



MACMUN

# International Court of Justice

Background Guide

## Committee Overview

### *Mandate and Function of the Committee*

The establishment of the International Court of Justice (ICJ) in 1945, the United Nation (UN)'s principal judicial organ,<sup>1</sup> aimed to promote sovereign equality between states, and maintain international peace and security.<sup>2</sup> The ICJ primarily focuses on settling legal disputes submitted by states in accordance with international law, and to give advisory opinions on legal questions which are submitted by UN organs or specialized agencies.<sup>3</sup> In the process, international treaties and applicable legislation must be examined. The court must also consider the principles of law, judicial decisions, and international customs.<sup>4</sup>

The Court is composed of 15 judges who serve in office for nine years and are elected by the UN General Assembly and Security Council.<sup>5</sup> Although the ICJ cannot enforce its rulings, member states are required to accept their decisions as outlined under a clause in the UN *Charter*. Furthermore, Article 94 of Chapter XIV of the UN Charter permits the Security Council to enforce ICJ rulings on all member states.<sup>6</sup>

It is important to note the differences between the ICJ and the International Criminal Court (ICC). Unlike the ICJ, the ICC is not under the jurisdiction of the UN and is only occasionally handed cases from the Security Council.<sup>7</sup> The following table explains the key differences between the two courts:

|                 | <u>International Court of Justice</u>                                  | <u>International Criminal Court</u>                            |
|-----------------|--|--|
| UN Relationship | Principal Judicial Court of the UN.                                    | Independent; Security Council may choose to refer cases.       |
| Jurisdiction    | UN Member States (Governments).  | Individuals.   |
| Types of Cases  | 1. Contentious Cases (Including Pending Cases)<br>2. Advisory Opinions | Criminal Prosecution.  |
| Subject Matter  | Treaty Violations, Human Rights, Boundary Disputes, Issues of          | Genocide, War Crimes, Crimes of Aggression, and Crimes Against |

---

<sup>1</sup> "The Court". International Court of Justice, 2020, <https://www.icj-cij.org/en/court>.

<sup>2</sup> "History". International Court of Justice, 2020, <https://www.icj-cij.org/en/history>.

<sup>3</sup> "The Court". International Court of Justice, 2020.

<sup>4</sup> "How The Court Works". International Court of Justice, 2020, <https://www.icj-cij.org/en/how-the-court-works>.

<sup>5</sup> "The Court". International Court of Justice, 2020.

<sup>6</sup> "Chapter XIV: The International Court of Justice". United Nations, 17 June 2015, <https://www.un.org/en/sections/un-charter/chapter-xiv/index.html>.

<sup>7</sup> "About". International Criminal Court, <https://www.icc-cpi.int/about>.

|         | Sovereignty, etc.  | Humanity.  |
|---------|--|--|
| Appeals | None. ICJ rulings in contentious cases are final and bind all parties. The Security Council is able to enforce rulings if states fail to comply. | Appeals Chamber, as outlined through Article 81-82 of the Rome Statute.  |
| Funding | Funded by the UN.  | Relies on state parties, voluntary contribution from the UN, organizations, governments, and other institutions for funding. |

**Table 1:** Distinctions between the International Court of Justice and the International Criminal Court.<sup>8,9,10</sup>

**The two main responsibilities of the ICJ include:<sup>11</sup>**

1. Settling legal disputes submitted to it by States in accordance to international law, and;
2. Offering advisory opinions on legal questions submitted by UN organs or specialized agencies.

### *Pending Cases*

Pending cases typically involve legal proceedings between two states, involving the use of mediation, arbitration, and negotiation, according to Article 33 of the UN *Charter*.<sup>12</sup> Judicial settlement to solve these ongoing legal disputes tend to be the final step in the process of analyzing a case. As such, pending cases have yet to reach a settlement, thus they await the final decision to be made.<sup>13</sup>

Cases are brought to the Court by one or more states in situations where they are unable to resolve the conflict or dispute amongst themselves. The applicant state is the one who files against another state, while the respondent state is whom the application is filed against.<sup>14</sup>

The ICJ may only intervene if the states concerned accept its jurisdiction in one of the following ways:<sup>15</sup>

<sup>8</sup> “About”. International Criminal Court.

<sup>9</sup> “How The Court Works”. International Criminal Court, <https://www.icc-cpi.int/about/how-the-court-works>.

<sup>10</sup> “Rome Statute of the International Criminal Court”. International Criminal Court, 2011, <https://www.icc-cpi.int/NR/rdonlyres/ADD16852-AEE9-4757-ABE7-9CDC7CF02886/283503/RomeStatutEng1.pdf>

<sup>11</sup> “The Court”. International Court of Justice, 2020.

<sup>12</sup> “Pacific Settlement of Disputes (Chapter VI of UN Charter)”. United Nations Security Council, <https://www.un.org/securitycouncil/content/pacific-settlement-disputes-chapter-vi-un-charter>.

<sup>13</sup> “Pending Cases”. International Court of Justice, 2020, <https://www.icj-cij.org/en/pending-cases>.

<sup>14</sup> “Contentious Jurisdiction”. International Court of Justice, 2020, <https://www.icj-cij.org/en/contentious-jurisdiction>.

<sup>15</sup> “How The Court Works”. International Court of Justice, 2020.

1. Entering a special agreement to take the case to the Court;
2. A clause in a treaty which permits the Courts involvement in the case of a dispute; or
3. Declaration of the state's consent to the Courts jurisdiction.

After a case has been accepted by the Court, proceedings may be instituted in one of two ways:<sup>16</sup>

1. Through the notification of a special agreement (a bilateral document submitted by either or both states involved), indicating the subject of dispute and the parties it pertains to; or
2. Through an application (a unilateral document submitted by the applicant state).

In the event that a respondent state does not agree to or does not accept the jurisdiction of the Court, they may submit preliminary objections. The Court must then rule on the preliminary objections before reviewing the applicants case. The next steps of the legal proceedings involve the following:<sup>17</sup>

1. A written phase, in which the parties file and exchange pleadings containing a detailed overview of the points of fact and law of the case; and
2. An oral phase, which consists of public hearings at which agents representing the states and their respective counsels address the Court.

Following the proceedings, judges of the Court hold a private discussion in order to decide the rulings for the case. The process involves many witnesses and experts, as they consider international treaties, conventions in force, the general principles of law, and judicial decisions.<sup>18</sup> The final ruling is delivered in a public setting, where neither parties have the option to appeal. Judgements reached by the Court are binding to all parties involved. If a state believes that another party has failed to comply with the decision of the Court, it may present the issue to the Security Council, who will then act accordingly.<sup>19</sup>

## *Advisory Opinions*

Upon request of the UN General Assembly or Security Council, the Court is able to provide advisory opinions on legal questions which must be answered by applying the relevant legal principles to the interpretation of the law.<sup>20</sup> After receiving a request, the Court must then gather all the facts through written and oral proceedings. Advisory proceedings typically conclude after the final ruling is delivered at a public sitting. Advisory opinions are neither final nor binding to the parties involved.<sup>21</sup> Nevertheless, the Courts advisory opinions carry great legal weight and moral authority.<sup>22</sup>

---

<sup>16</sup> "How The Court Works". International Court of Justice, 2020.

<sup>17</sup> "How The Court Works". International Court of Justice, 2020.

<sup>18</sup> "How The Court Works". International Court of Justice, 2020.

<sup>19</sup> "How The Court Works". International Court of Justice, 2020.

<sup>20</sup> "Advisory Jurisdiction". International Court of Justice, 2020, <https://www.icj-cij.org/en/advisory-jurisdiction>.

<sup>21</sup> "How The Court Works". International Court of Justice, 2020.

<sup>22</sup> "Advisory Jurisdiction". International Court of Justice, 2020.

## *Simulation Style/Composition of the Committee*

The ICJ committee will be composed of two designated Chairs who will moderate the debate and ensure that it adheres to Model UN rules and regulations. The Chairs will be responsible for opening and closing the debate, setting the agenda, managing the list of speakers, and help in facilitating the discussion. Moreover, they will announce when the delegates should vote on motions, and give the final rule on disputed points. The Chairs will also decide when to introduce the draft resolutions for debate.

The structure of the ICJ is different from other UN committees, as delegates will not be representing a particular state, but instead will be representing themselves as impartial “judges”. The committee will consist of 30 delegates, and each judge will have one vote for or against the applicant state. Their arguments are to be formed based on legal analysis of the various aspects and facts of the two cases.<sup>23</sup>

Each judge’s perspective should be based on their interpretation of the law and legal documents relating to each case. The distinction between the ICJ and other UN committees is the fact that judges argue points of law, not fact. For example, if a nation annexed land of a neighbouring country, the point of contention is not that the annexation had occurred, but rather, whether it had been in violation of international law. All delegates are expected to research their committee topics, submit a position paper, and be prepared for discourse regarding stances on each issue.

## *Arriving at a Decision*

ICJ decisions are written differently than other UN organs. The final document includes the following:

1. The Facts of the Case:
  - Summarize the key features of the case and factors that contributed to the issue. Include arguments for all parties involved.
2. Issues:
  - Formulate a list of questions that should be considered when forming a solution in relation to the case at hand.
3. Decisions pertaining to each question listen under the “Issues” section of the document:
  - State the majority opinion, as well as the justices who were in favour.
  - Outline the supporting arguments of the ruling. This may include:
    - Relevant articles of the UN Charter or other international treaties pertaining to the case.
    - The facts of the case to be disputed.
    - Definitions necessary to clarify terms used in the decision.
    - Steps that need to be taken in order to address the issue raised.
4. Operative Clauses:
  - Statements which summarize the Court’s stance on the issues raised, as well as possible solutions.

---

<sup>23</sup> “Members”. International Court of Justice, 2020.

5. Concurring Opinion:
  - A statement in paragraph form where a justice describes the stance taken by the majority opinion, presenting any supporting evidence if necessary.
6. Dissenting Opinion(s):
  - A statement in paragraph form where justices articulate their disagreement with the majority opinion. Justices must include their rationale behind the disagreement.

Overall, the ICJ committee reaches a decision based on the majority of votes between judges. It is fundamental that **delegates rule based on the various international treaties and/or legislation that are relevant to the case. Domestic law cannot be used for international rulings.**

### *Instructions for Writing Position Papers*

The position paper is a detailed essay of your country's policies and position on the topics that are going to be discussed in the committee. This will help you to organize your thoughts and successfully engage with the committee. You are required to submit a paper to be eligible for any conference award, and the writer of the best position paper in each committee will be given the Book Award.

A strong MACMUN position paper should include the following:

1. Discussion of the topic in general.
2. How your country is affected by the issues.
3. Your country's policies with respect to the issues.
4. Quotations from your country's leaders about the topics.
5. Actions that your country has taken with regard to the issues.
6. What your country believes should be done to address the issues.
7. What your country would like to accomplish in the committee's resolution.
8. A description of your relationship with other countries as it relates to the issues at hand.

Include your name, assigned country, and committee. Please do not include illustrations, diagrams, decorations, national symbols, watermarks, or page borders.

Length: 1 page per topic.

Format: Times New Roman, size 12, single-spaced.

Citation style: Your choice (please include a reference page; not counted in page limit).

Please email completed position papers (as well as any questions) to [icj@macmun.org](mailto:icj@macmun.org).

For detailed instructions on how to write a position paper, including a template and sample paper,

please refer to <https://www.macmun.org/resources> of our website.

### ***Where to Start Your Research***

All the ICJ's primary documents relating to the *Palestine v. The United States of America* case can be accessed through the following link: <https://www.icj-cij.org/en/case/176>

The *Vienna Convention on Diplomatic Relations* is pertinent to the first case, and will be useful for legal reasoning. It can be found here:

[https://legal.un.org/ilc/texts/instruments/english/conventions/9\\_1\\_1961.pdf](https://legal.un.org/ilc/texts/instruments/english/conventions/9_1_1961.pdf)

A study on *The Status of Jerusalem* is a great source to be familiar with, as it will offer a better understanding, background knowledge and history of the case. The recommendation is to read pages one through eleven, as it contains relevant information to the first case and can be found here:

<https://www.un.org/unispal/document/the-status-of-jerusalem/>

All the ICJ's primary documents relating to the *Ukraine v. Russian Federation* case can be accessed through the following link: <https://www.icj-cij.org/en/case/166>

The *International Convention on the Elimination of all forms of Racial Discrimination* is the primary document relating to the second case. It should be well understood and can be found in full here:

<https://www.ohchr.org/en/professionalinterest/pages/cerd.aspx>

Although it is not required, you may choose to do research beyond the documents and sources we have provided for you in preparation for the committee, as they are simply a guide on where to start. This may include, but is not limited to, researching the details of the conflict, the history of the conflicting nations' relations, and past ICJ decisions and their legal reasonings.



# Topic #1: Relocation of the United States Embassy to Jerusalem (Palestine v. United States of America)

## Introduction

For years, the status of Jerusalem had been the centre of many conflicts between Palestine and Israel, as both parties argued to have religious claims and ties to the land.<sup>24</sup> As an attempt to diminish the number of conflicts between the two nations, the UN had intervened and decided to introduce Resolution 181 (II) on November 29, 1947. The resolution had outlined the divided areas of the land between both parties, one would be the Arab State and the other a Jewish State. This was called the Partition Plan. The resolution had also declared that the, “Holy City of Jerusalem shall be established as a *corpus separatum* under a special international regime”.<sup>25</sup> That meant that the land belonged to neither parties, and had fallen under the administration of the UN. Although Israel had rejected the resolution, in no way did it deprive the resolution of its own validity.<sup>26</sup>

Although Jerusalem had been established as a *corpus separatum*, on December 6, 1947, the President of the United States recognized Jerusalem as the capital of Israel and announced that they would be relocating the American Embassy in Israel from Tel Aviv to Jerusalem.<sup>27</sup> The inauguration of the American Embassy in Jerusalem had taken place on May 14, 1948. It quickly became an issue for the State of Palestine as they felt the U.S. had violated the *Vienna Convention on Diplomatic Relations*. They argue that it, “Flows from the *Vienna Convention* that the diplomatic mission of a sending State must be established on the territory of the receiving State”, and due to the special status of Jerusalem, the relocation of the embassy constituted a breach of the *Vienna Convention*.<sup>28</sup>



<sup>24</sup> “The Status of Jerusalem”. United Nations, 1981, <https://www.un.org/unispal/document/auto-insert-195301/>.

<sup>25</sup> “Resolution 181 (II). Future government of Palestine”. United Nations General Assembly, 1947, <https://unispal.un.org/DPA/DPR/unispal.nsf/0/7F0AF2BD897689B785256C330061D253>.

<sup>26</sup> “The Status of Jerusalem”. United Nations, 1981.

<sup>27</sup> “Release 2018/47”. ICJ, 2018, <https://www.icj-cij.org/files/case-related/176/176-20180928-PRE-01-00-EN.pdf>.

<sup>28</sup> “Press release 2018/47”. International Court of Justice, 2018.



## *History of Proceedings*

### *Application instituting proceedings, 28 September 2018*

On September 28, 2018, the State of Palestine instituted proceedings against the United States. Palestine claimed that the relocation of the American embassy to Jerusalem was a violation of the *Vienna Convention*.<sup>29</sup> The applicant demanded that the U.S. withdraw immediately.<sup>30</sup>

The initial letter from the State of Palestine to the Registrar of the International Court of Justice stated:

*“1. The undersigned, duly authorized by the Government of the State of Palestine, has the honour to submit to the International Court of Justice, in accordance with Security Council resolution 9 (1946) and Article 35 (2) of the Statute of the Court, this Application instituting proceedings against the United States of America.*

*2. By the present Application, the State of Palestine requests the Court to settle the dispute it has with the United States of America over the relocation of the Embassy of the United States of America in Israel to the Holy City of Jerusalem. In so doing, it places its faith in the Court to resolve the dispute in accordance with its Statute and jurisprudence, based on the Vienna Convention on Diplomatic Relations (VCDR) read in appropriate context.”<sup>31</sup>*

Resolution 181 (II) had been one of the documents used as factual and legal background, in providing evidence for the special status of Jerusalem, in which it states that:

*“The City of Jerusalem shall be established as a corpus separatum under a special international regime . . . The City of Jerusalem shall include the present municipality of Jerusalem plus the surrounding villages and towns, the most eastern of which shall be Abu Dis; the most southern, Bethlehem; the most western, Ein Karim (including also the built-up area of Motsa); and the most northern Shu'fat.”<sup>32</sup>*

### *Annexes*

There were a total of six annexes in relation to the proceedings. The first two Annexes outlined the articles of the *Vienna Convention on Diplomatic Relations*, along with the articles of the Optional Protocol concerning the compulsory settlement of disputes, which was enacted April 18, 1961, in order to present factual and legal background information on the case.<sup>33</sup> The third Annex dealt with Security Council Resolutions 476, 2334, and 478.<sup>34</sup> The fourth Annex touched on Resolution 476 and Resolution

---

<sup>29</sup> “Press release 2018/47”. International Court of Justice, 2018.

<sup>30</sup> “Press release 2018/47”. International Court of Justice, 2018.

<sup>31</sup> “Application Instituting Proceedings”. ICJ, 2018.

<sup>32</sup> “Application Instituting Proceedings”. International Court of Justice, 2018.

<sup>33</sup> “Annexes” ICJ, 2018, <https://www.icj-cij.org/files/case-related/176/176-20180928-APP-01-01-EN.pdf>.

<sup>34</sup> “Annexes” International Court of Justice, 2018.

2334.<sup>35</sup> The fifth Annex had simply been a declaration of recognizing the competence of the ICJ.<sup>36</sup> The final Annex had dealt with the President of the U.S.’ proclamation of recognizing Jerusalem as the capital of Israel, and of the relocation of the U.S. Embassy to Jerusalem.<sup>37</sup>

### ***Order of 15 November 2018***

The ICJ fixed the time-limits to file written pleadings of May 15, 2019 for the Memorial of the State of Palestine, and November 15, 2019 for the Counter-Memorial of the United States of America.<sup>38</sup>

### ***Press Release of 30 November 2018***

The ICJ issued a press release stating that the Court has decided that the written pleadings will first be addressed to the question of jurisdiction and that of the admissibility of the Application.<sup>39</sup>

## ***Arguments of the Parties***

### ***Palestine’s Stance***

Palestine has accused the U.S. of breaching the *Vienna Convention* in their recent relocation of the American Embassy from Tel Aviv to Jerusalem.<sup>40</sup> The applicant argued that because of the special status of Jerusalem, as outlined in Resolution 181 (II), and reaffirmed in Resolutions 476, 2334, and 478, that Jerusalem shall be established as a *corpus separatum*, and falls under the administration of the UN.<sup>41</sup> Under the *Vienna Convention*, it is expected that, “The diplomatic mission of a sending State must be established on the territory of the receiving state”, but due to Jerusalem’s special status, it is not an established territory for either Israel or Palestine.<sup>42</sup>

Each resolution the state had presented for factual and legal background supported the notion that Jerusalem was UN territory. Resolution 181 (II) had primarily established Jerusalem as a *corpus separatum*.<sup>43</sup> Security Council Resolutions 476, 2334, and 478 had outlined that any action which seeks to alter the status of Jerusalem in any way would be deemed invalid.<sup>44</sup> Perhaps the most pertinent resolution

---

<sup>35</sup> “Annexes” International Court of Justice, 2018.

<sup>36</sup> “Annexes” International Court of Justice, 2018.

<sup>37</sup> “Annexes” International Court of Justice, 2018.

<sup>38</sup> “Order of 15 November”. ICJ, 2018, <https://www.icj-cij.org/files/case-related/176/176-20181115-ORD-01-00-EN.pdf>.

<sup>39</sup> “Release 2018/57” ICJ, 2018, <https://www.icj-cij.org/files/case-related/176/176-20181130-PRE-01-00-EN.pdf>.

<sup>40</sup> “Application Instituting Proceedings”. International Court of Justice, 2018.

<sup>41</sup> “Application Instituting Proceedings”. International Court of Justice, 2018.

<sup>42</sup> “Application Instituting Proceedings”. International Court of Justice, 2018.

<sup>43</sup> “Resolution 181 (II). Future government of Palestine”. United Nations General Assembly, 1947.

<sup>44</sup> “Annexes” International Court of Justice, 2018.

would be Resolution ES-10/19 from the tenth Emergency Special Session of the General Assembly, as it requested all states to, “Refrain from establishing diplomatic missions in the city of Jerusalem”.<sup>45</sup>

The state had requested the Court to declare that the relocation of the U.S. Embassy to Jerusalem was a breach of the *Vienna Convention*. It further requested the ICJ to order the U.S. to withdraw the diplomatic mission from Jerusalem, and to conform to their international obligations under the *Convention*.<sup>46</sup>

### ***The United States’ Stance***

On November 2, 2018, the United States informed the court of communications and had submitted a letter to the Secretary-General of the UN, which stated that they did not consider themselves to be in a “Treaty relationship with the Applicant under the Vienna Convention or the Optional Protocol”.<sup>47</sup> In their letters, the U.S. had further observed that the Applicant had been aware of these communications before their submission, and thus they concluded that, “The Court had no jurisdiction in respect of the Application”.<sup>48</sup> The U.S. sent a letter, informing the registry that they would not be participating in the proposed meeting by the President and representatives of the parties, which was to be held on November 5, 2018.<sup>49</sup>

### ***Stances of Other Countries***

Currently, there are only two countries who have relocated their Embassies to Jerusalem, that being the U.S. and Guatemala.<sup>50</sup> In recent terms, Kosovo and Serbia have agreed to relocate their embassies to Jerusalem, which resulted in the outrage of Turkey.<sup>51</sup> Turkey condemned and expressed a deep level of concern over Serbia’s decision to relocate its embassy, and in a written statement, the Foreign Minister called upon, “All countries to abide by the UN Resolutions adopted on this matter, respect the historical and legal status of Jerusalem, and refrain from steps that will make the resolution of the Israeli-Palestinian conflict even more difficult”.<sup>52</sup>

In total, there are thirty UN Member States that have absolutely no diplomatic relations with Israel, 17 of which are members of the Arab League.<sup>53</sup> There are approximately 86 countries who have embassies in

---

<sup>45</sup> “Annexes” International Court of Justice, 2018.

<sup>46</sup> “Press release 2018/47”. International Court of Justice, 2018.

<sup>47</sup> “Press Release 2018/57”. International Court of Justice, 2018.

<sup>48</sup> “Press Release 2018/57”. International Court of Justice, 2018.

<sup>49</sup> “Press Release 2018/57”. International Court of Justice, 2018.

<sup>50</sup> “Which countries have moved their Israeli embassy?” Jewish Chronicle, 2019, <https://www.thejc.com/news/world/which-countries-have-their-israel-embassy-in-jerusalem-interactive-map-1.471208>.

<sup>51</sup> “Netanyahu says Serbia will move its embassy to Jerusalem”. AlJazeera, 2020, <https://www.aljazeera.com/news/2020/09/04/netanyahu-says-serbia-will-move-its-embassy-to-jerusalem/>.

<sup>52</sup> “Turkey concerned over Serbia’s moving embassy to Jerusalem”. Anadolu Agency, 2020, <https://www.aa.com.tr/en/turkey/turkey-concerned-over-serbia-s-moving-embassy-to-jerusalem/1964227>.

<sup>53</sup> “Israel’s relations in the Middle East”. Washington Post, 2020, <https://www.washingtonpost.com/world/2020/08/15/israels-relations-middle-east-explained/>.

Israel, but only three of them have announced their plan of relocating their embassies to Jerusalem, that being, Honduras, Malawi, and Chad.<sup>54,55,56</sup> Each one of these countries has a particular stance in relation to their reason for the move. Malawi claims that it will help promote the socio-economic development and growth of their country by maintaining this foreign relation.<sup>57</sup> Chad claims that closer relations between the two nations is a joint interest from both an economic and security standpoint.<sup>58</sup> As for Honduras, they plan to use the relocation as a method to strengthen their strategic alliance with Israel.<sup>59</sup>

## ***Applicable Legislation***

### ***Resolution 9 of the Security Council (1946)***

Resolution 9 outlines the procedure of the admission of states not party to the statute of the court.<sup>60</sup> The Resolution may be accessed in full here: <https://www.icj-cij.org/en/other-texts/resolution-9>

### ***Resolution 181 (II) Future Government of Palestine (1947)***

This resolution was developed to address the question of the future government of Palestine. It may be accessed here: <https://unispal.un.org/DPA/DPR/unispal.nsf/0/7F0AF2BD897689B785256C330061D253>

### ***Vienna Convention on Diplomatic Relations (1961)***

This document outlines a framework for diplomatic relations between independent nations.<sup>61</sup> It may be accessed in here: [https://treaties.un.org/doc/Treaties/1964/06/19640624%2002-10%20AM/Ch\\_III\\_3p.pdf](https://treaties.un.org/doc/Treaties/1964/06/19640624%2002-10%20AM/Ch_III_3p.pdf)

### ***Optional Protocol to the Vienna Convention on Diplomatic Relations (1961)***

In 1961, two amendment optional protocols were added to the Vienna Convention, concerning the settlement of disputes.<sup>62</sup> These may be accessed here:

[https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=III-5&chapter=3&clang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=III-5&chapter=3&clang=en)

---

<sup>54</sup> “Honduras hopes to move Israel embassy by end of year”. National Post, 2020,

<https://nationalpost.com/pmnn/news-pmn/honduras-hopes-to-move-israel-embassy-to-jerusalem-by-end-of-year>.

<sup>55</sup> “Chad considering embassy in Jerusalem”. The Jerusalem Post, 2020, <https://www.jpost.com/israel-news/chad-considering-embassy-in-jerusalem-641526>.

<sup>56</sup> “Interactive: Which countries have moved their Israel embassy to Jerusalem?”. The Jewish Chronicle, 2019.

<sup>57</sup> “Malawi to open embassy in Jerusalem, making it first African country in Israel’s capital”. World Israel News, 2020, <https://worldisraelnews.com/malawi-to-open-embassy-in-jerusalem-making-it-first-african-country-in-israels>

<sup>58</sup> Chad considering embassy in Jerusalem”. The Jerusalem Post, 2020.

<sup>59</sup> “Honduras hopes to move Israel embassy by end of year”. National Post, 2020.

<sup>60</sup> “Resolution 9 (1946) of the Security Council”. ICJ, 2020, <https://www.icj-cij.org/en/other-texts/resolution-9>.

<sup>61</sup> “Application Instituting Proceedings”. International Court of Justice, 2018.

<sup>62</sup> “Optional Protocol to the Vienna Convention on Diplomatic Relations”. United Nations, 1961.

### ***Resolution 476 of the Security Council (1980)***

Resolution 476 was created due to The Security Council's concern that the special status of Jerusalem was not being respected by states, particularly Israel, who had taken measures to alter the character and status of the Holy City.<sup>63</sup> The Resolution may be found here: <http://unscr.com/en/resolutions/476>

### ***Resolution 478 of the Security Council (1980)***

The Security Council had been deeply concerned over the enactment of a "basic law" in the Israeli Knesset, which proclaimed a change in the character and status of Jerusalem, noting that Israel has not complied with resolution 476.<sup>64</sup> The Resolution can be found here: <http://unscr.com/en/resolutions/478>

### ***Jerusalem Embassy Act (1995)***

On November 8, 1995, the U.S. developed a bill as an attempt to provide for the relocation of the U.S. Embassy in Israel to Jerusalem, and for other purposes.<sup>65</sup> The Act may be accessed here: <https://www.congress.gov/bill/104th-congress/senate-bill/1322>

### ***Security Council Resolution 2334 (2016)***

Fearing that the continuous Israeli settlement activities will dangerously put the viability of the two-state solution at risk, the Security Council presented yet another resolution, hoping to put an end to the ongoing conflict.<sup>66</sup> The Resolution may be accessed in full here: [S/RES/2334 \(2016\)](https://www.un.org/News/Press/docs/2016/1611/S161102.html)

### ***Tenth Emergency Special Session of General Assembly the Resolution ES-10/19 (2017)***

The Security Council's failure to maintain international peace is what led the General Assembly to hold an Emergency Special Session on December 22, 2017, where it adopted resolution ES-10/19.<sup>67</sup> It may be found here: [https://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/ES-10/19](https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/ES-10/19)

## ***Committee Mission and Focus Questions***

Justices in this committee must clearly interpret and apply relevant international law to this case. It must be decided whether the actions of the U.S. violated the *Vienna Convention on Diplomatic Relations*, and if so, whether provisional measures must be implemented. It is important to note that no final verdict has been made on the case, as it is currently pending.

As Judges deliberate on the case, the following legal questions must be considered:

1. Has the U.S. violated its obligations to international law under the *Vienna Convention on Diplomatic Relations* and/or the *Optional Protocol*?

---

<sup>63</sup> "Security Council Resolution 476". UN Security Council Resolutions, 2020, <http://unscr.com/en/resolutions/476>.

<sup>64</sup> "Security Council resolution 478". UN Security Council Resolutions, 2020, <http://unscr.com/en/resolutions/478>.

<sup>65</sup> "Embassy Act of 1995". Congress Gov, 1995, <https://www.congress.gov/104/plaws/publ45/PLAW-104publ45.pdf>.

<sup>66</sup> "Security Council Resolution 2334". UN Security Council, 2016, <https://www.un.org/webcast/pdfs/SRES2334>

<sup>67</sup> "Status of Jerusalem". UN, 2017, [https://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/ES-10/19](https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/ES-10/19).

2. How could the relocation of the Embassy affect the proposed Partition Plan?
3. How might the relocation of the U.S. Embassy to Jerusalem impact future relations between Palestine and Israel?
  - a. How might the relocation of the U.S. Embassy impact other states?
4. President Trump stated that, *“This long overdue recognition of reality is in the best interests of both the United States and the pursuit of peace between Israel and the Palestinians”*.
  - a. Is the relocation of the Embassy in the best interests of all parties involved?
  - b. Did this action help bring about peace between Israel and Palestine?
5. How might the embassy relocation impact the UN’s goal of achieving peace in the Middle East?

## Topic #2: Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine vs. Russian Federation)

### Introduction

Ukraine, originally part of the former Soviet Union, proclaimed independence in 1991. The Russian Federation promised to respect Ukraine's sovereignty and territorial integrity by signing the Budapest Memorandum.<sup>68</sup> However, over the last decade, leaders of Russia have come to believe that the division of the Soviet Union into independent nations like Ukraine was a geopolitically catastrophic action for Russia.<sup>69</sup> It now seeks to restore dominance over former Soviet Union territory, including the Autonomous Republic of Crimea, which had been part of Ukraine since 1954.<sup>91, 70</sup>

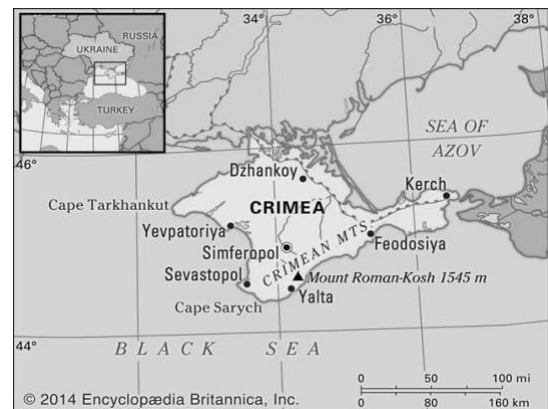


Figure 2: Map of the Crimean peninsula<sup>71</sup>

On February 20, 2014, the Russian Federation launched an invasion of Crimea. Within a week, armed groups had seized and established control over Crimean parliament buildings, military bases, airports, and media outlets. After Russian soldiers had occupied key Crimean cities, the Russian Federation then held a referendum in order to legitimize its occupation. The citizens voted in favour of unification of Crimea with the Russian Federation. However, the referendum was deemed invalid by the UN General Assembly due to being held in an environment of political intimidation.<sup>72</sup> The Russian Federation continues to occupy Crimea today.<sup>73</sup>

<sup>68</sup> “Application Instituting Proceedings.” International Court of Justice, January 16, 2017, <https://www.icj-cij.org/files/case-related/166/166-20170116-APP-01-00-EN.pdf>.

<sup>69</sup> “Putin Deplores Collapse of USSR.” BBC News, April 25, 2005, <http://news.bbc.co.uk/2/hi/4480745.stm>.

<sup>70</sup> “Crimea Profile.” BBC News, January 17, 2018, <https://www.bbc.com/news/world-europe-18287223>.

<sup>71</sup> “Crimea: location” Encyclopædia Britannica. <https://www.britannica.com/place/Crimea>

<sup>72</sup> “Territorial Integrity of Ukraine.” General Assembly, April 1, 2014, [https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/a\\_res\\_68\\_262.pdf](https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/a_res_68_262.pdf).

<sup>73</sup> “Application Instituting Proceedings.” International Court of Justice, January 16, 2017.



In its application to the ICJ, Ukraine asserts that the Russian Federation has been discriminating against ethnic and cultural minorities in Crimea, such as Ethnic Ukrainians and Crimean Tatars, because it views them as a threat to the regime. Ethnic Ukrainians associate with the Ukrainian state and support Ukraine's vision of independence. The Tatars are a Turkic minority group who have resided on the Crimean Peninsula since the thirteenth century.

Minorities were the subject to political intimidation during the referendum. Ukraine presents evidence that members of ethnic Ukrainian communities and Crimean Tatars have been abducted, beaten and killed by soldiers. Ukraine urges the court to determine that there has been significant discrimination against the Tatar community in the aftermath of annexation. After the Tatars refused to support the annexation, Ukraine asserted in its application to the ICJ that the Russian Federation proceeded to launch attacks against the Tatar People, their leaders, and political and media institutions. Russia has also suppressed culturally significant gatherings, including Crimean Tatar Flag Day.<sup>74</sup>

Ukraine also asserts that the Russian Federation has sponsored terrorism in eastern Ukraine, and is in violation of the International Convention for the Suppression of the Financing of Terrorism.<sup>75</sup> Due to the complexity and broad scope of international legislation that may apply to this case, the committee will focus only on determining whether the Russian Federation has violated international law under the ICERD. As such, the International Convention for the Suppression of the Financing of Terrorism should not be of major consideration during research or committee discussions.

## *History of Proceedings*

### *Application instituting proceedings*

In its application to institute proceedings submitted January 16, 2017, Ukraine states that the Russian Federation violated the ICERD by engaging in discriminatory acts against the Crimean Tatar and ethnic Ukrainian communities residing in the Autonomous Republic of Crimea. By instituting proceedings, Ukraine is requesting that the Court declare that the Russian Federation has violated its obligations under the ICERD through actions such as systematically discriminating against ethnic Ukrainian and Crimean Tatar communities, holding an illegal referendum in midst of intimidation and violence toward minority groups, preventing the celebration of important cultural events, and suppressing Ukrainian language education among ethnic Ukrainians. Ukraine requests that the Russian Federation be ordered to comply with its obligations under the ICERD.<sup>76</sup>

The Court must first determine if Ukraine's allegations fall under jurisdiction of the ICJ and of the ICERD. For this case to fall under jurisdiction of the Court as outlined under Section 36(1) of the ICJ Statute, it must be concerned with the interpretation of an international agreement that both parties have

---

<sup>74</sup> "Application Instituting Proceedings." International Court of Justice, January 16, 2017.

<sup>75</sup> "Application Instituting Proceedings." International Court of Justice, January 16, 2017.

<sup>76</sup> "Application Instituting Proceedings." International Court of Justice, January 16, 2017.

signed.<sup>77</sup> In addition, Article 22 of the ICERD states that for a case to be considered by the Court, the parties must have already attempted conflict resolution. Furthermore, Article 11 of the ICERD states that the conflict must have been brought to the attention of the ICERD committee.<sup>78</sup>

***Request for the indication of provisional measures of protection of 16 January 2017***

On the same day that Ukraine submitted an application to institute proceedings, it filed a request asking the ICJ to implement provisional measures to protect minorities from discrimination and violence while the case is pending in court. Ukraine requested that the ICJ order the Russian Federation to refrain from further acts of racial discrimination, and political and cultural suppression against citizens of Crimea.<sup>79</sup>

***Public hearings of 6-9 March, 2017***

The Court held public hearings to determine whether provisional measures should be granted. Preliminary evidence was submitted by both Ukraine and the Russian Federation.<sup>80</sup>

***Preliminary objections submitted by the Russian Federation, 12 September, 2018***

On September 12, the Russian Federation filed preliminary objections against the court case. The Russian Federation argued that the case does not fall under the jurisdiction of the ICJ. In addition, it outlined reasons for why evidence submitted by Ukraine on alleged violations of the CERD is weak.<sup>81</sup>

***Public hearings of 3-7 June, 2019***

The Court held public hearings to deliberate preliminary objections posed by the Russian Federation.<sup>82</sup>

***Press release of 8 November, 2019***

The Court issued a press release outlining their judgement on preliminary objections posed by the Russian Federation. The Court determined that it does have jurisdiction to consider the application by Ukraine.<sup>83</sup>

---

<sup>77</sup> “Statute of the Court.” International Court of Justice, <https://www.icj-cij.org/en/statute>.

<sup>78</sup> “Summary of Order: application of the ICERD (Qatar v. United Arab Emirates).” International Court of Justice, July 23, 2018, <https://www.icj-cij.org/files/case-related/172/172-20180723-SUM-01-00-EN.pdf>.

<sup>79</sup> “Ukraine institutes proceedings against Russian Federation and requests the Court to indicate provisional measures.” International Court of Justice, January 17, 2017, <https://www.icj-cij.org/files/case-related/166/19310.pdf>.

<sup>80</sup> “Latest developments.” International Court of Justice, <https://www.icj-cij.org/en/case/166>.

<sup>81</sup> “Preliminary Objections.” International Court of Justice, 12 September 2018. <https://www.icj-cij.org/files/case-related/166/166-20180912-WRI-01-00-EN.pdf>

<sup>82</sup> “Press Release: Preliminary Objections/.” International Court of Justice, 1 May 2019. <https://www.icj-cij.org/files/case-related/166/166-20190501-PRE-01-00-EN.pdf>

<sup>83</sup> “Press Release 2019/46.” International Court of Justice, 8 November 2019. <https://www.icj-cij.org/files/case-related/166/166-20191108-PRE-01-00-EN.pdf>

## *Arguments of the Parties*

### *Ukraine's Stance*

Ukraine asserts that after the Russian Federation annexed the Crimean Peninsula in 2014 through an unlawful referendum, it has proceeded to carry out acts of discrimination against non-Russian communities in the region, violating the ICERD. Ukraine writes that the *Mejlis*, the central political and cultural institution of the Crimean Tatar people has been outlawed under Russian occupation. It also asserts that Tatar leaders have been persecuted, exiled and imprisoned. Individuals of the Tatar community have been subjected to murders, disappearances, murders, and intimidation. Furthermore, Ukraine claims that cultural gatherings have been blocked and media voices among the Crimean Tatar and ethnic Ukrainian communities have been silenced. There have been significant decreases in educational opportunities for minority groups. Ukraine suggests that in these ways, Russia is attempting to achieve ethnic dominance in Crimea, and is in violation of the ICERD.<sup>84</sup>

In its application, Ukraine also claims that the Russian Federation's support of armed groups in eastern Ukraine violates the International Convention for the Suppression of the Financing of Terrorism, which both Ukraine and the Russian Federation signed in 2000.<sup>85</sup> However, this committee will not focus on violations of international law under this convention. The focus on committee sessions will be to determine whether any violation of international law has occurred under the ICERD.

### *Russian Federation's Stance*

The Russian Federation argues that Crimea is its rightful territory and has been acquired lawfully. Russia believes that Ukraine has instituted proceedings not to protect Crimean citizens against discrimination but to re-establish control of Crimea. The Russian Federation writes that Ukraine has had a history of failing to protect the rights of Crimean Tatars and therefore is not truly concerned about discrimination against this community.<sup>86</sup> For this reason, since the goal of the application concerns the status of Crimea, rather than the protection of human rights, the case is not under the jurisdiction of the ICERD.<sup>108</sup>

The Russian Federation argues that there is no evidence of discrimination against ethnic minorities in Crimea. For example, Crimea is currently inhabited by 277 336 Tatars and 344 515 ethnic Ukrainians. The population of minority groups is inconsistent with Ukraine's allegations of cultural erasure. In addition, Russia asserts it supports the development of minority communities as evidenced by its \$708 billion RUB investment in the Tatar community, and in part to organize Tatar cultural events. Furthermore, political leaders of minorities are not being suppressed. One hundred and fifty Crimean Tatars have been elected to Crimean State organs as a result of the September 2014 elections.

---

<sup>84</sup> "Application Instituting Proceedings." International Court of Justice, January 16, 2017.

<sup>85</sup> "Application Instituting Proceedings." International Court of Justice, January 16, 2017.

<sup>86</sup> "Preliminary Objections." International Court of Justice, 12 September 2018. <https://www.icj-cij.org/files/case-related/166/166-20180912-WRI-01-00-EN.pdf>

## ***Applicable Legislation***

The case will be examined for any violations of the International Convention on the Elimination of All Forms of Discrimination (ICERD). Although in its application to the ICJ, Ukraine also urges the court to consider violations of the International Convention for the Suppression of the Financing of Terrorism, this convention will not be the focus of committee discussions.

### ***International Convention on the Elimination of All Forms of Discrimination (ICERD)***

Adopted by the General Assembly on December 21, 1965, the International Convention on the Elimination of All Forms of Discrimination (ICERD) requires that State parties condemn racial discrimination and establish policies which counter discrimination in all forms without delay.<sup>87</sup> The convention can be accessed in full here: <https://www.ohchr.org/en/professionalinterest/pages/cerd.aspx>.

### ***Committee on the Elimination of Racial Discrimination (CERD)***

The CERD oversees the implementation of the ICERD.<sup>88</sup> Over the years, the committee has made several recommendations on the enforcement of the ICERD, which can be used as legal reasoning by the ICJ. One recommendation that may be considered in this case is General Recommendation 31 on the Prevention of Racial Discrimination in the Administration and Functioning of the Criminal Justice System.<sup>89</sup> This can be accessed here: <https://www.refworld.org/docid/48abd56dd.html>

## ***Committee Mission and Focus Questions***

It is important to note that no final verdict has been made by the ICJ on this case as it is currently pending in court.. The role of Justices in this committee will be to examine evidence presented by both parties to determine any violations of international law. Justices in this committee must interpret and apply the ICJ *Statute*, ICERD, and other applicable international laws to the case.

## ***Questions to Consider:***

1. Should Ukraine's request for the indication of provisional measures of protection be granted?
2. Is the ICERD applicable to this case in spite of preliminary objections posed by Russia?
3. Is the Russian Federation in violation of international law under the *International Convention of the Elimination of All Forms of Discrimination*?
  - a. Is there sound evidence of discrimination against ethnic Ukrainian communities?
  - b. Is there sound evidence of discrimination against Crimean Tatar communities?
4. Are Ukraine's interests in re-acquiring Crimea relevant to the case?

---

<sup>87</sup> "International Convention on the Elimination of All Forms of Racial Discrimination - Introductory Note."

Audiovisual Library of International Law, December 21, 1965, <https://legal.un.org/avl/ha/cerd/cerd.html>.

<sup>88</sup> "International Convention on the Elimination of All Forms of Discrimination." United Nations Human Rights Office of the High Commissioner, December 21, 1965.

<sup>89</sup> "General Recommendation XXXI". CERD, 2005. <https://www.refworld.org/docid/48abd56dd.html>