Chapter Four
International Court of Justice (ICJ)

What is 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 Justices, elected by the General Assembly and the Security Council, each serve on the Court for nine-year terms.

The primary purpose of the ICJ 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 ICJ is to clarify significant international legal questions brought to it by the UN General Assembly and the Security Council. When a UN 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.

When States have a case before the Court, participants submit written memorials and present oral arguments. When the Court is asked to render an advisory opinion, interested or assigned parties also submit written memorials and present orally before the Court. In both types of cases, interested parties can seek to submit an amicus curiae memorial (Latin for "friend of the Court"). 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 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 States; and
4. 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 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 damage claims by States in disputes involving the use of force (e.g. in *Islamic Republic of Iran v. United States*, and in *Libya v. Chad*).

Structure of AMUN's International Court of Justice

The cases before this year's AMUN International Court of Justice (ICJ) are:

- *Questions Relating to the Obligation to Prosecute or Extradite* (Belgium v. Senegal)
- *Aerial Herbicide Spraying* (Ecuador v. Colombia)
- *Application of the International Convention on the Elimination of All Forms of Racial Discrimination* (Georgia v. Russian Federation)

Other cases may be determined and announced later. Representatives are strongly encouraged to contact AMUN if their delegation wishes to bring a case before the Court; these cases should be submitted before 1 October. Background papers on the cases listed above are provided in the *Issues at AMUN* Handbook.

AMUN's ICJ is an all-student-run simulation, in that students serve both as Justices and as Advocates. While Justices adjudicate on the dispute, the Advocates present the arguments for the parties to the dispute. Advocates can also represent other interested groups who seek to submit an amicus curiae memorial.

Amicus curiae memorials may be submitted by a Representative 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. Staff responsibilities include the approval of cases for inclusion on the Court's docket, the review of memorials submitted to the Court, assisting in the preparation of the Court's docket, and the provision of any other assistance needed by ICJ Justices and Advocates.

The cases pre-selected by the AMUN Secretariat will form the substance of the Court's docket. Requests for additional cases may be submitted by any State registered as an AMUN delegation or by any ICJ Representative. Likewise, the UN 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, will decide whether such additional cases will be included 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.

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 available 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 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 simulation. 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 hearing the first case. 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 three to four hours presenting their case and hearing the opinion during conference. ICJ Advocates should also serve as Representatives to another AMUN simulation. It is essential that, whenever possible, the ICJ advocate or ad hoc Justice is teamed with another Representative in a Committee/Council, so that their State is represented while the Representative is fulfilling their duties in the ICJ. 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 Advocate from a school with a registered delegation.

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 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 about 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. 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. Many of these options 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?

Note: Remember that the AMUN 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.

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

All memorials must be submitted by 7 November to the AMUN Secretariat at icj@amun.org.

Preparation of 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. 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. **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 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/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.

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.

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 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.

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.

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, 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.

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, 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 Secretary-General or the Director of the Court to request assistance at **icj@amun.org**.