

2013

# ICJ 2013 BACKGROUND GUIDE

MIT MODEL UNITED NATIONS  
CONFERENCE V



[icj2013@mitmunc.org](mailto:icj2013@mitmunc.org)



## LETTER FROM THE DAIS

Dear Delegates,

My name is Shadab Gul and I am currently a sophomore doing Economics and Mathematics here at MIT. I have been doing MUN for three years now and have attended many college conferences. This year I decided to chair ICJ as it is special committee and I have never chaired a committee like this before. Having small number of delegates will help me know each of you as delegates better. MUN is definitely challenging and requires a lot of research but the key to become better at it is to enjoy what you are doing. I hope all of you chose this committee because you like it as it would just make your life so much easier and you will feel confident when you are speaking.

Do not hesitate to speak out and present your opinion, as I would love to listen to innovative ideas or some detail that I did not know existed.

Now enough of committee sessions talk. I am a lively person who likes to meet new people, so I am looking forward to getting to know all of you. Please feel free to ask any question. You can email me at [shadabgd@mit.edu](mailto:shadabgd@mit.edu) or at [icj2013@mitmunc.org](mailto:icj2013@mitmunc.org) and I promise I will reply as soon as it is possible.

Do not hesitate to ask anything. There is no such thing as stupid questions. Enjoy researching. See you all in February.

My name is Eta Atolia. I am a sophomore at MIT majoring in Biological

Engineering. This is my first year participating in Model United Nations. Since this is my very first time participating, I am really excited to be the deputy chair for ICJ. It was great understanding parliamentary procedures and seeing how committee sessions work. ICJ was a bit difficult to understand but I enjoyed researching for these particular topics.

I like hiking, playing piano and reading. Apart from that I spend a lot of time in the lab doing research. I like being able to carry out experiments independently and learn about the new and upcoming topics in synthetic biology.

See you soon,

*Shadab Gul*

*Eta Atolia*

International Court of Justice Chairs,  
MITMUNCV  
[icj2013@mitmunc.org](mailto:icj2013@mitmunc.org)

## COMMITTEE BACKGROUND

What is International Court of Justice and how does it function?

International Court of Justice is one of the many organs of the UN and is made of a panel of judges that resolves legal disputes brought to them by sovereign states. It also provides advisory opinions on legal issues submitted to it by duly authorized international organs, agencies, and the UN General Assembly.

In the committee itself the ICJ will be given two topics one after the other, at the chairs discretion and every person will be representing a non-biased judged bearing no differentiated feelings towards separate countries. The debate will go on very similar to other committees. Judges will raise their placards with their names (Judges name) on it trying to discuss each of the topics and what insight they have on each them. Each of the topics will be discussed separately and will have no overlapping.

Delegates will be judged on their speaking abilities with regards to being diplomatic. They will also be judged on what information they bring to the floor regarding the topics and what solution they present supporting their advice with reason. At the end of each topics discussion, the judges are expected to come up with a resolution, which will be passed with a majority vote that is 2/3rds of the committee.

**Topic 1:****OIL PLATFORMS:  
ISLAMIC REPUBLIC OF  
IRAN VS. UNITED STATES  
OF AMERICA****Introduction**

On 2 November 1992, the Islamic Republic of Iran instituted proceedings against the United States of America concerning a dispute arising out of the attack on three offshore oil production complexes. The complexes were owned and operated for commercial purposes by the National Iranian Oil Company and were destroyed by several warships of the United States Navy on 19 October 1987 and 18 April 1988. In its Application, Iran contended that these acts constituted a fundamental breach of various provisions of the Treaty of Amity, Economic Relations and Consular Rights between the United States and Iran, which was signed in Tehran on 15 August 1955, as well as of international law. The United States Counter-Memorial included a counter-claim concerning Iran's actions in the Gulf during 1987-88 which, among other things, involved mining and other attacks on U.S.-flag or U.S.-owned vessels. A treaty of amity, economic relations, and consular rights between the United States of America and Iran was signed at Tehran on August 15, 1955.

The United States of America and Iran, desirous of emphasizing the friendly relations which have long prevailed between their peoples, of reaffirming the high principles in the regulation of human affairs to which they are committed, of

encouraging mutually beneficial trade and investments and closer economic intercourse generally between their peoples, and of regulating consular relations, have resolved to conclude, on the basis of reciprocal equality of treatment, a Treaty of Amity, Economic Relations, and Consular Rights, and have appointed as their Plenipotentiaries:

1. There shall be firm and enduring peace and sincere friendship between the United States of America and Iran.

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.

3. The dwellings, offices, warehouses, factories and other premises of nationals and companies of either High Contracting Party located within the territories of the other High Contracting Party shall not be subject to entry or molestation without just cause. Official searches and examinations of such premises and their contents, shall be made only according to law and with careful regard for the convenience of the occupants and the conduct of business.

4. Enterprises which nationals and companies of either High Contracting Party are permitted to establish or acquire, within the territories of the other High Contracting Party, shall be permitted freely to conduct their activities therein, upon terms no less favorable than other enterprises of whatever nationality, engaged in similar activities. Such nationals and companies shall enjoy the right to continued control and management of such enterprises; to engage attorneys, agents, accountants, and other technical experts, executive personnel interpreters and other specialized employees of their choice; and to do all other things necessary or incidental to the effective conduct of their affairs.[1]

*Full Treaty can be found at [http://www.parstimes.com/law/iran\\_us\\_treaty.html](http://www.parstimes.com/law/iran_us_treaty.html)*

## Questions

The main question at the preliminary stage was whether the dispute between the two States with respect to the lawfulness of the actions carried out by the United States against the Iranian oil platforms was a dispute "as to the interpretation or application" of the Treaty of 1955. In a Judgment issued on 12 December 1996 the Court rejected the preliminary objection of the United States. It did not accept the argument that the treaty provisions only concerned commercial and consular matters and hence were not applicable in the event of the use of force. The Court found in this respect that the Treaty does not exclude *per se* any matters from the Court's jurisdiction.

Furthermore, the Court found that the destruction of the Iranian oil platforms was capable of having an effect upon the export trade in Iranian oil and, consequently, upon the freedom of commerce guaranteed in Article X, paragraph 1, of the Treaty. The lawfulness of that destruction could therefore be evaluated in relation to that paragraph. Hence, the dispute between the parties fell within the scope of the compromisers clause in Article XXI, paragraph 2, of the Treaty and the Court had jurisdiction to entertain the dispute

## More Recent Developments

### *Iran*

On behalf of the Government of Iran, at the hearing of 3 March 2003, on the claim of Iran:

"The Islamic Republic of Iran respectfully requests the Court, rejecting all contrary claims and submissions, to adjudge and declare:

1. That in attacking and destroying on 19 October 1987 and 18 April 1988 the oil platforms referred to in Iran's Application, the United States breached its obligations to Iran under Article X, paragraph 1, of the Treaty of Amity, and that the United States bears responsibility for the attacks; and

2. That the United States is accordingly under an obligation to make full reparation to Iran for the violation of its international legal obligations and the injury thus caused in a form and amount to be determined by the Court at a

subsequent stage of the proceedings, the right being reserved to Iran to introduce and present to the Court in due course a precise evaluation of the reparation owed by the United States; and

3. Any other remedy the Court may deem appropriate"; at the hearing of 7 March 2003, on the counter-claim of the United States:

"The Islamic Republic of Iran respectfully requests the Court, rejecting all contrary claims and submissions, to adjudge and declare: That the United States counter-claim be dismissed."

#### *The United States*

On behalf of the Government of the United States, at the hearing of 5 March 2003, on the claim of Iran and the counter-claim of the United States: "The United States respectfully requests that the Court adjudge and declare:

(1) that the United States did not breach its obligations to the Islamic Republic of Iran under Article X, paragraph 1, of the 1955 Treaty between the United States and Iran; and

(2) that the claims of the Islamic Republic of Iran are accordingly dismissed. With respect to its counter-claim, the United States requests that the Court adjudge and declare:

(a) Rejecting all submissions to the contrary, that, in attacking vessels in the Gulf with mines and missiles and otherwise engaging in military actions that were dangerous and detrimental to commerce and navigation between the

territories of the United States and the Islamic Republic of Iran, the Islamic Republic of Iran breached its obligations to the United States under Article X, paragraph 1, of the 1955 Treaty; and

(b) That the Islamic Republic of Iran is accordingly under an obligation to make full reparation to the United States for its breach of the 1955 Treaty in a form and amount to be determined by the Court at a subsequent stage of the proceedings."

*Please Note: The background guide is a short summary because there is much more information that cannot be put into these numbers of pages.*

### **Preparing for Topic # 1**

1. Read the treaty thoroughly.
2. Learn about the attacks before 1992 and what was proposed by each of the country.
3. Delegates are encouraged to come up with solutions/judgments themselves and not follow what the ICJ has already done.

### **Research**

<http://www.haguejusticeportal.net/index.php?id=6223>

[http://www.mpil.de/ww/en/pub/research/details/publications/institute/wcd.cfm?fuseaction\\_wcd=aktdat&aktdat=dec0306.cfm](http://www.mpil.de/ww/en/pub/research/details/publications/institute/wcd.cfm?fuseaction_wcd=aktdat&aktdat=dec0306.cfm)

<http://www.unhcr.org/refworld/country,,ICJ,,IRN,,414b00604,0.html>



**Topic 2:****AVENA AND OTHER  
MEXICAN NATIONALS:  
MEXICO VS. UNITED  
STATES OF AMERICA****Introduction**

On 9 January, 2003, Mexico instituted proceedings against the United States of America in a dispute concerning alleged breaches of Articles 5 and 36 of the Vienna Convention on Consular Relations of 24 April 1963 in relation to the treatment of a number of Mexican nationals who had been tried, convicted and sentenced to death in criminal proceedings in the United States. On 9 January 2003 Mexico also asked the Court to indicate provisional measures, and in particular to order the United States to take all measures necessary to ensure that no Mexican national was executed pending a final decision of the Court.

On 5 February 2003 the Court unanimously adopted an Order indicating such measures. On 31 March 2004, in the judgment on the merits, the Court found that the United States of America had breached its obligations to Mr. Avena and other Mexican nationals and to Mexico under the Vienna Convention on Consular Relations.[2]

The application stated that the USA in the case of the arrest and sentencing of 52 Mexican nationals had violated its international legal obligations to Mexico: 'in its own right and in the exercise of its right to diplomatic protection of its nationals, by failing to inform, without

delay, the 52 Mexican nationals after their arrest of their right to consular notification and access under Article 36 (1) (b) of the Vienna Convention on Consular Relations, and by depriving Mexico of its right to provide consular protection and the 52 nationals' right to receive such protection as Mexico would provide under Article 36 (1) (a) and (c) of the Convention.'

After an Order for provisional measures of February 2003, stating that the USA 'shall take all measures necessary to ensure that ... [three of the Mexicans being the most urgent cases on death row] are not executed pending final judgment in these proceedings,' in its March 2004 Judgment the ICJ found, that the USA had violated several articles of the Vienna Convention on Consular Relations. It also found: '[t]hat the appropriate reparation in this case consists in the obligation of the United States of America to provide, *by means of its own choosing*, review and reconsideration of the convictions and sentences of the Mexican nationals referred to [...].'[3]

The judgment means that the Court recognizes 'that the concrete modalities for such review and reconsideration should be left primarily to the United States,' as it already had done in the *LaGrand* case.

However, the judgment also specifies that this freedom in the choice of means for such review is not without qualification. Indeed, the Court decided that it should be carried out 'by taking account of the violation of the rights,' set forth in the Vienna Convention on Consular Relations.

The full treaty can be found at: [http://untreaty.un.org/ilc/texts/instruments/english/conventions/1\\_1\\_1969.pdf](http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf)

## Appeal

As more fully set forth in the accompanying Application, Mexico and its nationals have been subject to systematic violation by the United States of their rights under article 36 of the Vienna Convention. To Mexico's knowledge, no fewer than fifty-four of its nationals have been arrested, detained, tried, and convicted of capital crimes and are now presently under a sentence of death as a result of proceedings conducted by competent authorities of the United States that violated their obligations under article 36(1)(b) the Convention.

In each of those cases, the violations prevented Mexico from exercising its rights and performing its consular functions under articles 5 and 36, respectively, of the Convention. Mexico was thereby prevented from protecting its own interests and those of its nationals as contemplated by those articles.

## The Power of the Court

Article 41 (1) of the Statute of the Court vests the Court with "power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to preserve the respective rights of either party" pending a final judgment in the case. Orders of provisional measures pursuant to article 41 establish binding obligations. LaGrand (Germany

vs. United States of America), Merits, Judgment of 27 June 21101, para. 109. The Court has indicated provisional measures to prevent executions in two prior cases involving claims brought under the Vienna Convention by States whose nationals were subject to execution in the United States as a result of state criminal proceedings conducted in violation of the Convention.

In the Case Concerning the Vienna Convention on Consular Relations (Paraguay v. United States of America), Order of 9 April 1998, the Court indicated provisional measures to prevent the imminent execution of the Paraguayan national Angel Francisco Breard pending the final judgment on the merits, and in the LaGrand case (Germany v. United States of America), Order of 3 March, 1999, the Court afforded the same relief to prevent the execution of the German national Walter LaGrand.

There can be no question of the importance of the interests at stake.

International law recognizes the sanctity of human life. Article 6 of the International Covenant on Civil and Political Rights, to which the United States is a State Party, establishes that every human being has an inherent right to life and mandates that States protect that right by law.

## Request

On behalf of the Government of the United Mexican States, acting on its own behalf and in the exercise of the diplomatic protection of its nationals, 1 therefore respectfully request that,



pending final judgment in this case, the Court indicate:

- a. That the Government of the United States take all measures necessary to ensure that no Mexican national be executed;
- b. That the Government of the United States take all measures necessary to ensure that no execution dates be set for any Mexican national;
- c. That the Government of the United States report to the Court the actions it has taken in pursuance of subparagraphs (a) and (b); and
- d. That the Government of the United States ensure that no action is taken that might prejudice the rights of the United Mexican States or its nationals with respect to any decision this Court may render on the merits of the case.

In view of the extreme gravity and immediacy of the threat that authorities' in the United States will execute a Mexican citizen in violation of obligations the United States owes to Mexico, Mexico respectfully asks the Court to treat this Request as a matter of the greatest urgency and set a hearing on this Request before the middle of February 2003.

The Government of the United Mexican States has authorized the undersigned to appear before the Court in any proceedings or hearings relating to this request that the Court or its President may convene in accordance with the terms of article 74, paragraph 3, of the Rules of Court.[4]

## Preparing for Debate

1. Read the treaty thoroughly.
2. Learn about how the treaty was breached.
3. Delegates are encouraged to come up with solutions/judgments themselves and not follow what the ICJ has already done.

## Research

<http://www.icj-cij.org/docket/index.php?p1=3&p2=3&k=18&case=128&code=mus&p3=0>

<http://www.haguejusticeportal.net/index.php?id=6186>

*Please keep in mind the committee is set in 2004 for topic 2 and knowing any information after 2004 will not be acceptable.*

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[1][http://www.parstimes.com/law/iran\\_us\\_treaty.html](http://www.parstimes.com/law/iran_us_treaty.html)

[2]<http://www.haguejusticeportal.net/index.php?id=6186>

[3]<http://www.haguejusticeportal.net/index.php?id=10001>

[4] <http://www.icj-cij.org/docket/files/128/13062.pdf>