



## CHAPTER FOUR

# INTERNATIONAL COURT OF JUSTICE

### GENERAL ICJ FACTS

The International Court of Justice, sometimes referred to as the World Court, is the primary judicial organ of the United Nations. It sits in The Hague, Netherlands and is composed of fifteen independent Justices from around the world. The ICJ is the only court in the world with general and near-universal jurisdiction; countries may bring cases before the Court even without becoming UN Member States, as long as both countries have consented to be subject to the court's jurisdiction. It may entertain any question of international law, subject to the provisions of its founding statutes.

The Court's role is to examine international law and to settle legal disputes submitted to it by states. It also dispenses advisory opinions on legal questions referred to it by authorized United Nations organs and specialized agencies. Since 1946, the Court has heard more than 160 cases, including about 25 advisory opinions. ICJ cases, unlike most national legal systems, do not create binding legal requirements on other United Nations Member States, and cases are generally treated independently of one another.

The Justices are nominated by regional groups and elected by the General Assembly and Security Council for nine-year terms. Justices must receive a majority vote in each body to be named to the Court, and one third of the Court is elected every three years. A state party to a case before the ICJ also enjoys the right to appoint an ad hoc justice. The ad hoc Justice does not need to be from that state. The ad hoc Justice enjoys the same privileges and responsibilities as the other Justices, but his or her obligation is limited to proceedings in that case.

Once elected a Member of the Court is a delegate neither of their home government nor of any other State. Unlike most other organs of international organizations, the Court is not composed of representatives of governments. Members of the Court are independent judges whose first task, before taking up their duties, is to make a solemn declaration in open court that they will exercise their powers impartially and conscientiously.

Proceedings before the Court can last for years, involving complex issues of international law, as well as difficult political questions. The states party to the case submit pleadings, or memorials, in writing along with extensive records supporting their cases. The States also participate in oral arguments, which allow states to explore the case and respond to questions from the Justices. The Justices deliberate in private, then read the judgement in an open forum.

### COMMON TYPES OF CASES

The Court hears two types of cases, all involving nations rather than individuals. First, there are contentious cases between two states where there is a legal dispute and the states parties are bound to the Court's decision. States may institute proceedings by mutual agreement or by unilateral application against a respondent state. This is different from the International Criminal Court, which hears cases against individuals for crimes such as genocide.

Many of the Court's cases—historical and contemporary—are border or territorial disputes, where two states agree to let the ICJ decide where the border should be.

Other cases are highly charged and quite political in nature—it is rare that the interpretation and application of the law operates entirely outside of the realm of political discourse, and in the international arena, this is especially true.

Second, the Court can issue advisory opinions on legal questions referred to it by other agencies, such as the Security Council or the General Assembly. This opportunity is open to the five major organs of the UN and 16 other specialized agencies. Unlike the rulings in contentious cases, advisory opinions are not binding on the parties that request the opinion; the organization is under no legal obligation to follow the court's recommendation. The Court requests written and oral proceedings for the case, although these processes may be truncated when compared to the process used for contentious cases.

### STRUCTURE OF THE AMUN ICJ

In keeping with AMUN's philosophy of simulating United Nations bodies as closely as possible, the AMUN ICJ closely resembles the ICJ in the Hague. The ICJ at AMUN is composed of student Justices who hear oral arguments, deliberate on the cases before them and corroboratively develop opinions of the Court. Students also participate as Advocates, presenting their case first in a written memorial and then in oral arguments and in responses to questions from the Justices.

AMUN Secretariat members assist the ICJ in any additional legal research the body may require and help facilitate the work of the Court through each of the three cases. Secretariat responsibilities include researching 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 preselected by the AMUN Secretariat form the Court's docket. This year the ICJ is deliberating three cases:

- Advisory Opinion: Legality of the Threat or Use of Nuclear Weapons (Historical Case)
- Liechtenstein v. Germany
- Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)

Additionally, 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.

On the first day of the Conference, the Justices set the docket and review the procedures of the Court. When the docket is established it is published in the *AMUN Chronicle* and communicated to the advocates. 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.



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 as a permanent Justice; or (2) they may appoint an ad hoc 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 and the Director of the International Court of Justice by 1 October by e-mailing [icj@amun.org](mailto:icj@amun.org). 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, on the other hand, are *not* full-time Conference assignments. ICJ Advocates should expect to spend two to three hours presenting their case and hearing the Court's opinion during the Conference. ICJ Advocates should also serve as representatives in another AMUN simulation. ICJ Advocate teams are limited to two people.

Both ICJ Advocates and ad hoc Justices should, whenever possible, be paired or teamed with another representative in committee, so the state is fully represented in committee while the delegation participates in the ICJ proceedings.

## PREPARING AS A JUSTICE

As with any position at AMUN, reading the *Issues at AMUN* handbook is the required starting point. Justices should familiarize themselves with the factual and legal disputes at hand, as well as the international treaties involved. Another helpful resource is previous ICJ opinions that are similar in this instance. While reading, note the tone and style used by the ICJ. Pay special attention to the way the Court addresses questions of jurisdiction; often this is the crux of the winning argument for the Court. Memorials written by the Advocates are available on the AMUN website in November. Reviewing these is key to a successful experience.

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; 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. 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.

All Justices will be expected to hear arguments and question the Advocates in all cases on the docket. Any Justice not present during the Court's Oral Arguments may not participate in the subsequent

deliberations and opinion writing for that case. After each case is argued, the Justices retire to deliberate and to draft the opinion of the Court. Justices discuss the case in depth, pulling from their research prior to the Conference, the advocates' memorials and the points raised during oral argument. If the Justices require any additional information, they are welcome to request that from the Secretariat. Justices collaborate to write a majority opinion and as many concurring and dissenting opinions as the body requires. Justices use their persuasive writing and speaking skills to sway additional Justices to their position throughout the drafting process.

## PREPARING AS AN ADVOCATE

Advocates' opportunity to present their case is twofold: written memorials and oral arguments. Advocates must thoroughly understand the legal principles that support, and those that oppose, their position, and be able to articulate them in the face of strict scrutiny from the Justices. 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 the state is still represented in the committee while the advocate is fulfilling his or her duties in the ICJ.

## WRITTEN MEMORIALS

ICJ memorials should contain:

- Jurisdictional statement and arguments (outlining whether your country recognizes the Court's jurisdiction in this case)
- Statement of facts (what are the relevant facts in the case?)
- Statement of law (what treaties, customs or laws apply?)
- Argument section (detailing how the law and facts apply to the merits of the case - how do the laws and facts support your case?)
- Summary and prayer for relief (what do you want the Court to do?)

The ICJ does not require these sections to be in any particular order, although they are typically laid out in the order shown. As you draft your memorial, think carefully about how best to use these sections to your advantage to advocate your position.

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, each side should anticipate and seek to counter the arguments opposing Advocates might make. All memorials must be submitted by 25 October to the AMUN Secretariat at [icj@amun.org](mailto:icj@amun.org).

## ORAL ARGUMENT

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 will argue first. The Respondent will 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 prepare between 10 to 20 minutes for arguments. The oral argument is not simply an opportunity to give a prepared speech; Justices often interject with multiple questions throughout the 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 critical issues in the case. You should try to have at least three main 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, the best arguments are structured around a story that has a unified theme, which explains why your country has been wronged, and 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 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. Focus on the main points and key issues during the first five minutes. We suggest that you follow a pyramid format; present the crux of the argument first and then use the remainder of the allotted time to expand 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. Try to anticipate questions the Justices might ask and develop answers. Do not write out answers verbatim. Do, however, write out catch phrases or legal terms you will want to remember precisely. Simple, concise answers that repeatedly stress the same points are persuasive and will be remembered by the Justices. Oral arguments will involve extemporaneous speaking and responses, not the presentation of a memorized speech.
7. 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.
8. Outline the specific names of conventions, treaties and cases in your memorial. Your oral argument requires these citations to maintain your credibility with the Justices, and articulate the reasons your side of the case is stronger.
9. 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.

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.