



CHAPTER FOUR

INTERNATIONAL COURT OF JUSTICE

WHAT IS THE INTERNATIONAL COURT OF JUSTICE?

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

The ICJ is the only major United Nations 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 United Nations, and all Member States of the United Nations are *ipso facto* (Latin for "by the fact itself") Parties to the Statute of the ICJ. Fifteen independent Justices, elected by the United Nations General Assembly and the United Nations Security Council, serve on the Court for nine-year terms.

The primary purpose of the Court is to render opinions on international legal disputes between States. Only States that have accepted the jurisdiction of the ICJ may submit cases. Another purpose of the Court is to clarify significant international legal questions brought to it by the United Nations General Assembly or the Security Council. When a United Nations body brings an issue before the Court, it is requesting an Advisory Opinion. The ICJ does not have authority to decide disputes involving individuals, the public, or private organizations, although the Court may request that public organizations present information in a case.

In order to ensure a successful and educational simulation, any developments in contemporary cases that occur after 18 October will be disregarded. When submitting your memorials, please take this date into account. The Conference simulation will begin with the facts of the case as they are on 18 October. AMUN is dedicated to running a superior simulation, and preempting contemporary developments in this way will ensure that all participants can adequately prepare for their roles.

When States have a case before the Court, the named parties submit written memorials before Conference and present oral arguments during Conference. When the Court is asked to render an Advisory Opinion, interested or assigned parties also submit written memorials and present oral arguments before the Court. In both types of cases, interested parties can seek to submit an *amicus curiae* (Latin for "friend of the Court") memorial. These memorials may be submitted by States not specifically named in the case.

Article 38 of the Statute of the ICJ establishes the sources of law that the Court must apply, while resolving disputes in accordance with international law:

- International conventions (and treaties)
- International custom, as evidence of a general practice accepted as law
- General principles of law recognized by civilized States
- As a subsidiary means, judicial decisions and the teachings of qualified legal scholars.

Since 1945, the Court has rendered many decisions and Advisory Opinions. Since the Court has no binding enforcement mechanism,

not all of the disputing parties have complied with its decisions. Despite this condition, the Court's rulings are typically considered as authoritative interpretations of international law and have a strong moral and persuasive effect on the international legal community. The Court's most effective areas have been boundary disputes and providing a legal basis for enforcing States' damage claims in disputes involving the use of force (e.g., in Libyan Arab Jamahiriya/Chad, and in Islamic Republic of Iran v. United States).

STRUCTURE OF AMUN'S INTERNATIONAL COURT OF JUSTICE

The cases before this year's AMUN International Court of Justice are

- Ecuador v. Colombia (Aerial Herbicide Spraying)
- Gabčíkovo-Nagymaros Project (Hungary v. Slovakia)
- Whaling in the Antarctic (Australia v. Japan)

Case briefs on the cases listed above are provided in the *Issues at AMUN* handbook.

Students serve as both Justices and Advocates at AMUN. While Justices adjudicate the dispute, the Advocates present the arguments of the parties to the dispute. Advocates can also represent other interested groups who seek to submit an *amicus curiae* memorial.

Representatives may submit an *amicus curiae* memorial from any State or organization with an interest in the case. Such memorials may advocate the position of either the Applicant or the Respondent; other arguments based partially on each side's position(s); or another position not advocated by either party.

The ICJ Justices and Advocates will be assisted by members of AMUN's Secretariat: the Director and Registrars of the Court. Secretariat responsibilities include approving cases for inclusion on the Court's docket, reviewing Memorials submitted to the Court, assisting in the preparation of the Court's docket and providing any other assistance needed by ICJ Justices and Advocates.

The cases pre-selected by the AMUN Secretariat will form the Court's docket. The General Assembly or the Security Council may submit a request to the ICJ for an Advisory Opinion on a topic of international law. The Secretary-General, with the advice of the Director of the ICJ, will decide whether to include additional cases on the Court's docket.

The Court will meet to hear arguments throughout the Conference. The Justices, in consultation with the Director, will set the docket and review the procedures of the Court on the first day of the Conference. The docket, once set, will be published for the Advocates and other interested in the Court's proceedings.

REPRESENTATIVE INFORMATION

Any college, graduate or law student may register as a Justice for the ICJ, regardless of whether the student's school is registered for a delegation at AMUN.



A delegation with a case before the ICJ will be expected to provide at least one representative to argue its case unless other arrangements are made with the Secretary-General by 1 October.

Justice positions are assigned by application on a first-come, first-served basis until the fifteen seats on the Court are filled. Note that no school will be allowed more than one Justice on the Court unless additional seats are open just prior to the Conference. It is not a requirement for Justices to be a member of a delegation. States involved in a case before the Court are strongly encouraged to place a Justice on the Court. States wishing to do this may do so in two ways: (1) they may register someone to be a permanent Justice; or (2) they may appoint an ad hoc (Latin phrase meaning “for this”) Justice who would only sit for their case.

Ad hoc Justices only sit on the Court for the case in which their country is involved and must be assigned to another committee. If States wish to appoint an ad hoc justice they must contact the Secretary-General by 1 October. All other Justices are duration-of-Conference assignments, and representatives serving as Justices shall not be assigned to another simulation. The Justices should expect to spend the first day setting the docket, electing officers, determining the final procedures of the Court and reviewing the substantive issues in each case before the Court. The rest of Conference will be spent hearing cases, deliberating and rendering opinions on those cases.

Advocate positions are not duration-of-the-Conference assignments. ICJ Advocates should expect to spend two to three hours presenting their case and hearing the Court’s opinion during Conference. ICJ Advocates should also serve as representatives in another AMUN simulation. It is essential that, whenever possible, the ICJ Advocate or ad hoc Justice is teamed with another representative in a committee, so that their State is represented in the committee while the representative is fulfilling their duties in the ICJ.

PREPARATION

General Preparation: All ICJ Justices and Advocates need to acquire a basic working knowledge of the history of the ICJ and how it functions, which is available at www.icj-cij.org. They will also need to read the ICJ section in the *Issues at AMUN* handbook and further research the factual and legal background of each of the disputes in which they are involved.

Justices: Justices should review relevant treaties, applicable international common law and prior ICJ decisions, in addition to scholarly articles analyzing those treaties, common laws and decisions. ICJ opinions, as well as opinions written by Justices sitting on other international tribunals are available online at <http://www.icj-cij.org/homepage/index.php?lang=en>. 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?

Advocates: Advocates must thoroughly research both the law and facts involved in the dispute from which their case arises. Advocates are responsible for the preparation of written memorials and the presentation of oral arguments regarding their positions in their case. Advocates should be prepared to defend their case against scrutiny by the Justices and anticipate and respond to assertions by the opposing advocates.

Note: Remember that the AMUN ICJ is a simulation. No one expects students, who are not lawyers or Justices, to make presentations, decisions or render opinions with the same level of sophistication as actual ICJ Justices or Advocates. The students’ job is to gain a basic understanding of what considerations are taken into account when presenting or presiding over a case and to prepare to argue their cases before the Court.

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 (does the State recognize the Court’s jurisdiction on this case, and why or why not?)
3. A statement of law (what treaties, customs, or laws 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?).

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.

All memorials must be submitted by 25 October to the AMUN Secretariat at icj@amun.org.

PREPARATION OF ORAL ARGUMENTS BY ADVOCATES

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. Finally, the Applicant will have the opportunity to present a brief rebuttal. Advocates presenting *amicus curiae* arguments will then be accorded no more than five minutes each to speak. On the first day of Conference, the Justices will create the docket and define the amount of time for oral arguments. Advocates, with the exception of *amicus curiae*, should be prepared for anywhere between 10 and 20 minutes for arguments.

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. At least 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, Advocates must be prepared to both answer questions and defend their positions.

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.



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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 the Justices 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 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.
5. 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 and questions. It is also wise to conclude the 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. 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. Advocates may want to bring copies of or full citations for relevant documents, so the ICJ Registrars can distribute copies to the Justices for use in their deliberation.
8. Practice, practice, practice! There is no substitute for practicing oral arguments: your presentation is likely to be smoother and more persuasive. Have your Faculty Advisor 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.
9. 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 country. 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.
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 Justices question them. Also, audio files of past oral arguments before the ICJ are available at www.icj-cij.org.
11. Learn proper courtroom demeanor. Remember to be polite and deferential to the Justices at all times. While argument is the method, persuasion is the goal. Advocates will be provided the opportunity to practice their oral arguments before members of the AMUN Secretariat. Justices will not be allowed to attend.

Each Justice, while independent, will still have a roleplaying 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, because 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.

At AMUN, the Justices are in charge of the simulation. Their first task is to choose the order in which they will hear the three cases and decide on the time limits for oral arguments. The order and times are then published as the Court's official docket. After the docket is set, the Court elects a President and Vice President by secret ballot. Their duties are to moderate and time the oral arguments and facilitate the closed deliberations.

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. Any Justice not present during the Court's Oral Arguments may not participate in the subsequent deliberations and opinion writing for that case.

Justices should take the time to do preliminary research on the cases and Advisory Opinions, including becoming familiar with relevant treaties and conventions. If Justices have difficulty accessing documents relevant to the cases or Advisory Opinions, they should contact the Director of the Court to request assistance at icj@amun.org.