

COUR INTERNATIONALE
DE JUSTICE



INTERNATIONAL COURT
OF JUSTICE

RULES OF PROCEDURE FOR ICJ

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Introduction

Greetings Delegates,

This document is here to help answer one of the most common questions you might have about MUNs: how does debate happen?

There are many interpretations of what the Rules of Procedure should be for any conference. However, the ICJ is unique compared to other committees because it functions like a court. It follows a different set of rules, unrelated to the UNA-USA format.

The Rules of Procedure (R.o.Ps) aren't difficult to grasp. If you understand the terms and get a basic sense of the debate flow, you'll do just fine. Take your time to understand this document. It's natural to have questions, so don't hesitate to ask. Understanding how something works is crucial to fully grasping it.

This committee is more challenging than others due to the emphasis on legal arguments and analysis required to present your case effectively. Therefore, it is recommended that only experienced MUN participants attend this committee.

Please note that these rules of procedure are not exactly what happens in the real ICJ. They have been specifically designed to run the ICJ as a committee in a MUN Conference. The actual procedure is much more complex.

How does a MUN ICJ Work

A MUN ICJ is more like a moot court than a “normal” UN committee. If you ask yourself now “but what is a moot court?!” – Do not worry; it is just a simulation of a court. Similarly, to MUN which is a simulation of a specific UN committee. The apparent distinction is that a moot court follows procedural rules that are similar to the ICJ, which is a judicial body rather than a political one.

Two scenarios determine what the committee will do throughout the conference:

- 1) The Presidency chooses to hear a case that is based on a **legal dispute between two states**
- 2) The judges are asked to give an **advisory opinion**

The first scenario is arguably the more common one and has been talked about in this article already. An Advisory Opinion, on the other hand, is legal advice various institutions of the United Nations can demand. As opposed to judgments, this advice is not legally binding. For the proceedings, it should, however, not make too much of a difference. Even when asked to deliver an Advisory Opinion, all states that have a stake in the matter will be asked for their statements and consequently will have Advocates present. For the sake of simplicity, we will labor under the assumption that the ICJ will deliver judgment and not an advisory opinion (the advice in this article will reply to both).

Note: In a MUN ICJ committee, there may be at least 7 delegates representing one party and at least 7 judges.

Starting the Committee

Composition:

The Court shall be composed of the Presidency and the Judges.

Authorities and Responsibilities of President:

The President shall exercise their authority presiding in an equitable and objective manner. The President also reserve the right to propose a motion at any time so as to facilitate the work and procedure of the Court.

In case of doubt regarding procedural matters, the interpretation of the President prevails. The President maintain at all times their *status* as Judges.

The Presidency is responsible for all procedural matters pertaining to the Court, including, but not limited to, moderating the debate, determining the applicability of the rules and if necessary, clarifying the meaning of the existing rules without approval by the Court.

Roll Call:

Attendance shall be kept by the President with a Roll Call at the beginning of every session. Delegates shall establish their presence in the Court by raising their placards and declaring “Present”.

Formal Debate

Opening Statements:

Both parties give their respective opening statements which can last from 15 to 45 minutes, depending upon the chairperson. The Applicant goes first. Opening statements of both parties usually include a statement of facts, an account of what happened according to their position, and most importantly, legal arguments as to why they are in the right. The opening statement sums up their position and will already reference what they will later on argue.

Note: If any judge wishes to ask questions to the parties, it will be included in the total time for opening statements.

Rebuttals:

Having concluded their opening statements, both parties need to prepare for their respective rebuttals. Usually, they will receive some time to do this, but again, this depends on the President. The rebuttal takes up most of the oral proceedings and allows both parties to dissect each other's arguments. It is also the time for introducing evidence and building their own case. Again, the Applicant will start. It often makes sense to try and balance both making one's arguments and refuting the points made by the opposite side. Specified time for rebuttals is dependent on the President and time will be given separately to the justices to ask questions to both the parties.

A rebuttal should tell a tale that includes not only detailed legal analysis but also explains why the other side has it wrong – and that while doing all of this, it also leaves room for introducing the evidence.

Now, usually what happens in a court is, the applicant calls witnesses as a part of their evidence and ask them questions based on the particular case. Keep in mind, that while there is a strict order, both sides may question witnesses and make

statements on submitted evidence. That means, that when the Applicants call a witness, the Respondent may also question the witness once the Applicant does not have any further questions and the other way round.

But considering we cannot have witnesses in a MUN Conference and the limited number of delegates, we will take a different approach towards this committee i.e. moving forward with sub-hearings and negotiations.

Sub-Hearings:

You might remember what a moderated caucus is in a general MUN Committee following UNA-USA format. Sub-Hearings are the same in an ICJ Committee. It is basically debate on a sub-topic of the case, decided by the committee. Again the time depends on the President. Delegates need to raise a motion in order to facilitate this form of debate, when the Executive Board asks for it.

Negotiations:

It is that part of the committee where both the parties lobby each other and try to come into an agreement or a settlement of any kind which serves as a potential/permanent solution of the case. In this committee, negotiations will take place in both written as well as oral format. The oral format will come under informal debate when the President will give you time to discuss amongst yourselves. The written format will be given by the President as well.

Discussion on the Negotiations:

The justices will read the document prepared by both the parties and will get a particular amount of time to discuss within themselves if they want to accept or deny the agreement. The decision made by them can be either a joint decision or an individual decision. The Committee will take the majority into consideration.

Reasoning for the decisions made by the justices:

The justices will give reasoning for their decisions on the agreement/settlement provided by both the parties in verbal form. They will provide arguments which put emphasis on the legality of their decision, pros and cons about the agreement/settlement and finally, what can be the actual solutions for the case. This will also include a question/rebuttal round from the parties to the justices, which will be explained by the President.

Recommendation:

This will be a document prepared by the justices which will consist of all possible solutions regarding the case. Before preparing the document, both parties will get a chance to lobby the justices. This will be considered as evidence to the final ruling of the Judges on the case.

Some important points to note:

- In case the parties do not reach to a peaceful agreement/settlement, even after the recommendation is in order, then the ruling will be given by the Presidency.
- If the recommendation is in order and both parties agree to the possible solutions provided by the justices, then that will be the final outcome of the case and the ruling will be based upon the same.
- The format for all documents will be provided by the President.
- It will be advisable for the justices to take notes of the arguments presented by the parties which may help them in making decisions and forming questions.

Role of Justices

The Judges are of equal status. A judge must always remain impartial and objective. Judges in the ICJ have the task to listen to the presentation of both parties. They have to remain neutral until the end of the public proceedings. They are allowed to ask questions to both parties, but they cannot investigate themselves. Having listened to the arguments presented and the evidence submitted, they determine what the law says by applying international law to the case at hand. It is important to note that the ICJ does not have the power to create law – it will, however, determine what the law says.

Informal Debate

Considering a real ICJ hearing does not have any informal debate, we will still try to incorporate it into a MUN Conference to judge the delegates based on their lobbying skills. Informal debate can only occur on substantial issues. Delegates can raise a motion if they wish to move forward with informal debate. It is just like ‘Unmoderated Caucus’ from UNA-USA format. The time will be decided by the President.

Motions

Motions are essentially a procedural tool used to move forward with the debate. This means they are used to initiate procedural actions. Motions consist of two parts: the proposed action and the subsequent voting on it. The format for raising a motion will be given by the President.

Judgment of the Court

The Judgment will be given by the Presidency verbally after getting presented with all the facts and arguments by both the parties and hearing the opinions of the justices. After giving the judgement, the court will give some time to the justices and the parties if they have different opinions on the ruling and considering the time left, can have those arguments presented verbally or in written form depending upon the President.

Points

Point of Personal Privilege:

A delegate may rise to a Point of Personal Privilege if a matter impairs it's participation in the deliberation's activities. The President shall try to effectively address the source of impairment. A point of personal privilege can interrupt the speaker in any case. However, this motion should be used with the utmost discretion.

Point of Order:

If a delegate makes a factual inaccuracy in his/her speech, another delegate can point it out by raising it through a point of order. A factual inaccuracy means a wrong or an incorrect statement or a fact.

Point of Judiciary Inquiry:

A delegate may rise to a Point of Judiciary Inquiry to request an explanation on the Rules of Procedure by the President. This point may not interrupt a speaker.

Memorial

It is up to the President to ask delegates to submit a pre-conference document to decide the flow of debate. In a Memorial, the delegates are supposed to prepare a document which shall state the essence of their potential arguments followed by the key issues which they want to discuss in the committee. The format for a Memorial is the same as that of a Position Paper, though if any changes required shall be communicated by the President. It is necessary to be submitted to be submitted to the Presidency within the given deadline.

What if there is more than one case in the committee

In this particular situation, the delegates representing the parties for one case shall serve as the judge for the other case. This will allow them to research on both the agendas and participate in the committee, both as a portfolio and a judge. The President can decide different sets of arrangements for this particular situation as per their discretion. For eg: there are two cases in an ICJ MUN Committee - US vs Nicaragua and India vs Pakistan. So a delegate representing either US or Nicaragua will serve as a judge in the India vs Pakistan case, and similarly a delegate representing either India or Pakistan will serve as a judge in the US vs Nicaragua case.

How to get good at ICJ

You get good at ICJ, when you put in the work. As with anything of quality, there is no easy way or shortcut to getting good at ICJ. You need to do your research, and you need to be able to string a legal argument together. As a Counsel, you arguably will have to do more before the conference, because you need to plan and prepare. Either way, you need to be familiar with the case and the legal questions the Applicant asked.

You do not need to read the entire judgment.

ICJ judgments are notoriously long and compartmentalized into various sections (a single judgment can be well over 1000 pages!). Look for the sections that matter to you, search the judgment for the relevant parts and concentrate on the merits. Use the summaries and the headings for guidance. The questions asked by the Applicant will reflect what is most relevant in them – this is what you should focus on. The most important thing is that you understand how legal sources are evaluated and that can be learned from these judgments (or many other legal textbooks).

Resources to use for MUN ICJ

Website of the International Court of Justice

For general information about the ICJ as well as information about all previous and current cases of the ICJ: <https://www.icj-cij.org/en>

For thematic research:

Treaties and other written legal sources

UN Treaty Collection: <https://treaties.un.org>

Westlaw: <https://login.westlaw.co.uk/maf/app/authentication/signon>

Max Planck Encyclopedia of Public International Law (MPEPIL)

General Editor: Rüdiger Wolfrum, Director at the Max Planck Foundation for International Peace and the Rule of Law; former Director at the Max Planck Institute for Comparative Public Law and International Law

The encyclopedia contains 1,700+ peer-reviewed articles on every aspect of the substance of international law.

<https://opil-ouplaw-com.ezproxy.lib.gla.ac.uk>

Oxford Bibliographies

Oxford Bibliographies provides you with research guides and annotated bibliographies

https://www-oxfordbibliographies-com.ezproxy.lib.gla.ac.uk/browse?module_0=obo-9780199796953

Journals

Hein Online provides a good overview of International Law Journals

<https://heinonline-org.ezproxy.lib.gla.ac.uk/HOL/Index?collection=journals>

Introductory textbooks

Boyle, Alan E., and C. M. Chinkin. , 'The Making of International Law', Oxford, Oxford University Press, 2007

Evans, Malcolm D. , 'International Law', Fifth Edn, Oxford, Oxford University Press, 2018

Klabbers, Jan. , 'International Law', Second Edn, Cambridge, Cambridge University Press, 2017.

Shaw, Malcolm N. , 'International Law', Eighth Edn, Cambridge, Cambridge University Press, 2017

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BACKGROUND GUIDE

*Agenda: 1. Turkey VS Cyprus
2. India VS Pakistan*

LETTER FROM THE EXECUTIVE BOARD

Greetings Everyone,

We welcome you all to this simulation of the International Court of Justice at Amity International Model United Nations 2024. Please consider that the aim of this guide, as the name suggests, is to provide you with the background of the agenda solely and is by no means exhaustive. Your real research lies beyond this guide and we hope to see strong content and debate in the conference. Another important aspect of your preparation will be to analyse your research. Don't just read documents; understand how they fit into the larger context of world events related to the agenda. I would suggest that you take notes on your research. This will help you refer to it during committee as well as understand the underlying concept better once you translate it to words you're comfortable using.

Before reading this guide, please ensure you read the rules of procedure thoroughly which may help you give direction towards how this committee is going to be.

The committee might be a bit complex for you but we will address all your doubts and queries. The Executive Board wants to make this as comfortable an experience for you as possible. Your comfort will be a priority for us at all times. Do not hesitate at any point to approach us with your doubts. As frivolous as they might sound in your head, trust me, we had them when we were starting out as well.

Please note that anything written in the Background Guide **cannot** be used as proof in the committee.

Lastly, put your best foot forward as you research into the varied aspects of the agenda and display the best of your diplomatic courtesy. Feel free to revert back to the executive board for any queries or any form of assistance that you may require at the email ids or contact numbers mentioned below. Wishing you luck for the conference.

Regards

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HOW TO PREPARE FOR THE COMMITTEE

One of the major misconceptions about the concept of MUN's is that you just research from the internet and speak in the committee. However, that's not the only thing you do, you are required to research for the committee **AND ANALYSE** whatever you've studied. When it comes to the term analysis, a lot of people don't know what it means so **for example:**

You see someone's marksheet and see that person has scored 90+ out of 100 in 4 out of 5 subjects however in the 5th subject, the person has scored just 53 out of 100. The part till here is called your research; this is something you've found out by searching somewhere.

When it comes to analysis, analysis means interpretation, now for example in the above example a good analysis would be finding out that the person if gives more time to the 5th subject rather spending so much time on other subjects, his/her marks in the individual subjects might fall a bit but he/she would improve overall because now that person would be scoring well in 5th subject as well.

On a MUN level; analysis is a very important aspect when it comes to you playing the role of a delegate in a committee. Mostly delegates get confused by the term analysis and are not able improve the quality of their analysis overtime. In very simple words, "Analysis means interpreting the research you have from your perspective". The reason analysis is an important aspect of a MUN is because, without analysing the current research you can't progress towards development but can only dwell upon the already existing research.

Before that, let's understand what does your analysis include? When you start analysis, you need to keep the following things in mind:

- **Context**– What is the context of your analysis? Basically, what are you analyzing? What is it related to?
- **Stakeholders**– Who/What are driving your research and playing a major role? Who are the relevant members to your research?
- **Impact**– What impact will your research have on the agenda? What role will it play on the stakeholders of the research you have regarding the agenda?
- **Scope of Solution Space**– What all solutions can be formulated to tackle the problem?

• **Constraints within solution**– The solutions formulated in the solution space would have a few constraints, what are those? And can they be tackled or is there any way around?

• **Key Insights**– What is the final conclusion or key takeaways you have from the analysis you’ve done regarding your agenda?

The above are the key points which are included in the concept named “Analysis”. If you are able to find answers to the above points regarding your research, you’ll have an easier time going with the research and trying to understand the agenda.

VALID SOURCES OF PROOF IN THE COMMITTEE

Evidence or proof is from the following sources will be accepted as credible:

1. News Sources:

a. **State-operated News Agencies** – These reports can be used in the support of or against the State that owns the News Agency. These reports, if credible or substantial enough, can be used in support of or against any country as such but in that situation, they can be denied by any other country in the council. Some examples are,

- i. RIA Novosti (Russia) (<http://en.rian.ru/>)
- ii. IRNA (Iran) (<http://http://www.irna.ir/en/>)
- iii. BBC (United Kingdom) (<http://bbc.co.uk/>)
- iv. Al Jazeera (Qatar) (<http://www.aljazeera.com>)

2. Government Reports:

These reports can be used in a similar way as the State Operated News Agencies reports and can, in all circumstances, be denied by another country. However, a nuance is that a report that is being denied by a certain country can still be accepted by the Executive Board as credible information. Some examples are,

- i.) **Government Websites** like the State Department of the United States of America (<http://www.state.gov/index.htm>) or

the Ministry of Defense of the Russian Federation (<http://www.eng.mil.ru/en/index.htm>)

ii.) **Ministry of Foreign Affairs** of various nations like India [<http://www.mea.gov.in/>] or People's Republic of China (<http://www.fmprc.gov.cn/eng/>).

iii.) **Permanent Representatives to the United Nations** Reports (<http://www.un.org/en/members/>)

iv.) Multilateral Organizations like: NATO (<http://www.nato.int/cps/en/natolive/index.htm>), (<http://www.aseansec.org/>), OPEC (http://www.opec.org/opec_web/en/), etc.

3. **United Nations Reports:**

All UN Reports are considered are credible information or evidence for this simulation:

i.) UNSC (<https://www.un.org/securitycouncil/content/security-council-documents>)

UNGA (<https://www.un.org/en/ga/documents/index.shtml>)

ii.) UN Affiliated Bodies like the International Atomic Energy Agency (<http://www.iaea.org/>), World Bank (<http://www.worldbank.org/>), International Monetary Fund (<http://www.imf.org/external/index.htm>), International Committee of the Red Cross (<http://www.icrc.org/eng/index.jsp>), etc.iii.) Treaty Based Bodies like the Antarctic Treaty System (<http://www.ats.aq/e/ats.htm>), the International Criminal Court (<http://www.icc- cpi.int/Menu/ICC>)

4. **Subsidiary Organs of the UN:**

- International Law Commission (<https://legal.un.org/ilc/>)
- The Commission on the Status of Women itself is a subsidiary organ of the UN, being a functional commission of the Economic and Social Council. (<https://www.unwomen.org/en/csw>)

• **NOTE** — Sources like Wikipedia (<http://www.wikipedia.org/>), Amnesty International (<http://www.amnesty.org/>), Human Rights Watch (<http://www.hrw.org/>) or newspapers like the Guardian (<http://www.guardian.co.uk/>), Times of India (<http://timesofindia.indiatimes.com/>), etc. are typically not accepted as PROOF/EVIDENCE. However, they can be used for better understanding of any issue or on rare occasions, be brought up in debate if the information given in such sources is in line with the beliefs of a Government.

INTRODUCTION

Welcome to the International Court of Justice(ICJ)! As the primary judicial organ of the United Nations, this committee will be tasked with ensuring that members of the UN are held accountable and that justice is served. On the docket for the court are several cases including Turkey's 1974 invasion of Cyprus and the Jadhav India vs Pakistan. Objections will be called and witnesses will be questioned. Fiat iustitia et pereat mundus!

ABOUT THE ICJ

The International Court of Justice (ICJ), often referred to as the World Court, is the principal judicial organ of the United Nations (UN). It was established in 1945 and is located in The Hague, Netherlands. The ICJ plays a crucial role in the peaceful settlement of international disputes, as it provides a forum for states to resolve their legal conflicts through peaceful means rather than resorting to force. The Court's jurisdiction encompasses a wide range of legal issues, including disputes over territorial boundaries, treaty interpretations, state responsibility, and human rights violations. The ICJ operates based on the principles of international law and its decisions are binding on the parties involved. Its impartial and independent nature underscores its importance as a key component of the international legal framework and contributes to the maintenance of global peace and security.

CASE 1: TURKEY VS CYPRUS

Introduction

The invasion of Cyprus by Turkey in 1974 stands as a significant event in modern history, profoundly impacting the geopolitical landscape of the Eastern Mediterranean. The multifaceted nature of the conflict, stemming from historical, ethnic, and political factors, has cast a long shadow over the region's stability, peace, and international relations. Currently, Cyprus is home to the longest peace-keeping mission in UN history, UNFICYP. This background guide will attempt to explain the long and complicated history that led to the invasion of Cyprus by Turkey, however we encourage delegates to do their own research to ensure they are well prepared for the case.

Context

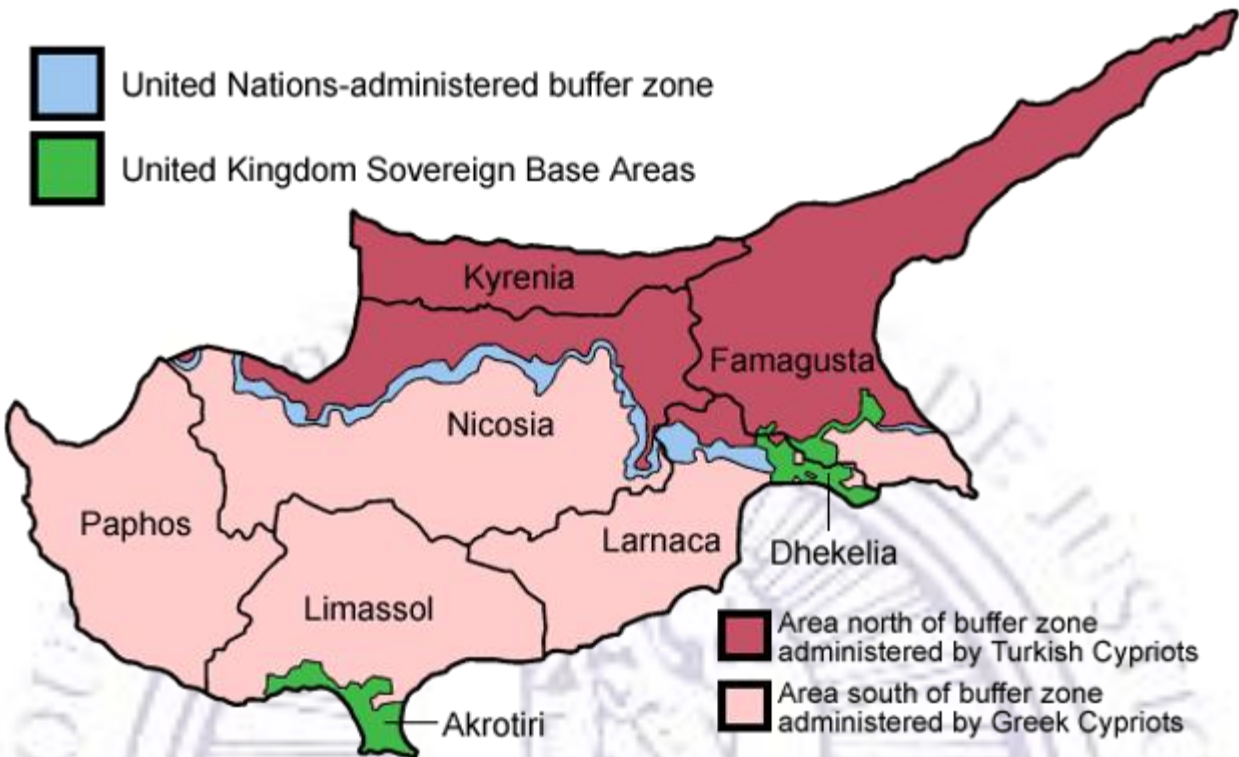
The roots of the Cyprus conflict can be traced back to the island's complex history, characterized by shifting allegiances and competing interests. From ancient times through the Ottoman rule and British colonial period, Cyprus served as a coveted strategic location due to its proximity to Europe, Asia, and Africa. These historical dynamics laid the groundwork for the tumultuous events of the 20th century. Cyprus was home to a diverse population, primarily consisting of Greek and Turkish Cypriots, who had coexisted for centuries. During the 1970s, the census showcased that the island was roughly 75% Greek Cypriot and 25% of the island was Turkish Cypriot. However, tensions between the two communities, fueled by nationalist sentiments, began escalating in the mid-20th century. The demand for enosis (union) with Greece by the Greek Cypriots clashed with the desire for taksim (partition) and stronger ties with Turkey among the Turkish Cypriots. In 1974, against a backdrop of political unrest and violence, a coup d'état orchestrated by elements of the Greek military junta sought to overthrow the elected government of Cyprus. In December 1983, the Ethniki Organosis Kyprion Agoniston (EOKA) carried out violent attacks against Turkish-Cypriots. EOKA had two main goals in its founding: independence from the British and enosis with Greece. 374 Turkish Cypriots died that Christmas season in what is now referred to as Bloody Christmas. This move was deemed as a threat to the Turkish Cypriot community and provided Turkey with a pretext for military intervention under the terms of the 1960 Treaty of Guarantee. This treaty was part of the Treaty of Nicosia concerning the establishment of the Republic of Cyprus in 1960. The Treaty of Guarantee was a treaty between Cyprus, Greece, Turkey, and the United Kingdom that

was promulgated in 1960. Article I of the Treaty of Guarantee played a significant role in the design of Cyprus' independence and the invasion itself.

Article I of the Treaty of Guarantee: The Republic of Cyprus undertakes to ensure the maintenance of its independence, territorial integrity and security, as well as respect for its Constitution. It undertakes not to participate, in whole or in part, in any political or economic union with any State whatsoever. It accordingly declares prohibited any activity likely to promote, directly or indirectly, either union with any other State or partition of the Island.¹

The Invasion

In response to the coup, Turkey launched a military invasion of Cyprus on July 20, 1974, in what it termed "Operation Attila." The intervention led to a division of the island, with Turkish forces occupying the northern third and declaring it the Turkish Republic of Northern Cyprus (TRNC), recognized only by Turkey. This division was formalized by the de facto ceasefire line known as the Green Line, patrolled by the United Nations Peacekeeping Force in Cyprus (UNFICYP). The consequences of the invasion were profound. The displacement of populations and the division of families left lasting scars. 162,000 Greek Cypriots became refugees following the invasion². The conflict fueled animosities between the two communities, while the geopolitical ramifications extended beyond the island's borders. International efforts to reach a lasting resolution, including the Annan Plan in 2004, have faltered due to the complexities of addressing political, territorial, and identity-related issues. The international community swiftly condemned Turkey's invasion, with the UN Security Council issuing a series of resolutions demanding the withdrawal of foreign troops and the restoration of Cyprus's sovereignty. Numerous attempts at reconciliation, led by the UN and other intermediaries, have yet to achieve a comprehensive resolution to the conflict. Turkey's actions in 1974 led to a protracted division of Cyprus, isolating the TRNC diplomatically and economically. The Republic of Cyprus, recognized internationally, holds membership in the European Union, whereas the TRNC remains largely unrecognized. The ongoing presence of UNFICYP underscores the unresolved nature of the conflict and the need for a negotiated settlement that accommodates the interests and aspirations of both communities.



Relevant International Law for this Case

Article I of the Treaty of Guarantee: *The Republic of Cyprus undertakes to ensure the maintenance of its independence, territorial integrity and security, as well as respect for its Constitution. It undertakes not to participate, in whole or in part, in any political or economic union with any State whatsoever. It accordingly declares prohibited any activity likely to promote, directly or indirectly, either union with any other State or partition of the Island.*

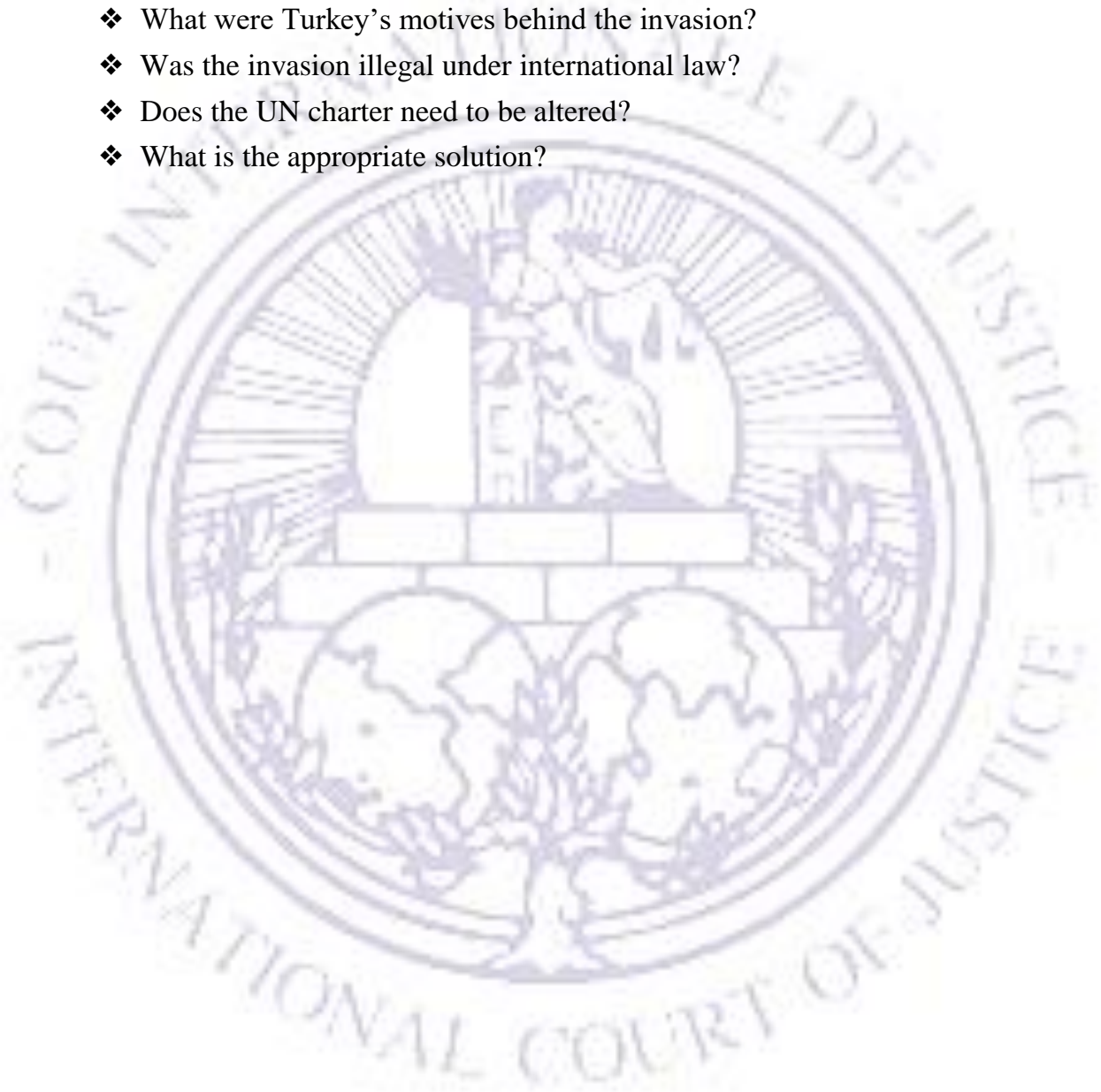
UN Charter Article 2(4): *“All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.”*

UN Charter Article 51: *“Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the*

present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

Questions to Consider

- ❖ What were Turkey's motives behind the invasion?
- ❖ Was the invasion illegal under international law?
- ❖ Does the UN charter need to be altered?
- ❖ What is the appropriate solution?



CASE 2: INDIA VS PAKISTAN

Background of the Case

Kulbhushan Jadhav, an Indian national, was arrested by Pakistan on March 3, 2016, in the province of Balochistan. Pakistan accused Jadhav of being a spy involved in espionage and subversive activities against the state, allegedly working for India's Research and Analysis Wing (RAW). Pakistan claimed that Jadhav was operating under the alias Hussein Mubarak Patel and was actively supporting terrorism and insurgency in Balochistan and Karachi. His arrest was followed by a military court trial, which sentenced him to death in April 2017 for alleged espionage and terrorism.

India responded by denying Pakistan's accusations, stating that Jadhav was a retired naval officer who had been conducting legitimate business activities in Iran after his retirement.

India also claimed that Jadhav had been kidnapped from Iran and brought to Pakistan, making his arrest illegitimate. India accused Pakistan of fabricating charges and violating international norms, particularly by denying Jadhav consular access, as required under the Vienna Convention on Consular Relations (1963).

India's position emphasized that Jadhav was not involved in any illegal activity on Pakistani soil, and his trial by a military court, without adequate legal representation, was unjust. This eventually led India to approach the International Court of Justice (ICJ), seeking intervention to halt the execution and secure Jadhav's release.

India's Legal Claims

India's assertion that Pakistan violated the Vienna Convention on Consular Relations (1963) centered around the claim that Pakistan denied Kulbhushan Jadhav his right to consular access following his arrest. Under Article 36 of the Vienna Convention, when a foreign national is arrested or detained in another country, the detaining state must inform the arrested individual of their right to communicate with their consular officers. Additionally, the consular officers should be allowed to visit and assist their national, including providing legal representation.

In Jadhav's case, India argued that Pakistan violated these provisions by:

1. Not informing India of Jadhav's arrest in a timely manner: Pakistan announced Jadhav's arrest only after several weeks, which India saw as a breach of the Vienna Convention's requirement for prompt notification.
2. Refusing repeated requests for consular access: After Jadhav's arrest, India made several formal requests for consular access, all of which were denied by Pakistan. India argued that this deprived Jadhav of his legal rights and the ability to defend himself effectively.
3. Proceeding with a military trial without consular assistance: India contended that Jadhav's trial in a military court, without access to Indian consular officials or independent legal representation, violated his rights under international law and the Vienna Convention.

India's appeal to the ICJ was primarily based on these violations, seeking a ruling that Pakistan must grant Jadhav consular access and provide an effective review and reconsideration of his conviction and death sentence. The ICJ ultimately agreed with India, finding that Pakistan had violated the Vienna Convention by not granting consular access and ordering a review of Jadhav's case.

Pakistan's Defense

In the ICJ, Pakistan defended its actions in the Kulbhushan Jadhav case by presenting several key arguments:

1. Jadhav's Role as a Spy and Terrorist
 - Pakistan maintained that Jadhav was a spy working for India's intelligence agency, Research and Analysis Wing (RAW), and had been involved in espionage, terrorism, and sabotage activities in Pakistan, particularly in Balochistan and Karachi.

- Pakistan asserted that Jadhav's actions posed a significant threat to national security, and he was captured while conducting covert operations on Pakistani soil.

2. Not Covered by the Vienna Convention

- Pakistan argued that since Jadhav was arrested for espionage, the provisions of the Vienna Convention on Consular Relations (1963) did not apply in the same way as they would for ordinary civilians.
- Pakistan cited its domestic laws, stating that spies and those engaged in acts of terrorism are treated differently, and under its interpretation, Jadhav's espionage activities disqualified him from consular access.
- Pakistan also pointed out that bilateral agreements between India and Pakistan (like the 2008 Agreement on Consular Access) provided exceptions in cases of security-related offenses.

3. Fair Trial and Due Process

- Pakistan insisted that Jadhav had been tried in accordance with its legal procedures and was given a fair trial in a military court under the Pakistan Army Act.
- Pakistan argued that Jadhav had access to legal counsel throughout the trial, and he had the option of appealing his conviction, asserting that his death sentence was the result of a legitimate judicial process.

4. No Proof of Abduction

- In response to India's claim that Jadhav was kidnapped from Iran, Pakistan rejected this as baseless. It maintained that Jadhav was arrested inside Pakistan's borders, in Balochistan, while conducting illegal espionage activities.

5. National Security and Sovereignty

- Pakistan emphasized that Jadhav's actions had a direct impact on its national security, and it was within Pakistan's sovereign right to prosecute individuals who pose a threat to the country.
- The defense argued that national security concerns should be considered in the application of international legal norms, particularly in cases involving espionage.

Reactions and Implications of the ICJ Judgment in the Kulbhushan Jadhav Case

1. India's Response: A Diplomatic Victory

India viewed the ICJ judgement on July 17, 2019 as a significant diplomatic and legal victory. The key aspect of the ruling was that Pakistan had violated the Vienna Convention on Consular Relations (1963) by denying consular access to Jadhav. India welcomed the ICJ's directive that Pakistan must review and reconsider Jadhav's death sentence and ensure his rights to defense, including consular access.

Violation of international law: The ICJ's ruling affirmed that Pakistan had breached the Vienna Convention, which India saw as a clear violation of Jadhav's rights.

2. Pakistan's Stance: Consular Access but Maintained Legal Position

While Pakistan complied with the ICJ's directive by granting consular access to Jadhav, it maintained its original stance regarding Jadhav's guilt. Pakistan continued to assert that Jadhav was a spy and terrorist who had been involved in activities undermining the country's security. Following the judgement, Pakistan allowed Indian officials to meet Jadhav, but his conviction for espionage and terrorism remained unchanged.

Pakistan emphasized that the ICJ had not annulled Jadhav's conviction or death sentence and claimed that the court had only called for procedural changes, particularly ensuring a fair review process. From Pakistan's perspective, the ICJ's

judgement did not undermine the legitimacy of Jadhav's trial or conviction, and it reiterated that his involvement in espionage was a serious crime against the state.

3. Broader Implications for Indo-Pak Relations

- **Strained Diplomatic Relations:** The case deepened the already fragile relationship between India and Pakistan. Both countries continued to use the case for domestic political posturing, with Pakistan portraying Jadhav as evidence of India's alleged interference in its internal affairs, particularly in Balochistan, while India viewed Pakistan's handling of the case as another example of its disregard for international norms.
- **International Legal Precedent:** The ICJ judgement set an important precedent for international law, particularly with respect to the Vienna Convention on Consular Relations. It reinforced the idea that even in cases of espionage, individuals are entitled to consular access and must be afforded due process. This precedent can impact how future cases of detained foreign nationals, especially those accused of espionage, are handled worldwide.
- **Limited Impact on Conflict Resolution:** Despite the ICJ ruling, the core tensions between India and Pakistan over issues such as Kashmir and terrorism remained unaffected. The case highlighted the deep mistrust between the two nations and showed that international legal interventions, while helpful in specific instances, have limited potential to address broader bilateral conflicts.

In conclusion, while the ICJ judgement provided a legal framework for review of the Kulbhushan Jadhav case and established the importance of international law in consular matters, it did little to ease the underlying hostilities between India and Pakistan, with both sides continuing to uphold their respective narratives.

Significance of the Judgment in International Law

The ICJ judgement in the Kulbhushan Jadhav case carries significant implications for international law, particularly in areas related to consular access, state sovereignty, and the treatment of individuals accused of espionage. The ruling reinforced the obligations

of states under the Vienna Convention on Consular Relations (1963) and set important legal precedents. Here are the key points of significance:

1. Reaffirmation of the Vienna Convention

- The ICJ's judgment reaffirmed that the Vienna Convention on Consular Relations applies universally, even in cases involving individuals accused of serious offenses like espionage and terrorism. The court ruled that Pakistan had violated the Convention by denying consular access to Kulbhusan Jadhav.
- This established that states cannot exempt themselves from the obligations of the Vienna Convention, regardless of the nature of the allegations against a foreign national. Even in cases of espionage, the detained individual retains the right to consular access, which is a key element of international human rights law.

2. Espionage and Consular Access

- The case clarified a critical legal question regarding whether consular access is applicable in cases involving espionage. Pakistan had argued that Jadhav's involvement in espionage and terrorism exempted him from consular access. The ICJ rejected this argument, stating that the Vienna Convention does not make distinctions between ordinary criminal acts and espionage.
- This precedent underscores that all individuals, regardless of the severity of their alleged crimes, must be provided consular access and due process in line with international legal obligations.

3. Due Process and Fair Trial Standards

- The ICJ highlighted the importance of due process and fair trial standards in cases involving foreign nationals. By ordering Pakistan to review and reconsider Jadhav's death sentence, the ICJ emphasized that states must ensure that individuals accused of crimes, particularly serious ones like espionage, are afforded proper legal representation and defense.

- This judgment reinforces the principle that even in cases involving national security, states are obligated to provide a transparent and fair judicial process, complying with international norms.

4. Judicial Review in Domestic Courts

- The court's order for Pakistan to provide an effective review and reconsideration of Jadhav's sentence emphasized the role of domestic courts in ensuring justice. This reinforced the idea that military courts, which lack transparency and often do not provide full legal rights, must be subject to civilian oversight, especially in cases involving foreign nationals and international law.
- The judgment sets a precedent for international courts requiring domestic legal systems to align with global standards in ensuring fair judicial proceedings.

5. Precedent for Future Espionage Cases

- This judgment sets an important precedent for future cases involving espionage and diplomatic disputes between nations. It clarifies that even individuals engaged in espionage are protected by international law, and states must respect their basic legal rights.
- It also establishes a mechanism for resolving such disputes through international legal forums like the ICJ, rather than allowing such cases to be resolved solely within the framework of domestic law or through bilateral tensions.

Questions to Consider

- ❖ What were the legal grounds for India's appeal to the ICJ?
- ❖ Was Pakistan justified in prosecuting Kulbhushan Jadhav?
- ❖ What precedent does this case set for any further espionage cases in international law that may possibly arise in the future?
- ❖ Why is important for international diplomacy and third-party nations to play a role in the proceedings?
- ❖ What were the key arguments presented by India and Pakistan during the ICJ hearings?
- ❖ Do you think domestic media in India and Pakistan shape the public opinion on the case?
- ❖ What were the broader implications of the ICJ's judgement on the case for international justice?
- ❖ What steps were taken by both countries after the ICJ's judgement?

Links For Research

https://icwa.in/show_content.php?lang=1&level=3&is_id=4786&lid=2154

<https://blog.ipleaders.in/an-analysis-of-the-kulbhushan-jadhav-case-india-v-pakistan/>

<https://www.orfonline.org/expert-speak/the-kulbhushan-jadhav-verdict-a-certain-win-w-ith-uncertain-outcomes-53188>

<http://opiniojuris.org/2019/07/25/reflections-on-the-international-court-of-justice-decisi-on-in-the-jadhav-case-india-v-pakistan-part-i/>

<https://pure.jgu.edu.in/id/eprint/4563/1/RETHINKING%20THE%20JADHAV%20CASE%20INFLUENCE%20AFTERMATH%20AND%20ENFORCEMENTREPENSANDO%20CASO%20JADHAV%20INFLU%3%8ANCIA%20CONSEQU%3%8ANCIA%20E%20APLICA%3%87%3%83OREPENSAR%20EL%20CASO%20JADHAV%20INFLUENCIA%20SECUELAS%20Y%20CUMPLIMIENTOAnkit%20Malhoutra1Faizan%20Ahmad.pdf>

<https://pure.jgu.edu.in/id/eprint/4563/1/RETHINKING%20THE%20JADHAV%20CASE%20INFLUENCE%2C%20AFTERMATH%2C%20AND%20ENFORCEMENTREPENSANDO%20O%20CASO%20JADHAV%20INFLU%2C%20ANCIA%2C%20CONSEQU%2C%20ANCIA%20E%20APLICA%2C%2087%2C%2083OREPENSAR%20EL%20CASO%20JADHAV%20INFLUENCIA%2C%20SECUELAS%20Y%20CUMPLIMIENTOAnkit%20Malhoutra1Faizan%20Ahmad.pdf>

SOME INSTRUCTIONS REGARDING THE COMMITTEE (VERY IMPORTANT)

1. Each portfolio is required to submit a Memorial, which compiles the main arguments of party in hand, and some key issues which they want to discuss in the committee. The format shall remain the same as that of a Position Paper. The Memorial needs to be submitted to the President's email given above, latest by 10th October 2024.
2. Delegates representing India and Pakistan will serve as judges at the time of discussion of Case 1 (Turkey vs Cyprus), and delegates representing Turkey and Cyprus will serve as judges at the time of discussion of Case 2 (India vs Pakistan).
3. Opening statements will last for minimum 30 minutes, depending upon the majority of the committee. The time decided will include the Question Answer Round, however the committee can decide either to skip the Q/A round or keep it separate from the time limit of opening statements.
4. Time for rebuttals will be decided by the majority of the committee.
5. Negotiations will be done in oral format, being a part of Informal Debate, following rebuttals. If both parties come into an agreement, they will form a document together containing all possible solutions. If both the parties fail to agree with each other, they will make separate documents highlighting their opinion on the case after all the arguments, and provide with fair and potential solutions to the conflict from their perspective. These documents will be reviewed by the judges. Format will be provided by the Presidency.
6. Discussion on these negotiations will be done by the judges in oral format. Delegates can decide if they want to include the Q/A round here (parties will ask questions to judges on their opinions).
7. The Presidency will decide if they wish to include Recommendations in this process. Till then no Recommendations to be made by the judges. Discussion by the judges will take place orally.
8. Judgement for both the cases will be given at the end of the conference.