

# JejuMUN XI

## BACKGROUND GUIDE

### International Court of Justice (ICJ)

#### *1 | Case Concerning Avena and other Mexican Nationals*

SDG: 16. Peace, Justice, and Strong Institutions

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# Committee Introduction

*Please Read the Rules of Procedure carefully! ICJ has additional preparations needed and a thorough understanding of the ROP is essential for delegates to succeed. Feel free to reach out to any of the chairs.*

The International Court of Justice (ICJ), also known as the “World Court,” is the principal judicial organ of the United Nations (UN). It was established in 1945 under the UN Charter, marking a significant step in the international community’s effort to resolve disputes peacefully and uphold international law.

ICJ is headquartered in the Hague, Netherlands, and the ICJ serves as a forum for UN member states to settle diverse conflicts, ranging from territorial disputes to human rights violations. ICJ provides advisory opinions on legal matters aided by authorized UN bodies and specialized agencies, ultimately aiding in the interpretation and development of international law.

The decisions of the court are binding for all UN member states, and non-member states can choose to accept its jurisdiction or not. By functioning judicially, the ICJ supports the UN’s mission of maintaining global peace and security.

The ICJ is composed of 15 judges who serve one-year terms. These judges are elected by majority votes in both the UN General Assembly and Security Council, thereby ensuring a broad representation of the international community.

The court’s primary function is to adjudicate conflicts between sovereign states. A state can only be a party in cases before the Court if it consents to the Court’s jurisdiction. Under Article 36 of ICJ’s statute, “states may consent in advance to compulsory jurisdiction through a declaration, which can be unconditional or conditional based on reciprocity or a specified time frame.”

The ICJ is distinct from other UN committees as it operates as a judicial body with a focus on legal matters rather than political issues. With this distinction in mind, delegates are required to take three specific approaches when engaging with the International Court of Justice.

1. **The objective is to prove the right or wrong of legal arguments rather than seeking compromise or consensus.** Therefore, advocates must present compelling legal arguments to persuade judges.

2. **ICJ emphasizes the application and interpretation of existing international law.**

Advocates should precisely understand and cite relevant legal provisions

3. **The accuracy and credibility of factual narratives are critical.** Advocates must build factual narratives supported by strong evidence that aligns with their legal arguments.

The issues presented in the committee will all be resolved through the International Court of Justice. The ICJ was established by its Charter as the UN's main judicial body in 1945. The court has universal international jurisdiction to settle disputes between nations under international law and provide advisory opinions on legal issues submitted by UN organs and specialized agencies. Something to note is that the court's engagement in each case is dependent on both conflicting nations' voluntary participation. States are legally obligated to abide by the court's decision once they agree to participate in its proceedings or are obligated to participate in the court's proceedings due to existing international agreements declaring their authority in specific disputes.

Each case in the ICJ consists of two teams of advocates. Each team is composed of two advocates each - a total of 4 advocates for a case. One of these two groups will play the role of the Applicant. This is the team who initiated the proceedings at the court. The other team will play as the Respondent. This is the team of advocates who will defend the allegation of the applicant team. The Advocates act as a counsel, providing legal representation for their representing state to the court. Each team of advocates will draft a memorandum, a list of evidence, and a combined list of stipulations, and will examine witnesses. (These documents will be elaborated on later in the guidebook.)

## **Differences with Other MUN Committees**

### **1. Role**

While you are assigned a country to represent in conventional MUN committees, you will be assigned to two different roles in ICJ: (1) Advocate of a Country (2) Judge/Advocate.

### **2. Objectives**

While the main goal of conventional MUN committees is to pass a resolution as a bloc, your goal in ICJ is to successfully determine the validity of evidence and argument presented by the advocates (if you are a judge) or to prove that you met the burden of proof (if you are an applicant) or to disprove that the applicant has met sufficiency of evidence (if you are a respondent). Also, while you persuade other delegates to join your bloc and use negotiation skills when drafting resolutions in conventional MUN committees, you need to prove that you are "right" in ICJ.

### 3. Rules of Procedure

Conventional MUN Committees	International Court of Justice
Role Call	Role Call
Opening Speech	Giving Oath
Moderated/ Unmoderated Caucus	Opening Statement
Forming Blocs	Presenting Evidence
Drafting Resolution	Witness Testimonies
Introducing Resolution	Rebuttal
Moderated/ Unmoderated Caucus about the Resolution	Final Questions by the Judges
Voting Resolution	Closing Statement
Adjournment	Verdict
	Adjournment

### Overview of the Roles

The International Court of Justice (ICJ) is composed of 15 judges (12 judges in our conference) and 2 advocates from each the Applicant (Mexico) and the Respondent (United States of America).

#### 1. Presidents (Chairs)

The presidents are responsible for ensuring that the rules of procedure of ICJ are applied correctly throughout the conference.

#### 2. Judges

Judges are responsible for determining the validity and effectiveness of the evidence used by the advocates and eventually producing the verdict of the case. During the conference, they will listen to the arguments proposed by the advocates and ask questions to determine the validity of the argument and evidence presented. In the final part of the session, once both parties have done their rebuttals, the judges will be given time to compile any final questions regarding their argument. For the final verdict, judges can conclude in two different ways:

- (1) The International Court of Justice does not have jurisdiction to rule on the case, thus the case is dismissed.

- (2) The Applicant party has met their burden of proof, thus judges will create a verdict accordingly as punishment or reparations for the parties.
- (3) The Applicant party has not met their burden of proof, thus the Respondent party is free of the applicant from all counts.

ICJ comprises a panel of 6-9 judges. They are responsible for ruling on the case. ICJ Judges will assess the arguments and evidence presented by each team of advocates and deliberate on a final verdict regarding the case. In general, there are three broad outcomes that Judges can conclude.

- 1) The ICJ does not have jurisdiction to rule on the case, and the case is dismissed.
- 2) The Applicant Party has met their burden of proof, thus Judges will create a verdict accordingly as "punishment" for the Respondent Party.
- 3) The Applicant Party has not met their burden of proof, thus the Respondent Party is free of the applicant from all counts."

### **3. Advocates**

Advocates are responsible for acting as counsel who represent the perspective of their representing state by presenting arguments and evidence. Instead of creating new laws or organizations just like in other MUN committees, they determine in what situations they can make references to a specific law to prove their point.

- Applicants (Mexico): Applicants are the ones who bring the case to the court by applying to the court. Their primary goal is to prove that their party has met the burden of proof or the sufficiency of evidence and that the opposing party (United States of America) has violated international law.
- Respondents (United States of America): Respondents are the ones who respond to the arguments made by the applicants. Instead of striving to meet the burden of proof, their primary goal is to prove that the applicant (Mexico) has not met the sufficiency of evidence.

# Agenda Introduction

## Legal Framework:

The Vienna Convention on Consular Relations (1963) is an international treaty that outlines the framework for consular relations between independent states. Article 36 of the VCCR specifically grants foreign nationals the right to contact their consulate when they are detained by authorities in a host country. A violation would mean a violation of international law that can lead to punishments through the International Court of Justice.

The consular rights set up in The Vienna Convention on Consular Relations(1963) determines the grounds in which each country may argue their stance on whether different sections of the Vienna Convention on Consular Relations(1963) helps their case.

Both countries may also argue on whether the ICJ has jurisdiction over this case to begin with.

## Key Legal Questions:

1. Did the United States violate Article 36 of the Vienna Convention on Consular Relations by not informing the Mexican nationals of their right to consular access?
2. What are the legal consequences of such violations, and what remedies should be provided?
3. How should the United States ensure compliance with the VCCR in the future?
4. Does the ICJ have jurisdiction over this matter between the United States and Mexico?
5. What international laws were violated by the United States that the Mexican Nationals suffered from?
6. Is there historical precedent concerning the VCCR in a similar trial?
7. What repercussions would a guilty verdict have on the United States and future international relations?

### **Summary of the Case:**

- Violation of Article 36: Mexico argued that the United States failed to inform 54 Mexican nationals arrested, detained, and sentenced to death in the U.S. of their right to contact the Mexican consulate. This omission allegedly denied the detainees the opportunity to receive assistance from their consulate, which could have provided legal aid and potentially influenced their defense.
- Remedies Sought: Mexico sought the ICJ's intervention to order the United States to review and reconsider the convictions and sentences of the affected Mexican nationals. Additionally, Mexico requested that the United States take measures to prevent future violations of the VCCR.
- U.S. Response: The United States acknowledged that there were instances where consular notification was not timely. However, it argued that its legal system provided sufficient safeguards and remedies to address any potential prejudice resulting from these violations.

### **ICJ Judgment:**

On March 31, 2004, the ICJ ruled in favor of Mexico, determining that the United States had indeed violated its obligations under Article 36 of the VCCR. The court ordered the United States to:

1. Review and Reconsideration: Provide effective review and reconsideration of the convictions and sentences of the affected Mexican nationals, taking into account the violations of their rights under the VCCR.
2. Preventive Measures: Ensure that U.S. authorities inform detained foreign nationals of their right to consular access promptly and consistently to comply with the VCCR in the future.

***THE ADVOCATES OF THIS ICJ COMMITTEE WILL NOT FOLLOW THE OUTCOME OF THE REAL LIFE EVENT, BUT RATHER ONLY DEAL WITH THE LAWS AND FACTS INVOLVED IN THE CASE FOR A TOTALLY NEW VERDICT CHOSEN BY THE JUDGES***



### **Aftermath and Compliance:**

The ICJ's judgment led to various legal and diplomatic efforts to ensure compliance, including:

1. Implementation Efforts: The United States took steps to improve training and procedures for law enforcement officers regarding consular notification requirements.
2. Medellín v. Texas: One of the significant follow-up cases in the U.S. legal system was Medellín v. Texas, where the U.S. Supreme Court ruled that the ICJ's judgment was not directly enforceable as domestic law without implementing legislation from Congress.

***\*THESE ARE EXAMPLES OF WHAT EACH SIDE MAY ASK FOR TO THE COURT WHICH WILL EITHER BE ACCEPTED OR DENIED BASED ON THE LEGAL ARGUMENTATION MADE BY EACH COUNTRY\****

### **Significance:**

The Avena case highlighted the importance of international legal obligations and the rights of foreign nationals under consular treaties. It underscored the need for states to adhere to their international commitments and provided a basis for improving consular notification practices worldwide.

### **Conclusion:**

The case concerning Avena and other Mexican nationals is a landmark decision in international law, emphasizing the protection of consular rights and the mechanisms for addressing violations. It serves as a precedent for future disputes involving consular access and the treatment of foreign nationals in detention.

# Letter from the Chairs

## **A Letter to the Esteemed Advocates of the Jeju Model United Nations XI International Court of Justice,**

We are introducing the International Court of Justice committee at the Jeju Model United Nations for the first time this year. I'm thrilled to present a very ambitious project that promises to provide participants with a first-hand, exceptional, and insightful understanding of international law. The International Court of Justice committee will act as a forum for the fusion of meticulous planning, teamwork, and intellectual discussion, developing legal minds.

We must recognize that this committee has the potential to become a mainstay of our conference as we begin the first iteration of the ICJ court at Jeju Model United Nations XI. This edition aims to close procedural loopholes and provide a strong framework that guarantees the ICJ functions as a premier teaching resource for high school students. The International Court of Justice advocates will be able to understand the legal principles, precedents, and procedures that regulate international relations by being fully immersed in the structure and content of international law.

I strongly advise all supporters of this esteemed court to seize this chance with zeal and commitment. Your involvement and dedication will influence the court's experiences and development, creating a legacy of learning and excellence. I hope this committee continues to be a source of inspiration and guidance for future editions.

Thank you for your commitment and contribution to this noble endeavor.

Sincerely,

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# Key Terms

## Vienna Convention on Consular Relations

Vienna Convention on Consular Relations is an international treaty that defines consular relations between countries. It was chosen at the Congress of Vienna in 1963 and put into effect in 1967. It is the first general treaty in terms of the matter of consular relations and consists of 79 articles with the majority outlining the operation and functions of consulates and consular agents. Its purpose is to describe the operation of the consulates, functions of consular agents, privileges and immunities granted to consular officials when posted to a foreign country. Mexico filed a lawsuit against the United States, claiming that the United States violated the Vienna Convention on Consular Relations by arresting, sentencing, detaining, trying, and convicting 54 Mexican nationals to death row without respecting Mexico's international legal obligations by Article 5 (Protecting in the receiving State the interests of the sending State and of its nationals... within limits permitted by international law) and Article 36 (Communication and contact with nationals of the sending State) of the Vienna Convention on Consular Relations.

## Status quo ante

Status quo ante is a Latin phrase that is defined as the state of affairs that existed previously. Mexico demanded the United States restore the Status quo ante and ensure that the rights by Article 36 of the Vienna Convention on Consular Relations are in effect.

## LaGrand Case

LaGrand Case is a legal case heard before the International Court of Justice that involved the discussion of the Vienna Convention on Consular Relations. In this case, Germany filed a lawsuit against the United States, claiming that the United States violated the Vienna Convention on Consular Relations. Germany claimed that the authorities of the State of Arizona had detained two German nationals, LaGrand and Karl, who were tried and sentenced to death without having their rights informed as stated in Article 36 of the Vienna Convention. It also stated that the United States' failure to inform those rights prevented Germany from protecting its nationals' interests provided by Article 5 and Article 36 in the Vienna Convention at the trial and the appeal level in the United States courts. The court ruled in favor of Germany and stated that domestic laws could not limit the rights granted under the Convention.

## Restitutio in Integrum

Restitutio in Integrum is a Latin phrase that is defined as the restoration to the original condition. Mexico requested that it should be entitled to the Restitutio in Integrum.

## **Contentious Cases**

Contentious cases address the legal disputes between States. Only the States that are States Members of the United Nations and Parties to the Statute of the Court or which have accepted its jurisdiction under specific conditions are the parties to the Contentious cases.

## **Advisory Proceedings**

Advisory proceedings are requests for advisory opinions on the legal questions referred to it by the United Nations' organs and specialized agencies. They are open to the five organs of the United Nations and 16 specialized agencies.

## **Jurisdiction**

Jurisdiction is defined as the official power to make legal decisions and judgments. Specific courts may have jurisdiction over specific areas and others might not.

## **Stipulation**

Stipulation is defined as a requirement that is demanded as part of an agreement.

## **Burden of Proof**

The burden of proof is defined as a legal standard that a party seeking to prove a point (applicant) should satisfy to have the legal facts established in the court.

## **Direct Examination**

Direct examination is the process of building the context of the case and diving deep into the evidence presented by questioning the witness.

## **Cross-Examination**

Cross-examination is the process of the attorney questioning the opponent party's witness in order to put a check on the witness' testimony.

## **Deliberation**

Deliberation is the process of producing a decision of the court.

# Historical Background

There were 4.9 million illegal Mexican immigrants recorded living in the USA in 2017. This number is nearly half of all illegal Americans in the US. The two border sharing countries have had problems with illegal immigrants for decades. Consular access has historically been provided to nationals of foreign countries in the US through foreign embassies that provide this aid. However, it is much more common for the foreign national in need of consular assistance to have to seek out help themselves, which makes those unaware of this aid helpless.

The Vienna Convention on Consular Relations was created by the UN in order to strengthen economic trade and international relations which was in the economic interest of many states. The VCCR acts as an outline to guide different countries by giving them a framework to use when solving international disputes.

Mexican immigration to America came in bunches during the 1900s. Any time the USA had a surge in its economy, it was an opportunity for these immigrants to illegally seek economic opportunities of their own. Due to how easy it was for Mexicans to illegally get into America, they would travel back and forth, with some returning to Mexico after the situation had gotten better as Mexico's economy started to develop. At the end of the day, economic opportunity was the reason people illegally immigrated to America with many returning when they believed they had fulfilled economic stability. However, it is important to keep in mind that the illegal nature of all the movements the Mexicans took makes it impossible to accurately track the number of people who actually took on these illegal journeys. The illegal nature and the fact that people moved independently a lot of the time make it hard for America to control this surge of immigrants without preventing them from entering in the first place by enforcing a stronger border. This is hard due to the sheer size of the land bordering the two major countries.

# Stances of Parties

## Mexico (Applicant)

Mexico filed a lawsuit against the United States, claiming that the United States violated the Vienna Convention on Consular Relations by arresting, sentencing, detaining, trying, and convicting 54 Mexican nationals to death row without respecting Mexico's international legal obligations by Article 5 (Protecting in the receiving State the interests of the sending State and of its nationals... within limits permitted by international law) and Article 36 (Communication and contact with nationals of the sending State) of the Vienna Convention on Consular Relations. Mexico also requested that the United States restore the status quo ante and bring back the rights provided by Article 36.

## United States of America (Respondent)

In some cases, the United States of America admitted its fault for prosecuting the Mexican nationals without informing them of their rights. But for other cases, the nation claimed that it had the permission to review and consider the conviction and sentence by taking into consideration the violation of rights in the convention. Also, the United States of America was concerned that the court would be transformed into a general criminal court of appeal if the court granted Mexico's request to halt the execution of the Mexican nationals.

## Questions to Consider

1. Did the United States of America violate Articles 5 and 36 of the Vienna Convention on Consular Relations?
2. Should the United States restore the status quo ante and rights provided by Article 36 of the Convention?
3. Did the United States of America have the permission to review and consider the conviction and sentence in the Avena case?
4. If the court grants Mexico's request to halt the execution of the Mexican nationals, would the court be transformed into a general criminal court of appeal?
5. What are the similarities and differences between the Avena case and the LaGrand case? How can the decision made in the LaGrand case be considered when addressing the Avena case?

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