



International Criminal Court

Berkeley Model
United Nations



LXIII
SIXTY-THIRD SESSION

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Dear Delegates,

It is my distinct honor to welcome you to the 63rd session of Berkeley Model United Nations and my great pleasure in introducing myself as your head chair for the International Criminal Court. My name is Maria Salamanca, I am currently a senior at Berkeley double majoring in Political Science and Legal Studies with a minor in Public Policy.

The case I have chosen for the committee has such great history, breadth and detail that it contains great potential for debate. I cannot wait to see how you as delegates approach the judicial issue at hand and what verdicts you will produce.

My love affair with Model United Nations started my first year at Berkeley when I joined this amazing organization filled with some of the most spectacular individuals I have ever met. Outside of my studies and BMUN I'm involved with a number of different organizations: I am currently the online editor for the Berkeley Political Review, I am a Research Analyst at a lobbying group created by prominent Silicon Valley figures. When I find myself with some spare time, I love nothing more than relaxing with friends, watching a movie, binge watching Netflix original series or just being a political junkie.

Liz Zarka will be serving as one of your vice chairs for the ICC. This is her seventh year in the MUN circuit, and she is serving as this year's Under Secretary General of Internal Relations. Outside of BMUN, Liz is pursuing a double major in philosophy and political science, and takes a special interest in ethics in international relations, philosophy of the mind, philosophy of language, and various topics in critical theory. For fun, she tries to read a lot of books, check out the rich music scene in the Bay Area and Tweet.

Jake Moskowitz is a first year Applied Math and Computer Science intended major. He participated in Model UN for two years in high school, and now enjoys being in the BMUN group. Other clubs and activities of his include Cal Rock Climbing Club, Intermural Dodgeball, and old school kickin' it with his pals. Jake can't wait to see all of the delegates' beautiful, flawless faces during conference.

Nick Spelta is a third year at Cal studying History. Nick was involved in Model United Nations in high school for four years, learning about relevant global conflicts and coming up with solutions. In his spare time, Nick enjoys playing tennis and hiking the Berkeley hills.

I am absolutely delighted to be your head chair this upcoming year, and so excited to help create a wonderful, engaging, and insightful Model United Nations experience. We cannot wait to meet you and spend an entire weekend filled with learning and fun!

Best,

Maria Salamanca, Head Chair

Berkeley Model United Nations, The 63rd Session



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Overview

For the purposes of this conference, the ICC will run a trial assuming that any current dispute about the jurisdiction and standing of both countries has been reaffirmed. We will assume that Chief Prosecutor FatouI Bensouda has established Palestine as “sufficiently a state” to file complaints against Israelis (Bensouda). Additionally, we will assume that in accordance with Article 15 of the Rome Statute, the Office of the Prosecutor initiated a preliminary examination and determined there is a reasonable basis to proceed with an investigation and trial. Lastly, we will assume that the trial is taking place in the future. We will take into account all events until December 31, 2014.

Timeline and Context for Conflict

The Israel-Palestine conflict is a complex and multilayered issue, with too broad of a scope to cover in a single background guide. The purpose of this synopsis is not to describe the conflict in its entirety, but to provide historical context to the current events. This should provide delegates with a starting point on the issues being addressed during trial.

961 BC

The context of the conflict dates back to the biblical times. In 961 BC, King Solomon constructed the Temple in Jerusalem.

586 BC

The southern Kingdom, Judah, was conquered by the Babylonians, who drove the Jews into exile and destroyed the Temple.

332 BC

Alexander the Great’s conquest brought the area under Greek rule and later established the Jewish state Judea along with the second Temple.

70 AD

After Roman conquest, the Emperor Titus put down several Jewish revolts in the area and destroyed the second Temple. This marked the beginning of the Jewish Diaspora.

638 AD

Arab Muslims ended Byzantine rule and caliph Omar built a mosque in what is now al-Aqsa Jerusalem. The area remained under Muslim rule until the fall of the Ottoman Empire in the 20th



century. The area known as Judea or Palestine was no longer considered a province of its own, but became part of the Ottoman Empire's Syrian province with Damascus as its local, administrative capital.

1897

The First Zionist Congress met in Switzerland to discuss Theodor Herzl's book on the Jewish State. The Congress issued the Basle Program to establish a home for the Jewish people in Palestine. A few Zionist immigrants had already started arriving in the area, by "1903 there were there were some 25,000 of them. They lived alongside about half a million Arab residents in what was then part of the Turkish Ottoman Empire. A second wave of about 40,000 immigrants arrived in the region between 1904 and 1914."

World War I

During the First World War, the Ottoman Empire sided with Germany against Britain who would encourage an Arab revolt against the empire. At the end of the war, Britain occupied the region and was assigned as the mandatory power by the League of Nation in 1920. During the period of war there were three key promises made to the people in the land. First, in 1916 the British Commissioner in Egypt, Sir Henry McMahon, promised Arab leadership post-war independence for former Ottoman Arab provinces. Second, the secret Sykes-Picot Agreement between Britain and France divided the region under joint control. Third, British Foreign Minister Arthur Balfour committed Britain to work towards the establishment in Palestine of a national home for the Jewish people through the Balfour Declaration.

1920 - 1930s

Hundreds of thousands of Jews emigrated to British Mandate Palestine due to the Jewish immigration to the Holy Land and the increased persecution of Jews in Europe prior to the second World War. This migration provoked unrest among the Arab community and the Zionist-Arab antagonism sparked violent clashes in 1929 where several Jews and Palestinians died.

1947 - 1948

Britain handed over the Palestine rule to the UN in 1947 which set up a special committee which recommended splitting the territory into separate Jewish and Palestinian states. Palestinians rejected the plan after it only gave them 43% of the land. On May 1948, British troops withdrew and both Jewish and Arab armies each staged attacks on each others territories after the



proclamation of the State of Israel. The Jewish armies were victorious in Negev, Galilee, and West Jerusalem.

1964

The Palestine Liberation Organization (PLO) was founded and claimed to be the sole representative of the Palestinian people, vowing to reclaim their land. In 1967 in a six-day preemptive strike, Israel seized land from both Egypt and Jordan, doubling its controlled area land. The UN Security Council Resolution 242 stressed the acquisition “inadmissible” and called for “withdrawal of Israeli armed forces.”

1970s

PLO factions launched a series of attacks on Israeli targets such as in the 1972 Munich Olympics killing 11 Israeli athletes. These incidents would trigger the loss of the Labour Party in Israel in 1977 to the Likud Party focused on extending Israel. Egyptian President Anwar Sadat shocked the world by flying to the Jewish state and becoming the first Arab leader to recognize Israel. Egypt and Israel signed the Camp David accords in September 1978. The Sinai Peninsula, which Israel had seized in the 1967 war, was returned to Egypt. Sadat was assassinated in 1981 by Islamist elements in the Egyptian army, who opposed peace with Israel, during national celebrations to mark the anniversary of the October war.

1990s

From 1987 to 1993 there were mass uprisings, also called “the intifada” against the Israeli occupation in Gaza and the increased number of Jewish settlements. In 1988, the PLO convened in Algeria and voted to accept the “two-state” solution based on the UN 1947 partition resolution and renounced terrorism but Israel continued to view them as terrorist organization regardless of U.S dialogue with them. In the early 1990s, there were strong strives for peace talks with the Madrid Summit, Oslo I (recognizing PLO) and Oslo II but these come to an end with the death of Israeli Prime Minister Rabin leading to deadlock until 2000 when the second intifada began. This conflict remains to this day, as there are Israel ground troops on the ground and Palestinians fighting.



Key Background Issues

Border Disputes

Resolution 181 originally called for a two-state solution back in 1948, for which the international community has also advocated ever since. But after so many wars, and with Israel occupying Palestine, there is much dispute and controversy over where the borders for both states should be drawn. Additionally, Israelis have settled in the areas that are considered occupied Palestine.

Right of Return

Following the 1948 war, thousands of Palestinians fled their homes as refugees. Today there are millions of Palestinians living in refugee camps. Refugees claim that they have a right of return that includes “a claim to citizenship, financial settlement and, in some cases, return to former homes and property in what is today Israel” (Global Policy). However, the Israeli leadership opposes this right of return in order to keep Israel a Jewish state.

Security and Terrorism

The conflict has created a vicious cycle of fighting by both Israeli and Palestinian sides. The Israeli military occupies parts of Palestine in order to secure its borders and territory taken over the course of the Arab-Israeli wars. However, this also creates tension with Palestinians and leads to insecurity and fighting. Also, groups within Palestine have fired rockets into Israel, and one of Palestine’s leading groups, Hamas, is considered a terrorist organization by the United States.

U.N Involvement

The United Nations has been involved in the conflict since its adoption of Resolution 181 (II) that recommended the adoption and implementation of a partition of Palestine. Along with the United States, Russia, and the European Union, it is a member of the Quartet on the Middle East, an organization dedicated to mediating the peace process. It has sponsored several peace negotiations between the two groups, the latest being the 2002 Roadmap for peace, which reached a deadlock early in Phase I and was never implemented. The United Nations has also provided humanitarian support for Palestinian refugees through its UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) and for Palestinian political claims through the Committee on the Exercise of the Inalienable Rights of the Palestinian People, the UN



Division for Palestinian Rights, the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People, the UN Information System on the Question of Palestine (UNISPAL), and the International Day of Solidarity with Palestinian People.

The Security Council, in particular, has been heavily involved in the conflict due to its threat to international peace and security. As of January 2010, the Security Council has adopted 79 resolutions directly critical of Israel for violations of UN Security Council resolutions, the UN Charter, the Geneva Conventions, international terrorism, or other violations of inter-national law (Hammond). However, the United States, a strong and known ally to Israel, has vetoed over 40 condemnatory Security Council resolutions against Israel, claiming that they are unilateral and does not address Palestine's acts of terrorism as well (Nohory).

The Palestinian Liberation Organization has previously campaigned for full member status for the state of Palestine based off its pre-1967 borders at the United Nations. By being granted membership into the UN, the PLO is given more legitimacy and strength at negotiation tables. The Security Council could not meet the needed majority and denied its petition for membership in 2011. However, the UN General Assembly overwhelmingly approved the de facto recognition of sovereign Palestine by granting non-member observer state status in November 2012 with 138 votes in favor, 9 against, and 41 abstentions (Charbonneau). This allowed Palestine to participate in General Assembly debates and improved its chances of joining UN agencies and the International Criminal Court (ICC), where it is hoped that prosecutors would investigate alleged crimes against humanity and war crimes. In 2009, when Mahmoud Abbas asked the ICC to investigate allegations of war crimes by Israel during its war in Gaza in 2008-09, the court's prosecutor refused to do so because Palestine was not then recognized by the UN as a state. That changed in 2012, when the UN General Assembly voted Palestine as an "observer state". Most international lawyers reckon that if the Palestinians applied to join the ICC now, they would get in (The Economist).

Palestine's Side

Palestine received pressure from Israel and the United States not to pursue the jurisdiction of the ICC, whether during or after the US-sponsored negotiations with Israel the summer and fall of 2014. Other nations such as France, the United Kingdom, Italy, and Canada, which are states parties to the ICC treaty, have, at times, opposed Palestine seeking access to the



ICC. Organizations such as Human Rights Watch opposed the politicizing of justice for victims of serious crimes under international law, and urged President Abbas to resist them. They wrote, “Justice is an important end in its own right, preserving the rights of victims and affected communities regardless of the uncertain prospects for peace... Palestine’s accession in April to 20 international treaties and conventions was a significant and positive step, obliging the Palestinian government to respect, protect, and fulfill human rights, and requiring Palestinian forces to abide by international rules on armed conflict. Accession to the Rome Statute would be a vital further step towards protecting human rights by ensuring that the ICC can step in to address impunity when domestic authorities are genuinely unable or unwilling to do so. Seeking the ICC’s jurisdiction over serious crimes committed on Palestinian territory should therefore be seen as an apolitical step towards ending impunity and could help deter future abuses.” (Francis)

Since Benjamin Netanyahu became Israel’s prime minister in 2009, Israel has begun construction on more than 9,480 settlement homes. Israeli demolitions during the same period left more than 4,600 Palestinians homeless. Both trends accelerated in 2013: 2,534 settlement housing starts in 2013 represented an increase of more than 220 percent over 2012, and demolitions that left 1,103 Palestinians homeless were up by almost 25 percent. In February 2014, the International Committee for the Red Cross stopped delivering emergency shelters to Palestinians in the Jordan Valley, due to constant confiscated or demolished the shelters (Francis). The ICC’s statute also classifies as a war crime the “direct or indirect” transfer of civilians by an occupying power into occupied territory – a category that would include the Israeli government’s facilitation of the transfer of its citizens into settlements. Another war crime under the statute is the “forcible transfer” of protected people in an occupied territory – in this case Palestinians – off their lands, such as by demolishing their homes and preventing them from returning.

The United Nations reports that of the 2,104 Palestinians killed in the recent war on Gaza, seven out of ten were civilian, that is, 69 percent of the total killed. Prime Minister Netanyahu does not deny the total number killed, but claims that 1,000 of those killed were indeed terrorist, leaving the remaining 52 percent as likely civilians (Ratner). Palestine claims Israel has committed serious crimes such as torture and indiscriminate attacks on civilians.



Israel's Side

Israel government argues that Hamas and Palestinian forces have embedded rockets in hospitals, shelters, homes and schools. In the summer of 2014 conflict, seventy-one people on the Israeli side, among them six civilians, were killed. Of the 65 military fatalities in Israel, 11 were killed by Hamas gunmen emerging from cross-border tunnels dug under the Israeli border. Over the course of the conflict, Hamas fired almost 4,000 rockets at Israel, including some 600 close to schools, mosques and other civilian facilities (Issacharoff). Israel believes that Hamas would kill scores of Israeli civilians if it could but its missiles are not as effective as Israel's. Israel argues that the intent of violence is very much present in the minds of Palestine leaders. The indiscriminate attacks on civilians are the consequences of carefully planned and placed threats in order to show Israel as the oppressor by its opponents.

Leaders of the Palestine side are even killing their own civilians. On July 28, Hamas executed 20 Gazan civilians and the leaders “had knowledge of executions, oversee Hamas’s governance of Gaza, and actively encourage and support the executions.” As a Jordanian citizen, Khaled Mashaal, the Hamas leader is subject to prosecution by the ICC because court is “empowered to exercise its jurisdiction over all acts committed by the citizen of a member, wherever those acts are committed” (Ratner).

Disputes in Matter/Charges

The court will be charging Benjamin Netanyahu with the following crimes:

War crimes

- Unlawful deportation and transfer
- Collective punishments
- Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities

Crimes against humanity

- Deportation or forcible transfer of population
- Excessive and disproportionate force
- Apartheid



The court will be charging Ismail Haniyeh and Khaled Mashal with the following crimes:

War Crimes

- Destruction and appropriation of property
- Murder
- Torture
- Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities

Questions to Consider

1. Does Palestine as an “observer state” have jurisdiction to bring charges against Israel at the ICC?
2. Should political leaders of Palestine, Israel, U.S and others focus on diplomatic relations as means of peace rather than the international law approach?
3. Is there such a thing a justified retaliation?



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