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# NLCSD MUN ICJ COMMITTEE

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Written by: Cara Connolly

Editors: Kiara Thomas and Emma Poirot

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# ICJ COMMITTEE

The International Court of Justice (ICJ) is one of six principal organs in the United Nations (UN). It was established to settle legal disputes between states in accordance with international law (it also gives advisory opinions on international legal issues). The ICJ was established by the charter of the United Nations, which was signed on June 26th, 1945, and brought into power on October 24th, 1945, same year of when the UN was created. The primary purpose of the ICJ is to settle legal disputes between states in order to maintain international relations as well as to provide advisory opinions to the UN General Assembly, Security Council and other organs and specialised agencies. This is achieved through the ICJ providing an authoritative interpretation of international law. The ICJ is composed of 15 judges elected by the UN General Assembly and the Security Council. Judges serve nine-year terms and may be re-elected. The court's composition aims to reflect a balance of representation from different regions of the world creating diverse and balanced representation within the choosing of their judges. Judges serve for nine-year terms with the possibility of being re-elected for a second term. The ICJ has a clear commitment to transparency, fairness and clear adherence to legal principles which underscores the vital maintaining of peace and security. The ICJ deals with many cases usually between sovereign states one being the case of the Corfu Channel involving both the UK and Albania in 1947 to 1949. This case was due to British ships striking mines in Albanian waters. Although, originally the validity of the jurisdiction of the court to hear the dispute was questioned. These cases were then conceded through the use of the ICJ interpreting that Albania must withhold their standards as a coastal state.

Forms of International Law

# FORMS OF INTERNATIONAL LAW

The ICJ utilizes a range of resources when forming as well as evaluating its decisions as a court. These sources including both international law and domestic laws taken and observed from the different member states involved. Sources of international law vary including treaties and conventions, general principles, customary law and subsidiary law. For majority of the cases presented in the ICJ international law will be utilized when making decisions (taking the form of different treaties as well as overall UN conventions). While, on the other hand domestic law will be composed of a states individual laws and statutes. Depending on the relevance to each case that is debated within the committee are applied due to either state or international involvement.

While different laws may conflict in similar issues there are levels of precedence's in order to distinguish the validity of the application of different laws. To exemplify this, conventions and treaties are recognized as taking precedence over customary law, customary law taking precedence over general principles, general principles taking precedence over subsidiary laws. When discussing older in comparison to newer laws the structure is as follows. Newer laws are commonly regarded as more significant then older laws as well as more specific laws taking precedence over vague laws. Moreover, in the case of an older law being more specific then a newer law the older law then takes precedence over the newer law due to detail taking more precedence than the age.

**SECTION 1 ACCESS TO THE PACIFIC OCEAN (BOLIVIA V. CHILE)**

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**HOW EFFECTIVE WAS THE ICJ'S RESPONSE TO THE OBLIGATION TO  
NEGOTIATE ACCESS TO THE PACIFIC OCEAN (BOLIVIA V. CHILE)**

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On the 24th of April 2013 the state of Bolivia officially issued the proceedings against the republic of Chile before the International court of justice. Chiles obligation to negotiate with Bolivia in order to reach an agreement granting Bolivia official sovereign access to the Pacific Ocean. Chile was believed to have not complied with this obligation as well as denying the existence of the obligation entirely according to Bolivia. Chile then filed a preliminary objection on the 15th of July 2014 causing the proceeding of the merits to be then suspended. The ICJ eventually rejected the validity of the preliminary objection raised by Chile since the court found reason to believe that they had jurisdiction to entertain the application made by Bolivia. For the overall judgement of the case the court made sure to consider the many different bases invoked by Bolivia in order to support Chiles alleged obligation. Following the ICJ's initial rejection of Chiles preliminary objection the case continued with Bolivia reinstating their claims towards Chile's alleged obligation to negotiate access to the Pacific Ocean. Bolivia utilized historical treaties as well as diplomatic exchanges followed by principles of international law. Although, none of these bases presented could fully establish the legal obligation of Chile to grant sovereign access to the sea. After the ICJ had concluded that none of the official bases were established due to Bolivia being landlocked an effort was still stated to re-insure to state how appropriate negotiations should still be undergone.

SECTION 1 ACCESS TO THE PACIFIC OCEAN (BOLIVIA V. CHILE)

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## HOW EFFECTIVE WAS THE ICJ'S RESPONSE TO THE OBLIGATION TO NEGOTIATE ACCESS TO THE PACIFIC OCEAN (BOLIVIA V. CHILE)

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This case can be seen to highlight the ineffectiveness of the ICJ as an organ within the United Nations. This is shown by, while retaining proper legal proceedings the ICJ did not aid with the international relations and unfairness being experienced by Bolivia and Chile. Due to the ICJ commonly having a lack of effectiveness in reaching satisfactory resolving claims and usually resorting to dismissing different legal movements it can be seen that each case develops at an excruciatingly slow pace. This slow pace within the court itself can exacerbate tensions between states prolonging levels of uncertainty causing obstacles within the efforts to achieve successful and satisfactory diplomatic solutions. In this specific case, the ICJ's decision further showcased the challenges made obvious when dealing with the reconciling of legal principles within the complex reality of international relations from the perspective of an intergovernmental organization. Therefore while the ICJ remains an important forum when dealing with legal issues internationally through a forum, the effectiveness of the solutions it proposes severely diminish the International court of Justices ability to address key underlying political tensions in a legal manner and with a level of efficacy.

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# PROBLEMS AND SOLUTIONS

One of the main problems presented by this case is the inherent difficulty in reconciling legal obligations when facing the realities of geopolitics. The lack of clear legal precedent within the case alongside the complexity of historical treaties and diplomatic exchanges caused for Bolivia's assertion of Chile's obligation to negotiate access to the Pacific ocean to not be recognized. This shows how the ICJ also in some cases does not fulfill its responsibility of being a platform for successful and effective diplomatic exchange regarding issues such as presented by Bolivia and Chile. Overall, due to Bolivia's landlocked status the ICJ only relied on legal framework to solve this territorial dispute causing a limited scope on the different affecting factors in this case.

When searching for solutions in the face of problems, such as those that are presented by this case, there is an obvious need which arises regarding innovative diplomatic approaches and multilateral cooperation. Rather than having the sole reliance of finding a solution shaped only with a legal framework, states should look towards creating and engaging in meaningful and sustained dialogue to address underlying disagreements and tension as well as fostering a mutual understanding between the nations involved. The ICJ overall could play a more proactive role in the facilitation as well as mediation when regarding conflict resolution by providing diplomatic support. Through the combination of both utilizing legal mechanisms and diplomatic support and mediation, states can work towards achieving more satisfactory and effective solutions.

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# QUESTIONS TO CONSIDER

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1. TO WHAT EXTENT DO HISTORICAL TREATIES, DIPLOMATIC EXCHANGES EFFECT THE RULING OF SOLE INTERNATIONAL LAW IN THE OPINION OF YOUR STATE?
2. HOW APPLICABLE WERE THE LEGAL FACTORS IN THE ICJ'S DECISION WITHIN DETERMINING THE JURISDICTION TO ACCEPT BOLIVIA'S APPLICATION
3. WHAT IMPLICATIONS DOES THE IDJ FACE WHEN RESOLVING FUTURE DISPUTES INVOLVING TERRITORIAL SOVEREIGNTY AS WELL AS THE ACCESS TO NATURAL RESOURCES?)
4. HOW EFFECTIVE WAS THE ICJ IN INCLUDING BOTH LEGAL PRINCIPLES ALONGSIDE GEOPOLITICAL REALITIES IN THIS CASE AND WHY?)
5. WHAT ALTERNATIVE APPROACHES COULD HAVE BEEN PURSUED BY BOLIVIA AND CHILE TO ADDRESS THEIR DIPUTE OUTSIDE OF THE ICJ AND HOW EFFECTIVE WERE THEY?)



**SECTION 2 APPLICATION OF THE CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE (CROATIA V. SERBIA)**

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**HOW EFFECTIVE WAS THE ICJ'S RESPONSE TO THE APPLICATION OF THE CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE (CROATIA V. SERBIA)**

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On the 2 July 1999 Croatia formally filed an application to the ICJ facing against the Federal republic of Yugoslavia (FRY) due to violations of the convention on the prevention and punishment on the crime of genocide. In order to achieve a basis for the courts jurisdiction where Croatia invoked the Article IX of the convention creating both Yugoslavia and Croatia to be viable parties. On 11 September 2002 Yugoslavia then filed preliminary objections to the Jurisdiction of the ICJ as well as towards the overall admissibility of the claims made by Croatia. The court extensively considered the scope of its jurisdiction which was founded only by the enactment of the article IX of the genocide convention. The court therefore had no power to rule on alleged breaches of other obligations under international law, not amounting to genocide, particularly those protecting human rights in armed conflict. This being still the case even if the alleged breaches were of obligations under certain norms, or of moral obligations which involve the protection of essential humanitarian values. The ICJ further noted that their jurisdiction did not cover the allegations of violations of the customary international law on genocide. The ICJ then made a judgement in 2008 that it reserved its decision on jurisdiction with regard to violations of the convention allegedly committed. The main issue was finding the areas on where Yugoslavia was contrary to the convention which the court then decided was not necessary for reaching a conclusion since they were matters 'for the merits.' The acts were then decided by the court to be acts of genocide through the Serb forces committing killings to the Croat national and or ethnic group (therefore rejecting Serbia's counter claims).

**SECTION 2 APPLICATION OF THE CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE (CROATIA V. SERBIA)**

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Overall, the ICJ can be seen to be effective in un-biasly judging the legal dilemmas between Serbia and Croatia although neither case was approved and both were eventually dismissed. Therefore, dismissing Serbia's involvement of the genocide yet it did rule that Serbia committed a breach in the genocide convention through failing to prevent the genocide from occurring. The courts nuanced approach towards the prosecution of Serbia showcased the complex realm of adjudicating allegations of genocide as well as the overall importance of adhering to international law. However, while the court may retain limitations in addressing breaches of other international rights beyond genocide its deliberation can be seen as an attempt at reparation for such heinous crimes. This case serves as a focal point when analyzing the legal and moral dimensions of state responsibility in situations involving conflict and mass amounts of violence.

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## PROBLEMS AND SOLUTIONS

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This specific case highlights the challenges faced by the ICJ in regards to international justice. One of the main issues is the limitations of the jurisdiction of the ICJ due to the specified Article IX of the genocide convention. This prohibits the ICJ from ruling on alleged breach of human rights in armed conflict or violations of customary international law on genocide. Moreover, the ICJ's scope of action becomes constrained, with the potential to impact its ability to address comprehensive justice in complex cases involving multifaceted legal as well as moral considerations.

This issues imposed on the ICJ involving jurisdictional limitations clearly showcase the overall need for a more holistic approach to international justice. One potential solution involves the expanding of the mandate for the ICJ to be able to apply itself on a broader range of international legal norms alongside human rights standards globally. This would allow for the empowerment of the court to adjuvate cases involving heinous violations of human rights therefore promoting accountability of member states and strengthening the international legal framework as a whole. This can also be achieved through the collaboration of the ICJ and regional human rights bodies which could facilitate a more coordinated and comprehensive response to legal dilemmas.

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# QUESTIONS TO CONSIDER

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1. HOW DID THE ICJ'S DELIBERATIONS IN THE CROATIA V. SERBIA CASE CONTRIBUTE TO BROADER DISCUSSIONS ON ACCOUNTABILITY, JUSTICE, AND STATE RESPONSIBILITY IN SITUATIONS OF CONFLICT AND MASS VIOLENCE?
2. HOW CAN THE LESSONS LEARNED FROM THE CROATIA V. YUGOSLAVIA CASE INFORM FUTURE EFFORTS TO STRENGTHEN INTERNATIONAL LEGAL MECHANISMS FOR ADDRESSING VIOLATIONS OF HUMAN RIGHTS AND PROMOTING ACCOUNTABILITY IN CONFLICT-AFFECTED REGIONS?
3. HOW CAN ACCOUNTABILITY MECHANISMS BE STRENGTHENED TO ENSURE GOVERNMENTS AND HUMANITARIAN ACTORS UPHOLD THE HUMAN RIGHTS OF DISPLACED PERSONS?
4. IN WHAT WAYS DID THE ICJ'S APPROACH TO ADJUDICATING ALLEGATIONS OF GENOCIDE IN THE CROATIA V. SERBIA CASE SHOWCASE THE COMPLEXITIES OF INTERNATIONAL LAW AND THE IMPORTANCE OF ADHERING TO LEGAL FRAMEWORKS?)
5. HOW DID CROATIA INVOKE ARTICLE IX OF THE GENOCIDE CONVENTION TO ESTABLISH JURISDICTION IN ITS CASE AGAINST YUGOSLAVIA BEFORE THE ICJ?