

INTERNATIONAL COURT OF JUSTICE

BACKGROUND GUIDE





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Hello Delegates!

As your ICJ chairs, we are so incredibly excited to welcome you to what we hope will be an amazing conference for you all! As a new and specialized committee in MACMUN, we are striving to make ICJ a great platform to discuss international law within the contexts of two very interesting (and controversial!) cases that will require evidence-based decision-making, collaboration, and the skills of persuasion to arrive at final resolutions. We have worked hard on providing you with all the information you need to get to get started, but how you approach them depends ultimately on you—we look forward to hearing the diverse perspectives that you will bring to the conference! Here's a bit about ourselves so you can get to know us before the conference:

Takhliq is a fourth-year Health Sciences student in the Global Health Specialization. Her previous Model UN experiences include Delegate in the 2016 and 2017 conferences, and Chair of HRC in MACMUN 2018. Passionate about international relations and appreciative of the intricacies of a globalizing world, she is excited to lead a committee very different from her past MACMUN experiences. She finds international law to be incredibly fascinating due to the nuances that factor into decision-making, and loves that MUN brings together people with diverse life backgrounds to debate on key global issues in a collaborative environment.

This is **Dia**'s first year with MACMUN and she is delighted to be involved in the organizational side of Model UN after high school participation as a Delegate. In her role as Junior Executive, she shadows and assists other Secretariat members, and assumes the role of Chair for the International Court of Justice. Around campus, Dia can be found volunteering at the Women and Gender Equity Network, stargazing with the McMaster Undergraduate Academic Astronomy Club, or walking the trails around Cootes Paradise contemplating world peace. She hopes that MACMUN will be an engaging platform for young people to share their ideas, think critically about complex world issues, and emerge empowered to make changes in their daily lives and in the world around them.

With its focus on the legal questions that govern international laws, ICJ will be a learning experience for you all and for us as well, so we thank you for joining us on this journey this year! We look forward to meeting you in February, and working together on these topical and interesting issues in world politics. As Chairs, we are both here to support you in any way, and you can reach out to us at any point if you have any questions. Take this opportunity to step out of your comfort zone, put those great public speaking skills or use (or refine them if they're a little rusty!), and take on the roles of the global leaders that you are all meant to be!

Your Chairs, Takhliq & Dia icj@macmun.org



"Injustice anywhere is a threat to justice everywhere" -Martin Luther. "Letter from Birmingham Jail." 16 Apr. 1963.



Committee Overview

Mandate and Function of the Committee

As the principal judicial organ of the United Nations (UN), the International Court of Justice (ICJ, or "the Court") officially came into existence in June 1945. Its predecessor, the Permanent Court of International Justice (PCIJ), active from 1922 to 1946, was established by Article 14 of the *Covenant of the League of Nations*. Despite handling 29 contentious cases, issuing 27 advisory opinions, and demonstrating its effectiveness in the development of an international judicial process, the PCIJ still saw a decrease in its work leading up to the start of the Second World War in Europe in 1939. After the war ended, in response to calls in 1942 for the establishment or re-establishment of an international court, various meetings were held between different states. It was ultimately decided that an entirely new court would be created under the mandate of the UN, and thus, the ICJ was established.

As the "only court of a universal character with general jurisdiction," the ICJ primarily functions to address and resolve contentious matters between states.⁴ In this process, it must consider international treaties and applicable conventions; international customs; the general principles of law; judicial decisions; and expert knowledge and statements.⁵ The Court has its seat at the Peace Palace in The Hague, Netherlands, and is the only UN organ not based in New York.

While ICJ has no power to enforce its final rulings, a clause in the UN *Charter* does require member states to accept its decision. Article 94 of Chapter XIV of the UN Charter further authorizes the UN Security Council to enforce ICJ rulings, subject to the veto power of the five permanent members of the Security Council.⁶

It is important to distinguish the role of the Court from other judicial institutions, particularly the International Criminal Court (ICC). The ICC, unlike the ICJ, is the first permanent international criminal court, and is not under the jurisdiction of the UN.⁷ The following table demonstrates some of the key points of distinction between the ICJ and the ICC:

¹ "The Court." International Court of Justice, 2018, https://www.icj-cij.org/en/court.

² "History." International Court of Justice, 2018, https://www.icj-cij.org/en/history.

³ "History." International Court of Justice.

⁴ "The Court." International Court of Justice.

^{5 &}quot;How the Court Works." International Court of Justice, 2018, https://www.icj-cij.org/en/how-the-court-works.

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

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



	International Court of Justice	International Criminal Court
UN Relationship	Official court of the UN.	Independent; may receive case referrals from Security Council and can initiate prosecutions without UN action or referral.
Jurisdiction	UN member states (governments).	Individuals.
Types of cases	 Contentious proceedings between parties; Advisory opinions. 	Criminal prosecution of individuals.
Subject matter	Sovereignty, boundary disputes, maritime disputes, trade, natural resources, human rights, treaty violations, treaty interpretations, etc.	Genocide, crimes against humanity, war crimes, crimes of aggression.
Appeals	None; the ICJ decision in a contentious case is binding for all parties. Failure to comply can be taken to Security Council.	Appeals chamber, under Article 80 of the Rome Statute.
Funding	UN-funded.	Assessed contribution from state parties, and voluntary contributions from the UN, governments, international organizations, individuals, corporations, and other entities.

Table 1: Distinctions between the International Court of Justice and International Criminal Court.

⁸ "The Court." International Court of Justice.

⁹ "About." International Criminal Court.



The responsibilities of the ICJ primarily include:10

- 1. Settling legal disputes submitted to it by States, within the rules of international law; and
- 2. Providing advisory opinions on legal questions submitted by other UN organs and agencies.

Its organizational structure involves 15 judges who are elected to serve terms of nine years by the UN General Assembly and Security Council. Candidates must receive an absolute majority of the votes in both UN bodies to be elected. 11 One-third of the Court is re-elected every three years, with judges eligible for re-election. Following the election of the judges, a secret ballot is held to elect a President and a Vice-President for three years. 12

The Court may not include more than one national of the same state and must aim to represent the principal legal systems of the world. Judges are typically elected based on moral character, and must possess the qualifications necessary to be appointed to the highest judicial offices in their own nations.¹³ Judges are only dismissed if they have violated the conditions of their position.

Contentious Cases

Contentious cases involve legal proceedings typically between two states, and involve the use of mediation, negotiation, arbitration and judicial settlement to solve legal disputes, according to Article 33 of the UN *Charter*. ¹⁴ An international legal dispute is defined as "a disagreement on a question of law or fact, a conflict, or a clash of legal views or interests." ¹⁵ Individuals, international organizations, and other authorities and entities cannot institute contentious proceedings before the Court.

Cases are usually brought to the Court by one or more states, often when countries are unable to resolve disputes amongst themselves through other avenues. The <u>applicant state</u> is the one who files a case against another state, while the <u>respondent state</u> is the state whom the application is filed against.¹⁶

¹⁰ "The Court." International Court of Justice.

¹¹ "Members." International Court of Justice, 2018, https://www.icj-cij.org/en/members.

^{12 &}quot;Members." International Court of Justice.

^{13 &}quot;Members." International Court of Justice.

¹⁴ Repertoire of the Practice of the Security Council. "Pacific Settlements of Disputes." United Nations, http://www.un.org/en/sc/repertoire/settlements.shtml#rel1.

^{15 &}quot;Contentious Jurisdiction." International Court of Justice, 2018, https://www.icj-cij.org/en/contentious-jurisdiction.

¹⁶ "Contentious Jurisdiction." International Court of Justice.



The Court may only deal with a dispute once the states involved have recognized its jurisdiction—consent to its consideration of the case.¹⁷ Nations typically consent to the Court's jurisdiction in one of three ways:¹⁸

- 1. A special agreement to take the case to the ICJ;
- 2. A clause in a treaty accepting ICJ jurisdiction in case of dispute; or
- 3. Simple consent by a nation to the Court's jurisdiction.

Once a case has been accepted by the ICJ, subsequent proceedings may be instituted:19

- 1. Through notification of a special agreement (a bilateral document submitted to the Court by either or both states involved), which indicates the subject of the dispute and the parties concerned; or
- 2. Through an application (a unilateral document submitted by an applicant state against a respondent state).

If a respondent state does not agree to or accept the jurisdiction of the Court, it can submit preliminary objections. The Court must then rule upon these preliminary objections before the points raised within the applicant's case can be considered. The next steps of the legal proceedings involve 1) a written phase, where the parties file and exchange pleadings containing the points of fact and of law for the case; and 2) an oral phase, which is a public hearing at which agents representing the states and their respective counsels address the Court.²⁰

After proceedings, the judges of the Court hold a private discussion in order to arrive at a ruling. Often involving witnesses and experts, as well as detailed considerations of international treaties, conventions, customs, and the general principles of law, this step may take up to several years.²¹ The final ruling is delivered in a public setting, with no option to appeal for either parties.

It must be noted that any judgments reached by the Court in regards to legal matters between states must be accepted by the nations involved.²² If a state believes the other party has failed to comply with the rules according to the judgment given by the Court, it may then bring the issue to the Security Council, which can then recommend or take measures accordingly.²³

¹⁷ "Contentious Jurisdiction." International Court of Justice.

¹⁸ "How the Court Works." International Court of Justice.

¹⁹ "How the Court Works." International Court of Justice.

²⁰ "How the Court Works." International Court of Justice.

²¹ "How the Court Works." International Court of Justice.

²² "The Court." International Court of Justice.

²³ "How the Court Works." International Court of Justice.



Advisory Opinions

Upon request of the UN General Assembly or Security Council, the Court may also provide advisory opinions on legal questions, defined as "a question that must be answered by applying relevant legal principles to interpretation of the law."²⁴ Five UN organs, 15 specialized agencies and one related organization only may request advisory opinions; states can only apply for contentious proceedings.²⁵ This is the only way for organizations to appear before the Court for a particular case or question.

A written request for an advisory opinion, addressed to the Registrar of the UN Secretary-General or the director or secretary-general of the entity requesting the advisory opinion, must be filed.²⁶ In order to address these legal questions, the Court assembles all the facts through written and oral proceedings. It establishes a list of states and international organizations that would be able to provide relevant information to the Court. Participants then have the option of filing written statements and are also invited to make oral statements at these meetings if the Court deems them necessary.²⁷ Proceedings are typically concluded when the final advisory opinion is delivered in a public setting.

The opinions reached by the Court are neither binding nor final for the requesting UN organ, agency, or organization, which can proceed as they see fit.²⁸ However, they do carry great legal weight and authority as they can contribute to "the clarification and development of international law and thereby to the strengthening of peaceful relations between States."²⁹

Simulation Style/Composition of the Committee

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

The ICJ is structured differently than all other UN committees. It will consist of 17 delegates, all of whom will represent themselves as neutral "justices." Each judge will have one vote for or

²⁴ "Advisory Jurisdiction." International Court of Justice, 2018, https://www.icj-cij.org/en/advisory-jurisdiction.

²⁵ "Advisory Jurisdiction." International Court of Justice.

²⁶ "Advisory Jurisdiction." International Court of Justice.

²⁷ "How the Court Works." International Court of Justice.

²⁸ "How the Court Works." International Court of Justice.

²⁹ "Advisory Jurisdiction." International Court of Justice.



against the applicant state. They will not be representing a specific state, and as such, must build their arguments based on legal analysis of the various aspects of the two cases. Judges make a declaration in open court to exercise their powers impartially and conscientiously.³⁰

In this manner, each judge's perspective will be based on their perspective and interpretation of the legal documents involved in each case. To be clear, the greatest distinction between ICJ and other UN committees is that judges argue points of law, not fact. For example, if one nation attacked its neighbouring country, the point of contention is not that an attack occurred, but whether the attack violated a certain provision or point of law. All delegates are expected to adequately research the two committee topics, submit a position paper, and be prepared for discourse regarding their stances on both issues. This requires having a strong understanding of pertinent international treaties, documents, and opinions for both cases.

A page will be present during the meeting to pass notes between delegates and to the Chairs, if necessary. Pages will be screening notes to ensure appropriate content, and the Chairs retain the right to read notes.

Recent Activity (2016-2018)

Since 2016, the ICJ has decided on 9 cases, and has 17 cases still in progress.³¹ These cases involve nations from all over the world, ranging from Equatorial Guinea and France, to Guyana and Venezuela, to Palestine and the United States. Additionally, the cases involve a variety of topics and their accompanying international agreements, including land and water disputes, violence, and human rights abuses.

Arriving at a Decision

An ICJ decision is written differently than all other UN agencies. The final document must be arranged as the following:

- 1. Facts of the case:
 - Summarize the key occurrences that led to the issue, as well as any arguments for or against both parties.
- 2. Issues:
 - In bullet-form, list questions that need to be considered in arriving at a solution to the case at hand.
- 3. Decisions pertaining to each question listed in the "Issues" section of the document:
 - Present the majority opinion, listing the justices in favour.
 - Present supporting reasons for ruling. This may involve:
 - Relevant articles of the UN Charter or international treaties pertaining to the case at hand.

³⁰ "Members." International Court of Justice.

^{31 &}quot;List of all Cases." International Court of Justice. https://www.icj-cij.org/en/list-of-all-cases

[&]quot;Pending Cases." International Court of Justice. https://www.icj-cij.org/en/pending-cases



- Facts of the case to be disputed.
- Include any definitions necessary to clarify terms used in the decision.
- Include any steps that need to be taken to address the issues raised.

4. Operative clauses:

- These are statements summarizing the Court's stance on the key issues and present solutions to the case at hand.
- 5. Concurring Opinion:
 - This is a statement, in paragraph-form, presented by one justice describing the stance taken by the majority opinion, as well as any additional supporting evidence.
- 6. Dissenting Opinions:
 - This is a statement, in paragraph-form, presented by justices who disagree with the majority opinion, where evidence in support of their arguments must be presented.
 - Justices must explain within the decision why they disagree with the majority opinion.

Overall, the ICJ committee makes a decision based on the way the majority of the judges vote. It is important that <u>delegates rule based on the various international treaties and/or legislation</u> that are relevant to this case. Domestic law cannot be used for international rulings.

Instructions for Writing Position Papers

The position paper is a detailed essay of your legal stance on the cases 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 written and researched position paper in each committee will be given the Book Award.

A strong MACMUN position paper should include the following:

- 1. Discussion of the facts of the case in general, including stances of both nation states involved, the legal treaties and/or articles concerned, and current proceedings.
- 2. Statement of the legal issue and the legal questions that must be considered.
- 3. Legal analysis of the actions and statements of both parties involved in the case in accordance with the relevant legal treaties and/or articles. You must also consider whether the case is within the jurisdiction of the ICJ. Please note that any legislation discussed must be within the scope of international law; domestic legislation is inapplicable and cannot be presented as evidence for certain stances taken on the issues.
- 4. Clear conclusion stating your stance on the case.

Include your name and committee. Please do not include any 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 (no in-text citations; please include a reference page, which is not counted in page limit).

Due date: Sunday, February 3, 2018 at 11:59pm to ici@macmun.org.

For detailed instructions on how to write a position paper, including a template and sample paper, please refer to our How To MUN guide on our website.

Where to Start Your Research

The ICJ's portal to all of its primary documents relating to the *Islamic Republic of Iran v. The United States of America* case. It is a great resource to get acquainted with the nuance of each country's arguments and the legal reasoning of justices: https://www.icj-cij.org/en/case/164

The *Treaty of Amity* is pertinent to the first case, and will be useful for background and legal reasoning. It can be found in full here: https://www.state.gov/documents/organization/275251.pdf

The Iran-United States Tribunal can also give background and legal reasoning for this case: http://www.iusct.net/

The *United States Foreign Immunity Act* is a piece of domestic legislation that governs how the U.S. handles matters that involve foreign states. It is relevant to the case and may be used for background knowledge; however, as it is not an international document, it cannot be used for the ICJ's legal reasoning: https://www.law.cornell.edu/uscode/text/28/part-IV/chapter-97

The United States Supreme Court has previously had a case against Iran; this case can be found in full here:

https://www.supremecourt.gov/DocketPDF/

17/17-1529/52917/20180711130011617 Clearstream%20et%20al%20v.

%20Peterson%20et%20al%20Brief%20in%20Opposition.pdf

This is the ICJ's portal to all of its primary documents relating to the *Qatar v UAE* case. It is a great resource to get acquainted with the nuance of each country's arguments and the legal reasoning of justices: https://www.icj-cij.org/en/case/172

The *International Convention on the Elimination of all forms of Racial Discrimination* is the primary document pertinent to the above case. It should be well understood, and can be found in full here: https://www.ohchr.org/en/professionalinterest/pages/cerd.aspx

Beyond specific documents, you may do any research you deem necessary to prepare for this committee. 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: Certain Iranian Assets (*Islamic Republic of Iran v. United States of America*

"Today, if we have no peace, it is because we have forgotten that we belong to each other-that man, that woman, that child is my brother or my sister."

- Mother Teresa

Introduction

Since the Islamic Revolution of 1979 brought a religious government in Iran to power and caused a deep fissure in relations between the United States (U.S.) and the Islamic Republic of Iran, the two nations have coexisted with tension and discord, with no direct diplomatic relations since 1980.³³ Pertaining specifically to the ICJ, Iran and the U.S. also have a long history of contentious cases, including the aerial incident in the Persian Gulf in 1988³⁴; the destruction of Iranian oil platforms in 1992³⁵; the U.S. diplomatic and consular staff in Tehran in 1979³⁶; and most recently, the 2018 case in regards to violation of the 1955 Treaty of Amity on the reimposition of "sanctions" and restrictive measures by the U.S. against Iran, Iranian companies and/or Iranian nationals.³⁷

In 1983, 241 U.S. service personnel, including 220 Marines, stationed in Lebanon as part of a multinational peacekeeping mission during the Lebanese Civil War were killed due to a truck bomb at a Marine compound.³⁸ Hezbollah, a militant group in Lebanon, was found responsible, and it was ruled by a U.S. federal judge in 2003 that the attack was backed by support of the Iranian government. Iran, however, has denied any role in the attacks.

³³ Maloney, Suzanne. "America and Iran: From Containment to Coexistence." Brookings, 15 Aug. 2001, https://www.brookings.edu/research/america-and-iran-from-containment-to-coexistence/.

³⁴ "Aerial Incident of 3 July 1988 (Islamic Republic of Iran v. United States of America)." International Court of Justice, https://www.icj-cij.org/en/case/79.

³⁵ "Oil Platforms (Islamic Republic of Iran v. United States of America)." International Court of Justice, https://www.icj-cij.org/en/case/90.

³⁶ "United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran)." International Court of Justice, https://www.icj-cij.org/en/case/64.

³⁷ "Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America)." International Court of Justice, https://www.icj-cij.org/en/case/175.

³⁸ CNN Library. "Beirut Marine Barracks Bombing Fast Facts." CNN, https://www.cnn.com/2013/06/13/world/meast/beirut-marine-barracks-bombing-fast-facts/index.html.



Peterson et al. v. Islamic Republic of Iran et al.

In 2001, Deborah Peterson, whose brother was one of the men killed in the Beirut barrack bombings, filed a wrongful-death lawsuit alongside other plaintiffs in U.S. courts against Iran on the grounds of state-sponsored terrorism. ³⁹

In 2012, the U.S. District Court for the District of Columbia ordered Iran to pay over \$2.6 billion USD in funds through a bank account in New York owned by Iran's central bank, Bank Markazi.⁴⁰ Despite questions about the constitutionality of these proceedings, the U.S. Supreme Court upheld its decision on April 20th, 2016, annulling "the immunity from enforcement which would otherwise apply to such assets and interests of Bank Markazi."⁴¹

History of Proceedings

Application instituting proceedings

On June 14th, 2016, Iran filed a case in the Registry of the Court against the U.S., claiming that recent acts by the U.S. against Iran and Iranian companies violated the 1955 Treaty of Amity, Economic Relations, and Consular Relations between the two states.⁴²

In the initial letter from Iran to the Registrar of the International Court of Justice, it stated:

"On behalf of the Islamic Republic of Iran, and in accordance with Articles 36 (1) and 40 (1) of the Statute of the Court, and Article 38 of the Rules of Court, I have the honour to notify the Court that the Islamic Republic of Iran is hereby presenting an Application concerning the violations by the Government of the United States of America of the Treaty of Amity, Economic Relations, and Consular Rights between Iran and United States of America which was signed in Tehran on 15 August 1955 and entered into force on 16 June 1957."⁴³

Order of 1 July 2016

³⁹ "Peterson v. Islamic Republic of Iran AKA UBAE." Findlaw, https://caselaw.findlaw.com/us-2nd-circuit/1880392.html.

⁴⁰ CNN Library. "Beirut Marine Barracks Bombing Fast Facts."

⁴¹ "Application Instituting Proceedings filed in the Registry of the Court on 14 June 2016." International Court of Justice, 14 June 2016, https://www.icj-cij.org/files/case-related/164/164-20160614-APP-01-00-EN.pdf.

⁴² "Application Instituting Proceedings filed in the Registry of the Court on 14 June 2016." International Court of Justice.

⁴³ "Application Instituting Proceedings filed in the Registry of the Court on 14 June 2016." International Court of Justice.



On July 1, 2016, the ICJ fixed time-limits for the filing of the written pleadings as 1 February 2017 for the Memorial of the Islamic Republic of Iran and 1 September 2017 for the Counter-Memorial of the United States of America.⁴⁴

Order of 2 May 2017

On May 2nd, 2017, following the filing of preliminary objections to the jurisdiction of the ICJ by the U.S. on May 1st, 2017, the ICJ fixed the time-limit of 1 September 2017, within which the Islamic Republic of Iran may present a written statement of its observations and submissions on the preliminary objections raised by the U.S.⁴⁵

Press Release of 22 June 2018

The ICJ announced that it will be holding public hearings from Monday 8 to Friday 12 October 2018 at the Peace Palace in The Hague. These hearings will be focused to Preliminary Objections raised by the U.S. on May 1st, 2017.⁴⁶

Arguments of the Parties

Iran's stance

Iran has accused the U.S. of pursuing claims and enforcement proceedings against Iran and Iranian entities within its borders under its consideration of Iran as a state sponsoring terrorism. For example, the U.S. courts have awarded total damages of over \$56 billion USD—consisting of approximately \$26 billion USD in compensatory damages (often referred to as actual damages, these compensate the plaintiff for the loss) and \$30 billion USD in punitive damages (paid in addition to any compensatory damages, often acting as a method of further punishment)—against Iran in response to its alleged involvement in various acts of terrorism, primarily outside of U.S. territory.⁴⁷

Specifically, this applies to enforcement proceedings in the U.S. that occurred even where such Iranian assets or interests "are found to be held by <u>separate juridical entities . . . that are not party to the judgment on liability</u> in respect of which enforcement is sought and/or are held by Iran or Iranian entities . . . and <u>benefit from immunities from enforcement proceedings</u> as a matter of international law, and as required by the [1955] Treaty."⁴⁸ [emphasis added].

⁴⁴ "Certain Iranian Assets (Islamic Republic of Iran v. United States of America), Order of 1 July 2016." International Court of Justice, 2016, https://www.icj-cij.org/files/case-related/164/164-20160701-ORD-01-00-EN.pdf.

⁴⁵ "Certain Iranian Assets (Islamic Republic of Iran v. United States of America), Order of 2 May 2017." International Court of Justice, 2017, https://www.icj-cij.org/files/case-related/164/164-20170502-ORD-01-00-EN.pdf.

⁴⁶ "Certain Iranian Assets (Islamic Republic of Iran v. United States of America), Preliminary Objections." International Court of Justice, 22 June 2018, https://www.icj-cij.org/files/case-related/164/164-20180621-PRE-01-00-EN.pdf.

⁴⁷ "Application Instituting Proceedings filed in the Registry of the Court on 14 June 2016." International Court of Justice.

⁴⁸ "Iran institutes proceedings against the United States with regard to a dispute concerning alleged violations of the 1955 Treaty of Amity." International Court of Justice, 15 June 2016, https://www.icj-cij.org/files/case-related/164/19032.pdf.



Arguing that "the United States has failed in those cases to accord Iran and Iranian state-owned companies, and their property, sovereign immunity, and failed to recognize the juridical separateness of Iranian state-owned companies," Iran has also used the enforcement proceedings in *Peterson et al. v. Islamic Republic of Iran et al.* as a primary example of the violation of international law under the 1955 Treaty of Amity.⁴⁹

In regards to the case, Iran has requested, among other things, that the Court should adjudge, order and declare its jurisdiction under the *Treaty of Amity* to handle the dispute and come to a final ruling based on the claims submitted by Iran, and for the Court to declare unlawful the U.S.'s violations of its obligations to Iran and prevent acts against Iran and Iranian state-owned companies under international law and the Treaty of Amity.⁵⁰

The United States' stance

In the amicus brief field by the U.S. government in the *Bank Markazi v. Peterson* case, the U.S. argued that the sections of the 1955 *Treaty* referenced by Iran are not applicable to Bank Markazi:

"Petitioner [Bank Markazi] argues that Section 8772 [of the Iran Threat Reduction and Syria Human Rights Act of 2012] violates Article IV.1 of the Treaty of Amity between the United States and Iran, which requires the parties to "accord fair and equitable treatment" to each other's "nationals and companies" ... Petitioner also argues in passing that the statute violates Article III.1 of the Treaty of Amity, which requires each state to "recognize[]" the "juridical status" of "[c]ompanies" of the other state ... Contrary to petitioner's argument, the Treaty is not implicated here because petitioner is not a "national" or "compan[y]" within the meaning of the Treaty.

Petitioner is not a "national" of Iran as that term is used in the Treaty. The context makes clear that the term includes only natural persons ... Nor is petitioner a "compan[y]" within the meaning of the Treaty. The term "companies" is defined as "corporations, partnerships, companies and other associations, whether or not with limited liability and whether or not for pecuniary profit" ... That definition—which does not include any reference to government agencies and instrumentalities—is not naturally read to include entities like petitioner. The central bank of Iran is an agency of the state that carries out sovereign functions ..."51

As such, it is expected that the U.S. may argue that since Bank Markazi is a government instrumentality, it may not "claim or enjoy immunity" according to Article XI of the 1955 *Treaty*

⁴⁹ "Certain Iranian Assets (Islamic Republic of Iran v. United States of America)." U.S. Department of State, https://www.state.gov/s/l/assets/index.htm.

⁵⁰ "Application Instituting Proceedings filed in the Registry of the Court on 14 June 2016." International Court of Justice.

⁵¹ "Brief for the United States as Amicus Curiae." U.S. Department of State, 19 Aug. 2015, https://www.justice.gov/sites/default/files/osg/briefs/2015/10/01/14-770 us invitation brief.pdf.



of Amity.⁵² It may also claim that Iran's terrorist attacks against the U.S. violated its obligations to international law under the 1955 *Treaty*, making enforcement proceedings against Bank Markazi legal.⁵³

While preliminary objections by the U.S. will be heard in the upcoming hearings, State Department spokesman John Kirby previously stated, "As we have said before, we believe that the United States has acted consistent with its obligations under international law."⁵⁴ The U.S. has filed, in May 2017, preliminary objections to the jurisdiction of the Court and the admissibility of the Application.

Applicable Legislation

The 1955 Treaty of Amity

The 1955 *Treaty of Amity, Economic Relations, and Consular Relations* is part of a larger collection of general commercial treaties called the *Friendship, Commerce, and Navigation Treaties* (FCN) of the UN.⁵⁵ These treaties aim to present a legal framework to govern investment, economic, and commercial interactions between states.

As outlined in the official documents of the case, Iran contends that the U.S. violated the *Treaty* of *Amity* on the basis of the following:

- 1. "Failure to recognize the separate juridical status of such entities including Iranian State-owned companies,
- 2. Unfair and discriminatory treatment of such entities and their property, which impairs the legally acquired rights and interests of such entities including enforcement of their contractual rights,
- 3. Failure to accord to such entities and their property the most constant protection and security that is in no case less than that required by international law,
- 4. Expropriation of the property of such entities,
- 5. Failure to accord to such entities freedom of access to the US courts, including the abrogation of the immunities to which Iran and Iranian State-owned companies, including Bank Markazi, and their property, are entitled under customary international law and as required by the Treaty of Amity, both with respect to jurisdictional immunities and immunities from enforcement,
- 6. Failure to respect the right of such entities to acquire and dispose of property,
- 7. Application of restrictions to such entities on the making of payments and other transfers of funds to or from the USA, and

⁵² Chachko, Elena. "Iran Sues the U.S. in the ICJ – Preliminary Thoughts." Lawfare, 18 June 2016, https://www.lawfareblog.com/iran-sues-us-icj-%E2%80%93-preliminary-thoughts.

⁵³ Chachko, Elena. "Iran Sues the U.S. in the ICJ – Preliminary Thoughts." Lawfare.

⁵⁴ Correll, Diana S. "Iran Sues U.S. in International Court." Washington Examiner, 16 June 2016, https://www.washingtonexaminer.com/iran-sues-us-in-international-court.

⁵⁵ "Treaty of Amity, Economic Relations, and Consular Rights Between The United States of America and Iran." U.S. Treaties and Other International Agreements, 15 Aug 1955, https://www.state.gov/documents/organization/275251.pdf.



8. Interference with the freedom of commerce between the territories of Iran and the USA."56

The following articles within the 1955 Treaty of Amity must be considered in the case:

Article III (1) provides that:

"Companies constituted under the applicable law 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." [emphasis added].⁵⁷

Article III (2) provides that:

"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." ⁵⁸ [emphasis added].

Article IV (1) provides that:

"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 their lawful contractual rights are afforded effective means of enforcement, in conformity with the applicable laws." [emphasis added].

Article IV (2) provides that:

"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

⁵⁶ "Application Instituting Proceedings filed in the Registry of the Court on 14 June 2016." International Court of Justice.

⁵⁷ "Treaty of Amity, Economic Relations, and Consular Rights Between The United States of America and Iran." U.S. Treaties and Other International Agreements.

⁵⁸ "Treaty of Amity, Economic Relations, and Consular Rights Between The United States of America and Iran." U.S. Treaties and Other International Agreements.

⁵⁹ "Treaty of Amity, Economic Relations, and Consular Rights Between The United States of America and Iran." U.S. Treaties and Other International Agreements.



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."⁶⁰ [emphasis added].

Article V (1) provides that:

"Nationals and companies of either High Contracting Party shall be permitted, within the territories of the other High Contracting Party: (a) to lease, for suitable periods of time, real property needed for their residence or for the conduct of activities pursuant to the present Treaty; (b) to purchase or otherwise acquire personal property of all kinds; and (c) to dispose of property of all kinds by sale, testament or otherwise. The treatment accorded in these respects shall in no event be less favorable than that accorded national and companies of any third country." [emphasis added].

Article VII (1) provides that:

"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." [emphasis added].

Article X (1) provides that:

"Between the territories of the two High Contracting Parties there shall be freedom of commerce and navigation." [emphasis added].

Article XI (4) provides that:

"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." [emphasis added].

⁶⁰ "Treaty of Amity, Economic Relations, and Consular Rights Between The United States of America and Iran." U.S. Treaties and Other International Agreements.

⁶¹ "Treaty of Amity, Economic Relations, and Consular Rights Between The United States of America and Iran." U.S. Treaties and Other International Agreements.

⁶² "Treaty of Amity, Economic Relations, and Consular Rights Between The United States of America and Iran." U.S. Treaties and Other International Agreements.

⁶³ "Treaty of Amity, Economic Relations, and Consular Rights Between The United States of America and Iran." U.S. Treaties and Other International Agreements.

⁶⁴ "Treaty of Amity, Economic Relations, and Consular Rights Between The United States of America and Iran." U.S. Treaties and Other International Agreements.



The U.S. Foreign Sovereign Immunities Act (FSIA)

In 1976, U.S. President Gerald Ford signed into law the Foreign Sovereign Immunities Act (FSIA), which establishes the limitations of proceedings against a foreign nation, including its political subdivisions, agencies, or other entities, by U.S. federal or state courts.⁶⁵ This legislation provides U.S. courts with the exclusive ability to exercise jurisdiction against a foreign state. Prior to its enactment, this responsibility was held by the executive branch. The key exception in the FSIA, relevant to this case between Iran and the U.S., pertains to victims of state-sponsored terrorism. It is important to note, however, that this is only presented here in order to provide further context of the case. Domestic legislation is not applicable in ICJ as it is not within the scope of international law.

Section 1605A (a) (1) provides that:

"NO IMMUNITY — A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case not otherwise covered by this chapter in which money damages are sought against a foreign state for personal injury or death that was caused by an act of torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support or resources for such an act if such act or provision of material support or resources is engaged in by an official, employee, or agent of such foreign state while acting within the scope of his or her office, employment, or agency." ⁶⁶ [emphasis added].

Section 1605A (a) (2) provides that:

"CLAIM HEARD — The court shall hear a claim under this section if—

A. (i) (I) the foreign state was designated as a state sponsor of terrorism at the time the act described in paragraph (1) occurred, or was so designated as a result of such act, and, subject to subclause (II), either remains so designated when the claim is filed under this section or was so designated within the 6-month period before the claim is filed under this section..."⁶⁷ [emphasis added].

Section 1605A (c) provides that:

"PRIVATE RIGHT OF ACTION — A foreign state that is or was a state sponsor of terrorism as described in subsection (a)(2)(A)(i), and any official, employee, or agent of that foreign state while acting within the scope of his or her office, employment, or agency, shall be liable to

- (1) a national of the United States,
- (2) a member of the armed forces,

^{65 &}quot;28 U.S. Code Chapter 97 - JURISDICTIONAL IMMUNITIES OF FOREIGN STATES." Legal Information Institute, https://www.law.cornell.edu/uscode/text/28/part-IV/chapter-97.

⁶⁶ "28 U.S. Code § 1605A - Terrorism Exception to the Jurisdictional Immunity of a Foreign State." Legal Information Institute, https://www.law.cornell.edu/uscode/text/28/1605A.

^{67 &}quot;28 U.S. Code § 1605A - Terrorism Exception to the Jurisdictional Immunity of a Foreign State." Legal Information Institute.



- (3) an employee of the Government of the United States, or of an individual performing a contract awarded by the United States Government, acting within the scope of the employee's employment, or
- (4) the legal representative of a person described in paragraph (1), (2), or (3), for personal injury or death caused by acts described in subsection (a)(1) of that foreign state, or of an official, employee, or agent of that foreign state, for which the courts of the United States may maintain jurisdiction under this section for money damages. In any such action, damages may include economic damages, solatium, pain and suffering, and punitive damages. In any such action, a foreign state shall be vicariously liable for the acts of its officials, employees, or agents." [emphasis added].

Section 1605A (g) (1) provides that:

"PROPERTY DISPOSITION — (1) In general.—In every action filed in a United States district court in which jurisdiction is alleged under this section, the filing of a notice of pending action pursuant to this section, to which is attached a copy of the complaint filed in the action, shall have the effect of establishing a lien of lis pendens upon any real property or tangible personal property that is—

- (A) subject to attachment in aid of execution, or execution, under section 1610;
- (B) located within that judicial district; and
- (C) titled in the name of any defendant, or titled in the name of any entity controlled by any defendant if such notice contains a statement listing such controlled entity."⁶⁹ [emphasis added].

Additionally, Section 1610 of the FSIA governs enforcement against the property of a foreign state and state-owned companies.

Section 1610 (a) provides that:

"The property in the United States of a foreign state, as defined in section 1603(a) of this chapter, used for a commercial activity in the United States, shall not be immune from attachment in aid of execution, or from execution, upon a judgment entered by a court of the United States or of a State after the effective date of this Act ..." [emphasis added].

Section 1610 (b) provides that:

"In addition to subsection (a), any property in the United States of an agency or instrumentality of a foreign state engaged in commercial activity in the United States shall not be immune from attachment in aid of execution, or from execution, upon a judgment entered by a court of the United States or of a State after the effective date of this Act, if —

^{68 &}quot;28 U.S. Code § 1605A - Terrorism Exception to the Jurisdictional Immunity of a Foreign State." Legal Information Institute.

^{69 &}quot;28 U.S. Code § 1605A - Terrorism Exception to the Jurisdictional Immunity of a Foreign State." Legal Information Institute.

⁷⁰ "28 U.S. Code § 1610 - Exceptions to the Immunity from Attachment or Execution." Legal Information Institute, https://www.law.cornell.edu/uscode/text/28/1610.



(3) the judgment relates to a claim for which the agency or instrumentality is not immune by virtue of section 1605A of this chapter or section 1605 (a) (7) of this chapter (as such section was in effect on January 27, 2008), regardless of whether the property is or was involved in the act upon which the claim is based."⁷¹ [emphasis added]

Section 1610 (g) (1) provides that:

"IN GENERAL.—Subject to paragraph (3), the property of a foreign state against which a judgment is entered under section 1605A, and the property of an agency or instrumentality of such a state, including property that is a separate juridical entity or is an interest held directly or indirectly in a separate juridical entity, is subject to attachment in aid of execution, and execution, upon that judgment as provided in this section, regardless of—

- A. the level of economic control over the property by the government of the foreign state;
- *B.* whether the profits of the property go to that government;
- C. the degree to which officials of that government manage the property or otherwise control its daily affairs;
- D. whether that government is the sole beneficiary in interest of the property; or
- E. whether establishing the property as a separate entity would entitle the foreign state to benefits in United States courts while avoiding its obligations."⁷² [emphasis added].

Section 1611 (b) provides that:

"Notwithstanding the provisions of section 1610 of this chapter, the property of a foreign state shall be immune from attachment and from execution ..."73 [emphasis added].

The Terrorism Risk Insurance Act (TRIA)

The Terrorism Risk Insurance Act (TRIA) was enacted by the U.S. Congress in 2002, which allows judgments to be executed against blocked assets of an alleged terrorist party.

Section 201 (a) provides that:

"Notwithstanding any other provision of law, and except as provided in subsection (b), in every case in which a person has obtained a judgment against a terrorist party on a claim based upon an act of terrorism, or for which a terrorist party is not immune under section 1605(a)(7) of title 28, United States Code, the blocked assets of that terrorist party (including the blocked assets of any agency or instrumentality of that terrorist party) shall be subject to execution or attachment in aid of execution in order to satisfy

^{71 &}quot;28 U.S. Code § 1610 - Exceptions to the Immunity from Attachment or Execution." Legal Information Institute.

^{72 &}quot;28 U.S. Code § 1610 - Exceptions to the Immunity from Attachment or Execution." Legal Information Institute.

⁷³ "28 U.S. Code § 1611 - Certain Types of Property Immune from Execution." Legal Information Institute, https://www.law.cornell.edu/uscode/text/28/1611.



such judgment to the extent of any compensatory damages for which such terrorist party has been adjudged liable."⁷⁴ [emphasis added].

Committee Mission & Focus Questions

In consideration of the ongoing *Iran v. United States* case, additional questions arise surrounding the sovereign immunity of a foreign state and its nationals' agencies and/or entities independent of any connection to the national government. This case, in particular, becomes even more interesting with the recent declaration by the U.S. that it is withdrawing from the 1955 *Treaty of Amity* following Iran's complaint with the ICJ regarding the re-imposition of U.S. sanctions.⁷⁵ Ultimately, clarification of the language in the 1955 *Treaty* must be provided in order to apply it to the case at hand.

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

- 1. Is it within the jurisdiction of the ICJ to rule on this case?
- 2. In relation to the 1955 *Treaty*, the question of whether Bank Markazi can be considered a "national" or a "company" must also be deliberated. Can the *Treaty* still be considered relevant, and more importantly, applicable to this case? Can Iran claim immunity on behalf of Bank Markazi under the 1955 *Treaty*?
- 3. Has the U.S. violated its obligations to international law under the 1955 *Treaty*?
- 4. If the U.S. does withdraw itself from the 1955 *Treaty*, how might that influence rulings in this case?

 $^{^{74}\ ^{\}prime\prime} Terrorism\ Risk\ Act\ of\ 2002. ^{\prime\prime}\ United\ States\ Treasury,\ 2002,\ https://www.treasury.gov/resource-center/fin-mkts/Documents/hr3210.pdf.$

⁷⁵ "US Pulls out of 1955 Treaty of Amity with Iran; "firm, Enduring Peace" in Balance as Symbolic Agreement Ends." Firstpost, 4 Oct. 2018, https://www.firstpost.com/world/us-pulls-out-of-1955-treaty-of-amity-with-iran-firm-enduring-peace-in-balance-as-symbolic-agreement-ends-5316481.html.



Topic #2: Qatar v. United Arab Emirates

"Truth never damages a cause that is just."
- Gandhi

Introduction

Important note: This case will be treated as if the date is June 30, 2018. Any evidence, orders, or actions occurring after this date will have no bearing in committee and do not have any influence on a Justice's reasoning.

In June 2018, the Qatari government filed a case against the United Arab Emirates (UAE) at the ICJ, alleging that the UAE has violated the *International Convention on the Elimination of all forms of Racial Discrimination* (ICERD) by discriminating against Qatari nationals.⁷⁷ This action came after a steady escalation of tensions between Qatar and its neighbouring Gulf states.

History of Qatar-UAE Relations

Historically, Qatar and the UAE have had strong and peaceful international relations. They share a naval border on the Persian Gulf and are both members of the Gulf Cooperation Council (GCC), an international body that strengthens political and economic coordination between the traditional monarchies of the Gulf region: the UAE, Qatar, Bahrain, Kuwait, Oman, and Saudi Arabia. Despite these ties, Qatar and the UAE have found themselves at odds due to shifting alliances with regional powers such as Saudi Arabia and Iran.

In recent years, Qatar has supported political opposition groups in neighbouring nations. These nations have not been pleased, and in 2013 and 2014, a series of secret agreements were made between Qatar, Saudi Arabia, the UAE and Kuwait, in which Qatar agreed not to support antigovernment activist groups, including the Muslim Brotherhood and Yemeni rebels. These nations have also often accused Qatar of violating these agreements. On December 16th, 2015, 28 Qatari citizens were taken hostage by an Iran-backed Shi'ite militant group in Syria. After 16 months and the release of two hostages, Qatar paid a large sum of money as ransom for the

^{77 &}quot;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

^{78 &}quot;Gulf Cooperation Council." Encyclopedia Britannica. https://www.britannica.com/topic/Gulf-Cooperation-Council

⁷⁹ "The Secret Documents that Help Explain the Qatari Crisis." CNN. https://www.cnn.com/2017/07/10/politics/secret-documents-qatar-crisis-gulf-saudi/index.html

⁸⁰ Ganea, Marcela. "The Qataris hostage affair may have affected the relations among the Gulf countries." Geopolitics.http://english.geopolitics.ro/the-qatari-hostages-affair-may-have-affected-the-relations-among-the-gulf-countries/



release of the remaining 26 individuals, some of whom were members of the Qatari royal family.⁸¹

On May 23rd, 2017, a Qatari news agency was allegedly hacked into and released false statements from the Qatari government supporting Iran and criticizing the president of the United States. 82 Though the Qatari government immediately released a public statement claiming that these reports were false, this incident, coupled with the hostage payments, led many nations in the GCC to claim that Qatar is sympathetic to extremist groups and is supportive of Iran. As a result, many nations, including the UAE, severed diplomatic ties with Qatar. 83

A few weeks later, on June 22nd, 2017, the GCC issued a list of thirteen demands for Qatar to implement in exchange for the restoration of normal international relations:⁸⁴

- 1. Reduce diplomatic ties with Iran;
- 2. Shut down the Turkish military cooperation base within Qatar;
- 3. Formally declare the Muslim Brotherhood, ISIL, al-Qaeda, Fateh al-Sham, and Hezbollah as terrorist groups and sever any ties with them;
- 4. Eliminate any support of groups deemed terrorists by Saudi Arabia, the UAE, and the US;
- 5. Return wanted fugitives from Saudi Arabia, Egypt, Bahrain, and the UAE;
- 6. Shut down Al-Jazeera;
- 7. Stop granting citizenship to wanted people from the Saudi Arabia, the UAE, Egypt, and Bahrain:
- 8. Provide compensation for harm caused by Qatar's recent policies;
- 9. Align Qatari policies with the other GCC nations;
- 10. End contact with political oppositions in the UAE, Saudi Arabia, Egypt, and Bahrain, and give each nation the documents of its previous contact with these groups;
- 11. Stop funding and shut down all news outlets that Qatar funds;
- 12. Agree to all demands within 10 days of issuing; and
- 13. Agree to compliance audits over the next 10 years.

Qatar rejected these demands, with its foreign minister claiming the requests were "so draconian that they appeared designed to be rejected."85 The following year, Qatar filed an application at the ICJ instituting proceedings against the UAE.

⁸¹ Warrick, Joby. "Hacked messages show Qatar appearing to pay hundreds of millions to free hostages." The Washington Post, April 28, 2017. https://www.washingtonpost.com/world/national-security/hacked-messages-show-qatar-appearing-to-pay-hundreds-of-millions-to-free-hostages/2018/04/27/46759ce2-3f41-11e8-974f-aacd97698cef_story.html?utm_term=. 2c9164c9651f

^{82 &}quot;Application Instituting Proceedings State of Qatar v United Arab Emirates". International Court of Justice, June 11, 2018. https://www.icj-cij.org/files/case-related/172/172-20180611-APP-01-00-EN.pdf

^{83 &}quot;Qatar row: Saudi and Egypt among countries to cut Doha links." BBC, June 5, 2017. https://www.bbc.com/news/world-middle-east-40155829

^{84 &}quot;Arab states issue 13 demands to end Qatar-Gulf crisis". Al Jazeera, July 12, 2017. https://www.aljazeera.com/news/2017/06/arab-states-issue-list-demands-qatar-crisis-170623022133024.html

^{85 &}quot;Qatar responds to Gulf neighbours' demands". The Guardian, July 3, 2017. https://www.theguardian.com/world/2017/jul/03/qatar-given-more-time-to-respond-to-gulf-neighbours-demands



History of Proceedings

Application instituting proceedings

In its application to institute proceedings, Qatar states that the UAE has violated ICERD by targeting Qataris using discriminatory measures in order to undermine Qatar's sovereignty and coerce Qatar into complying with its harsh list of demands. By initiating proceedings, Qatar is seeking an order that the UAE must comply with its obligations under ICERD, restore Qataris' rights, ensure no more discrimination will occur, and provide compensation for harm caused by these measures. By

For the ICJ to make any decision based on this application, it must first determine whether Qatar's allegations fall under the jurisdiction of the Court and of ICERD. For this case to fall under ICJ jurisdiction as outlined under Section 36(1) of the ICJ *Statute*, it must regard the interpretation or application of an international agreement that both parties have signed onto. ⁸⁸Likewise, ICERD mandates in Article 22 that a dispute can only be brought to the ICJ if other measures of conflict resolution have been pursued and have failed, and Article 11 of ICERD requires that before a case is initiated, the plaintiff must have brought the dispute to the attention of the ICERD committee. ⁸⁹ The arguments determining jurisdiction for this case are explored in further detail in the 'Argument of the Parties' section below.

Request for the Indication of Provisional Measures of Protection of 11 June 2018

Concurrent to opening the case, Qatar filed a request asking the ICJ to implement provisional measures to protect Qatari people before completion of the proceedings. In this document, Qatar requested that the ICJ order the UAE to revoke all of its June 5th actions immediately, reinstating normal diplomatic relations. For the ICJ to implement provisional measures, it must determine that the rights allegedly being violated are urgent and that not taking action immediately would cause severe and irreparable harm.

Press Release of 15 June 2018

The ICJ issued a press release stating that it would be holding public hearings to determine whether to grant Qatar the provisional measures it seeks.⁹¹

^{86 &}quot;Application Instituting Proceedings State of Qatar v United Arab Emirates". International Court of Justice, June 11, 2018. https://www.icj-cij.org/files/case-related/172/172-20180611-APP-01-00-EN.pdf

^{87 &}quot;Application Instituting Proceedings State of Qatar v United Arab Emirates". International Court of Justice.

^{88 &}quot;Statute of the Court." International Court of Justice. https://www.icj-cij.org/en/statute

⁸⁹ "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

^{90 &}quot;Request for the Indication of Provisional Measures of Protection." International Court of Justice, June 11, 2018. https://www.icj-cij.org/files/case-related/172/172-20180611-WRI-01-00-EN.pdf

 $^{^{91}}$ "Press Release." International Court of Justice , June 15, 2018. https://www.icj-cij.org/files/case-related/172/172-20180615-PRE-01-00-EN.pdf



Public Hearings of 27-29 June 2018

Over three days, legal representatives from Qatar and the UAE presented their evidence and arguments to the ICJ at the Peace Palace in The Hague.

Arguments of the Parties

Qatar's Stance

As the UAE and Qatar are both parties to ICERD, and these discriminatory actions have taken place while both had signed onto it, Qatar argues that the case falls under ICJ jurisdiction. Further, Qatar asserts that this case is over a disagreement in interpretation or application of ICERD. As it states, Qatar has exhausted all other avenues of conflict resolution by repeatedly attempting diplomatic negotiations with the UAE. However, the UAE continues to uphold its requirements for Qatar to change its policies, which it has described as non-negotiable. On March 8th, 2018, Qatar reached out to the Committee on the Elimination of All Forms of Racial Discrimination (CERD) and submitted an inter-state communication to the UAE informing them that they believed ICERD to have been violated. Once again, the UAE responded that they believed they are upholding this convention. Based on this, Qatar states that this case meets all the requirements under both the ICJ *Statute* and ICERD to pursue this case at the ICJ. 93

Qatar alleges that on June 5th, 2017, the UAE issued an order requiring all Qatari diplomats to leave the nation within 48 hours, and Qatari nationals 14 days to do the same. At the same time, the UAE closed its seaports and airspace to Qataris, preventing them from entering or passing through the country. It also ordered UAE nationals in Qatar to return to the UAE or face revocation of their citizenship, and prohibited by law any speech deemed to be in support of Qatar or opposed to the actions taken against Qatar, with a punishment of up to 15 years of imprisonment. The UAE has also shut down local Al-Jazeera media networks and blocked its transmission, along with other Qatari media.

Qatar argues that this is discrimination based on national origin because it targets Qataris based on their nationality and restricts them differently than other non-citizens inside or outside the

^{92 &}quot;Public sitting- Verbatum Record." International Court of Justice, June 27, 2018.https://www.icj-cij.org/files/case-related/172/172-20180627-ORA-01-00-BLpdf

^{93 &}quot;Public sitting- Verbatum Record." International Court of Justice.

⁹⁴ "Request for the Indication of Provisional Measures of Protection." International Court of Justice, June 11, 2018. https://www.icj-cij.org/files/case-related/172/172-20180611-WRI-01-00-EN.pdf

^{95 &}quot;Request for the Indication of Provisional Measures of Protection." International Court of Justice.



UAE. Qatar states this action violates ICERD under Article 1, which states national origin as a protected ground against discrimination.⁹⁶

Qatar claims that these actions have had a severe impact on Qatari nationals, violating many of their rights protected under ICERD.⁹⁷ As a result of the order for Qatari nationals to leave the UAE, Qataris have had to leave their families, properties, educations, and medical treatments behind. Qatar argues that this consequence violates Article 5 of ICERD, which protects rights to each of these. In addition, by preventing Qataris from entering or passing through the UAE, the UAE has violated another tenet of Article 5, the right to movement. Further, by blocking AlJazeera and other Qatar-funded media, the UAE has violated Qataris' Article 5 right to freedom of expression. Since Qataris cannot enter the UAE, they cannot access the Emirati court systems, and cannot fight against this discrimination domestically. This lack of access to equal tribunals violates Articles 5, 6, and 7 of the ICERD. Finally, as the UAE has made it criminal to support Qatar, they have violated Article 4, which protects against the use of propaganda to fuel racial discrimination.

Qatar argues that these violations have caused and continue to cause severe and irreversible harm to Qataris, and requests that the court order the UAE to reverse these actions immediately to prevent further harm during the rest of the proceedings. In order to legitimize the severity of its claims, Qatar points to numerous organizations that have recognized the UAE's actions as violating human rights, including the Office of the United Nations High Commissioner for Human Rights.⁹⁸

United Arab Emirates' Stance

The UAE denies all of Qatar's allegations of human rights violations. While it has severed diplomatic ties with Qatar, expelling their diplomats and ordering Qataris to leave the country, it claims that the June 5 measures are designed to have minimal impact on Qataris. Further, the UAE government claims that it did not issue any deportations of Qataris, so many remain in the UAE, and those who left were encouraged to do so by workers in Qatar's embassy. In terms of Qataris entering the UAE, they must obtain special permits, something that is a normal measure for a country to require, and the UAE claims that over 8,000 Qataris have entered the UAE since the severing of diplomatic ties. While Qataris are in the UAE, they are treated with respect and allowed to continue life normally. The UAE even issued a statement to Qatari students who left, letting them know that they are welcome to return. In terms of limiting freedom of expression, the UAE argues that Al-Jazeera is hate speech and therefore is not protected under the ICERD's

⁹⁶ "International Convention on the Elimination of all forms of Racial Discrimination, 1965." United Nations Human Rights Office of the High Commissioner. https://www.ohchr.org/en/professionalinterest/pages/cerd.aspx

^{97 &}quot;Request for the Indication of Provisional Measures of Protection." International Court of Justice, June 11, 2018. https://www.icj-cij.org/files/case-related/172/172-20180611-WRI-01-00-EN.pdf

^{98 &}quot;Public sitting- Verbatum Record." International Court of Justice, June 28, 2018. https://www.icj-cij.org/files/case-related/172/172-20180628-ORA-01-00-BI.pdf

^{99 &}quot;Public sitting- Verbatum Record." International Court of Justice.

¹⁰⁰ "Public sitting- Verbatum Record." International Court of Justice.



free speech Article and should be shut down. While Qatar claims that the UAE's actions have had negative effects on its people, it has no substantiated evidence, only unverifiable anecdotes. Furthermore, the UAE argues that Qatar has not pursued all measures to resolve conflict. Since Qatari citizens are not barred from entering the UAE, they could pursue justice in domestic courts.¹⁰¹

The UAE argues that this case does not fall under the jurisdiction of ICERD as the UAE is not targeting individual Qataris; rather, its actions are aimed at the Qatari government. The UAE has tried to get Qatar to change its policies through the Riyadh Agreements of 2013-2014, both of which Qatar backed out of.¹⁰² The UAE argues that Qatar supports terrorism and used their ransom payment as a front for directly funding terrorist groups. It is these actions that the UAE condemns by severing diplomatic ties.

Beyond this, the UAE argues that this case does not fall under the jurisdiction of ICERD because nationality is not a protected ground. The UAE states that national origin is not equivalent to nationality. In this manner, Qatar is only arguing on the basis of current nationality, as it is not arguing that former Qatari citizens or dual citizens within the UAE are targeted or that Emirati children of Qatari parents are targeted. Therefore, UAE argues that the issues concern distinguishing between citizens and non-citizen. The UAE further argues that this type of distinction does not fall under discrimination under ICERD, as Article 1 specifically allows for differential treatments between these groups. 104

Applicable Legislation

International Convention on the Elimination of all forms of Racial Discrimination (ICERD)

On December 21st, 1965, ICERD was adopted by the General Assembly in resolution 2106 (XX).¹⁰⁵ Drafted on the heels of World War II and the American civil rights movement, and in the midst of the wave of decolonization, the ICERD filled a global need for guidelines on upholding human rights by preventing racial discrimination. Since then, 179 states have become party to it. In this case, many Articles of the Convention referred to specifically are outlined below.

Article 1 provides that:

"1. In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic

¹⁰¹ "Public sitting- Verbatum Record." International Court of Justice.

¹⁰² "Public sitting- Verbatum Record." International Court of Justice.

¹⁰³ "Public sitting- Verbatum Record." International Court of Justice.

¹⁰⁴ "International Convention on the Elimination of all forms of Racial Discrimination, 1965." United Nations Human Rights Office of the High Commissioner. https://www.ohchr.org/en/professionalinterest/pages/cerd.aspx

¹⁰⁵ "International Convention on the Elimination of all forms of Racial Discrimination, 1965." United Nations Human Rights Office of the High Commissioner.



origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

2. This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens." [emphasis added].

Article 2 provides that:

- "1. Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end:
 - A. Each State Party undertakes to engage in **no act or practice of racial discrimination against persons, groups of persons or institutions** and to ensure
 that all public authorities and public institutions, national and local, shall act in
 conformity with this obligation;
 - B. Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations;
 - C. Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;
 - D. Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization;
 - E. Each State Party undertakes to encourage, where appropriate, integrationist multiracial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.
- 2. States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved." ¹⁰⁷ [emphasis added].

Article 4 provides that:

"1. Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin,

¹⁰⁶ "International Convention on the Elimination of all forms of Racial Discrimination, 1965." United Nations Human Rights Office of the High Commissioner.

¹⁰⁷ "International Convention on the Elimination of all forms of Racial Discrimination, 1965." United Nations Human Rights Office of the High Commissioner.



or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, inter alia:

- A. Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;
- B. Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law;
- C. Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination." 108 [emphasis added].

Article 5 provides that:

"1. In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

- A. The right to equal treatment before the tribunals and all other organs administering justice;
- B. The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution;
- C. Political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;
- D. Other civil rights, in particular:
 - 1. The right to freedom of movement and residence within the border of the State;
 - 2. The right to leave any country, including one's own, and to return to one's country;
 - *3. The right to nationality;*
 - 4. The right to marriage and choice of spouse;
 - 5. The right to own property alone as well as in association with others;
 - 6. The right to inherit;
 - 7. The right to freedom of thought, conscience and religion;

¹⁰⁸ "International Convention on the Elimination of all forms of Racial Discrimination, 1965." United Nations Human Rights Office of the High Commissioner.



- 8. The right to freedom of opinion and expression;
- 9. The right to freedom of peaceful assembly and association;
- E. Economic, social and cultural rights, in particular:
 - 1. The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration;
 - 2. The right to form and join trade unions;
 - 3. The right to housing;
 - 4. The right to public health, medical care, social security and social services;
 - 5. The right to education and training;
 - 6. The right to equal participation in cultural activities;
 - 7. The right of access to any place or service intended for use by the general public, such as transport hotels, restaurants, cafes, theatres and parks." [emphasis added].

Article 6 provides that:

"Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination." ¹¹⁰ [emphasis added].

Article 7 provides that:

"States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention." [emphasis added].

Article 22 provides that:

"Any dispute between two or more States Parties with respect to the interpretation or application of this Convention, which is not settled by negotiation or by the procedures expressly provided for in this Convention, shall, at the request of any of the parties to the

¹⁰⁹ "International Convention on the Elimination of all forms of Racial Discrimination, 1965." United Nations Human Rights Office of the High Commissioner.

¹¹⁰ "International Convention on the Elimination of all forms of Racial Discrimination, 1965." United Nations Human Rights Office of the High Commissioner.

¹¹¹ "International Convention on the Elimination of all forms of Racial Discrimination, 1965." United Nations Human Rights Office of the High Commissioner.



dispute, be referred to the International Court of Justice for decision, unless the disputants agree to another mode of settlement." [emphasis added].

Committee on the Elimination of Racial Discrimination (CERD)

CERD is a UN committee tasked with overseeing the implementation of ICERD. It meets regularly and receives reports from all parties on how the Convention is being applied domestically. Any recommendations for the enforcement of ICERD made by CERD can be used as legal reasoning in the ICJ.

The General Recommendations that may be relevant to this case include, but are not limited to:

- 1. General Recommendation 30 on discrimination against non-citizens. 113
- 2. General Recommendation 35 on combating racist hate speech. 114
- 3. General Recommendation 22 on Article 5 of the CERD Convention in relation to refugees and displaced persons.¹¹⁵

Committee Mission & Focus Questions

Justices in this committee must clearly interpret the ICJ *Statute*, ICERD, and any other applicable international law in order to apply it to this case. It must be decided whether the actions of the UAE are considered to be racial discrimination, and if so, whether they qualify for provisional measures to be implemented. In order to determine these factors, contradictory evidence given by the UAE and Qatar must be reconciled to create a clear picture of what has occurred and its impact, and there must be a deeper consideration of the language used in ICERD.

Questions to consider include:

- 1. Does this case fall under the jurisdiction of both ICERD and the ICJ?
- 2. Is nationality a protected ground under ICERD?
 - A. Is nationality synonymous with national origin?
 - B. If not, to what extent should nationality be a protected ground?
- 3. What is the difference between acting against a nation and discriminating against its citizens?
- 4. Can nations justifiably engage in discriminatory practices on the basis of protecting their own national security?
- 5. Does Qatar's application meet the requirements for provisional measures?

¹¹² "International Convention on the Elimination of all forms of Racial Discrimination, 1965." United Nations Human Rights Office of the High Commissioner.

¹¹³ "General Recommendation XXX on Discrimination Against Non-Citizens." Committee on the Elimination of all forms of Racial Discrimination. http://www.refworld.org/docid/45139e084.html

¹¹⁴ "General Recommendation No. 35." Committee on the Elimination of all forms of Racial Discrimination. http://www.refworld.org/docid/53f457db4.html

¹¹⁵ "General Recommendation No. 22." Committee on the Elimination of all forms of Racial Discrimination. http://www.refworld.org/publisher,CERD,GENERAL,,4a54bc340,0.html



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