

SHAWMUN

2014

ICJ





International Court of Justice Palestinian state vs Israeli state

By

Grace Makhoul & Hoda Al-Haddad

Greeting Delegates,

As the directors and the chairs of the international court of Justice Committee, we are excited and thrilled to be taking part in the Shawnigan Lake School's Model United Nations ICJ mock trail.

The International court of justice role is to provide equality and to be in accordance with international law. It coordinates the legal disputes that are submitted to it by states/countries to give consolatory opinions on legal questions referred to it by specialized agencies and United Nations with authorized organs. To this day there are many human rights and justices that are being violated and remain unsolvable. These issues occur daily and are shared on the news. To make matters worse many of them go on for years without any international intervention to help the victims.

This Palestinian-Israeli conflict has been going for far too long, and citizens from both sides have been seriously affected. This very moment, there are many people who are suffering from hunger, restrictions of freedom, oppression and death. Due to the complexity of this situation there has been little intervention; however, seeing as it is the International Court of Justice's mission is to spread justice and to investigate human rights, it is now taking a detailed investigation of the situation to come up with possible solutions to the conflict that will not harm either of the parties that are involved. This trail might be a key or a clue in exploring the views of both the Palestinian and Israeli parties, and assist in reaching a negotiation period, which will hopefully let go of the economic restrictions currently held on the Gaza Strip by the Israeli government.

We are looking forward to meeting you on April and good luck with your research and investigation.

Sincerely,

Grace Makhoul and Hoda Al-Haddad

Introduction

The UN member states are obliged under Article 33 of the UN Charter to resolve their disputes by peaceful means, of which the International Court of Justice (referred to after as the ICJ) is one.



The court was first established in 1945 under the UN charter as a successor of the Permanent International Court of Justice (PICJ). The evident dissolution that was quickly approaching the PCIJ in 1943 saw the need to restore international law. The ICJ is based in the Peace Palace of the Hague, Netherlands and is the primary judicial branch of the United Nations. Its primary function is to settle legal disputes brought to the court by duly authorized international branches, agencies, and the UN general assembly. Unique to the ICJ, and one of the core points on creating an entirely new judicial institution rather than renew the PCIJ, was that all members of the United Nations were automatically subject to the statute of the ICJ and therefore all member states in the new world order were automatically subject to judgment in its set international law. In another words, the statute of the ICJ was annexed into the UN charter. The range of topics the court receives is very broad; however, the court has only dealt with a few cases.

Article 33 of the United Nations Charter lists the following methods for the specific settlement of disputes between States: negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, and the restoration of regional agencies or arrangements; good offices should also be added to this list.

Contentious Case vs. Advisory Opinion

The court deals with two sorts of cases: contentious cases and advisory proceedings.

In contentious cases, only States (States Members of the United Nations and other States which have become parties to the Statute of the Court or which have accepted its jurisdiction under certain conditions) may be parties.

Advisory proceedings, which are held before the Court, are open solely to five organs of the United Nations and to 16 specialized agencies of the United Nations family.

The United Nations General Assembly and Security Council may request advisory opinions on “any legal question”. Other United Nations organs and specialized agencies which are authorizing to seek advisory opinions can only do so with respect to “legal questions arising within the scope of their activities”.

History of Palestinian-Israeli conflict

During World War II, the Holocaust forced Jewish followers to fear for their lives, but Britain supported the Jewish people and provided security for them. That is when the head of the Jewish agency David Ben-Gurion stated/defined their police in a motto “We will fight the war as if there were no White paper, and we will fight the white paper as if there were no war”. At the same time Palestine was still considered an independent country, where they fought for their freedom in a revolution against Britain. In 1940, circumstances changed when Italy declared war against the British Commonwealth and supported Germany. At the time, Italy has planned many air attacks on Palestine and bombed several areas such as Haifa and Tel Aviv. In 1942, there was a period of disquiet for Jewish residences in Palestine, as they were afraid that the German General Erwin Rommel would conquer Palestine, which seemed inevitable as the Germans advanced through North Africa towards the Suez Canal. Therefore, this fear, which is referred to as the “Two hundred days of anxiety”, led to the British support of the foundation of the Palmach (a Jewish Paramilitary that lasted between 1920 -1948, then it became the core of the Israeli Military).

On July 1944, the British Government allowed the establishment of the Jewish Brigade led by both Jewish and non-Jewish officers. This brigade fought around Europe, especially against the German and Italian forces. Members of the Brigade played an important role in the Berihah's efforts to help Jewish people escape from Europe to Palestine.

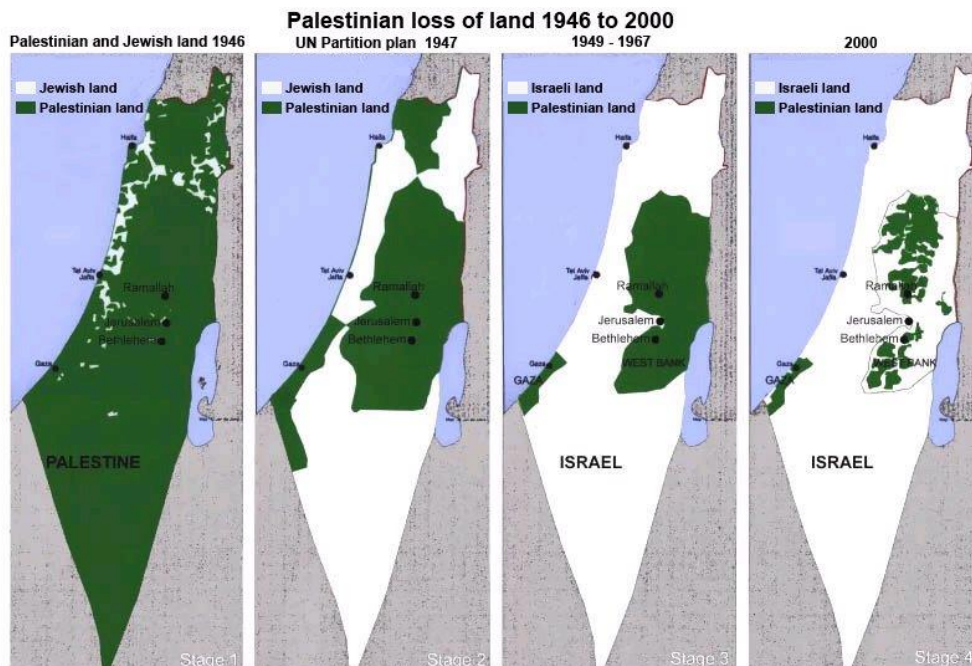
Starting in 1939 and continuing throughout the Holocaust, the British government had applied restrictions against Jews immigrating to Palestine; however, after Jews fled from Nazi persecution they were deported to different places or held in detention campus.

In 1944 Menachem Begin, the leader of the Zionist militant group Irgun "The National Military Organization in the Land of Israel", determined to force the British government to remove all of its troops out of Palestine. Accusing the British government of breaking its promise in the Balfour Declaration, where the white paper of 1939 restricting Jewish immigration was an increase in their pro-Arab policy, which he decided to break with Haganah. After this had begun, he sent a command for the armed forces to attack British forces. During this war the economic statue of Palestine (before the declaring of Israeli statue) was increasing. It was considered an economic boom, and there was a huge development in the industrial and agricultural outputs. Also during the war, the relationship between Arabs and Jews was quite.

Britain's control over Palestine was weakened after World War II, partially because of the heavy economic burden of paying for over 90,000 soldiers while going through the post-war depression. After being attacked several times by the Hagana and Irgun, the British Government, in 1947, announced their desire to stop the attacks and requested/demanded the United Nations General Assembly to find a solution regarding the future of the Country (Palestine). The British Administration has failed to take any further responsibility on any decisions that were made.

On the 29th of November 1947, the United Nations General Assembly adopted the resolution 181 (ii) to set the plan that Palestine will be divided into independent Arab states, Jewish states, and the city of Jerusalem. Zionist and Jewish leaders accepted the plan, while Arab leaders rejected it. After this disagreement between the two sides, violent actions were spread and thousands of Arabs, Jews, and Brits were killed. This led to a Civil War. Many external forces have entered Palestine from both sides to participate in the war, but in mid-1948 Jewish forces defeated Palestinian forces and Palestinian society collapsed.

On May 1948 the Jewish People's Council along with David Ben-Gurion declared the establishment of the state of Israel over Palestine. There was intervention from neighboring Arab countries such as Iraq, Egypt and Syria to free Palestine from colonization but none of their attacks were successful. The most significant battles were between Israeli forces and Jordanian forces over the control of Jerusalem. After that Israel successfully concurred and took control over the whole region where over 300,000 Palestinians were expelled and kicked out of their homes. However, to this day, Gaza and the West-Bank are the only two regions that Israel has not successfully occupied.



Current situation in Palestine

The conflict in these regions continues to this today. Palestine has openly declared their support of the idea of having two independent states, Israel and Palestine. However, this has been rejected by Israel and it is still under discussion. However, Israeli settlement growth and policies on Palestinian territories is harshly criticized by the European Union as it is a sign of Israel's commitment to the two-state solution. In December 2011, all the regional groups of the UN Security Council gathered to discuss the violation of human rights by the Israeli government, yet for the past year there has been violent attacks on the west-bank side, where Israel has tried to build and expand on the land. From 2007-present, there has been a blockade on the Gaza Strip for the reason that Israel aims to "limit Palestinian rocket attacks from the Gaza Strip and to prevent Hamas from obtaining weapons. However, in 2010 Israel claimed that they had eased the blockade for non-military goods to pass through. It announced that it will allow all strictly civilian goods into Gaza and prevent dual-use items from entering. Rafah crossing is one of the most important places that has helped in transporting aid to Palestine. In 2011 Egypt opened Rafah border crossing only for people but not for supplies. However, The Israel NGO Gisha Legal Center for freedom of movement has reported that Israel has continued to take part in preventing the basic functioning of Gazan economy. According to the Gisha, "Israel is not only restricting goods and services but it is also preventing people from entering and existing Gaza."¹ The blockade was criticized by United Nations Human Rights council. In 2010, Secretary of the United States, Hilary Clinton said the situation in Gaza is "unsustainable and unacceptable"².

Nevertheless, the opinion on the legality of the Blockade is still controversial. In 2011 one of the

¹ Agence, France-Presse. "Key Facts about Israel's Blockade on Gaza." *GlobalPost*. GlobalPost, 6 May 2013. Web. 26 Feb. 2014. <http://www.globalpost.com/dispatch/news/afp/130506/key-facts-about-israels-blockade-gaza>

² "Clinton Urges Caution in Aftermath of Gaza Flotilla Raid." *VOA*. N.p., 31 May 2010. Web. 26 Feb. 2014. "http://www.voanews.com/content/clinton-urges-caution-in-aftermath-of-gaza-flotilla-raid-95359634/118694.html"

UN investigative committee came to the conclusion that the blockage is legal and is necessary for protection. On the contrary, the United Nations Human Rights Council, International Committee of Red Cross, and other international law experts consider this blockade to be illegal.³

Human Rights Violations caused by the Blockade

According to the United Nations independent expert, there are serious human rights violations where he stated “neither Israel nor its proxies can justify the facts on the ground in occupied Palestine.”⁴ According to Richard Falk, “Israel has been taking away Palestinian water and land by sizing on 60,000 square of land near Nablusin in 2013”⁵. The blockade on the Gaza strip still continues to cost many Palestinians their homes and the their access to food. “Israel’s blockade is suffocating Palestinians in Gaza, with an incredible 70 per cent of the population dependent on international aid for survival and 90 per cent of the water unfit for human consumption,”⁶ Falk said. In 2014, statistics that were published by the Palestinian Central Bureau that shows Gaza’s unemployment rate spiked by 18.4% in the last 3 months, reaching 38.5%, where the unemployment rate in West Bank is 18.2%. Over 29,000 people joined the ranks of being unemployed in Gaza, which it brings the total number of unemployed citizens to 159,600. These

³ Geoffrey, Palmer. "Report of the Secretary-General's Panel of Inquiry on the 31 May 2010 Flotilla Incident." *UN.org*. N.p., 31 May 2010. Web. 22 Feb. 2014.
http://www.un.org/News/dh/infocus/middle_east/Gaza_Flotilla_Panel_Report.pdf

⁴ "Human Rights Violations in Occupied Palestinian Territory Cannot Be Distorted – UN Expert." *UN News Center*. UN, 06 June 2013. Web. 26 Feb. 2014. <http://www.un.org/apps/news/story.asp?NewsID=45108#.Uw6PaRBdV64>

⁵ Human Rights Violations in Occupied Palestinian Territory Cannot Be Distorted – UN Expert." *UN News Center*. UN, 06 June 2013. Web. 26 Feb. 2014. <http://www.un.org/apps/news/story.asp?NewsID=45108#.Uw6PaRBdV64>

⁶ Human Rights Violations in Occupied Palestinian Territory Cannot Be Distorted – UN Expert." *UN News Center*. UN, 06 June 2013. Web. 26 Feb. 2014. <http://www.un.org/apps/news/story.asp?NewsID=45108#.Uw6PaRBdV64>

unemployment rates have increased because of the blockade where people cannot receive or trade goods and services.



The Palestinian Liberation Organization (PLO) and Hamas



The Palestinian Liberation Organization (PLO) was the fruit of the 1964 Arab League summit in Cairo. The organization’s charter in 1964 stated that “Palestine with its boundaries that existed at the time of the British mandate is an integral regional unit”. In 1993, during the Madrid conference, the PLO was accepted by Israel and the United States, after it accepted the UN resolutions 242 and 338, recognized the state of Israel and rejected “violence and terrorism”. The PLO is recognized “as the sole representative of the Palestinian people” by over 100 nations with which it has diplomatic relations. Fatah, a faction of the PLO, is the political party of the organization. The organization has been under the leadership of Mahmoud Abbas since 2005, who is affiliated with Fatah; he also serves as the president of the Palestinian state. Fatah’s opponent in the Palestinian politics is Hamas.

Hamas is the “Islamist Resistance movement” and was founded in 1987 in the midst of the First Intifada. Since then, Hamas has joined the political life and in 2006, it won the Palestinian Parliamentary Elections, consequently governing the Gaza Strip. The political bureau released statements in which they entailed that they are willing to corporate “a resolution to the

Arab-Israeli conflict which included a Palestinian State under the 1967 borders”. However, it has been affiliated with the military wing of “Izz El Din Qassam” brigades, which has launched attacks on Israel that included rockets and suicide bombings. Hamas is considered a terrorist group by Israel, the United States, Canada, the European Union, and Japan classify Hamas as a terrorist, while not Iran, Russia, Turkey, and the Arab nations.

Jurisdiction

The ICJ, being the judicial core of the UN, its jurisdiction is based on the International Law. International law is defined under all international treaties and resolutions or other formal documents passed with international consent (e.g, resolutions passed within U.N forums), as well as international custom and the general principles of law recognized by the international community (Statute Article 38).

The Court is only a judicial body for any case regarding two states and so individuals may not approach the court (Statute Article 34). Any legal situation deemed a threat to international peace and security falls within the jurisdiction of the Court; the Court is open to all member states of its Statute and even non-member states (Statute Article 35). If, however, a dispute between two parties as to the jurisdiction of the Court in a situation arises, the Court shall decide the matter (Statute Article 36(6)).

The Structure

The directors of the ICJ will serve as the president and vice president of the court. The court will consist of three bodies:

The Applicant Party: The moving party, or Applicant, consists of the advocates from the country, agency or organization that brings the case to the Court.

The Respondent Party: The responding party, or Respondent, consists of the advocates from the country, agency or organization defending itself from the case presented by the Applicant party.

Panel: The officers and judges of the Court that regulate proceedings and form a verdict make up the Panel.

Judicial independence and the impartiality of the Court and judges are expressed within Article 16-18 of the Statute. No member of the Court may not act as agent, counsel, or advocate in any case; members may not take part in the decision making process of any case in which they have previously taken part as agent, counsel, or advocate for one of the parties, or as a member of a national or international court, or of a commission of enquiry, or in any other capacity. Judges may deliver judgments with unanimous opinion or they may deliver their own separate opinions unless their opinion is represented in the whole. Decisions and Advisory Opinions are given by the majority. In the event of equal votes, the President's vote becomes the casting vote. However, judges may also deliver dissenting opinions. Mostly because of this binding nature of decisions, ICJ can be seen as the most competent body to resolve international legal disputes. However, if either of the parties decides to challenge the scope or meaning, it has the option to request an interpretation. The Court may revise its judgment, such as in the event of the discovery of a fact previously unknown to the Court, which might be a decisive factor. Either of the parties may apply for the revision.

The modes of address of the court

Though the ICJ does not require third-person modes of address, all members of the Court must be addressed with proper formality. A judge should be addressed as “Judge *Surname*” or “Your Honor” or simply “Judge”. Any panel member occupying the duties of the presidency for a case must be addressed as “Mr./Madame President” or “President” while the registrar, if needed to be addressed at any point, should be addressed as “Registrar” or by the modes of address for judges. When addressing specific advocates of either party, the advocate may be called as “Advocate” or “Counsel”; when a specific party is referred to, it may only be called by country name or “Applicants/Respondents”. Keep in mind that there is to be no direct conversation between parties when the court is in session, but that any questions or objections may be asked through the President or Assistant President. Any witness appearing before the Court is to be addressed by their appropriate title and surname (e.g. Dr. *Surname* or Ms. *Surname*). Witnesses appearing before the Court may use first-person modes of address.

The procedure of the court

- **Committee I Session**
 - Judges convene, prepare lists of questions that could be asked, to discuss possible outcomes of the court
 - Advocates convene, to discuss possible scenarios of the court, to prepare their opening argument, to decide and prepare their three evidences that will be provided to the court and on their witnesses list.

- **Committee II Session - Contentious Case**

- *Documents and Swearing In*

Copies of the three evidences are presented to the panel and to the other advocates party, being either the applicant or the respondent. Before the court convenes to commence the contentious case, advocates and witnesses must give an oath.

Then the court will follow the following procedure:

- *Opening Arguments*

- Applicant Party
- Respondent Party

- *Presentation of Evidence*

- Applicant Party presents their evidences, after each piece of evidence the respondent party can object on the grounds of authenticity, undue bias, relevance, reliability, or accuracy
- Respondent party presents their evidences, after each piece of evidence the respondent party can object on the grounds of authenticity, undue bias, relevance, reliability, or accuracy

- *Weighing of Evidence*

- The Judges will convene to discuss the evidences submitted to the court
- The Advocate parties will have the opportunity to prepare their witnesses.

- *Examination of Witnesses*

The parties will alternate witnesses

- The applicant party presents their witness then the respondent party has the opportunity to cross examine the witness
- The respondent party presents their witness then the applicant party has the opportunity to cross examine the witness

- *Rebuttals*

- Four alternating rebuttals based on their presented arguments, evidences and witness, starting with the applicant party.

- *Convening time*

- *Closing Arguments*

- **Committee III Session**

- *Deliberation*

- *The Verdict*

Witnesses



Ismail Haniyah



Benjamin Netanyahu



Hassan Nasrallah



Shimon Peres



Mahmoud Abbas



Avigdor Lieberman

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