



INTERNATIONAL COURT OF JUSTICE

BACKGROUND GUIDE

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International Court of Justice

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Dear Judges,

Welcome to the International Court of Justice (ICJ)! Your committee will be staffed by Mariana Odete Andrade (President) and Tatyana Budilskaya (Vice-President). Mariana holds a Bachelor in Law degree from Universidad San Francisco de Quito and works as a junior associate in a law firm in Ecuador. Tatyana is completing a joint Law degree and Masters in International Relations at the University of Ottawa and the Norman Paterson School of International Affairs.

Judges of the ICJ will have the opportunity to discuss the following cases:

1. Certain Iranian Assets (“Islamic Republic of Iran v. United States of America”)
2. Immunities and Criminal Proceedings (“Equatorial Guinea v. France”)

The ICJ is the principal judicial organ of the United Nations. Established in June 1945, the Court’s role is to settle, in accordance with international law, legal disputes submitted to it by States and to give advisory opinions on legal questions referred to it by authorized United Nations organs and specialized agencies.

We hope that you will find this Background Guide useful in your preparation for the conference. The bibliographies in this document and the ICJ website are good starting points.

Each delegate will also be required to submit a legal memo on the above referenced cases before **16 February 2017** to icj@canimun.org. Guidelines and requirement are available on the CANIMUN website under the “Delegate Resources” section.

Prior to the conference, make sure you review our “Delegate Code of Conduct,” which can be found on our website.

If you have any questions regarding the committee or the conference, feel free to contact us at icj@canimun.org.

We wish you all the best in your preparation and look forward to meeting you at CANIMUN 2017!

Mariana Odete Andrade
President

Tatyana Budilskaya
Vice-President

COMMITTEE OVERVIEW

The Court

Background and Structure

The International Court of Justice (ICJ), also known as the “World Court”, is one of the six principal organs of the United Nations (UN) and its main judicial organ.¹ A successor to the Permanent Court of International Justice (1922-1945), it was established in June 1945 under the *Charter of the United Nations* (1945) and began its activities in April 1946.² The ICJ is the only UN organ not located in the city of New York, seating instead at the Peace Palace in the city of The Hague, Netherlands.³

The Court is composed of a body of 15 independent judges who possess the qualifications required in their respective jurisdictions to be appointed to the highest judicial offices, or are jurists of recognized competence in international law.⁴ Judges are elected by the General Assembly and the Security Council for a nine-year term and may be re-elected. The Court must not include more than one national of the same Member State and must represent the entire principal legal systems of the world.⁵

Although the Court generally discharges its duties as a full Court, it may also form permanent or temporary chambers to deal with certain categories of cases, such as labour or communications, or to handle summary procedures.⁶ The Court also elects a President and Vice-President for a three-year term. The President presides at all meetings of the Court, directs the work and supervises its administration, and has a casting vote in the event of votes being equally divided during judicial deliberations.⁷

Membership

One of the main principles governing the settlement of international disputes is that States are free to choose the methods of resolving their disputes. This implies that States must consent the Court's role in a said dispute. This manifestation of consent can be done by 1) a special agreement between two or more States to submit a specific issue to the Court; 2) a clause in a treaty by which a State accepts in advance the jurisdiction of the Court should a dispute arise on the interpretation or application of a treaty with another State; or 3) a unilateral declaration, by which State parties to the Statute unilaterally recognize the Court's jurisdiction as binding.

Pursuant to the UN Charter, UN members are automatically parties to the Statute of the ICJ, meaning there is no requirement for a separate ratification to be a party to the Court's Statute and that every member of the UN is entitled to the benefits of the Court from the date of their

¹ The International Court of Justice Handbook. (2013), p. 5.

² *Ibid.*

³ [United Nations. \(n.d.\). Main Organs.](#)

⁴ Statute of the International Court of Justice. (1945).

⁵ International Court of Justice. (n.d.) *Members of the Court.*

⁶ International Court of Justice. (n.d.) *The Court: Chambers and Committees.*

⁷ International Court of Justice. (n.d.) *The Court: Presidency*

admission to the UN.⁸ Some Member States, nonetheless, have attached reservations when accepting the Court's jurisdiction, whereby they do not recognize said jurisdiction over disputes in regards to certain matters.⁹

Mandate and Functions

Legal Basis

The UN Charter, signed in San Francisco on 26 June 1945, is the first constituent treaty of the ICJ. Article 7 of the Charter establishes the Court as one of the six principal organs of the United Nations; Article 36 mentions that legal disputes among UN members should, as a general rule, be referred by the parties to the ICJ; and Articles 92 to 96 illustrate the main aspects of the Court's functioning.¹⁰

The *Statute of the International Court of Justice* (1945) is annexed to and forms a vital part of the UN Charter. It comprises all the provisions regarding the organization and functioning of the Court.

Jurisdiction

The ICJ has a dual jurisdiction: 1) a contentious jurisdiction, to settle in accordance with international law legal disputes between States submitted to it by them; and 2) an advisory jurisdiction, to give opinions on legal matters referred to it by duly authorized United Nations organs and specialized agencies.¹¹

Contentious Jurisdiction

According to Article 34 (1) of the Statute, only States may be parties in cases before the Court, and pursuant to Article 36 (1), its jurisdiction comprises all cases which the parties refer to it and all matters specially provided for in the UN Charter or in treaties and conventions in force.¹²

Proceedings may be instituted in two ways: through the notification of a special agreement, by either of the State parties to the agreement or by both of them; or by means of an application, submitted unilaterally by an applicant State against a respondent State. The procedure first comprises of: 1) a written proceedings phase, in which parties file and exchange pleadings consisting on their factual and legal arguments; 2) an oral proceedings phase, consisting of public hearing at which each State's agents address the Court; 3) the deliberation phase, which ends with the Court delivering its judgment at a public sitting. Judgments are final and not subjected to appeal.¹³

Although Article 2 and Article 94 (1) of the UN Charter prescribes that judgments are binding upon parties, given the nature of the Court's jurisdiction there is no guarantee of full enforcement of its

⁸Mohamed Sameh M. Amr. (2003). *The Role of the International Court of Justice As the Principal Judicial Organ of the United Nations*, p. 26.

⁹ International Court of Justice. (n.d.) *Practical Information: Frequently Asked Questions*.

¹⁰ Statute of the International Court of Justice. (1945).

¹¹ International Court of Justice. (n.d.) *Practical Information: Frequently Asked Questions*.

¹² Statute of the International Court of Justice. (1945).

¹³ International Court of Justice. (n.d.) *How the Court Works*.

rulings by member States. If parties do not comply with the obligations arising from the decision of the Court, the Security Council may, at its own discretion, decide on measures to give effect to the judgment. These measures, nonetheless, amount to a recommendation in accordance to Chapter VI of the UN Charter.¹⁴

Advisory Jurisdiction

Organs of the UN and specialized agencies may request the Court an advisory opinion on specific legal questions. Contrary to the decisions resulting from the contentious jurisdiction, advisory opinions have no binding effect and the requesting organ, agency or organization remains free to decide what effect to give to these opinions.¹⁵

Sources of International Law

Whether the Court is engaged in advisory proceedings or decides a case of a contentious nature, its members shall apply and decided based on the same body of rules. These rules comprise the sources of international law and are listed in Article 38 (1) of the Statute of the Court:

Article 38 (1): The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:

- a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
- b. international custom, as evidence of a general practice accepted as law;
- c. the general principles of law recognized by civilized nations;
- d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

The first three of these sources – international conventions, international custom and general principles of law – are referred to as “primary sources” of international law.¹⁶ International conventions cover not only bilateral and multilateral treaties, but also all other international understandings and agreements, even of informal nature, that establish rules recognized and accepted by the States parties.¹⁷ International customary law, on the other hand, is not a written source, and comprises a consistent and widespread State practice and the belief that said practice is rendered obligatory; e.g., requiring States to grant immunity to a visiting Head of State.¹⁸ General Principles of Law, as stated in Article 38 (1), consist on those norms that are so fundamental that can be found in virtually every legal system; e.g., the principle of good faith in international law.¹⁹

Given that there is no doctrine in international law establishing that judicial decisions are binding, these are considered as “secondary sources” or evidence of international law rules, as well as the

¹⁴ United Nations Conference on Trade and Development (2003).

¹⁵ International Court of Justice. (n.d.) *Jurisdiction: Advisory Jurisdiction*.

¹⁶ Northwestern Law Pritzker Legal Research Center. (n.d.) *Sources of International Law*.

¹⁷ The International Court of Justice Handbook. (2013), p. 96.

¹⁸ Christopher Greenwood (n.d.) *Sources of International Law: An Introduction*.

¹⁹ American Society of International Law, International Judicial Academy. (2007). *What are General Principles of International Law?* International Judicial Monitor.

teachings of publicists, meaning significant scholarly writing on international law, including treatises, articles and other publications.²⁰

The main difference between primary and secondary sources of international law is that primary sources are considered authoritative statements of international law due to their binding effect between States; whereas secondary sources are not *per se* international law. Consequently, Judges shall necessarily refer to a primary source of international law in their decisions; they could also use a secondary source to help them prove the existence of a particular rule of international law, but this source does not constitute by itself evidence of international law.

Simulation Style

The ICJ simulation will be conducted in a similar format to a crisis committee. Formal rules of procedure will be largely abandoned in favor of an open-style debate. The President and Vice President (committee staff) will steer conversation by creating *informal* speakers lists and designating speaking times, but by and large this committee is to be guided by the judges (delegates) themselves. As such, it is imperative that all judges come amply prepared to discuss each fact in detail.

As will be emphasized later, judges are not expected to promote their country of origin's policies. Instead, judges of the ICJ are seen as neutral arbitrators. While their past legal and world experiences will shape their perceptions of issues and potentially colour their understanding of certain situations, in no way do judges of the ICJ use their positions to bolster any particular State's agendas or policies.

Judges of the ICJ must work collaboratively to fully explore the legal and non-legal issues and questions surrounding each case. There is no 'right or wrong' answer; instead, judges are on a quest for knowledge of what can universally be accepted as 'just'. Judges who do not agree with one another are encouraged to ask questions and examine the arguments of their counterparts, and in turn are expected to come to session with a firm understanding so that they may promote their own arguments. Judges must actively listen to their fellows and are encouraged to poke holes in and/or bolster one another's arguments in order to promote debate and discussion.

Sample Timeline

At the beginning of the simulation, the Court will set the agenda. Realistically, the International Court of Justice only hears one case at a time. However, as we will be discussing two topics, we will vote on their order of appearance.

Once the first case has been selected, judges will begin preliminary discussion of the legal questions presented. During this period, each judge will present her or his initial views, speculations, and uncertainties. From these, the Court will develop a common understanding of the primary issues involved.

Judges will be asked to present their preliminary opinions in the form of written notes. These notes will then be presented orally before the court, with a copy being distributed to each judge. These

²⁰ Northwestern Law Pritzker Legal Research Center. (n.d.) *Sources of International Law*.

notes are not binding, but are an opportunity to identify consensus and issues of contention between one's colleagues. They will ultimately serve as a jumping-off point to begin formal deliberation.

Formal deliberations are the predominant phase of the Court's proceedings. During these deliberations, judges will analyze relevant facts and aspects of international law and formulate opinions on each. The format of these deliberations is completely set by judges' consensus. The dais will typically recognize different speakers and may present comments, critiques, and questions in order to facilitate discussion. At times, the Court may choose to limit discussion to a particular issue or question requiring clarification; at others, it may conduct 'straw' or 'consensus' polls. As these deliberations progress, judges' positions will become more defined, and (hopefully) a consensus will be largely agreed upon. It is encouraged that judges develop a methodology to deal with the case – i.e. an analysis that fits individual components into a finalized resolution of the case as a whole.

Finally, judges will be responsible for producing formal written opinion statements during an extended caucus. Judges will break into groups based on their legal analysis and viewpoints of the case. These groups will likely fall under Majority (consensus), Concurring (same overall conclusion but arrived there differently), and Dissenting (different/conflicting conclusion). In theory, the Court should produce as few as one or as many distinct opinions as it has members.

All opinions must begin with whether the ICJ has jurisdiction in this manner, or state why it lacks jurisdiction. Remember, every portion of one's opinion must derive from, and support in, international law.

Annotated Bibliography

Statute of the International Court of Justice. (1945). [Online document] Retrieved 24 September 2016 from: <http://www.icj-cij.org/documents/?p1=4&p2=2>

An integral part of the Charter of the United Nations, the Statute constitutes the legal basis by which the Court functions. This norm rules the Court's organization, jurisdiction and rules of procedure; thus, delegates will have to constantly refer to this document in order to comply with their role of Judges or Parties to the case in adherence to the law.

The International Court of Justice Handbook. (2013) [Online document] Retrieved 26 September 2016 from: http://legal.un.org/avl/pdf/rs/other_resources/manuel_en.pdf

This comprehensive manual includes general information on the Court's history, composition, structure, jurisdiction, and decisions. The handbook also includes a summary of the cases brought before the Court from 1946 to 2013. Therefore, it will serve as a strong support for delegates during or prior to the conference may any doubt regarding the Court arises.

International Court of Justice. (n.d.) *How the Court Works*. [Website] Retrieved 26 September 2016 from: <http://www.icj-cij.org/court/index.php?p1=1&p2=6>

The information provided on this website explains the work of the Court in exercising its contentious and advisory jurisdiction, while referring to the procedure followed by the Court on each case. A brief mention on the sources of international law is also made. Delegates can refer to this website when looking for more detailed information on how cases unfold at the ICJ.

Bibliography

American Society of International Law, International Judicial Academy. (2007). *What are General Principles of International Law?*. International Judicial Monitor. [Article] Retrieved 6 November 2016 from: http://www.judicialmonitor.org/archive_0707/generalprinciples.html

Christopher Greenwood (n.d.) *Sources of International Law: An Introduction*. [Article] Retrieved 6 November 2016 from: http://legal.un.org/avl/pdf/ls/greenwood_outline.pdf

Christopher Greenwood (2011). *The Role of the International Court of Justice in the Global Community*. [Article] Retrieved 25 September 2016 from: <http://jilp.law.ucdavis.edu/issues/volume-17-2/Greenwood.pdf>

Handbook on accepting the jurisdiction of the International Court of Justice: model clauses and templates (2014). [Brochure] Retrieved 23 September 2016 from http://legal.un.org/avl/pdf/rs/other_resources/Manual%20sobre%20la%20aceptacion%20jurisdiccion%20CIJ-ingles.pdf

Hugh Thirlway (2014). *The Sources of International Law*. [Book content] Retrieved 25 September 2016 from: <http://opil.ouplaw.com/view/10.1093/law/9780199685394.001.0001/law-9780199685394-chapter-1>

International Court of Justice. (n.d.) *Jurisdiction: Advisory Jurisdiction*. [Website] Retrieved 6 November 2016 from: <http://www.icj-cij.org/jurisdiction/index.php?p1=5&p2=2>

International Court of Justice. (n.d.) *Members of the Court*. [Website] Retrieved 26 September 2016 from: <http://www.icj-cij.org/court/index.php?p1=1&p2=2>

International Court of Justice. (n.d.) *Practical Information: Frequently Asked Questions*. [Website] Retrieved 26 September 2016 from: <http://www.icj-cij.org/information/index.php?p1=7&p2=2>

International Court of Justice. (n.d.) *The Court: Chambers and Committees*. [Website] Retrieved 2 November 2016 from: <http://www.icj-cij.org/court/index.php?p1=1&p2=4>

International Court of Justice. (n.d.) *The Court: Presidency*. [Website] Retrieved 5 November 2016 from: <http://www.icj-cij.org/court/index.php?p1=1&p2=3>

Mohamed Sameh M. Amr. (2003). *The Role of the International Court of Justice As the Principal Judicial Organ of the United Nations*.

Northwestern Law Pritzker Legal Research Center. (n.d.) *Sources of International Law*. [Website] Retrieved 26 September 2016 from: <http://www.law.northwestern.edu/library/research/international/gettingstarted/sourcesofintllegal/>

Rules of Court. (1978). [Online document]. Retrieved 24 September 2016 from: <http://www.icj-cij.org/documents/index.php?p1=4&p2=3&p3=0>

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United Nations Conference on Trade and Development. (2003). *Dispute Settlement: International Court of Justice*. [Online Report]. Retrieved 23 September 2016 from:
http://unctad.org/es/Docs/edmmisc232add19_en.pdf

United Nations. (n.d.). *Main Organs*. [Website]. Retrieved 2 November 2016 from:
<http://www.un.org/en/sections/about-un/main-organs/>

TOPIC 1: CERTAIN IRANIAN ASSETS (*Islamic Republic of Iran v. United States of America*)

Introduction

Iran and U.S.: a long-running conflict

The history of Iran-United States (U.S.) relations reveals an inextricable conflict with mostly economic and political roots. These two nations maintained strong ties for most of the nineteenth century; however, in 1973, this apparently strong alliance was shaken when the Shah of Iran – the last head of the Iranian Monarchy and the U.S.’s main ally in the Middle East – refused to lower the price of oil, in a movement deemed necessary to help the Iranian development and economy.²¹ As a result, senior officials from the White House questioned if the privileged alliance between these two nations should be maintained.²²

The answer to this question was evident when in 1976, the U.S. and Saudi Arabia colluded to lower oil prices, weakening Iran’s economy and thus triggering a financial crisis. By the time the 1979 Iranian Revolution that abolished the monarchy and ousted the *Shah* took place, most of the Iranian population believed it was of utmost importance to make Iran a stronger and independent nation by rejecting any foreign intervention.²³ Finally, a complete breakdown on Iran – U.S. relations took place when on 4 November 1979, Iranian revolutionaries afraid that the U.S. might intend to reinstall the *Shah*, seized the American Embassy in Tehran and held 52 American diplomats hostages from 4 November 1979 to 20 January 1981, resulting in the U.S. government freezing approximately US \$12 billion of Iranian assets as a sanction.²⁴

The 1983 Beirut Barrack bombings

On 23 October 1983, 220 U.S. Marines and 21 other service personnel were killed when a suicide bomber rammed an explosive-laden truck at a Marine compound in Beirut, Lebanon.²⁵ U.S. service personnel had been stationed there as part of a multi-national peacekeeping force in the context of the Lebanese Civil War. Despite denying any involvement, Hezbollah, a Shi’a paramilitary organization based in Lebanon that emerged as a response to the Israeli invasion of Lebanon was soon held responsible.²⁶ Hezbollah was created with financial support, training and equipment from Iranian authorities.²⁷

In subsequent years, the Central Intelligence Agency (CIA) had calculated that Iran’s proxy groups were responsible for at least 24 international terrorist incidents.²⁸ In January 1984, the U.S.

²¹ Massachusetts Institute of Technology International Review. (2009). *History Brief: Timeline of US-IRAN Relations until the Obama Administration*.

²² *Ibid.*

²³ *Ibid.*

²⁴ United States Institute for Peace. (n.d.). *The Carter Administration*.

²⁵ CNN. (2016). *Beirut Marine Barracks Bombing Fast Facts*.

²⁶ Massachusetts Institute of Technology International Review. (2009). *History Brief: Timeline of US-IRAN Relations until the Obama Administration*.

²⁷ The Atlantic. (2013). *The Origins of Hezbollah*.

²⁸ *Ibid.*

government listed Iran as a “state sponsor of terrorism” and soon warned that Iranian sponsored terrorism presented the greatest threat to U.S. personnel in the region.²⁹

Bank Markazi v. Peterson

In 2001, Deborah Peterson, whose brother had been killed in the Beirut barrack bombings, along with other plaintiffs filed a wrongful-death suit in U.S. Courts against Iran for its alleged “State sponsored terrorism,” seeking execution against a bank account owned by the Central Bank of Iran (hereinafter the “Bank Markazi”).³⁰ A federal district court found Iran liable for the 1983 barrack bombings incident and awarded plaintiffs a US \$2.65 billion judgment in 2007, and while parties discussed in court about how would Iran pay the judgment, the Congress passed the *Iran Threat Reduction and Syria Human Rights Act of 2012*, making approximately US \$2 billion in frozen Iranian funds available for seizure in the Bank Markazi case.³¹

In 2014, when the Second Circuit Court of Appeals used this new Act to side with the families and seize the funds, Iran filed a review arguing that the Congress had violated the separation of powers by passing a law that was solely directed at the *Bank Markazi v. Peterson* case (targeted legislation), leading the Court to a particular result while the case was still pending.³² However, on 20 April 2016, the Supreme Court held that the Congress had not exceeded its constitutional role in enacting a statute that made it easier for plaintiffs to recover damages awarded to them in previous instances, thus confirming that Bank Markazi had to pay approximately US \$2 billion to the victims of the 1983 barrack bombings.³³

The ruling was received with dismay by the Iranian government, who affirmed that the decision went against international law, amounted to appropriation of the Islamic Republic of Iran’s property and could be compared to “theft”.³⁴ For several foreign policy experts, by challenging the internationally accepted principle of sovereign immunity, which states that a nation is immune from lawsuits in the courts of another, the *Bank Markazi v. Peterson* decision puts yet another strain on the already tense Iranian-American relation.³⁵ It is noteworthy that a nuclear deal between Iran and U.S. is being implemented in the hopes of reviving Iran’s stagnant economy, in exchange of a halt in its nuclear program. The sanctions imposed by the *Bank Markazi v. Peterson* decision may therefore seem counterproductive in creating the right environment necessary to improve Iran- U.S. relations.³⁶

History of Proceedings

On 14 June 2016, as a response the U.S. Supreme Court’s ruling in the *Bank Markazi v. Peterson* case, Iran instituted proceedings against the United States of America before the International Court of

²⁹ The Atlantic. (2013). *The Origins of Hezbollah*; U.S. Department of State. (n.d.). *State Sponsors of Terrorism*

³⁰ CNN. (2016). *Supreme Court hears Iran victims compensation case*.

³¹ The Atlantic. (2016). *What the Supreme Court’s ruling on Iranian Assets Means*.

³² IIT Chicago-Kent College of Law. (2016). *Bank Markazi v. Peterson*.

³³ The New York Times. (2016). *Supreme Court Rules Iran Bank Must Pay for Terrorist Attacks*.

³⁴ The Huffington Post. (2016). *Iran Decries Supreme Court Ruling in Favor of Terror Victims as “Theft”*; Iranian Diplomacy. (2016). *Political Judgment in Judicial Guise*.

³⁵ Iran Pulse. (2016). *How Supreme Court decision to freeze Iran assets undermines US foreign policy*.

³⁶ MUFTAH. (2016). *U.S. Policy & Politics Are Complicating the Nuclear Deal with Iran*.

Justice (ICJ), arguing violations by the U.S. Government of the *Treaty of Amity, Economic Relations, and Consular Rights between Iran and the United States of America* (1955) (hereinafter ‘the 1955 Treaty’), which was signed in Tehran on 15 August 1955 and entered into force on 16 June 1957.³⁷ A signed copy of the Application instituting proceedings before the Court was communicated to U.S. on the day it was filed.

Iran invoked Article XXI, paragraph 2, of the 1955 Treaty, to which both Iran and U.S. are Parties, as basis for the jurisdiction of the Court, which provides that:

“Any dispute between the High Contracting Parties as to the interpretation or application of the present Treaty, not satisfactorily adjusted by diplomacy, shall be submitted to the International Court of Justice, unless the High Contracting Parties agree to settlement by some other pacific mean.”

On 1 July 2016, after deliberating on the circumstances of the case, the ICJ fixed as time-limits for the filing of written pleadings the 1 February 2017, for the Memorial of Iran; and the 1 September 2017, for the Counter-Memorial of the United States of America.³⁸

Claims and Arguments

Islamic Republic of Iran

Iran establishes as the subject of the dispute a series of measures by the U.S. that violate the 1955 Treaty by having had and/or currently have adverse effects upon the ability of Iran and Iranian companies (including Iranian State-owned companies, such as Bank Markazi) to exercise their rights to control and enjoy their property, including property located outside the territory of Iran and within the territory of the U.S.³⁹

Iran argues that, since the designation of Iran as a State sponsoring terrorism, a designation which Iran strongly disagrees with, the U.S. has enacted several legislative and executive acts resulting in claims and enforcements proceedings against Iran and Iranian entities in the U.S. At the date of the application, U.S. courts had awarded total damages of over US \$56 billion against Iran regarding its alleged involvement in various terrorists acts mainly outside the U.S.: for instance, on 9 March 2016 a U.S. District Court ordered Iran to pay more than US \$10.5 billion to families of people killed in the 11 September 2001 terrorist attacks and to a group of insurers. Furthermore, Iran explains the U.S. District Court’s decision resulting in the order for Iran to pay US \$2.6 billion in the *Bank Markazi v. Peterson* case.⁴⁰

The damages awarded by Courts, Iran says, are assets or interests held by separate juridical entities that are not party to the judgment on liability in respect of which enforcement is sought, and/or are

³⁷ International Court of Justice. (2016). *Certain Iranian Assets (Islamic Republic of Iran v. United States of America)*: Press Release 2016/ 19 - Iran institutes proceedings against the United States with regard to a dispute concerning alleged violations of the 1955 Treaty of Amity.

³⁸ International Court of Justice. (2016). *Certain Iranian Assets (Islamic Republic of Iran v. United States of America)*: Order - Fixing of time-limits: Memorial and Counter-Memorial.

³⁹ International Court of Justice. (2016). *Certain Iranian Assets (Islamic Republic of Iran v. United States of America)*: Application instituting proceedings.

⁴⁰ *Ibid.*

held by Iran or Iranian entities that benefit from immunities from enforcement proceedings as a matter of international law and as required by the 1955 Treaty.⁴¹

On this basis, Iran requests the Court to adjudge, order and declare its jurisdiction under the Treaty of Amity to entertain the dispute and rule upon its claims; and that the U.S. has breached its obligations to Iran under several provisions of the 1955 Treaty.⁴²

United States of America

U.S. State Department spokesman John Kirby has stated that: “As we have said before, we believe that the United States has acted consistent with its obligations under international law”.⁴³

Considering previous procedures between Iran and the U.S. before the ICJ, it is expected for the U.S. to question the jurisdiction of the Court to adjudge this case and the admissibility of the claims brought forward by Iran.⁴⁴ For instance, on the brief filed by the U.S. Government in the *Bank Markazi v. Peterson* case, the U.S. argued that the provisions of the 1955 Treaty cited by Iran do not apply to the Central Bank of Iran, given that Article IV (1) of the 1955 Treaty requires the parties to “accord fair and equitable treatment” to each other’s “nationals and companies”, when, according to the U.S., Bank Markazi is not a “national” or “company” within the meaning of the Treaty.⁴⁵

The U.S. explained that Bank Markazi is not a “national” of Iran, as the term used in the Treaty includes only natural persons, nor is petitioner a “company” within the meaning of the Treaty, which refers to “corporations, partnerships, companies and other associations”, definition that excludes government agencies and instrumentalities, such as Bank Markazi.⁴⁶ Furthermore, it may argue that Bank Markazi, being a government instrumentality, shall not claim or enjoy immunity, as stated on Article XI (4) of the 1955 Treaty.⁴⁷

Finally, the U.S. might affirm that the enforcement proceedings against Bank Markazi were a lawful countermeasure in response to Iran’s terrorist attacks against the U.S., breaching its obligations under the 1955 Treaty and international law.⁴⁸

It is noteworthy that the Court fixed the deadline for the U.S. to submit its Counter-memorial by 1 September 2017, hence U.S. official arguments are not available yet.

⁴¹ International Court of Justice. (2016). *Certain Iranian Assets (Islamic Republic of Iran v. United States of America): Press Release 2016/19 - Iran institutes proceedings against the United States with regard to a dispute concerning alleged violations of the 1955 Treaty of Amity*.

⁴² International Court of Justice. (2016). *Certain Iranian Assets (Islamic Republic of Iran v. United States of America): Application instituting proceedings*.

⁴³ Washington Examiner. (2016). *Iran sues U.S. in international court*.

⁴⁴ *Opinio Juris* (2016). *Does the International Court of Justice Have Jurisdiction over Iran’s Claim Against the U.S? Actually, Maybe It Does*.

⁴⁵ United States Department of Justice. (2015). *Brief for the United States as Amicus Curiae*.

⁴⁶ Lawfare. (2016). *Iran Sues the U.S. in the ICJ – Preliminary Thoughts*.

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*

Law Applicable

Jurisdiction

Iran claims the Court has jurisdiction to adjudge this case pursuant to Article 36 (1) of the Statute of the Court and Article XXI (2) of the 1955 Treaty, which provide respectively:

Article 36 (1) of the Statute of the Court: “The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force.”⁴⁹

Article XXI (2) of the 1955 Treaty: “2. Any dispute between the High Contracting Parties as to the interpretation or application of the present Treaty, not satisfactorily adjusted by diplomacy, shall be submitted to the International Court of Justice, unless the High Contracting Parties agree to settlement by some other pacific means.”⁵⁰

Substance

Throughout proceedings, Judges shall examine the following provisions of the 1955 Treaty:

Article III (1): “Companies constituted under the applicable laws and regulations of either High Contracting Party shall have their juridical status recognized within the territories of the other High Contracting Party. It is understood, however, that recognition of juridical status does not of itself confer rights upon companies to engage in the activities for which they are organized. As used in the present Treaty, “companies” means corporations, partnerships, companies and other associations, whether or not with limited liability and whether or not for pecuniary profit.”⁵¹ (emphasis added)

Article III (2): “Nationals and companies of either High Contracting Party shall have freedom of access to the courts of justice and administrative agencies within the territories of the other High Contracting Party, in all degrees of jurisdiction, both in defense and pursuit of their rights, to the end that prompt and impartial justice be done. Such access shall be allowed, in any event, upon terms no less favorable than those applicable to nationals and companies of such other High Contracting Party or of any third country. It is understood that companies not engaged in activities within the country shall enjoy the right of such access without any requirement of registration or domestication.”⁵² (emphasis added)

Article IV (1): “Each High Contracting Party shall at all times accord fair and equitable treatment to nationals and companies of the other High Contracting Party, and to their property and enterprises; shall refrain from applying unreasonable or discriminatory measures that would impair their legally acquired rights and interests; and shall assure that

⁴⁹ Statute of the International Court of Justice. (1945).

⁵⁰ *Ibid.*

⁵¹ Treaty of Amity Economic Relations and Consular Rights between the United States and Iran. (1955).

⁵² *Ibid.*

their lawful contractual rights are afforded effective means of enforcement, in conformity with the applicable laws.”⁵³ (emphasis added)

Article IV (2): “Property of nationals and companies of either High Contracting Party, including interests in property, shall receive the most constant protection and security within the territories of the other High Contracting Party, in no case less than that required by international law. Such property shall not be taken except for a public purpose; nor shall it be taken without the prompt payment of just compensation. Such compensation shall be in an effectively realizable form and shall represent the full equivalent of the property taken; and adequate provision shall have been made at or prior to the time of taking for the determination and payment thereof.”⁵⁴ (emphasis added)

Article VII (1): “Neither High Contracting Party shall apply restrictions on the making of payments, remittances, and other transfers of funds to or from the territories of the other High Contracting Party, except (a) to the extent necessary to assure the availability of foreign exchange for payments for goods and services essential to the health and welfare of its people, or (b) in the case of a member of the International Monetary Fund, restrictions specifically approved by the Fund.”⁵⁵ (emphasis added)

Article X (1): “Between the territories of the two High Contracting Parties there shall be freedom of commerce and navigation.”⁵⁶

Article XI (4): “No enterprise of either High Contracting Party, including corporations, associations, and government agencies and instrumentalities, which is publicly owned or controlled shall, if it engages in commercial, industrial, shipping or other business activities within the territories of the other High Contracting Party, claim or enjoy, either for itself or for its property, immunity therein from taxation, suit, execution of judgment or other liability to which privately owned and controlled enterprises are subject therein.”⁵⁷ (emphasis added)

Relevance and Legal Questions

State immunity constitutes one of the core principles of international law and has remained the matter of controversy for several procedures adjudged by the ICJ, including the case at hand. However, the relevance of the present procedure lies on the growing role terrorism has in our society and how it may overlap with the economic relations and consular rights among states.

The issues to be examined by Judges include, but are not limited to, the following legal questions:

1. Does the ICJ have jurisdiction to decide this case?
2. Is the 1955 Treaty still enforceable, considering the long-standing conflict between Iran and the U.S. and Iran’s alleged State-sponsored terrorism?

⁵³ *Ibid.*

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

⁵⁶ Treaty of Amity Economic Relations and Consular Rights between the United States and Iran. (1955).

⁵⁷ *Ibid.*

3. Is Iran able to claim immunity on behalf of Bank Markazi under the 1955 Treaty? Is Bank Markazi a “national” or a “company” in the context of the 1955 Treaty?
4. Has the U.S. breached its obligations under the 1955 Treaty?

Annotated Bibliography

International Court of Justice. (2016). *Certain Iranian Assets (Islamic Republic of Iran v. United States of America): Application instituting proceedings* [Case document]. Retrieved 1 September 2016 from: <http://www.icj-cij.org/docket/files/164/19038.pdf>

This document marks the beginning of the case at hand. It provides with a clear view on Iran's claims against the United States, its grounds for appearing before the Court, a description of the law allegedly breached, and the requested judgment. This document offers delegates the essential knowledge on Iran's position and arguments, as well as on the background of the case.

Associated Press. (2016). *High Court sides with families of '83 Beirut bombing victims*. [Article] Retrieved 23 September 2016 from: <http://bigstory.ap.org/article/476d0bf0c83c4c809d86c9c9e393c6f5/terror-victims-win-supreme-court-judgment-against-iran>

This online news article provides a brief but clear summary of the 'Bank Markazi v. Peterson' case, and an explanation of the U.S. Supreme Court decision in April 2016. This publication will help delegates to understand the reasons behind Iran's application to the Court without having to rely solely on the U.S. Supreme Court judgment and its complex legal language.

Massachusetts Institute of Technology International Review. (2009). *History Brief: Timeline of US-IRAN Relations until the Obama Administration*. [Article] Retrieved 21 September 2016 from: <http://web.mit.edu/mitir/2009/online/us-iran-2.pdf>

Written by Sam Sasan Shoamanesh, Counsel to the International Criminal Court, this timeline illustrates in a more neutral tone the history of Iranian-American long-standing conflict up to 2009. Delegates may review this article in order to understand the key facts comprising the context of the case.

United States Department of Justice. (2015). *Brief for the United States as Amicus Curiae*. [Legal Document]. Retrieved 31 October 2016 from: <http://www.scotusblog.com/wp-content/uploads/2015/09/14-770-US-invitation-brief.pdf>

This document consists of the Amicus Brief submitted by the United States Department of Justice before the U.S. Supreme Court in the context of Bank Markazi v. Peterson case. Considering that the U.S. won't release their Counter-Memorial before September 2017, this brief is the only official document issued by the U.S. so far, containing its claims and arguments on the Bank Markazi case.

Lawfare. (2016). *Iran Sues the U.S. in the ICJ – Preliminary Thoughts*. [Article]. Retrieved 2 November 2016 from: <https://www.lawfareblog.com/iran-sues-us-icj-%E2%80%93-preliminary-thoughts>

Consisting on the preliminary thoughts of Elena Chachko, SJD candidate at Harvard Law School, regarding the Iran v. U.S. case at hand, this opinion column raises several questions that could be considered by Judges during the simulation, including but not limited to the applicability of the 1955 Treaty to Bank Markazi and an analysis on how the U.S. could prevail on the case.

Bibliography

CNN. (2016). *Beirut Marine Barracks Bombing Fast Facts*. [Article]. Retrieved 31 October 2016 from: <http://edition.cnn.com/2013/06/13/world/meast/beirut-marine-barracks-bombing-fast-facts/>

CNN. (2016). *Supreme Court hears Iran victims compensation case*. [Article]. Retrieved 31 October 2016 from: <http://edition.cnn.com/2016/01/13/politics/supreme-court-iran-victims-compensation/>

IIT Chicago-Kent College of Law. (2016). *Bank Markazi v. Peterson*. [Article]. Retrieved 2 November 2016 from: <https://www.oyez.org/cases/2015/14-770>

International Court of Justice. (2016). *Certain Iranian Assets (Islamic Republic of Iran v. United States of America): Order - Fixing of time-limits: Memorial and Counter-Memorial* [Case document]. Retrieved 27 September 2016 from: <http://www.icj-cij.org/docket/files/164/19060.pdf>

International Court of Justice. (2016). *Certain Iranian Assets (Islamic Republic of Iran v. United States of America): Press Release 2016/19 - Iran institutes proceedings against the United States with regard to a dispute concerning alleged violations of the 1955 Treaty of Amity* [Case document]. Retrieved 27 September 2016 from: <http://www.icj-cij.org/docket/files/164/19032.pdf>

Iran Pulse. (2016). *How Supreme Court decision to freeze Iran assets undermines US foreign policy*. [Article]. Retrieved 5 November 2016 from: <http://www.al-monitor.com/pulse/originals/2016/05/us-supreme-court-iranian-asset-seizures-terror-victims.html#ixzz4Og8eeMpH>

Iranian Diplomacy. (2016). *Political Judgment in Judicial Guise*. [Article]. Retrieved 4 November 2016 from: <http://www.irdiplomacy.ir/en/page/1958368/Political+Judgment+in+Judicial+Guise.html>

Joshua M. Robbins. (2016). *Iran's World Court Case Against the United States May Impact Investment Arbitration*. BakerHostetler. [Article]. Retrieved September 28 from: <https://www.bakerlaw.com/alerts/irans-world-court-case-against-the-united-states-may-impact-investment-arbitration>

Kenneth Katzman. (2016). *Iran Sanctions*. Congressional Research Service. [Article]. Retrieved September 28 from: <https://www.fas.org/sgp/crs/mideast/RS20871.pdf>

Lawfare. (2016). *Iran Sues the U.S. in the ICJ – Preliminary Thoughts*. [Article]. Retrieved 2 November 2016 from: <https://www.lawfareblog.com/iran-sues-us-icj-%E2%80%93-preliminary-thoughts>

MUFTAH. (2016). *U.S. Policy & Politics Are Complicating the Nuclear Deal with Iran*. [Article]. Retrieved 5 November 2016 from: <http://muftah.org/us-complicating-iran-nuclear-deal/#.WBdpUMk9-M8>

Opinio Juris (2016). *Does the International Court of Justice Have Jurisdiction over Iran's Claim Against the U.S? Actually, Maybe It Does*. [Article]. Retrieved 2 November 2016 from: <http://opiniojuris.org/2016/06/16/does-the-international-court-of-justice-have-jurisdiction-over-irans-complaint-against-the-u-s-actually-maybe-it-does/>

Canadian International Model United Nations 2017
International Court of Justice

Reuters (2016). *Iran files complaint with ICJ to recover \$2 billion frozen in U.S.* [Article]. Retrieved 26 September 2016 from: <http://www.reuters.com/article/us-iran-politics-court-idUSKCN0Z12EU>

Statute of the International Court of Justice. (1945). [Online document] Retrieved 24 September 2016 from: <http://www.icj-cij.org/documents/?p1=4&p2=2>

The Atlantic. (2013). *The Origins of Hezbollah* [Article]. Retrieved 2 November 2016 from: <http://www.theatlantic.com/international/archive/2013/10/the-origins-of-hezbollah/280809/>

The Atlantic. (2016). *What the Supreme Court's ruling on Iranian Assets Means* [Article]. Retrieved 2 November 2016 from: <http://www.theatlantic.com/politics/archive/2016/04/bank-markazi/479190/>

The Huffington Post. (2016). *Iran Decries Supreme Court Ruling in Favor of Terror Victims as "Theft"*. [Article]. Retrieved 4 November 2016 from: http://www.huffingtonpost.com/entry/iran-supreme-court-terror-ruling_us_571a66f5e4b0d912d5fe8054

The New York Times. (2016). *Supreme Court Rules Iran Bank Must Pay for Terrorist Attacks*. [Article]. Retrieved 1 November 2016 from: http://www.nytimes.com/2016/04/21/business/supreme-court-rules-iran-bank-must-pay-for-terrorist-attacks.html?_r=0

Treaty of Amity Economic Relations and Consular Rights between the United States and Iran. (1955). [Online Document]. Retrieved September 28 from: http://www.parstimes.com/law/iran_us_treaty.html

U.S. Department of State. (n.d.). *State Sponsors of Terrorism*. [Webpage] Retrieved 2 November 2016 from: <http://www.state.gov/j/ct/list/c14151.htm>

United States Institute for Peace. (2016). *Iran Files ICJ Complaint to Reclaim Assets*. [Article]. Retrieved 26 September 2016 from: <http://iranprimer.usip.org/blog/2016/jun/17/iran-files-icj-complaint-reclaim-assets>

United States Institute for Peace. (2016). *Supreme Court Orders Iran to Compensate Terror Victims*. [Article]. Retrieved 26 September 2016 from: <http://iranprimer.usip.org/blog/2016/apr/20/supreme-court-orders-iran-compensate-terror-victims>

United States Institute for Peace. (n.d.). *The Carter Administration*. [Webpage] Retrieved 28 October 2016 from: <http://iranprimer.usip.org/resource/carter-administration-0>

Washington Examiner. (2016). *Iran sues U.S. in international court*. [Article]. Retrieved 5 November 2016 from: <http://www.washingtonexaminer.com/iran-sues-u.s.-in-international-court/article/2594160>

TOPIC B: IMMUNITIES AND CRIMINAL PROCEEDINGS (*Equatorial Guinea v. France*)

Introduction

Context of the case

State actor immunity is a fundamental concept in international law. While there are many political undertones that may explain the lack of observance to such immunity by some states, it is fundamental that states have to respect each other's sovereignty. *Equatorial Guinea v. France* is a pending case at the International Court of Justice (the "Court") that deals with immunities and criminal proceedings while exploring the principle of sovereignty in international law.

Pursuant to Article 48 of the Statute of the Court and to Articles 31, 32, 44, and 45 of the Rules of Court, the Republic of Equatorial Guinea (hereinafter "Equatorial Guinea") brought an action to curtail the French Republic's (hereinafter "France") pursuit of trial of Mr. Teodoro Nguema Obiang Mangue, the Second Vice-President in charge of Defence and State Security of Equatorial Guinea on charges of money laundering. The criminal proceedings against Mr. Mangue were initiated before the French courts in 2007, pursuant to complaints lodged by associations and private individuals against certain African Heads of State for the misappropriation of public funds in their country of origin – the proceeds of which allegedly have been invested in France. Equatorial Guinea has strongly and consistently protested against such proceedings, arguing that Mr. Mangue is entitled to immunity from criminal jurisdiction.

Moreover, Equatorial Guinea sought to define the legal status of the building which houses its Embassy in France, located at 42 avenue Foch in Paris. This is the first time that the Court engenders a dispute related to large-scale corruption, offering an opportunity to expand case law on criminal jurisdiction and immunities in this context. As we move into a more globalized world, examination of state immunity would create the necessary predictability within the international legal framework.

Fundamental international law principles

Questions of whether international law suffers from a legitimacy crisis have been intensively circulating in recent years. Some say that:

"[i]nternational law today is no longer adequately described or assessed as the law of a narrowly circumscribed domain of foreign affairs. Its obligations are no longer firmly grounded in the specific consent of states and its interpretation and enforcement is no longer primarily left to states".⁵⁸

Equatorial Guinea v. France explores legitimacy in international law in application to the principles of sovereignty and state actor immunities.

⁵⁸ Mattias Kumm. (2004). *The Legitimacy of International Law: A Constitutionalist Framework of Analysis*.

The examination of *Equatorial Guinea v. France* requires thorough comprehension of such principles. Sovereignty is the ultimate power, authority and jurisdiction over people and a territory. No other agent can tell a sovereign entity what to do with its territory or its people. Under current international law, sovereignty "denotes the basic international legal status of a state that is not subject, within its territorial jurisdiction, to the governmental, executive, legislative, or judicial jurisdiction of a foreign state or to foreign law other than public international law".⁵⁹ Further, by the virtue of which one sovereign state actor cannot be sued before the courts of another sovereign state without consent, the concept of *ratione personae* immunity arises. The predominant justification for such immunities is that they ensure smooth conduct of international relations. Under customary international law, it has long been clear that the Head of State and diplomats accredited to a foreign state possess such *ratione personae* immunities from the jurisdiction of foreign states.⁶⁰

History of Proceedings

Application instituting proceedings

On June 13th, 2016, Equatorial Guinea instituted proceedings against France with regard to the immunity from criminal jurisdiction of Mr. Mangue, and the legal status of the building that houses its Embassy in France.

Order for a fixing of time-limits

On July 1st, 2016, there was an Order for a fixing of time-limits of the Memorial by Equatorial Guinea and a Counter-Memorial by France with regard to Article 48 of the Statute of the Court and to Articles 31, 32, 44, 45, paragraph 1, 48 and 49 of the Rules of Court. In consideration that Equatorial Guinea wished to have at its disposal a period of six months from the date of the present Order for the preparation of its Memorial, and France's agreement to a period of six months for the preparation of its Counter-Memorial, the Court fixed the time-limit of January 3rd, 2017, for the Memorial of the Republic of Equatorial Guinea; and July 3rd, 2017, for the Counter-Memorial of the French Republic.

Request for the indication of provisional measures

On September 29th, 2016, a request for the indication of provisional measures was submitted to the Court by Equatorial Guinea. Pursuant to Article 41 of the Statute and Articles 73 to 75 of the Rules of Court, Equatorial Guinea requested the Court for the indication of provisional measures in order to preserve the rights of Equatorial Guinea under international law.

By Note Verbale of September 12th, 2016, Equatorial Guinea protested against the order handed down on September 5th, 2016, by the investigating judges of the Paris Tribunal de grande instance and the summons dated September 21st, 2016, issued by the Financial Prosecutor. Equatorial Guinea stated that it was in flagrant violation of international law and requested that France take all necessary measures to terminate the criminal proceedings instituted against Mr. Mangue, including those affecting the premises of its Embassy.

⁵⁹ *Sovereign Union - First Nations Asserting Sovereignty | Asserting Australia's First Nations Sovereignty into Governance*, (2016).

⁶⁰ D Akande & S Shah, (2016). *Immunities of State Officials, International Crimes, and Foreign Domestic Courts*.

Equatorial Guinea relies on Article 35 of the United Nations Convention against Transnational Organized Crime (2000) (hereinafter the “United Nations Convention”), and under the Optional Protocol to the Vienna Convention on Diplomatic Relations (1961) (hereinafter the “Optional Protocol”) as the basis for *prima facie* jurisdiction enabling the Court to indicate provisional measures. On the basis of the facts of the case and the rights that Equatorial Guinea is seeking to protect, in view of the urgency, and in order to avoid irreparable prejudice to its rights at issue in these proceedings, Equatorial Guinea asks the Court to indicate the following provisional measures:

"(a) that France suspend all the criminal proceedings brought against the Vice-President of the Republic of Equatorial Guinea, and refrain from launching new proceedings against him, which might aggravate or extend the dispute submitted to the Court;

(b) that France ensure that the building located at 42 avenue Foch in Paris is treated as premises of Equatorial Guinea’s diplomatic mission in France and, in particular, assure its inviolability, and that those premises, together with their furnishings and other property thereon, or previously thereon, are protected from any intrusion or damage, any search, requisition, attachment or any other measure of constraint;

(c) that France refrain from taking any other measure that might cause prejudice to the rights claimed by Equatorial Guinea and/or aggravate or extend the dispute submitted to the Court, or compromise the implementation of any decision which the Court might render."

Arguments of the Parties

Equatorial Guinea arguments

Equatorial Guinea argues that the reasons given by the French courts have no basis in international law. In particular, they disregard the Court’s jurisprudence, which recognizes that certain holders of high-ranking office enjoy *ratione personae* immunity.

Equatorial Guinea's case arises from the criminal proceedings instituted against Mr. Mangué before French courts in 2007. On July 13th, 2012, an international arrest warrant was issued for Mr. Mangué. On March 18th, 2014, Mr. Mangué was placed under judicial examination. Accordingly, on May 23rd, 2016, the Procureur de la République filed his final submissions seeking separation of the complaints to either dismiss them or refer to the Tribunal correctionnel. While the Procureur found that Mr. Mangué “enjoys no immunity that might bar prosecution,” Equatorial Guinea argues that these proceedings constitute a violation of Mr. Mangué's immunity to which he is entitled under international law as a representative of the State.

Moreover, Equatorial Guinea asserts that the building located on 42 avenue Foch in Paris should enjoy the immunities accorded to official premises by international law in the Application. Equatorial Guinea relies on the fact that the former owner of the premise, Mr. Mangué, sold the building to the State of Equatorial Guinea in September 2011 and that property “has been used by the diplomatic mission of Equatorial Guinea” since then.

France counter-arguments

Please note that the Court fixed the deadline for France to submit its counter-memorial by July 3, 2017. Hence, France's official counter-arguments are not yet made available. However, there are positions officially declared by France that delegates – especially those that will act as agents for France during trial – could take into account.

For instance, France told the Court's judges that they do not have jurisdiction in the case; even if they did, there would be no urgent reason for an interim order to halt the Paris proceedings that were scheduled.⁶¹ Further, a French law professor representing France told the Court that Equatorial Guinea's case was a "flagrant and evident abuse of law".⁶² Delegates are encouraged to entertain the implications of this statement and to view this brief article to attain insight into France's position on the case and current proceedings.

Law Applicable

Jurisdiction of the Court

Equatorial Guinea claims the Court has jurisdiction in the present case under the provisions of the Optional Protocol and under Article 35 of the United Nations Convention.

Optional Protocol

Both France and Equatorial Guinea are parties to the Vienna Convention on Diplomatic Relations: France ratified it on December 31st, 1970, and Equatorial Guinea acceded to it on August 30th, 1976. Further, both States are also parties to the Optional Protocol: France ratified it on December 31st, 1970, and Equatorial Guinea acceded to it on November 4th, 2014.

Article I of the Optional Protocol provides that:

“Disputes arising out of the interpretation or application of the Convention shall lie within the compulsory jurisdiction of the International Court of Justice and may accordingly be brought before the Court by an application made by any party to the dispute being a Party to the present Protocol.”

United Nations Convention

Both France and Equatorial are also parties to the United Nations Convention: France ratified it on October 29th, 2002, and Equatorial Guinea on February 7th, 2003.

Article 35, paragraph 2, of the United Nations Convention provides that:

“Any dispute between two or more States Parties concerning the interpretation or application of this Convention that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those

⁶¹ *France: Equatorial Guinea's World Court Case Is Abuse of Law*, (2016).

⁶² *Ibid.*

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States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.”

The jurisdiction of the Court exists under this provision in so far as the dispute could not be settled through negotiation or arbitration. The Court considers that France has given Equatorial Guinea official notification of its refusal to settle the dispute between the two States by means of negotiation and arbitration.

Other Legal Bases of Case Proceedings

Throughout the proceedings of the case, the parties rely on the following Articles:

Statute of the Court

Article 48 of the Statute of the Court provides that: "The Court shall make orders for the conduct of the case, shall decide the form and time in which each party must conclude its arguments, and make all arrangements connected with the taking of evidence".

Rules of Court

Article 31 of the Statute of the Court provides that: "In every case submitted to the Court, the President shall ascertain the views of the parties with regard to questions of procedure. For this purpose he shall summon the agents of the parties to meet him as soon as possible after their appointment, and whenever necessary thereafter".

Article 44 of the Statute of the Court provides that:

- "1. In the light of the information obtained by the President under Article 31 of these Rules, the Court shall make the necessary orders to determine, inter alia, the number and the order of filing of the pleadings and the time-limits within which they must be filed.
2. In making an order under paragraph 1 of this Article, any agreement between the parties which does not cause unjustified delay shall be taken into account.
3. The Court may, at the request of the party concerned, extend any time-limit, or decide that any step taken after the expiration of the time-limit fixed therefor shall be considered as valid, if it is satisfied that there is adequate justification for the request. In either case the other party shall be given an opportunity to state its views.
4. If the Court is not sitting, its powers under this Article shall be exercised by the President, but without prejudice to any subsequent decision of the Court. If the consultation referred to in Article 31 reveals persistent disagreement between the parties as to the application of Article 45, paragraph 2, or Article 46, paragraph 2, of these Rules, the Court shall be convened to decide the matter.

Article 45, paragraph 1, of the Statute of the Court provides that: "The pleadings in a case begun by means of an application shall consist, in the following order, of: a Memorial by the applicant; a Counter-Memorial by the respondent".

Article 48 of the Statute of the Court provides that: "Time-limits for the completion of steps in the proceedings may be fixed by assigning a specified period but shall always indicate definite dates. Such time-limits shall be as short as the character of the case permits".

Conclusion

Questions to consider

In consideration of the proceedings of *Equatorial Guinea v. France*, more questions of legitimacy in international law arise:

- Does international law lack legitimacy in general?
- Has it yielded to the pressures of power?
- Has it lost its ability to induce compliance?
- Why is the lack of enforcement of international law relevant?

Moreover, the case poses a question of the impact of increasing globalization and blurred border lines of states.

Annotated Bibliography

Anton Moiseienko. (2016). *Equatorial Guinea v France: What are the Limits on Prosecution of Corruption-Related Money Laundering by Foreign Officials?*, Online: EJIL: Talk! , Retrieved at:

<http://www.ejiltalk.org/equatorial-guinea-v-france-what-are-the-limits-on-prosecution-of-corruption-related-money-laundering-by-foreign-officials/>

While this EJIL analysis of Equatorial Guinea v France explains the background of the case, it also serves to evaluate the merits and jurisdiction considerations per party involved. The author comes to the conclusion that this is an excellent opportunity to expand and refine the Court's case law on criminal jurisdiction and immunities in regards to fighting against large scale corruption.

British Institute of International and Comparative Law. (2014). *The Position of Heads of State and Senior Officials in International Law* (Online Report), Online: *biicl* , Retrieved at:

http://www.biicl.org/files/6831_the_position_of_heads_of_state_-_event_report_23_jan_2014.pdf

The British Institute of International and Comparative Law presents a report that speaks to the trend identified for increased international activity for Heads of State and State officials, rendering immunities an important practical concern. It furthers the reality that international law is no longer the exclusive preserve of states, but is also made to respond to the demands of non-state actors with their own agenda and interests. This reading presents an opportunity to reflect on the different obligations owed by a state to foreign state officials and non-state actors.

France: *Equatorial Guinea's World Court Case Is Abuse of Law*. (2016), Online: *VOA*, Retrieved at:

<http://www.voanews.com/a/france-says-equatorial-guinea-world-court-case-is-abuse-of-law/3555974.html>

This article helps to infer France's position on the case before the release of its official counter-memorial on July 3, 2017. The author elaborates on the background of Teodoro Nguema Obiang Mangue in relation to claims of prosecution immunity. He states that "the French case is not the first time Obiang's opulent way of life has been targeted overseas". Further, this article highlights the

dialogue which takes place between official court proceedings, and the importance to follow such dialogue to gather predictions about the case.

GOPAC Network. (2013). *Prosecuting Grand Corruption as an International Crime* (Online Report), Gopac network, Retrieved at:

http://gopacnetwork.org/Docs/DiscussionPaper_ProsecutingGrandCorruption_EN.pdf

The GOPAC report supports hypotheses that the fight against corruption is assuming an ever-increasing prominence. It is presented that this trend calls upon a greater use of international law by virtue of acknowledging universal jurisdiction over corruption offences or setting up international mechanisms for prosecuting corruption. The case at hand is an example of the increasing prominence of corruption on the international plane. Further, this reading calls for reflection on universal jurisdiction over corruption and its according impacts.

International Court of Justice. (2016). *Immunities and Criminal Proceedings (Equatorial Guinea v. France) Application*. International Court of Justice. Retrieved at: <http://www.icj-cij.org/docket/files/163/19036.pdf>

This is the Application filed by Equatorial Guinea in efforts to curtail France's pursuit of trial of its state actor. It provides with a clear outline of the legal bases to appear before the Court and outlines context for its claim. Delegates are highly recommended to view this document for essential knowledge on Equatorial Guinea's position and the background of the case.

Bibliography

Equatorial Guinea asks U.N. court to block French case against president's son, (2016), Reuters, Retrieved at: <http://www.reuters.com/article/us-equatorial-france-idUSKCN0Z02KY>

Equatorial Guinea sues France over corruption inquiry - BBC News, (2016), BBC News, Retrieved at: <http://www.bbc.com/news/world-africa-19732360>.

Ill-Gotten Gains: The Public Prosecutor Requests the Opening of a Trial against Obiang SHERPA, (2016), Sherpa, Retrieved at: <https://www.asso-sherpa.org/ill-gotten-gains-the-public-prosecutor-requests-the-opening-of-a-trial-against-obiang>

International Court of Justice. (2002). *Rome Statute of the International Criminal Court*, 17 July 1998, 2187 UNTS 38544 (entered into force 1 July 2002), Retrieved at: http://legal.un.org/icc/statute/99_corr/cstatute.htm

International Court of Justice. (2016). *Order - Fixing of time-limits: Memorial and Counter-Memorial*. Retrieved at: <http://www.icj-cij.org/docket/files/163/19058.pdf>

International Court of Justice. (2016). *Press Release – Fixing of time-limits for the filing of the initial pleadings*. Retrieved at: <http://www.icj-cij.org/docket/files/163/19050.pdf>

International Court of Justice. (2016). *Press Release 2016/33 - Conclusion of the public hearings on the request for the indication of provisional measures made by Equatorial Guinea - The Court to begin its deliberation*. Retrieved at: <http://www.icj-cij.org/docket/files/163/19260.pdf>

Canadian International Model United Nations 2017
International Court of Justice

International Court of Justice. (2016). Press Release – The Republic of Equatorial Guinea institutes proceedings against France with regard to "the immunity from criminal jurisdiction of [its] Second Vice-President in charge of Defence and State Security, and the legal status of the building which houses [its] Embassy in France. Retrieved at: <http://www.icj-cij.org/docket/files/163/19028.pdf>

International Court of Justice. (2016). Press Release 2016/28 - Request for the indication of provisional measures submitted by Equatorial Guinea. Retrieved at: <http://www.icj-cij.org/docket/files/163/19126.pdf>

International Court of Justice. (2016). Press Release 2016/32 - Request for the indication of provisional measures - The Court to hold public hearings from Monday 17 to Wednesday 19 October 2016. Retrieved at: <http://www.icj-cij.org/docket/files/163/19232.pdf>

International Court of Justice. (2016). Public sitting held on Monday 17 October 2016, at 10 a.m., at the Peace Palace, Vice-President Yusuf, Acting President, presiding, in the case concerning Immunities and Criminal Proceedings (Equatorial Guinea v. France) (Translation). Retrieved at: <http://www.icj-cij.org/docket/files/163/19258.pdf>

International Court of Justice. (2016). Public sitting held on Tuesday 18 October 2016, at 10 a.m., at the Peace Palace, Vice-President Yusuf, Acting President, presiding, in the case concerning Immunities and Criminal Proceedings (Equatorial Guinea v. France) (Translation). Retrieved at: <http://www.icj-cij.org/docket/files/163/19264.pdf>

International Court of Justice. (2016). Public sitting held on Wednesday 19 October 2016, at 10 a.m., at the Peace Palace, Vice-President Yusuf, Acting President, presiding, in the case concerning Immunities and Criminal Proceedings (Equatorial Guinea v. France) (Translation). Retrieved at: <http://www.icj-cij.org/docket/files/163/19268.pdf>

International Court of Justice. (2016). Public sitting held on Wednesday 19 October 2016, at 5 p.m., at the Peace Palace, Vice-President Yusuf, Acting President, presiding, in the case concerning Immunities and Criminal Proceedings (Equatorial Guinea v. France) (Translation). Retrieved at: <http://www.icj-cij.org/docket/files/163/19274.pdf>

International Court of Justice. (2016). Request for the indication of provisional measures submitted by the Government of Equatorial Guinea. Retrieved at: <http://www.icj-cij.org/docket/files/163/19248.pdf>

International Law and Justice | United Nations, (2016), Retrieved at: <http://www.un.org/en/sections/issues-depth/international-law-and-justice/index.html>.

Jennifer Tridgell and Esther Pearson, (2016). The ICJ's docket grows in June 2016: an overview of Iran v US, Equatorial Guinea v France and Chile v Bolivia, Retrieved at: <http://ilareporter.org.au/2016/06/the-icjs-docket-grows-in-june-2016-an-overview-of-iran-v-us-equatorial-guinea-v-france-and-chile-v-bolivia/>

Jonathan Brown, (1988). Diplomatic Immunity: State Practice under the Vienna Convention on Diplomatic Relations, 37 International and Comparative Law Quarterly at 78, Retrieved at: <https://www.cambridge.org/core/journals/international-and-comparative-law->

[quarterly/article/diplomatic-immunity-state-practice-under-the-vienna-convention-on-diplomatic-relations/F9A6F8958F3733A3245483FEDD6958D8](#)

Rene Värk, (2003). *Personal Inviolability and Diplomatic Immunity in Respect of Serious Crimes*, Retrieved at: <http://www.juridicainternational.eu/?id=12585>

Statute of the International Court of Justice, (1945), 33 UNTS 993 (entered into force 24 October 1945), Retrieved at: <http://www.icj-cij.org/documents/?p1=4&p2=2>