, but a “preponderance of the evidence” is the burden to be met. If at the end, the Applicant has met its burden, it is successful, if not, it is unsuccessful. This explanation might not be totally clear in writing, particularly without examples, but during the conference the principle will be fairly self-evident. ---

Research and planning are primarily the responsibility of the advocates themselves. Advocates should set their own meeting times, ideally weekly, when tasks and strategy may be discussed. Officers and members of the Secretariat are not expected to necessarily monitor or direct each team’s work. However, officers will take any specific questions during pre-conference preparation, make time to meet with advocates together and separately, and provide guidance on documents, witnesses, procedure, etc.

First, one set of Stipulations will be submitted by both sets of advocates. Stipulations are significant facts of the case that are agreed to by the parties, and, therefore, do not need to be proven or disputed. It is crucial that opposing counsel discuss those relevant issues of fact and of law to which an agreement can be reached before the case is presented. Once agreed by both parties, these stipulated facts become real evidence, which will save all participants vast amounts of time. Immediately following the presentation of the Opening Argument by the Applicant, the President of the Court will ask for Stipulations, which should be in writing and, of course, agreed to by both sides. If not, they are not stipulations. The single form should state: “The parties stipulate that: (1)..., (2)..., etc.”. Again, stipulations are evidence to be considered by the judges

and should be agreed to by the advocates before work begins on their Memoranda.

Following their research and finalizing Stipulations, each pair of advocates will prepare a short written Memorandum of Points and Authorities, or Memorandum, for the Court by a date selected by the President. The Memorandum should be a party's view of the pertinent facts and legal principles/points of law as espoused by its advocates. It need not give away trial strategies; however, it should present a statement of jurisdiction, facts, law, a succinct presentation of the arguments to be applied, and a "prayer for relief," or a statement of what advocates want the court to find/do. Arguments may contradict points that are anticipated raised by the opposing party. Memoranda are short and should be written in plain language. A length of approximately 3 single spaced pages with citations is recommended.

> A word on the kitchen sink approach (or not): Experts may disagree, but there is one principle that seems to repeat itself over and over again. Think about it and decide if it is right for you and for your case. If you are the moving party/Applicant, be specific in what you want and how you present it. Clear and concise are the best principles; stay focused and do not allow the other side to get you muddled. If you are the responding party/Respondent, throw in everything you can, like pots and pans in a kitchen sink. Muddy the waters, confuse the issues, prevent the moving party from being clear, concise, and focused. Of course, each of these two tactics demands appropriate behavior and proper legal presentation.

At the same time as each set of advocates has completed their Memorandum, they must submit a list of their real evidence to the Court. This is the body of the case. The Evidence List should simply show the title, author/publisher, and date of the document(s) being submitted, any passages/sections being specifically highlighted, and, if found online, a link to the source for convenience. The list may include news reports, images (i.e. maps, aerial photographs), academic writing, treaties (conventions, bilateral agreements), government documents, ICJ case law, and so on. Fifteen (15) pieces of real/tangible evidence is the maximum submitted by each party. The judges cannot take in more than this number in such a short deliberation period.

Each set of advocates should also expect to name a Witness List, simply informing the officers of who they intend to call as their TWO witnesses. They must be "real", that is, they are named as representatives of a delegation/commission/organizational role and be used in that capacity, for instance, a representative of the Federal Republic of Germany or the International Committee of the Red Cross. Many years ago, one set of advocates selected someone from their delegation to act as a Serbian general, which was not their role or position at the conference. This raises obvious problems of truthfulness and representation of real personalities. So, the ICJ will only hear from witnesses that might plausibly appear in the actual business of the United Nations.

Contact information for the witnesses will then be communicated to each set of advocates. The officers are responsible for sharing background information on the case and roles with them, but throughout the months leading up to the conference (January and February), each team should expect to shift the purpose of their meetings to include preparing witnesses on their role, direct examination questions, and anticipating the opponents' cross-examination, etc. Again, advocates must expect to be accountable for the "quality" of preparation and ultimately their presentation during the trial.

Finally, it is often not the brightest advocate who "wins" a case, but the one who is the best prepared. Said another way, a thoroughly prepared advocate never really "loses" a case. Advocates: do not take a verdict personally. If you did your best, that is all a client can expect. Of course, you cannot be successful in every case!

1. Advocates should be addressed as "Counsel", as in "Counsel for (Country)".

2. Advocates are expected to act professionally. In addition to following general rules set forth above and those of the conference in general, they must not take anything personally and should never try to hit other participants below the belt.

3. Advocates must stand when speaking in the courtroom, to ensure their remarks are audible.

4. Before the conference, any changes to availability such as travel or illness should be properly communicated to co-counsel and the officers.

Sample Documents

Sample memorial
Sample opinion

RULES OF PROCEDURE FOR THE ICJ

While different conferences will use different rules of procedure, they will have a common denominator. Usually, proceedings start with the Chairs (often called President and Vice-President in the ICJ) opening proceedings and calling the Applicant to present their case. As we have learned already, there are different roles participants of a MUN ICJ can partake in. The Applicant in this scenario refers to the Counsel (i.e. the legal representation) of the state that brought the case in the first place. Delegates can apply for this position, and it is usually filled by two or three people who work in a team. They have to argue why their state is in the right and give a legal reason for it.

The respondent, that is to say, the legal representative of the state that has been accused of a breach of international law needs to argue why their actions indeed have not been a violation of international law. Similarly to the Applicant, they need to find legal precedent and legal sources to support their arguments.

Both parties will usually have the opportunity to submit evidence – either in written form, such as treaties, correspondence, or advice given by legal experts or they can choose to call witnesses. Bear in mind, however, that the ICJ is NOT a criminal court, witnesses are not supposed to give an account of what happened as much as give expert, specialized advice. Witnesses are, therefore, not necessarily helpful. Again, it will depend mainly on how the presidency of your ICJ wants to run their committee. Often, they prepare an evidence pack beforehand – sometimes they might provide a list from which both Counsel teams can choose.

Opening Statement

The Applicant delivers their opening statement, which can last from 15 to 45 minutes depending on the local rules of procedure. Either during or after (or both) judges are invited to ask questions. Opening statements of both parties usually include a statement of facts, an account of what happened according to their position, and most importantly, legal arguments as to why they are in the right. The opening statement sums up their position and will already reference what they will later on argue. It is, however, only supposed to be a taster – the statement is not supposed to dive into detailed legal arguments yet. The Council will want to mention the evidence they want to present and why that is significant or introduce the witnesses they want to call. After the Applicant has finished and answered all the questions, the Respondent has the chance to deliver their opening statement. This should take the same amount of time.

The purpose of an Opening Statement is to tell the Court what you intend to show/prove by the presentation of your case. It is best to say, “We intend to show…” or “We intend to prove…” etc. Never make assertions or promises to the judges that you cannot keep. The opposing counsel will make certain that the judges remember that you promised in your opening statement to prove something you failed to do. Fifteen minutes for each side is the maximum, and only one advocate presents the Opening Statement for each side. State your “prayer” in the Opening Argument. What is it you want the court to find/do? The Applicant presents the Opening Statement first. Normally, the Respondent gives its Opening Statement after the Applicant has rested/presented its whole case. In our proceedings, however, the Respondent will give its Opening Statement immediately after the Applicant has marked all its tangible evidence (see below).

> A note on evidence: The presentation of evidence during a trial is governed by principles called rules of evidence. Judges use a balancing test carefully weighing whether a trial would be fairer with or without a piece of evidence in question (remember the questions of law spoken of above).

Stipulations

After the Applicant's Opening Statement, the Stipulations are read out to the judges. The Applicant reads each stipulation separately. The Respondent is asked if they agree. If so, the President says, "so stipulated", and that single stipulation is evidence, which can be considered by the judges.

Marking Real Evidence

The Applicant or Moving Party's evidence is marked in numbers, e.g. Applicant's A1, A2.

a. When marking the evidence, the advocates will read the title of the document to the Court, then the source of that document, followed by the date of the document.

b. The President will ask if opposing counsel have seen the piece of evidence (the answer should be YES). Then opposing counsel will be asked if there is an objection to only AUTHENTICITY or RELEVANCE. Opposing counsel likely will not agree with the truth or accuracy of the document, but this should be raised later. At this juncture, the only issues are whether it is authentic and/or relevant. If there is no author, it could have been written by Donald Duck and therefore not authentic.

In a real legal case, we have the person who wrote the article or document testify before the judges. However, we cannot do that in our simulation. We can only submit the article, try and authenticate it, and go from there. Once the tangible evidence has been authenticated, and testimony has been received as to its purpose, reliability, accuracy, and relevance, etc., it is then subject to cross-examination or evidence that rebuts its credibility, reliability, and/or truthfulness.

c. The advocate presenting the piece of evidence is asked to paraphrase the document's points and may highlight certain passages, articles, etc. The presentation of evidence is used only to explain what that piece of evidence literally says. What the advocates MUST NOT DO is state how the piece of evidence pertains to case. They may NOT discuss what any piece of evidence

purports to say, infers, or implies. They may only do so during their Closing Argument. That is the time to relate a piece of evidence to their case.

After all of Applicant's evidence has been marked, Respondent will present its Opening Statement and mark its evidence. The Responding Party's evidence is marked in letters, e.g. Respondent's RA, RB.

Evidence Discussion

The Court then begins an in camera session for around forty five minutes. Advocates will be asked to leave the room. During this time, they are free to speak to their witnesses or complete other work. Formally, observers should also be dismissed, but the conference may not permit this.

This time is set for judges to become familiar with the marked evidence. The Registrar will ensure each judge has access to each piece of evidence in some form. They will have approximately 30 minutes to review and analyze their piece(s) of evidence. Next, starting with Applicants "1", each judge will summarize their findings regarding those pieces of evidence to the entire body of judges; thus, what their piece of evidence purports to say, whether it helps the side who presented it or, perhaps, the other side, and how much weight the judges should give to that piece of evidence----a lot, some, very little, or none.

Witness Testimony

Questioning "your own" witnesses is called direct examination. Questioning the opposing side's witness is called cross-examination and takes place after opposing counsel's direct.

Witnesses should be well-prepared for their appearance. As previously mentioned, advocates have the means at their disposal to meet with and coach their witnesses with time to spare. They should know what questions will be asked of them in direct examination and some idea of cross-examination.

Witnesses MUST testify from memory. They may be given, read aloud from, and comment on marked evidence as they testify, but NO NOTES are allowed. Only one advocate per team should question a witness.

a. Direct Examination: The witness is introduced to the Court, and the Oath is administered by the Registrar. Direct examination by the side that called the witness may proceed, following basic rules:

i. No leading questions. Leading questions suggest an answer by their formulation. “You saw him, didn’t you?” is leading, because it suggests an affirmative answer – “did you see him?” is not, because neither yes nor no is suggested. Opposing counsel should rise, and object to “leading the witness”. Note, the only exception is if the President decides counsel has called a hostile witness or witness identified with the other party.

ii. No hearsay questions. Unlike leading questions, hearsay is often less clear in practice, and exceptions apply. Basically, witnesses cannot be asked about an out-of-court statement or act allegedly made by another party. This is not based on the witness’s personal knowledge, but simply repeats what someone else said. It is ruled inadmissible when its truthfulness cannot be tested by cross-examination.

The criteria here for admissibility of evidence (testimony) are trustworthiness and relevance. Opposing counsel may object and prevent the ‘triers of fact’ from hearing facts through hearsay.

iii. Keep questions short – no narratives/speeches, no unnecessary repetition.

b. Cross-Examination: After the other party’s line of questioning has been exhausted, opposing counsel may cross-examine the witness. Cross-examination is meant to create a dispute about the witness’s statements, and/or to place the witness’s credibility into question. A strong examination can help judges’ determination of truth and veracity, including through the witness’s demeanour. In cross-examination:

i. Questions must be related to the questions asked or testimony produced on direct examination.
ii. Leading questions are encouraged. In effect, the cross-examiner should tell the witness what you want them to say by leading. “Isn’t it true that this evidence shows not X but Y?” The answers produced in such a line of questioning should typically be yes or no, but witnesses will often explain their answers.
iii. No hearsay questions.
iv. Keep questions short – no narratives/speeches, no unnecessary repetition. With each witness, the Court hears Direct, then Cross, then redirect and re-cross until both sides have no more questions.

c. Judges’ Questions to Witnesses: Technically, at any time during the testimony of a witness, a judge, subject to the approval of the President, may ask a question of the witness. However, rather than interfere with the flow of testimony, it is prudent in our simulation for judges to wait until all direct testimony and cross-examination of a witness is completed, at which time judges will have the opportunity to ask questions of the witness. Following these questions, advocates will be given a very brief opportunity to ask one or two further questions.

Finally, all participants are expected to be particularly respectful to witnesses, who have given considerable personal time and energy to the Court. If any examiner attempts to provoke or otherwise harass the witness, all improper statements will be struck and penalties will result.

Other advice to advocates on witness testimony:

• Never ask a witness a question to which you yourself do not know the answer.

• Avoid asking a witness “why…”.

• Try to lay a clear foundation with your questioning. Do not assume the Court knows where you are going with questions or overestimate their patience.

• Know when to stop! Saying “no further questions,” or, even, “no questions” at the right time has power – strategic examination must include strategic timing!

Admitting Evidence

Each party must ask to have their tangible evidence admitted, e.g. “Counsel for (Respondent) requests that Respondent’s Evidence A be admitted into evidence.”

If objections were previously made regarding AUTHENTICITY or RELEVANCE and such issues were confirmed by Evidence Discussion, that evidence may not be admitted.

At this point, advocates may also object to other evidence on grounds of RELIABILITY and ACCURACY. Generally, these objections simply go to the weight of individual pieces of evidence and are simply recorded by the Court.

Note, the Court may take “Judicial Notice” of certain facts of common knowledge, such as today’s date. These facts, documents, decisions, etc. do not need to go through the process of authentication, testimony, cross-examination, etc.

Judges’ Questions

There will be around a one-hour period where all judges are allowed, and, indeed, expected, to ask questions of the advocates. While procedure may vary depending on time constraints, number of participants, etc., the Presidents should generally monitor questions and keep order.

These questions should not be adversarial. The period is provided to clarify issues, facts, and points of law. Questions should be directed at one set of advocates or the other, addressing them as “Counsel for (Country)”. Questions should not be open-ended. Follow-up questions are granted at the discretion of the President. i.

Closing Arguments

Each side is given 30 minutes maximum to sum up its case and tie together the evidence and the legal elements. The Applicant goes first but may “pause” and reserve the balance of its time. The responding party goes next. Finally, the moving party may use up the time it has reserved.

During Closing, the advocates must state their “prayer”, what each side is requesting for a judgement. Usually, it is best for the advocates to state what they think the issues are, what the answers to those issues are, and what the decision (or their “prayer” from the court) should be. If damages are involved, it is incumbent upon the advocates to state what amount(s) they think the Court should award—and why. Proof is essential regarding damages, although, in most of our ICJ cases, liability can be determined by the Court with the damage issue left for future hearing.

Deliberation

After Closing Arguments, the advocates are asked to leave the room and another in camera session begins. Advocates, or at least one team member each, must remain near the room to answer any further questions which may arise. While different procedures may be used from this point, what follows is the recommended method for use at NAMUN.

Issues must be decided. First, judges are asked to choose their top three issues. These are listed on a document/chart visible to the whole Court. Typically, this chart is no longer than ten items, with some minor sub-issues to broader topics. The issues are then ordered by popularity for discussion. Once each issue is determined, it is easier for the Court to reach a decision. This process may take several hours, and judges should feel free to change their minds multiple times during debate.

Time should also be budgeted for several straw polls. It is rare that one side receives no votes. The ICJ is not a consensus-based process, so if one’s judgment is strong, hold to it!

When the Court takes its final vote, several parties are formed. The one with the most votes will write the “Majority Opinion”. This is the Court’s ruling. Judges who agree with the majority decision but differ on the reasons why will write one or multiple “Separate But Concurring Opinion(s)”.

The minority party, which voted the other way, will write a “Dissenting Opinion”. Judges who also dissented but differ on the reasons why will write one or multiple “Separate But Dissenting Opinion(s)”.

Imagine that Judges A, B, C, D, E, F, G, and H all voted for Respondent, and Judges I, J, K, L, M, and N all voted for Applicant. The Court rules for Respondents. Within the group voting for Respondent, A, B, C, and D share reasons for voting for Respondent. E, F, and G voted for Respondent for a different set of issues. H voted for Respondent but disagreed with all colleagues. The largest group on the winning side (ABCD) write the "Majority Opinion". EFG and H write their own "Separate But Concurring" opinions. Within the group voting for Applicant, I, J, K, L, and M share reasons for voting. N disagrees. The largest group (IJKLM) write a "Dissenting Opinion". N writes a "Separate But Dissenting Opinion".

In total, we have five Opinions: one "Majority", two "Separate But Concurring", one "Dissent", and one "Separate But Dissenting".

Once again, the "Majority Opinion" must vote the same way, with the same combination of issues.

Finally, judgments must be written out, and this, too, takes a long time to find the correct wording. Templates will be provided. If there is a large number for the Majority or Dissent, committees are formed to write the judgments. A draft is presented to the remaining judges for their review and correction, then to the President.

"Palestine v. United States. Relocation of the United States Embassy to Jerusalem"

INTRODUCTION

The Vienna Convention on the Law of Treaties (hereinafter the "Vienna Convention") is an international agreement which regulates treaties between states. It was written on May 23rd, 1969 and it is known as the "The Treaty on Treaties", and it establishes comprehensive rules, procedures and guidelines for how treaties are defined, drafted, amended, interpreted, and generally operate.

The city of Jerusalem is the holy site for all three monotheistic religions (Judaism, Christianity and Islam) being rich in monuments, including the two Great Temples and the Western Wall of the compound. It is considered as the holiest site for the Jewish faith, as well for the Islamic faith, due to the belief that the Prophet Muhammad was transported from the Sacred Mosque in Mecca to Al-Aqsa during the Night Journey, making the city the third holiest site for the Muslims.

HISTORICAL BACKGROUND

On November 29th, 1948, the UN General Assembly adopted resolution 181, also known as the "United Nations Partition Plan for Palestine". This resolution labeled the area of Jerusalem as an international territory to be under the control of the UN. Six months after this decision the Jewish leadership decided to declare their independence and the State of Israel was born. This movement was made despite the sacred city of Jerusalem not being part of it.

Immediately after the Israeli declaration of independence the countries of Egypt, Syria, Jordan, Iraq, Lebanon and Saudi Arabia joined the Arabs in Palestine and declared war on Israel. The war lasted until July 20, 1949, resulting in the expansion of the Israeli territory taking over the western part of Jerusalem declaring it the Israeli capital. The rest of the land including the Judea and Samaria eastern part of Jerusalem which were planned to be part of the Arab state in the Partition Plan, was then handed over to the Jordanian control.

The "Six-day" war erupted on the 5th of June 1967 and ended on the 10th of June 1967. The war was fought between by Israel against Egypt, Jordan and Syria. After the six days of battles Israel occupied lands of Syria, Judea, Samaria, the eastern Jerusalem from the Jordanians, Gaza and the Sinai Peninsula from Egypt. After the war the UN Security Council adopted Resolution 242, calling on Israel to withdraw from the lands it occupied during the war.

In 1980, the Israeli parliament accepted the "Basic Law: Jerusalem the Capital of Israel". This legislation was brought up in discussion with the UN Security Council and it was decided in Resolution number 478 that this act is meaningless and must be canceled.

Throughout the Israeli-Palestinian conflict, both parties tried negotiating for peace. One important question that caused all the talks to fail was the status of Jerusalem and whether to divide the city or not, and if so, how should it be done. Some offers were made by the various mediators to divide the city into two parts; the western part would be Israeli territory and allowing it to remain as the Israeli capital city, and the eastern part would be the new Palestinian capital city. But the most significantly difficulty in the various peace talks was the old city of Jerusalem, known as the “Historic/Holly Basin”. In 2000 Israel offered to keep it under Israeli control and proposed to the Palestinians custodianship over the temple mountain. Others wanted to divide the city between both parties according to the location of the holy sites or to keep the old city under international control.

CURRENT SITUATION

Even though de facto Israel have control over both the eastern and western parts of Jerusalem, the acknowledgement of the Israeli de jure control over Jerusalem is in the center of a global debate. Some countries acknowledge this control, some recognize only the control over the western part of the city and other do not accept this control at all. Which is why, most of the embassies and other diplomatic missions of plenty of countries in Israel, are located outside Jerusalem.

In 1995, the United States passed the “Jerusalem Embassy Act”. Which recognized the Israeli rule in Jerusalem and the city as the capital of the State, as well as allocating funds and expressing the intent to move the US Embassy to Jerusalem no later than 1999. Although the law passed it was no signed by president Bill Clinton. Moreover, the law allowed the president of the United States to invoke its application for a period of six months and without limitations of reissuing, based on "national security" grounds, which was done by all the following presidents.

In late 2017, USA recognized Jerusalem as Israel’s capital officially and also declared their embassy would be moved from Tel Aviv to Jerusalem. By May 2018, this relocation was complete, not without questioning US’s status as “broker of peace” by the international community in the light of this move. And on March 4th, 2019 the U.S. Consulate General Jerusalem was merged into the U.S. Embassy Jerusalem to form a single diplomatic mission.

Although the state of Palestine is an observer member for the United Nations, it submitted an application instituting proceedings in the ICJ on September 28th, 2018. They base their right for the application to the ICJ, more specifically on article 35 of the statute of the court which states:

> "[t]he International Court of Justice shall be open to a State which is not a party to the Statute of the International Court of Justice, upon the following condition, namely, that such State shall previously have deposited with the Registrar of the Court a declaration by which it accepts the jurisdiction of the Court, in accordance with the Charter of the United Nations and with the terms and subject to the conditions of the Statute and Rules of the Court, and undertakes to comply in good faith with the decision or decisions of the Court and to accept all the obligations of a Member of the United Nations under Article 94 of the Charter"

The State of Palestine submitted to the register of the court a declaration accepting the ICJ's authority, stating:

> "[...] that it accepts with immediate effect the competence of the International Court of Justice for the settlement of all disputes that may arise or that have already arisen covered by Article I of the Optional Protocol to the Vienna Convention on Diplomatic Relations Concerning the Compulsory Settlement of Disputes (1961), to which the State of Palestine acceded on 22 March 2018. In doing so, the State of Palestine declares that it accepts all the obligations of a Member of the United Nations under Article 94 of the Charter of the United Nations".

As basis for the court's jurisdiction, Palestine invokes Article 1 of the Optional Protocol to the Vienna Convention concerning the Compulsory Settlement of Disputes. In addition, they mention Article 3 which states the functions of a diplomatic mission, claiming that the sending state must promote their causes of the mission only in the territory of the receiving state, and while Jerusalem is not part of Israel de jure, the USA is violating this rule.

Possible Witnesses Suggestions

UNITED STATES OF AMERICA

1. Ex-President Donald J. Trump
2. Ex-president Bill Clinton

PALESTINE

1. President Mahmud Abás Judges Judges

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