

Inkundla yeHlabathi / World Forum (IyeH) is an international organisation of which your State is a Member. The headquarters of IyeH are located in Cape Town, South Africa. Each Member State has established a Permanent Mission to IyeH which houses 15-20 delegates. The Republic of South Africa ('the receiving State') has accredited each Permanent Mission to IyeH as a 'diplomatic mission' in terms of the *Vienna Convention on Diplomatic Relations* (1961).

Each Permanent Mission uses a shared computer network to communicate information. This network includes a common chat room to discuss issues of shared concern, as well as State-specific chat rooms intended for communication between delegates to IyeH representing a particular State.

A dispute has arisen regarding the **inviolability of State-specific chat rooms** – that is, whether representatives of the receiving State or any other State may infiltrate another State's chat room in order to gather information. The *Vienna Convention on Diplomatic Relations* was drafted many years before the advent of the Internet or other forms of online electronic communication and does not specifically envisage confidentiality of electronic communications. Both the Ministers of Foreign Affairs and Information seek your advice (but unfortunately without doubling your meagre salary).

TASK 1 [25 mins, in working groups]

1. Ensure you are fully familiar with the rules on treaty interpretation in the *Vienna Convention on the Law of Treaties* (1969) [attached] and the circumstances under which each of these rules should be applied.
2. May your State rely on the *Vienna Convention on the Law of Treaties* (1969) to provide rules for interpreting the provisions of the *Vienna Convention on Diplomatic Relations* (1961)? If so, why? If not, why not?
3. What advice would you give the two Ministers as to whether messages in a State-specific chat room are considered as 'official correspondence' under the *Vienna Convention on Diplomatic Relations* (1961)? How would you justify your interpretation of the treaty?

TASK 2 [online, by Monday 6 March, under 'International Actions > Treaty Negotiations']

1. Post an interpretative declaration on behalf of your State under 'International Actions' > 'Treaty Negotiations', setting out your reasons in brief. This message can be posted by the Permanent Representative or any other Minister or delegate.

***Vienna Convention on Diplomatic Relations* (1961),
500 UNTS 95 [excerpts]**

Article 27

[Preamble]

The States Parties to the present Convention,

Recalling that peoples of all nations from ancient times have recognized the status of diplomatic agents,

Having in mind the purposes and principles of the Charter of the United Nations concerning the sovereign equality of States, the maintenance of international peace and security, and the promotion of friendly relations among nations,

Believing that an international convention on diplomatic intercourse, privileges and immunities would contribute to the development of friendly relations among nations, irrespective of their differing constitutional and social systems,

Realizing that the purpose of such privileges and immunities is not to benefit individuals but to ensure the efficient performance of the functions of diplomatic missions as representing States,

Affirming that the rules of customary international law should continue to govern questions not expressly regulated by the provisions of the present Convention,

Have agreed as follows:

[...]

1. The receiving State shall permit and protect free communication on the part of the mission for all official purposes. In communicating with the Government and the other missions and consulates of the sending State, wherever situated, the mission may employ all appropriate means, including diplomatic couriers and messages in code or cipher. However, the mission may install and use a wireless transmitter only with the consent of the receiving State.

2. The official correspondence of the mission shall be inviolable. Official correspondence means all correspondence relating to the mission and its functions.

[...]

Article 40

[...]

3. Third States shall accord to official correspondence and other official communications in transit, including messages in code or cipher, the same freedom and protection as is accorded by the receiving State. They shall accord to diplomatic couriers, who have been granted a passport visa if such visa was necessary, and diplomatic bags in transit the same inviolability and protection as the receiving State is bound to accord.

4. The obligations of third States under paragraphs 1, 2 and 3 of this Article shall also apply to the persons mentioned respectively in those paragraphs, and to official communications and diplomatic bags, whose presence in the territory of the third State is due to force majeure.

Vienna Convention on the Law of Treaties (1969)
1155 UNTS 331 [excerpts]

Article 4
Non-retroactivity of the present Convention

Without prejudice to the application of any rules set forth in the present Convention to which treaties would be subject under international law independently of the Convention, the Convention applies only to treaties which are concluded by States after the entry into force of the present Convention with regard to such States.

Article 31
General rule of interpretation

1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.
2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:
 - (a) any agreement relating to the treaty which was made between all the parties in connexion with the conclusion of the treaty; (b) any instrument which was made by one or more parties in connexion with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.
3. There shall be taken into account, together with the context:
 - (a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions; (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation; (c) any relevant rules of international law applicable in the relations between the parties.
4. A special meaning shall be given to a term if it is established that the parties so intended.

Article 32
Supplementary means of interpretation

Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31:

- (a) leaves the meaning ambiguous or obscure; or (b) leads to a result which is manifestly absurd or unreasonable.

Article 33
Interpretation of treaties authenticated in two or more languages

1. When a treaty has been authenticated in two or more languages, the text is equally authoritative in each language, unless the treaty provides or the parties agree that, in case of divergence, a particular text shall prevail.
2. A version of the treaty in a language other than one of those in which the text was authenticated shall be considered an authentic text only if the treaty so provides or the parties so agree.
3. The terms of the treaty are presumed to have the same meaning in each authentic text.
4. Except where a particular text prevails in accordance with paragraph 1, when a comparison of the authentic texts discloses a difference of meaning which the application of articles 31 and 32 does not remove, the meaning which best reconciles the texts, having regard to the object and purpose of the treaty, shall be adopted.

33. It is accordingly incumbent upon the Court to decide the meaning of the text in question by applying the rules of interpretation that it recently had occasion to recall in the case concerning the *Territorial Dispute (Libyan Arab Jamahiriya/Chad)*:

“in accordance with customary international law, reflected in Article 31 of the 1969 Vienna Convention on the Law of Treaties, a treaty must be interpreted in good faith in accordance with the ordinary meaning to be given to its terms in their context and in the light of its object and purpose. Interpretation must be based above all upon the text of the treaty. As a supplementary measure recourse may be had to means of interpretation such as the preparatory work of the treaty and the circumstances of its conclusion.” (*I.C.J. Reports 1994, Judgment*, pp. 21-22, para. 41.)

Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain)
[1995] ICJ Rep 6 at para. 33: