



GeMUN 2012

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The International Court of Justice

(By Camilla Torresan, GeMUN ICJ Board)

The International Court of Justice (ICJ) was established by the United Nations in 1945 and is based in The Hague, the Netherlands. It is the principal international judicial body of the United Nations. The two major roles of the ICJ include developing advisory opinions on matters of international law and presiding over legal disputes submitted to the court by Member States. Only Member States may submit cases to the Court, and the Court is only considered competent to preside over a case if both States have accepted the jurisdiction of the Court over the dispute. The ICJ does not preside over legal disputes between individuals, non-governmental organizations, corporations or any other private.

The official languages of the Court are English and French.

For every case, there are two Advocates representing one country. As there are two member states per case, there are a total of four Advocates; the "plaintiff" or party bringing the case, is called the **Applicant**. The "defendant" is called the **Respondent** along with a President a Vice President, a Registrar and 15 Judges.

The ICJ follows the *ICJ Statute*, which is an integral part of the Charter of the United Nations, and the *Rules of Court*.

The Registry

The Registry is the permanent administrative organ of the ICJ. It is responsible to the Court alone. Since the ICJ is both a court of justice and an international organ, the Registry's tasks are both those of a service helping in the administration of justice—with sovereign States as litigants — and those of the secretariat of an international commission.



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Advisory Opinions

The advisory procedure of the Court is open solely to international organizations. The only bodies at present authorized to request advisory opinions of the Court are five organs of the United Nations and 16 agencies of the United Nations family.

Jurisdiction

The Court is competent to entertain a dispute only if the States concerned have accepted its jurisdiction in one or more of the following ways:

1. by the conclusion between them of a special agreement to submit the dispute to the Court;
2. by virtue of a jurisdictional clause, i.e., typically, when they are parties to a treaty containing a provision whereby, in the event of a disagreement over its interpretation or application, one of them may refer the dispute to the Court. Over 300 treaties or conventions contain a clause to such effect;
3. through the reciprocal effect of declarations made by them under the Statute whereby each has accepted the jurisdiction of the Court as compulsory in the event of a dispute with another State having made a similar declaration.

Procedure

The procedure followed by the Court in contentious cases is defined in its Statute, and in the Rules of Court adopted under the Statute. The proceedings include a written phase, in which the parties file and exchange pleadings, and an oral phase consisting of public hearings at which agents and counsels address the Court. After the oral proceedings the Court deliberates in camera and then delivers its judgment at a public sitting. The judgment is final and without appeal. Should one of the States involved fail to comply with it, the other party may have recourse to the Security Council of the United Nations.

Sources of applicable law

The Court decides in accordance with international treaties and conventions in force, international custom, the general principles of law and, as subsidiary means, judicial decisions and the teachings of the most highly qualified publicists.



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Preparation for a debate

General Preparation

Initially, ICJ Representatives should determine whether they have access to international legal sources. All ICJ Representatives need to acquire a basic working knowledge about the history of the ICJ and how it functions, which is available at www.icj-cij.org. They will also need to research the factual and legal background about each of the disputes in which they are involved.

Justices

Justices should review relevant treaties, applicable international common law, and prior ICJ decisions and scholarly articles analyzing those treaties, common laws and decisions. Most law school libraries, and many undergraduate libraries, have international law casebooks which contain ICJ opinions, as well as opinions written by justices sitting on other international tribunals; these are also available online at www.un.org/Depts/dhl/resguide/specil.htm.

As you read these decisions, ask yourself:

- What writing style does the author use?
- How do Justices address jurisdictional issues?
- How do they apply the law to the facts of the case?

Duties of the Justices

Each justice, while “independent,” will still have a role-playing function. ICJ justices “retain” their citizenship with whatever state their school represents at the Conference. Justices not affiliated with a delegation will be assigned citizenship with a state. A justice’s citizenship is important, since it is frequently the case in the “real” ICJ that a justice from a particular country will side with the position advocated by their country of origin when that state comes before the ICJ, although they do not always do so. Thus, while ICJ justices are supposed to be independent advocates for the law, they often come to the Court with inherent biases based on their home country’s history, culture, religion and laws.

Justices will each have an opportunity to review the memorials submitted for each case. All justices will be expected to hear arguments and question the advocates in all cases on the docket. After each case is argued, the justices will retire to deliberate and to write opinions.

Justices should take the time to do preliminary research on the cases and advisory opinions.

Note: Remember that the GeMUN ICJ is a simulation. No one expects students, who are by definition not lawyers or justices, to make decisions and render opinions with the same level of sophistication as actual ICJ justices. Your job is simply to gain a basic understanding of what considerations are taken into account by justices when deciding cases and writing opinions.



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Advocates

Advocates must thoroughly research both the law and facts involved in the dispute from which their case arises. Advocates also will be responsible for the preparation of written memorials and the presentation of oral arguments regarding their positions in their case.

Preparation of Memorials

ICJ memorials contain, in the following order:

1. A statement of facts (what are the relevant facts in the case?);
2. A jurisdictional statement and arguments (i.e. does the state recognize the Court's jurisdiction on this case, and why or why not?);
3. A statement of law (what laws, customs, precedents or treaties apply?);
4. A detailed argument section, which discusses how the law and facts apply to the merits of the case (how do the laws and facts support your case?);
5. A summary and prayer for relief (what do you want the Court to do?).

Oral arguments

Oral arguments provide Advocates with an opportunity to explain to the Justices the factual and legal merits of their case. In each case, the Applicant shall argue first. The Respondent shall then have the same amount of time to reply. Advocates should be aware that the oral argument is not simply an opportunity to give a prepared "speech." While an Advocate should have an outline of the points they wish to make, the Justices often interject with specific questions during each Advocate's presentation.

The first five minutes of each Advocate's presentation will be uninterrupted, to allow each side the opportunity to freely present the key issues of their arguments. After the initial five minutes, the Advocates may continue with their presentations, but the Justices may also interject and question the Advocates on the merits of their case. Therefore, be prepared to both answer questions and defend your position.

The following steps should be taken to prepare for oral arguments:

1. Identify the issues that are the critical, deciding factors in the case. You should try to have at least three critical points to your argument.
2. Examine your memorial. What are your best arguments regarding the critical issues?
3. Develop a "theme" which incorporates your best arguments on the critical issues. Keep it simple. Remember, you are just trying to tell the Justices a story - a story about why your country has been wronged, or about what they can do to provide a fair and just solution.
4. Prepare an outline. The outline should include your theme, your best arguments on the critical issues, your answers to your opponent's best arguments, and ideas about answers to any other



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questions you think the justices might ask. Try to make your memorial and oral argument outline consistent, so that the first issue addressed in the memorial is the first addressed in the oral argument. Though each Advocate will have more than five minutes to present oral arguments, keep in mind that only the first five minutes of the presentations will be uninterrupted. Therefore, while preparing your presentation it is to your advantage to focus on the main points and key issues during the first five minutes. We suggest that you follow a “pyramid” format, in which the crux of the argument is presented first and then for the remainder of the allotted time the speaker expands on those issues in a more thorough and complete manner. This format can also allow for a quick means of referencing issues during the remaining period of presentation/questions. It is also wise to conclude your presentation by again summing up the key points.

5. Do not write out answers verbatim. Do, however, write out “catch phrases” or legal terms you will want to remember precisely. Oral arguments will involve extemporaneous speaking and responses, not the presentation of a memorized speech.
6. Be sure your outline includes specific names of conventions, treaties, cases, etc. which you are using to support your answers. This is very important because your legal argument is what you need to use to convince the Justices that your side of the case is stronger.
7. Practice, practice, practice! There is no substitute for practicing oral arguments. Your presentation is likely to be smoother, and thus more persuasive. Have your Faculty Advisor and/or other students fire questions at you. Learn to field those questions, and then transition back to the point you were making prior to the question.
8. Hammer home your theme again and again. Remember, your legal argument is what is going to convince the Justices to decide in favor of your state. The facts are the facts; what is going to be in contention is how international law views the dispute. Rambling, disjointed presentations are not persuasive. Simple, concise answers that repeatedly stress the same points are persuasive, and will be remembered by the Justices.
9. Contact a court (an appeals court, if possible) in your area and find out when arguments or a trial will occur. Then, visit the court and observe how the attorneys make their presentations, and how the Justices question them. Also, on the web, at www.icj-cij.org, there are oral arguments that you can listen to via your computer.
10. Learn proper courtroom demeanor. Remember to be polite and deferent to the justices at all times. While argument is the method, persuasion is the goal.

Preparing a Case

- Stipulations: main points of your defence/accuse.
- Refer to treaties
- Say you tried to deal with the other part but they refused your proposal



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Opening Speech

- It's about 20 minutes per part (applicant goes first)
- Introduce the case
- Have an emotional appeal

Memorial

- Explain the subject of dispute
- Say if you accept the jurisdiction of the court (refer to treaties)
- Strengthen your stipulations in the legal claims:
 - present evidences
 - remind treaties that haven't been respected
 - include maps and images
- Seek to counter the anticipated arguments of the Applicant
- Ask a judgment:
 - a payment from the other country
 - the withdrawn of all the accusations

*remember: you have to give an overview of the matter, be concise and clear; you should manipulate the other part but don't confuse the judges.

Start with simple points, after explain the weakest ones, then the stronger ones.

Witnesses

- They can't be real people (ex. Not Barack Obama but the U.S. president)
- They could be scientists or scholars from the UN or NGOs
- They have to memorize what they have to say
- They have to know the case, not just the answer they have to give
- They have to be sure of what they say in order to convince the Justice
- You can't tell them what to say in your question



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Example of trial

- Presentation of the case
- Reading of stipulations
- Applicant's Opening Speech
- Respondent's Opening Speech
- Witnesses
- Applicant's Closing Argument
- Respondent's Closing Argument
- Judges alone take the decision
- Judgment

Useful Websites: www.icj-cij.org

<http://www.icj-cij.org/presscom/en/inotice.pdf>

<http://www.haguejusticeportal.net/eCache/DEF/6/178.html>