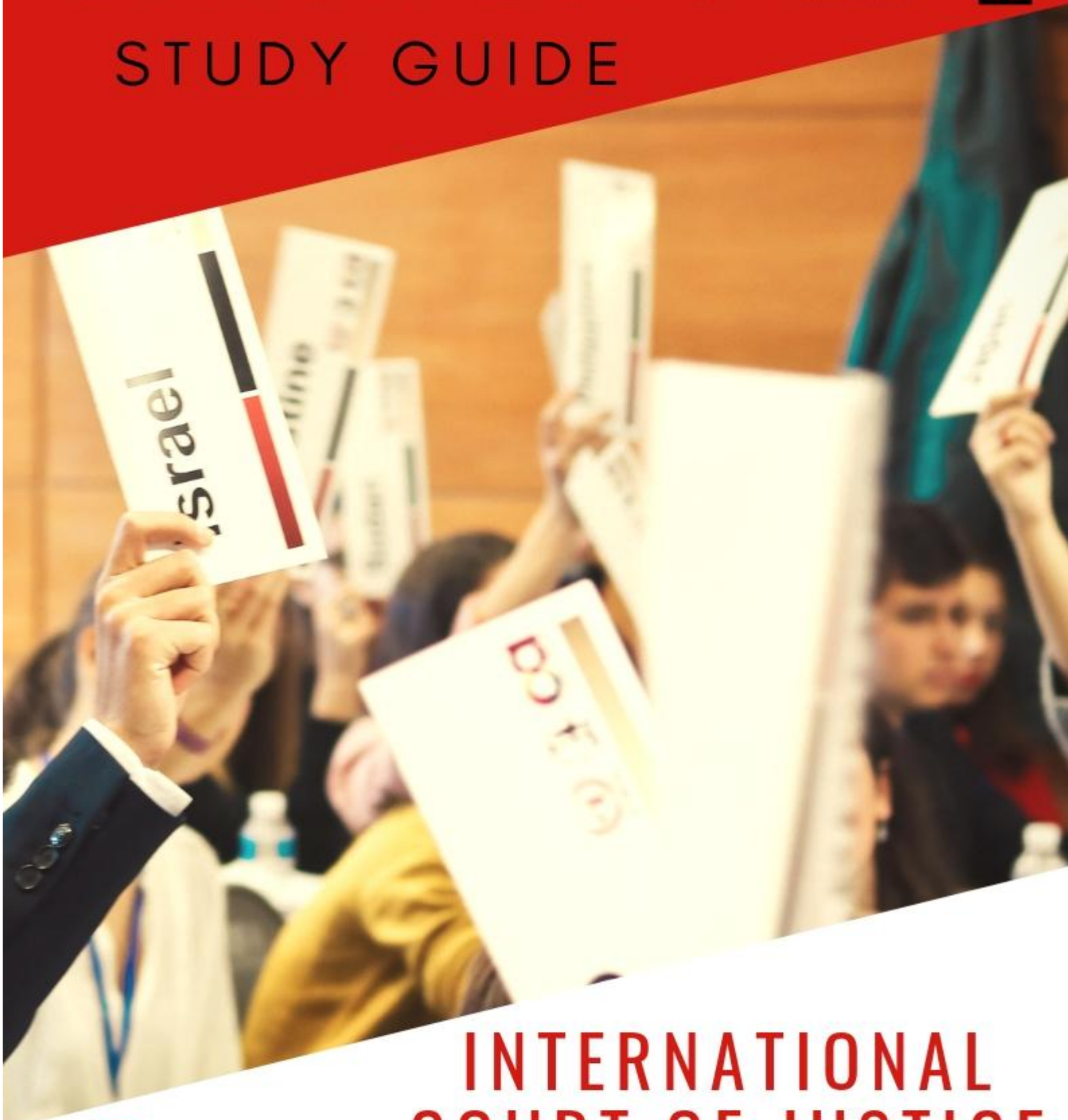


# SYMUN 2018

STUDY GUIDE

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## INTERNATIONAL COURT OF JUSTICE



SYMUN



**This Study Guide on the topic:**

Immunities and Criminal Proceedings (Equatorial Guinea v. France)

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## I. GENERAL INFORMATION ABOUT THE INTERNATIONAL COURT OF JUSTICE

The International Court of Justice (ICJ or the Court from now on) is one of the six main organs of the United Nations and it is the only one of those main organs that is not situated in New York, being located in the Peace Palace, The Hague. It was created in 1945 by Chapter III, Article 6, which reads:

“CHAPTER III: ORGANS

Article 7

There are established as principal organs of the United Nations: a General Assembly, a Security Council, an Economic and Social Council, a Trusteeship Council, an International Court of Justice and a Secretariat.

Such subsidiary organs as may be found necessary may be established in accordance with the present Charter.” (United Nations, UN Charter, 1945)

The ICJ is the principal judicial organ of the United Nations meaning it is the only permanent Court of this organization. Its foundation rests on the same principles that gave rise to the UN. These principles are mentioned in Chapter 1 of the UN Charter, but we are going to pay special attention to article 1.1, that reads:

Article 1

The Purposes of the United Nations are:

To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace; (United Nations, UN Charter, 1945)

In the pursuit of the objectives mentioned before, the Court fulfills a double mission:

### A. Solving Contentious Cases

Disagreements between States occur frequently and are nearly impossible to avoid. States may choose how to peacefully solve their dispute (E.g. mediation, arbitration, etc.), one way to do it's to entrust the resolution of their disagreement to an independent third party like the ICJ.

When faced with a Contentious Case the ICJ's role will be to settle disputes between **States**, in accordance with international law. In order to do this, both States involved in a legal dispute have to accept the jurisdiction of the International Court of Justice. If one of the States refuses to submit its case to the ICJ the International Court of Justice won't have the jurisdiction over that case, as States can't be force into litigation at the ICJ.



States can accept the ICJ jurisdiction over a case in a multitude of ways (art. 36 of the Statute of the Court, see *appendix*):

- **Through a Special agreement** (E.g. Germany v Denmark and the Netherlands [1969]): in these agreements the States involved in a pre-existing dispute give the ICJ jurisdiction over a specific case on a one-time basis.
- **Through what's known as Optional Clause Declarations** (Australia v. Japan: New Zealand intervening [2014]): Art. 36. 2 of the Statute of the Court states that at any time one State "*may ... declare that they recognize as compulsory ... the jurisdiction of the Court*" (United Nations, Statute of the International Court of



Justice, 1946) over future disputes. Some declarations exclude several types of disputes that the particular State does not wish to submit to the Court. If both States involved in a dispute have made these declarations before a dispute arises, the ICJ will have jurisdiction over that dispute.

- **Through Treaties containing provisions -or Compromissory clauses-** (E.g. *Argentina v. Uruguay* [2010]): these provisions give the ICJ jurisdiction over future disputes in regard to the Treaty's application or interpretation.

**What does it mean to accept the jurisdiction of a judicial organ?** The term jurisdiction comes from two Latin words, *iuris* (law) and *dicere* ("to speak"), meaning that the Court has competence to decide the outcome of the case presented before it. To accept a Court's jurisdiction over a litigation means to accept its power to administer justice in a determined legal dispute or in other words, to consent to the Court settling their dispute.

### ***B. Solving Advisory Proceedings***

Occasionally the ICJ will provide legal advice or guidance to UN bodies on legal questions. Unlike the ICJ judgments in Contentious Cases the advisory opinions given in these type of cases are not binding, meaning, they do not require the compliance of the UN body who requested guidance.

The Security Council and the General Assembly may request advisory opinions to the ICJ on all sorts of matters, and other bodies of the United Nations may also pose questions when the General Assembly gives them the authority to do so.



## II. COMPETENCE, FUNCTIONS AND STRUCTURE OF THE COMMITTEE

The Court is composed of 15 **independent** judges belonging to 15 different nationalities (art. 3.1 Statute of the Court - see *appendix*). These magistrates are elected by the General Assembly and the Security Council in simultaneous independent proceedings for a term of nine years (arts. 4 and 8 of the Statute of the Court – see *appendix*). According to Article 10 of the Statute of the Court (SC from now on), the Candidate to the membership of the ICJ that obtains an absolute majority “shall be considered elected” (United Nations, Statute of the International Court of Justice, 1946)– see *appendix*. One third of the Court, meaning 5 magistrates, is elected every 3 years. Judges may be reelected and some of them have served for more than one term.



**What does it mean to be an independent judge?** It means that the judges serve in their individual capacity. When a magistrate is elected to become part of the International Court of Justice, he or she won't be a delegate of his or her country (as it would be the case in the General Assembly, for example), meaning they will represent their own views on the significance and interpretation of International Law, and not those of a State. This independence is materialized by a public solemn declaration of impartiality that every Judge has to state before taking up his or her duties (art. 20 SC – see *appendix*). “In order to guarantee his or her independence, no Member of the Court can be dismissed unless, in the unanimous opinion of the other Members, he/she no longer fulfils the required conditions. This has in fact never happened.” (International Court of Justice, s.f.).

**Judges ad hoc:** art. 31 SC (see *appendix*) states that “a State party to a case before the International Court of Justice which does not have a judge of its nationality on the Bench may choose a person to sit as judge ad hoc in that specific case under the conditions laid down in Articles 35 to 37 of the Rules of Court” (International Court of Justice, s.f.). The nomination of a judge ad hoc is a facultative power (Luiz von Bahten) of the parties involved in a legal proceeding, meaning it's not mandatory for both parties to designate a judge ad hoc, it is merely a prerogative.

### III. THE CASE: IMMUNITIES AND CRIMINAL PROCEEDINGS (EQUATORIAL GUINEA V.FRANCE)

#### A. Factual background

**2007:** criminal proceedings started against Mr. Teodoro Nguema Obiang Mangue before French courts. The reason behind these proceedings were the complaints of a number of individuals and associations (namely, Sherpa, Survie and the Fédération des Congolais de la diaspora) that claimed that Mr. Teodoro Nguema Obiang Mangue, as well as other African heads of States and members of their families were misappropriating or embezzling public funds in their natal countries and then investing those funds in France. “None of the proceedings were preceded by a complaint from Equatorial Guinea. On the contrary, Equatorial Guinea has strongly and consistently protested against these proceedings” (International Court of Justice, 2016).



In November the Paris Public Prosecutor decided to abstain from taking further action in the case, after considering that there was no way of sufficiently establishing the offence of misappropriating public funds.



**Who is Teodoro Nguema Obiang Mangue?** Teodoro Nguema Obiang Mangue is the son of the incumbent president of the Republic of Equatorial Guinea, Teodoro Obiang Nguema Mbasogo (in office since 1979). He has been the vice-president of the Republic of Equatorial Guinea since 2012 (first as second vice-president and then as first vice-president) and before holding this title he was the agriculture and forestry minister (from 1997 to 2012).

**2008:** transparency International France filed a complaint before the senior investigating judge of the Paris Tribunal *de grande instance* (International Court of Justice, 2016).

**2011:** Mr. Mangue transferred a building located at 42 Foch Avenue in Paris to the State of Equatorial Guinea in September 2011. The property is "co-owned by five Swiss companies of which Mr. Teodoro Nguema Obiang Mangue had been the sole shareholder since 18 December 2004" in 2011 Mr. Mangue transferred his shareholder rights to the state of Equatorial Guinea.

This property, "thought to be worth as much as \$180 million ... [and has] 101 rooms, including a Turkish bath, a hair salon, two gym clubs, a nightclub and a movie theater" (de la BAUME, 2012), has been used by the diplomatic mission of Equatorial Guinea since then.

**2012:** the French judge, Roger Le Loire, issued an arrest warrant for Mr. Mangue after his refusal to being interviewed by magistrates on the charges previously mentioned (BBC News, 2012).

**2016:** the Paris correctional Tribunal condemned Mr. Obiang on money laundering charges committed between the years 1997 and 2011. Mr. Obiang was sentenced to three years of suspended prison and the payment of a fine of 30 million euros. To settle this debt, it was ordered to seize all the goods object of the process, including the building.



Also, in 2016, Equatorial Guinea instituted proceedings against the French Republic before the ICJ, with regard the immunity from criminal jurisdiction of Mr. Teodoro Nguema Obiang Mangue, and the legal status of the building located a building located at 42 Foch Avenue in Paris where the Embassy of Equatorial Guinea can be found.

### *B. The parties*

**The Republic of Equatorial Guinea:** in its application to the International Court of Justice, Equatorial Guinea argued the following:

1. Firstly it claims that the French courts violated "the principles of the sovereign equality of States and non-interference in the internal affairs of another States" (International Court of Justice, 2016).
2. Secondly, the Equatorial Guinea's representation argues that the criminal proceedings against Mr. Obiang constituted "a violation of the immunity to which he is entitled under international law and interfere with the exercise of his official functions as a holder of high-ranking office in the State of Equatorial Guinea" (International Court of Justice, 2016).
3. Last but not least, the Equatorial Guinea's affirms that the confiscation of the property located at 42 Foch Avenue violated the principles laid down by the Vienna Convention on Diplomatic Relations of 10 April 1961 and by the Court's Jurisprudence (Germany v. Italy: Greece intervening).

The Republic of Equatorial Guinea requested for:

1. France to suspend all criminal proceedings initiated against the Vice President Mr. Mangue and to abstain from initiating new proceedings against him;
2. France to ensure that the building located on Foch 42 Avenue in Paris is considered as a location of diplomatic mission and to ensure its inviolability;



3. France to abstain from taking any other measure that may cause damage to the rights claimed by it.

**The French Republic** regarding the property at 42 Avenue Foch, France claims that the property is co-owned by the five Swiss companies previously mentioned, of which Equatorial Guinea is the sole shareholder; meaning that this building is not a property of Equatorial Guinea but of the companies (International Court of Justice, 2016).

Regarding the alleged violation of Mr. Obiang's immunity, France responds that the Court has no jurisdiction over this matter, and even if it did France argues that Mr. Obiang cannot be entitled to legal immunity in this case (giving that the alleged crimes were committed by him in his private capacity).

### *C. Applicable law*

**Jurisdiction:** as we have mentioned before in order to administer justice a Court must have jurisdiction over the case. The Jurisdiction of the ICJ in this case is a debatable issue.

I. **The case for the ICJ's jurisdiction over the case (Equatorial Guinea):** Equatorial Guinea argues that the ICJ has jurisdiction over this particular legal dispute. It bases its position on:

- i. **Art. 35.2 of the Convention against Transnational Organized Crime:** this article establishes that after failing to find a solution of a legal dispute regarding the interpretation and application of this Convention, through arbitration, the ICJ will have jurisdiction over it.

Equatorial Guinea argues that this Convention encompasses the criminal proceedings that were taken against Mr. Obiang, specifically in its articles 6, 12, 14 and 18.



ii. **Art. 1 of the Optional Protocol to the Vienna Convention on Diplomatic Protection:** this being a case of a Compromissory clause, a figure that has been explained before in this guide.

II. **The case for the partial jurisdiction over the case (France):** France notes that the provisions previously mentioned of the Convention against Transnational Organized Crime (or Palermo Convention) “do nothing more than oblige States to legislate or regulate. As regards Article 18 of the Convention, France notes that it requested mutual legal assistance from Equatorial Guinea in this case and that the latter raised not the slightest objection on the basis of the rules relating to the immunity *ratione personae* of its Vice-President. France further observes that the proceedings against Mr. Teodoro Nguema Obiang Mangue were instituted not on the basis of the Convention, but under provisions of the French Penal Code, provisions which “were in no way adopted to give effect to the Convention”, since French criminal legislation was already “in complete conformity with the obligations laid down by the . . . Convention”.

Consequently, France considers that the Court has no jurisdiction, on the basis of Article 35, paragraph 2, of the said Convention, to entertain Equatorial Guinea's requests concerning the alleged violation of its sovereignty and the purported interference by France in its domestic affairs. In particular, it asserts that the Court has no jurisdiction to entertain Equatorial Guinea's requests relating to the immunity *ratione personae* claimed by Mr. Teodoro Nguema Obiang Mangue”.

#### D. The principle of sovereign equality and of non-interference

As we have stated before, Equatorial Guinea argues that the French Court that carried out the criminal proceedings against Mr. Obiang violated “the principles of the sovereign equality of States and non-interference in the internal affairs of another States”. As in the previous section, in here too, we find two different legal points of



view. But in order to understand them we have to lay out the basics of these two principles.

- I. **The principle of sovereign equality:** this principle derives from the idea that *Par in parem non habet imperium* or that “equals have no dominion over equals (Noorda, 2013). States, even if some are richer or more militarily prepared, are by the definition equal; this is why this principle prohibits states from dominion over other states (Noorda, 2013).

Art. 2 of the UN Charter sets the legal framework of this principle by stating that: “*The Organization and its Members ... shall act in accordance with the following Principles. 1. The Organization is based on the principle of the sovereign equality of all its Members...*”

- II. **The principle of non-intervention:** this principle of customary international law can be defined as a principle that “*involves the right of every sovereign State to conduct its affairs without outside interference.*” (Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America) , 1986).

**What is customary law?** Customary law derives from custom and for the ICJ it is a source of law (a source of law is “*something that something ... that provides the authority for judicial decisions and for legislation*” (Merriam-Webster, s.f.) according to art. 38 SC, that reads:

#### Article 38

1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:

...

b. international custom, as evidence of a general practice accepted as law;”



Knowing what both of these principles mean, we are ready now to review both countries views.

- I. **The case for the unlawful extension of France's jurisdiction:** In the present case Equatorial Guinea argues that the trial and posterior sentencing of the vice-president was an unlawful extension of France's jurisdiction under the principles that we have seen before.
  
- II. **The case for that lawful trial of Mr. Obiang:** France argues that the crime of money laundering was committed in France, therefore, the French courts had jurisdiction over the case. France also claims that the crime of money laundering is autonomous from the crimes that created the capital being laundered.

**Why is it important where the crime was committed?** in order for a Court to have extraterritorial jurisdiction the Court must be connected to the crime on one of the following points (explained by principles):

1. The active personality principle (connecting point: the criminal): this principle explains that the Court where the active person is from will have the jurisdiction over the case. The active person in a crime is the person that commits the crime (the criminal). In this case Mr. Obiang is not a French citizen, and therefore, his nationality gives jurisdiction to Equatorial Guinea's courts.
  
2. The protective principle (connecting point: the result of a criminal act): when one of the results of criminal acts is to provoke harm to a State's integrity, no matter where in the world these acts were made, the courts of the State being harmed have jurisdiction over them. In this case, Mr. Obiang's actions don't directly harm France's integrity.





3. The territoriality principle (connecting point: the place where the criminal actions took place): The Courts of the State where a crime was committed have jurisdiction over it. The crime of money laundering took place in France.

**Why is it important that money laundering is an autonomous crime for the case of France?** Money laundering is a crime because it involves using a legal scheme to legitimize money that comes from illegal acts. So, it is in fact a crime that needs another crime in order to exist. Some could argue that being this the case it is Equatorial Guinea's courts the ones holding jurisdiction over the case against Mr. Obiang, given that the original crimes were committed in their territory. On the other hand, if money laundering is an autonomous crime then France has jurisdiction over Mr. Obiang's money laundering in France.

#### *E. Rationae personae and rationae materiae*

State immunity give protection to States against legal proceedings that other States may begin against them. For example, a French court could begin criminal proceedings against the United States. State immunity is based on the principle of sovereign equality.

Given that States act through the actions of real people (Heads of states, diplomats, etc.), immunity is given to those people that act in representation of a State. This immunity can be of two different types:

- *Rationae personae* (personal immunity): this is the immunity given to a person because of the nature of their position or the office he or she holds. This immunity grants immunity to the person in acts performed in their official capacity as well as their private acts.
- *Rationae Materiae* (functional immunity): this immunity covers the acts executed by a States official in the performance of their official duties.



- I. **The case for Mr. Obiang's immunity:** Equatorial Guinea argues that being the Vice-President in charge of State Defense and Security, Mr. Obiang is entitled to personal immunity.
  
- II. **The case for the ICJ's lack of jurisdiction over this matter:** as we have explained before, France argues that the court lacks jurisdiction over this matter.

#### *F. Inviolability of the mission premises*

Art. 22 of the Vienna Convention on Diplomatic Relations states that:

*"1. The premises of the mission shall be inviolable. The agents of the receiving State may not enter them, except with the consent of the head of the mission."*

Both legal stands on this topic have been completely explained before.

#### **IV. SOURCES OF INFORMATION AND FURTHER READING**

In order to formulate a legal opinion on all matters discussed before, the Judge must not conform with the information provided in this study guide and must expand its knowledge as much as possible before the start of SYMUN 2018.

You should be familiar with the following sources of information, as well as the sources of information provided in the bibliography. The material contained in this section could either appear during the debate or be useful for you to know more about the case:

- The International Court of Justice ([link](#))
- The Statute of the International Court of Justice ([link](#))
- The Palermo Conference ([link](#))
- Vienna Convention on Diplomatic Relations ([link](#))
- Youtube video on international sources of law ([link](#))



## V. ADDITIONAL INFORMATION AND REMINDERS

Regarding preparation for this Conference, that should go beyond is in this guide, you should prepare a Position Paper that has to be sent to the Chair before the Conference starts.

Moreover, you should read in detail the Rules of Procedure, especially the articles applying to the dress code of this Model of United Nations:

Delegates attire must be at all moments appropriate to the relevance of the event and the role represented. Therefore, compliance with the so-called Western Business Attire is mandatory.

Female: full suit of blazer, with blouse or dress or formal shoe. No jeans or sneakers are acceptable. Cocktail dresses will not be accepted.

Male: full suit or blazer and formal trousers (no jeans are accepted), shirt, tie or bow-tie, and formal shoes. Again, neither sneakers nor formal wear will be accepted.

Despite the above-mentioned provisions, delegates shall wear, at their discretion, clothes, badges, accessories and typical dresses of the countries they represent, if they are appropriate for the occasion according to the protocol of such countries.

Moreover, if you have any doubt or need any information about the Committee, conferences or other issues, don't hesitate to contact us.

### I. APPENDIX

#### A. Statute of the Court

##### Article 3

1. The Court shall consist of fifteen members, no two of whom may be nationals of the same state.



2. A person who for the purposes of membership in the Court could be regarded as a national of more than one state shall be deemed to be a national of the one in which he ordinarily exercises civil and political rights.

#### **Article 4**

1. The members of the Court shall be elected by the General Assembly and by the Security Council from a list of persons nominated by the national groups in the Permanent Court of Arbitration, in accordance with the following provisions.

2. In the case of Members of the United Nations not represented in the Permanent Court of Arbitration, candidates shall be nominated by national groups appointed for this purpose by their governments under the same conditions as those prescribed for members of the Permanent Court of Arbitration by Article 44 of the Convention of The Hague of 1907 for the pacific settlement of international disputes.

3. The conditions under which a state which is a party to the present Statute but is not a Member of the United Nations may participate in electing the members of the Court shall, in the absence of a special agreement, be laid down by the General Assembly upon recommendation of the Security Council.

#### **Article 8**

The General Assembly and the Security Council shall proceed independently of one another to elect the members of the Court.

#### **Article 20**

Every member of the Court shall, before taking up his duties, make a solemn declaration in open court that he will exercise his powers impartially and conscientiously.

#### **Article 31**



1. Judges of the nationality of each of the parties shall retain their right to sit in the case before the Court.
2. If the Court includes upon the Bench a judge of the nationality of one of the parties, any other party may choose a person to sit as judge. Such person shall be chosen preferably from among those persons who have been nominated as candidates as provided in Articles 4 and 5.
3. If the Court includes upon the Bench no judge of the nationality of the parties, each of these parties may proceed to choose a judge as provided in paragraph 2 of this Article.
4. The provisions of this Article shall apply to the case of Articles 26 and 29. In such cases, the President shall request one or, if necessary, two of the members of the Court forming the chamber to give place to the members of the Court of the nationality of the parties concerned, and, failing such, or if they are unable to be present, to the judges specially chosen by the parties.
5. Should there be several parties in the same interest, they shall, for the purpose of the preceding provisions, be reckoned as one party only. Any doubt upon this point shall be settled by the decision of the Court.
6. Judges chosen as laid down in paragraphs 2, 3, and 4 of this Article shall fulfill the conditions required by Articles 2, 17 (paragraph 2), 20, and 24 of the present Statute. They shall take part in the decision on terms of complete equality with their colleagues.

### **Article 36**

1. The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force.



2. The states parties to the present Statute may at any time declare that they recognize as compulsory ipso facto and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning:

a) the interpretation of a treaty;

b) any question of international law;

c) the existence of any fact which, if established, would constitute a breach of an international obligation;

d) the nature or extent of the reparation to be made for the breach of an international obligation.

3. The declarations referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain states, or for a certain time.

4. Such declarations shall be deposited with the Secretary-General of the United Nations, who shall transmit copies thereof to the parties to the Statute and to the Registrar of the Court.

5. Declarations made under Article 36 of the Statute of the Permanent Court of International Justice and which are still in force shall be deemed, as between the parties to the present Statute, to be acceptances of the compulsory jurisdiction of the International Court of Justice for the period which they still have to run and in accordance with their terms.

6. In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court.

### ***B. United Nations Convention against Transnational Organized Crime***



1. States Parties shall endeavor to settle disputes concerning the interpretation or application of this Convention through negotiation.
2. Any dispute between two or more States Parties concerning the interpretation or application of this Convention that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.
3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Convention, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.
4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

***C. Optional Protocol to the Vienna Convention on Diplomatic Relations,  
concerning the Compulsory Settlement of Disputes***

**Article I**

Disputes arising out of the interpretation or application of the Convention shall lie within the compulsory jurisdiction of the International Court of Justice and may accordingly be brought before the Court by an application made by any party to the dispute being a Party to the present Protocol.

**Article 22**



- 1.The premises of the mission shall be inviolable. The agents of the receiving State may not enter them, except with the consent of the head of the mission.
- 2.The receiving State is under a special duty to take all appropriate steps to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity.
- 3.The premises of the mission, their furnishings and other property thereon and the means of transport of the mission shall be immune from search, requisition, attachment or execution.





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