

# CHAPTER IV.

## THE INTERNATIONAL COURT OF JUSTICE

The International Court of Justice (ICJ) was established under Chapter XIV of the United Nations Charter. It replaced the Permanent Court of Justice, which existed under the UN's predecessor, the League of Nations.

The ICJ is the only major UN body whose headquarters is not in New York City; the Court sits in the Hague, Netherlands. The Court is the principal judicial organ of the UN, and all members of the UN are ipso facto parties to the Statute of the ICJ. Fifteen independent judges, elected by the General Assembly and the Security Council, each serve on the Court for nine-year terms.

The purpose of the ICJ is to decide international legal disputes. Only nations which have accepted the ICJ's jurisdiction may submit disputes to the Court for resolution, or be named as parties in a case. Only states may be parties in cases. The ICJ does not have authority to decide disputes involving individuals, or public or private organizations, although public organizations may be requested by the Court to present information. The ICJ is empowered to render advisory opinions at the request of the General Assembly or the Security Council, and under certain circumstances, other UN bodies.

Article 38 of the Statute of the ICJ establishes the sources of law to be applied by the Court in resolving disputes in accordance with international law:

1. International Conventions (and treaties);
2. International Custom, as evidence of a general practice accepted as law;
3. General Principles of Law recognized by civilized nations; and
4. Judicial Decisions (case law precedent) and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of law.

The Court has rendered a number of major decisions and advisory opinions since 1945. While not all of its decisions have been strictly complied with by the parties -- the ICJ has no binding enforcement mechanism -- its rulings do set legal precedent and have a strong moral and legal persuasive effect on parties and other interested states. The Court has been particularly effective in resolving boundary disputes and in providing a legal basis for actions to enforce damage claims by states in certain disputes involving the use of force (e.g. in *United States v. Iran*, and in *Libya v. Chad*).

### STRUCTURE OF AMUN'S ICJ

The cases before the 2002 AMUN International Court of Justice (ICJ) include:

- *Democratic Republic of the Congo v. Uganda* (1999): Dispute Over the Armed Activities on the Territory of the Congo;
- *Liechtenstein v. Germany* (2001): Dispute Over the Reparation of Property Stemming from World War II; and
- *Spain v. Canada* (1995): Fisheries Jurisdiction Case.

Other cases and/or advisory opinions may be determined and announced at a later time. Representatives are strongly encouraged to contact AMUN if their delegation wishes to bring a case before the Court.

Background papers on the cases listed above are provided in the *Issues at AMUN Handbook*. Explicit instructions on the procedures of the Court will be forthcoming to all registered delegations in an ICJ Addendum.

AMUN's ICJ is an all-student-run simulation, in that students serve both as judges and as advocates (attorneys for the parties and other states who submit amicus curiae, or "friend of the court" memorials and arguments). One member of AMUN's Secretariat will serve as Director of the Court. The Director's responsibilities include the approval of cases for inclusion on the Court's docket, the review of memorials submitted to the Court, the preparation of the Court's docket, and the provision of any assistance needed to ICJ Judges and Advocates.

The cases pre-selected by the AMUN Secretariat will form the Court's initial docket. Additional case requests may be submitted by any state registered as an AMUN delegation or by any ICJ Representative. Such requests will be reviewed by the Director. The AMUN Secretariat, with the advice of the Director, will decide whether such additional cases will be included on the



Court's docket. *Also, the AMUN General Assembly and/or Security Council may, at any time, request that the Court consider a question of international law and render an advisory opinion.*

The Court will meet to hear arguments throughout the Conference. The Judges, in consultation with the Director, will set the docket and review the procedures of the Court on the first day of the Conference.

## REPRESENTATIVE INFORMATION

Any college, graduate or law student may register as either a judge or an advocate for the ICJ, regardless of whether the student's school is registered for a delegation at AMUN. Up to two students from a school may participate on the ICJ.

Advocate positions are available to any student applicant. **If a state which is a party to a case is represented at the AMUN Conference by a school's delegation, that state will be expected to provide a Representative to argue its case, unless other arrangements are made with the Secretary-General.** Additionally, any Representative wishing to present a "friend of the court" memorial and oral argument may participate, as a representative of a state (or an international organization) not represented at the AMUN Conference.

Judge positions are available on a first-come, first-served basis, until the fifteen judge positions are filled. Judges may be a member of a delegation, or any interested non-delegation member. **States involved in a case before the Court are strongly encouraged to place a Judge on the Court for the duration of the Conference.**

**Judge positions are duration-of-conference assignments, and Representatives serving as judges should not be assigned to another simulation.** ICJ judges should expect to spend the entirety of Saturday setting the docket and determining the final procedures of the Court. Sunday, Monday and Tuesday will be spent hearing cases and rendering decisions on those cases.

**Advocate positions are not duration-of-the-conference assignments.** ICJ advocates should expect to spend four to five hours presenting their case on either Sunday, Monday or Tuesday. ICJ advocates should also serve as Representatives to another of the AMUN simulations. It is essential that, whenever possible, the ICJ advocate is teamed with another Representative in a Committee/Council, so that the simulation will still be covered when the ICJ Representative is in the Court. Advocate positions would also be ideal for a Permanent Representative who is "floating" between Committees/Councils.

There is no additional per delegate fee for a student assigned to a Committee/Council who also serves as an ICJ Representative from a school with a registered delegation. Students from a school without a registered delegation must pay the \$36.00 per delegate registration fee.

## PREPARATION

**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. They will also need to research the factual and legal background about each of the disputes in which they are involved on AMUN's ICJ docket.

**Judges:** Judges should review prior ICJ decisions and articles analyzing those decisions. Most law school libraries, and many undergraduate libraries, have international law casebooks which contain ICJ opinions, as well as opinions written by judges sitting on other international tribunals; these are also available online at [www.un.org/Depts/dhl/resguide/specil.htm](http://www.un.org/Depts/dhl/resguide/specil.htm). As you read these decisions, ask yourself: What writing style is used by the writer? How do the judges address jurisdiction issues? How do they apply the law to the facts of the case?

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

**Advocates:** Advocates must thoroughly research both the facts and law 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 brief statement of law (what laws, customs, precedents or treaties apply?);
2. A statement of facts (what are the relevant facts in the case?);
3. A jurisdictional statement, including arguments on jurisdiction (does the state recognize the court's jurisdiction on this case, and why?);
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?); and
5. A summary and prayer for relief (what do you want the court to do?).

The “plaintiff,” or party bringing the case, is called the Applicant. The “defendant” is called the Respondent. Due to time constraints, both the Applicant and Respondent in any AMUN ICJ case must prepare their memorials without seeing the memorial of their opponent. However, the Respondent's memorial should seek to counter the anticipated arguments of the Applicant.

Amicus Curiae, or “friend of the court” memorials, may be submitted by any state or organization with an interest in the case. Such memorials may advocate the position of either the Applicant or the Respondent, or they may advocate other arguments, based partially on each side's position(s), or another position not advocated by either party.

All memorials are to be submitted on the first day of the AMUN Conference, unless decided otherwise by the Court. Copies should be provided in sufficient number (eighteen unless otherwise advised) to distribute to all other parties and judges.

## PREPARATION OF ORAL ARGUMENTS

Oral arguments provide advocates with an opportunity to explain to the judges the merits of their arguments. In each case, the Applicant shall argue first, and shall have approximately fifteen minutes to speak. The Respondent shall then have approximately fifteen minutes to reply. Advocates presenting friend of the court arguments will then be accorded five minutes each to speak. Note that the Court may alter these times as it deems necessary.

Advocates should be aware that oral argument is not simply an opportunity to give a “speech.” While an advocate should have an outline of the points he/she wishes to make, the judges can, and likely will, 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 judges may also interject and question the advocates on the merits of their case.** Therefore, be prepared to both answer questions and present a defense of your positions.

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

1. Identify the issues which are the critical, deciding factors in the case. Usually, there will be no more than three critical issues.
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 judges 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 questions you think the judges 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.
5. Though each advocate has fifteen minutes to present his/her 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 ten minutes of presentation/questions. It is also wise to conclude your presentation by again summing up the key points.

6. 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.
7. Be sure your outline includes specific names of conventions, treaties, cases, etc. which you are using to support your answers. It is a good idea to make brief notes about what each convention, treaty or case says.
8. 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. Also, many good speakers practice in front of a mirror -- there is no better way to evaluate yourself.
9. Hammer home your theme again and again. Rambling, disjointed presentations are not persuasive. Simple, concise answers which repeatedly stress the same points are persuasive, and will be remembered by the judges.
10. 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 judges question them.
11. Learn proper courtroom demeanor. Remember to be polite and deferent to the judges at all times. While argument is the method, persuasion is the goal.

## **DUTIES OF THE JUDGES**

AMUN ICJ judges will have wide latitude to operate within the AMUN Statute of the ICJ, copies of which will be furnished to all ICJ Representatives. Judges will meet with the Director on the first day of the Conference to go over the Statute and to establish their own internal rules of procedure.

Each judge, while “independent,” will still have a role playing function. ICJ judges “retain” their citizenship with whatever nation their school represents at the Conference. Judges not affiliated with a delegation will be assigned citizenship with a nation. A judge’s citizenship is important, since it is frequently the case in the “real” ICJ that a judge from a particular country will side with the position advocated by his/her country of origin when that state comes before the ICJ (although they do not always do so). Thus, while ICJ judges are supposed to be “independent,” many judges exhibit some “favoritism” toward the position of their own nation or bloc.

Judges will each have an opportunity to review the memorials submitted for each case. All judges will be expected to hear arguments and question the advocates in all cases on the docket. After each case is argued, the judges will retire to meet and make their decisions, then write their opinions.

Judges should take the time to do preliminary research on the pre-set cases and advisory opinions. If Judges have difficulty accessing documents relevant to the cases or advisory opinions, they should contact the Secretary-General at the Conference address to request the appropriate materials.

