



**International Court of Justice**  
**Background Guide**

AGENDA: CERTAIN IRANIAN ASSETS  
(ISLAMIC REPUBLIC OF IRAN V. UNITED  
STATES OF AMERICA)

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## LETTER FROM THE CHAIR

Dear Distinguished Delegates

It is my pleasure to welcome you all to the International Court of Justice (ICJ) Committee and IPSC MSMUN 2022. Over the next three days you should expect not only lively debate but also worthwhile discussion that challenges and helps you grow as a delegate. While we strongly encourage these conversations, please remember to observe diplomatic courtesy at all times. I am extremely excited to see how this committee unfolds and decisions made in the next couple of days.

MUN for India is, at its core, a conscious effort at redefining the Model UN ecosystem in India, and attempts to transcend barriers, uphold global standards, and improve the overall quality by expanding the network to include knowledge partners, thought leaders, and change makers.

As a delegate/judge of the ICJ you have the responsibility of resolving the case pending in the court for the past six years and give your own statements for the following. An in-depth understanding and extensive research are a must for any delegate participating in the ICJ to properly examine the dispute and its background. The manner in which you speak should not be your primary concern, but speaking clearly, with comprehensive framing will enhance the depth of your statements. At the same time, we do not want first-time MUNers to get



intimidated and will try our best to make this a riveting experience for each one of you.

We now leave you with our best wishes and we hope that we all learn something amidst the fierce competition during this three-day conference. Please feel free to contact the executive board regarding any query.

Warm Regards

The Executive Board

International Court of Justice



## HISTORY

The creation of the Court represented the culmination of a long process of developing methods for the pacific settlement of international disputes, the origins of which can be traced back to classical times.

Article 33 of the United Nations Charter lists the following methods for the pacific settlement of disputes between States: negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, and resort to regional agencies or arrangements, to which should also be added good office. Same is true of judicial settlement (the method applied by the International Court of Justice), except that a court is subject to stricter rules than an arbitral tribunal, particularly in procedural matters.

Historically, mediation and arbitration preceded judicial settlement. The former was known in ancient India and the Islamic world, whilst numerous examples of the latter can be found in ancient Greece, in China, among the Arabian tribes, in maritime customary law in medieval Europe, and in Papal practice.





## The Origin of Arbitration

The modern history of international arbitration is generally recognized as dating from the so-called Jay Treaty of 1794 between the United States of America and Great Britain. This Treaty of Amity, Commerce and Navigation provided for the creation of three mixed commissions, composed of equal numbers of American and British nationals, whose task it would be to settle a number of outstanding questions between the two countries which it had not been possible to resolve by negotiation. While it is true that these mixed commissions were not strictly speaking organs of third-party adjudication, they were intended to function to some extent as tribunals. They reawakened interest in the process of arbitration. Throughout the nineteenth century, the United States and the United Kingdom had recourse to them, as did other States in Europe and the Americas.

The *Alabama Claims* arbitration in 1872 between the United Kingdom and the United States marked the start of a second, even more decisive, phase. Under the Treaty of Washington of 1871, the United States and the United Kingdom agreed



to submit to arbitration claims by the former for alleged breaches of neutrality by the latter during the American Civil War. The two countries set forth certain rules governing the duties of neutral governments that were to be applied by the tribunal, which they agreed should consist of five members, to be appointed by the Heads of State of the United States, the United Kingdom, Brazil, Italy and Switzerland, the last three States not being parties to the case. The arbitral tribunal's award ordered the United Kingdom to pay compensation, which it duly did. The proceedings served to demonstrate the effectiveness of arbitration in settling of a major dispute, and led during the latter years of the nineteenth century to a range of developments, namely:

- a sharp growth in the practice of inserting in treaties clauses providing for recourse to arbitration in the event of a dispute between the parties;
- the conclusion of general treaties of arbitration for the settlement of specified classes of inter-State disputes;
- efforts to construct a general law of arbitration, so that countries wishing to have recourse to this means of settling disputes would not be obliged to agree each time on the procedure to be adopted, the composition of the tribunal, the rules to be followed and the factors to be taken into consideration in making the award;
- proposals for the creation of a permanent international arbitral tribunal to avoid the need to set up a special *ad hoc* tribunal to decide each individual dispute.

## Introduction

The International Court of Justice (ICJ) was established in 1945 at the San Francisco Conference by the United Nations Charter. The court serves as the





principal judicial organ of the United Nations and is located in The Hague, Netherlands inside the Peace Palace. The court consists of 15 Judges elected by both the UN General Assembly (GA) and UN Security Council (UNSC) representing “The main forms of civilization and of the principle legal systems of the world”. The Court has the power to hear two types of cases: contentious and advisory proceedings. **The Islamic Republic of Iran V. United States of America comes under contentious cases.**

Contentions cases consist of one state bringing its dispute with another before the court. These cases can only be brought before the Court if one or more jurisdictional demands are met:

1. Both states enter into an agreement to bring a dispute to the court;
2. Both states are party to a treaty in which a clause dictates that the ICJ shall settle disputes between states;
3. Both states have accepted the compulsory jurisdiction clause in the statute of the ICJ.

To make a ruling, Judges draw upon five main sources of international law: international treaties and conventions; international custom; the general principles of law; judicial decisions; and the teachings of the most highly qualified publicists. The rulings in contentious cases are legally binding between the two states. If a state refuses to comply with the court's ruling the UN Security Council may take further action to enforce the ruling.

## **Brief to the Agenda**

On June 14, 2016, Iran filed an Application against the United States at the International Court of Justice (ICJ), asserting that the United States has taken

measures against Iran and Iranian companies that amount to violations of the 1955 Treaty of Amity, Economic Relations, and Consular Relations between Iran and the United States. Iran contends, among other things, 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. It seeks the unfreezing and return of nearly \$2 billion in Iranian assets held in the US.

On Feb. 13, the International Court of Justice (ICJ) handed down its [decision](#) on the U.S. preliminary objections in *Certain Iranian Assets (Iran v. United States)*. Iran brought this case against the United States in 2016, after the U.S. Supreme Court's decision in *Bank Markazi v. Peterson*. In *Peterson*, the court sanctioned the turnover of about \$1.75 billion in Central Bank of Iran assets to satisfy U.S. court judgments in favour of terrorism victims under the Foreign Sovereign Immunities Act's terrorism exception. Iran also challenged other U.S. measures.

While the ICJ accepted jurisdiction over the case and allowed it to move forward—rejecting most U.S. preliminary objections—the United States won a key argument. The ICJ agreed with the U.S. that the court does not have jurisdiction to hear claims based on the international law of state immunity, thereby removing the weakest link in the U.S. legal position. The ruling significantly narrows the scope of the case and its implications for international law. Iran invoked Article XXI.2 of the 1955 bilateral Treaty of Amity, Economic Relations, and Consular Rights between the United States and Iran. The treaty grants the ICJ jurisdiction over disputes concerning “the interpretation or the application” of the treaty that cannot be “satisfactorily adjusted by diplomacy.” Iran argues that the U.S. violated its commitments under various treaty provisions, as well as the international law of state immunity from jurisdiction and execution—which, according to Iran, the Treaty of Amity incorporates.

The ICJ reached the same conclusions in its *Certain Iranian Assets* judgment. The United States raised three jurisdictional objections and two objections to the admissibility of the case. On jurisdiction, the U.S. argued that

1. under the Treaty of Amity's national security exception, the treaty does not apply to U.S. actions pursuant to Executive Order 13599, because those actions were designed to counter Iran's nuclear proliferation activities;

2. the court lacks jurisdiction over all claims grounded in the international law of state immunity; and

3. key treaty provisions that Iran relies upon do not apply to the Iranian government and the Central Bank of Iran, because the bank is a government instrumentality, while those treaty provisions refer to "nationals" or "companies" rather than government entities.

The United States also argued that Iran's abuse of process in relying on the Treaty of Amity and its unclean hands—given its own support for terrorism and proliferation activities, treatment of U.S. persons and property, as well as the state of the U.S.-Iran relationship—rendered the case inadmissible.

## **Why Iran filed the Case?**

Iran lodged the case against the US in the ICJ on 14 June 2016 in response to the US Supreme Court's April 2016 ruling in a case known as *Bank Markazi v. Peterson* that had been under litigation since the early 2000s.

The suit involved over 1,300 individuals who had secured favourable verdicts in several separate cases against Iran for its alleged role in the 1983 Beirut barracks bombings and other attacks. Petitioners had sought compensation via funds in a



Citibank account in New York connected with Iran's central bank, known as Bank Markazi.

In 2012, while the case was still pending, the Obama administration froze all assets of the Iranian government in the US, including the Citibank account.

Further, the US Congress added a section to the Iran Threat Reduction and Syria Human Rights Act of 2012 that allowed frozen foreign assets to be used to satisfy judgments. The legislation even mentioned the *Bank Markazi v. Peterson* case by name, and its case docket number.

The Iranian central bank opposed the move, arguing that it was 'unconstitutional' and a violation of the US's doctrine of the separation of powers, implying that the legislature was attempting to dictate the judicial process.

In April 2016, the US Supreme Court in a 6-2 ruling said such a law was not unconstitutional and did not amount to a violation of the separation of powers.

## **TREATY OF AMITY**

The Treaty of Amity and Cooperation in Southeast Asia (TAC) was established in 1976 and embodies universal principles of peaceful coexistence and friendly cooperation among States in Southeast Asia. It is a legally-binding code for inter-state relations in the region and beyond. The Treaty has been amended three times, in 1987, 1998, and 2010, respectively, to allow for accession by states outside Southeast Asia as well as for regional organisations whose members are sovereign states, among others. As of August 2022, there are 49 High Contracting Parties to the TAC.

# HOW WAS THE TREATY OF AMITY BREACHED?

Since 2016, Tehran has argued that Washington violated the 1955 Treaty of Amity — an agreement of friendship signed by the two countries — by seizing Iranian assets in the US and diverting them to other parties.

In 2018, when the US withdrew from the Iran nuclear deal, the ICJ ordered Washington to ensure that sanctions imposed against Tehran did not affect humanitarian aid such as food and medicine.

The Trump administration subsequently pulled the US out of the Treaty of Amity in 2018 in what was viewed as a largely symbolic move.

It was only in February 2019 that the ICJ, after years of hearings, ruled that Iran could proceed with a bid to recover frozen assets in the US worth roughly USD 2 billion. The hearings starting now will revolve around this bid.

## The Vienna Convention on Consular Relations

The Vienna Convention on Diplomatic Relations was adopted in 1961 by the United Nations Conference on Diplomatic Intercourse and Immunities held in Vienna, Austria.

This treaty lays down the rules and regulations of diplomatic relations between countries and also the privileges that diplomats enjoy in other countries.

The treaty entered into force in April 1964 and currently, there are 192 parties to the convention.

The Vienna Convention applies not only to diplomats but also to both military and civilian personnel from the military departments, who are present in the country under the authority of the chief of the diplomatic mission.

Vienna Convention on Consular Relations is an international treaty that defines a framework for consular relations between sovereign states. It codifies many consular practices that originated from state custom and various bilateral agreements between states.





## Conclusion

The ICJ concluded that the dispute between the parties concerned alleged breaches of obligations under the Treaty of Amity. It also held that the dispute resolution clause within the Treaty of Amity clearly provided jurisdiction to the ICJ, rendering all preliminary objections of the US untenable.

Now that the ICJ has decided to hear the case, both parties shall be given an opportunity to submit written and oral arguments on the merits of the case. After this the ICJ shall decide whether or not the provisions of the Treaty of Amity have actually been violated through the re-imposition of US sanctions, and if so, the remedies accorded to Iran.

For international legal scholars and policy experts, one of the most important questions to ponder over is whether this preliminary judgment by the ICJ will potentially impact any future deliberations on the Iran nuclear deal.



# Position Paper Guidelines

The background guide provides you with a framework and structure to continue doing research on your topic and investigating your country's stance. We encourage delegates to further explore the intricacies of the topics and develop creative solutions beyond the background guide.

Position paper are an opportunity for delegates to summarize their research in preparation for the conference. delegates are strongly encouraged to write position paper on each topic. Below is the general structure for papers that can be adapted depending on your country and committee.

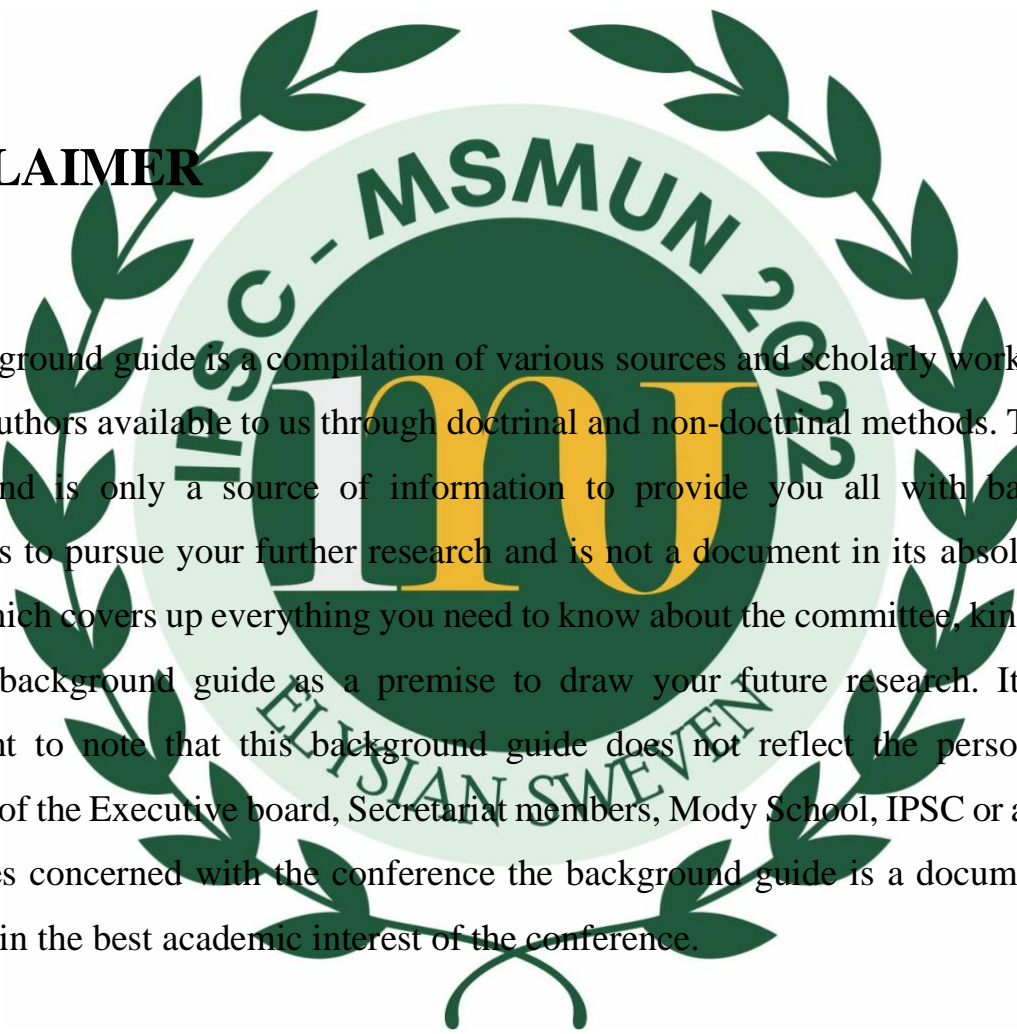
- I. Topic background: include a brief summary of the topic and outline your country's past involvement and experience with the issue.
- II. Country stance: explain your country's policies and position on the issue, including relevant statistics and research.
- III. Proposed solutions: propose and provide further details on possible solutions and identify and analyze potential benefits and drawbacks. Remember that your solutions should reflect your country's policies.

Delegates should write one position paper per topic, with each paper a maximum of one page long (excluding the work cited page). No cover pages. All papers should be single-spaced with standard margins in Times new roman 12pt. Font. Place the following in the top left-hand corner of both your position papers: committee, country, delegate's name, school, and topic. All sources should be appropriately cited.

Position paper should be submitted to [icjipscmun@gmail.com](mailto:icjipscmun@gmail.com)

Either as a word document or pdf to the above-mentioned email by 15<sup>th</sup> November,2022. Please title the email in file with your committee's name and country. Delegates who do not submit position papers will be ineligible for awards. Questions regarding position paper should be directed to the above-mentioned email.

## **DISCLAIMER**



The background guide is a compilation of various sources and scholarly work of various authors available to us through doctrinal and non-doctrinal methods. The background is only a source of information to provide you all with basic guidelines to pursue your further research and is not a document in its absolute nature which covers up everything you need to know about the committee, kindly use this background guide as a premise to draw your future research. It is significant to note that this background guide does not reflect the personal ideology of the Executive board, Secretariat members, Mody School, IPSC or any authorities concerned with the conference the background guide is a document prepared in the best academic interest of the conference.