

## *History of the International Court of Justice*

The movement to establish a World Court happened after The Hague Conferences of 1897 and 1907 eventually leading to the establishment of the Permanent Court of Arbitration. With the creation of the League of Nations after World War I, a new push was made. The Covenant of the League called for ideas for a World Court; this led to the founding of the Permanent Court of International Justice (PCIJ), whose tasks included providing peaceful method of dispute settlement based on International Law. After the Second World War, it was decided to drop the “Permanent” when the International Court of Justice succeeded the PCIJ. Cases decided by the PCIJ carry the same weight as those decided by the ICJ.<sup>1</sup> After World War Two, the United Nations Charter (Chapter 3, Article 7) created the current International Court of Justice (ICJ) as one of the principal organs of the United Nations. Chapter 14, Article 92 states that the ICJ “will be the principal judicial organ of the United Nations.”<sup>2</sup>

### *The ICJ – Overview*

The International Court of Justice was established in 1945 to settle international legal disputes, as well as offer advisory opinions for international organizations and agencies. The ICJ is the only major UN body whose headquarters is not in New York City; the Court is located at The Hague, in the Netherlands. States that have not signed the UN Charter may also appear before the Court. To do this they must meet certain qualifications that have been outlined by the General Assembly under the recommendation of the Security Council, accept the provisions within the “Statute of the ICJ” and agree to comply with the decisions of the ICJ, and make annual contributions to the cost of the Court.<sup>3</sup>

The structure and authority are further outlined in the “Statute of the ICJ.” The “Statute of the ICJ” grants the ICJ the ability to resolve legal disputes submitted by member states and to give advisory opinions on legal questions referred to the Court by other international organizations and agencies, such as the GA or the SC.<sup>4</sup> The Court consists of fifteen justices elected by the General Assembly and the Security Council to a nine-year term in office. Justices must have high moral character, be competent in International Law, and have the qualifications to be appointed to the highest judiciary in their country. These nominations are then submitted to the General Assembly and Security Council for the vote. The elected justices do not represent their governments but are instead independent magistrates. Even with this safeguard, no two justices may be selected from the same country.

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<sup>1</sup> “A Guide to the History, Composition, Jurisdiction, Procedure, and Decisions of the Court.” <http://www.icj-cij.org/icjwww/igeneralinformation/ibbook/Bbookframepage>.

<sup>2</sup> Charter of the United Nations, 1945.

<sup>3</sup> International Court of Justice, *overview*. <http://www.icj-cij.org>.

<sup>4</sup> Statute of the International Court of Justice, 1945.

### ***The ICJ's Authority***

The primary purpose of the ICJ is to render opinions on international legal disputes between States. States that have accepted the jurisdiction of the ICJ may only submit these 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, they are requesting an Advisory Opinion. The ICJ does not have authority to decide disputes involving individuals, the public or private organizations.<sup>5</sup>

When states have a case before the Court, participants submit written memorials and present oral arguments. At the parties' request and the Court's approval, a "Reply" and a "Rejoinder" may be permitted for written memorials. When the Court is asked to render an Advisory Opinion, assigned parties also submit written memorials and present orally before the Court. 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; and 3). General Principles of Law recognized by civilized States.<sup>6</sup>

The Court's rulings are typically considered as authoritative interpretations of law and have a strong moral and assuasive effect on the international legal community. The Court's most effective areas have been boundary disputes and providing legal basis for enforcing damage claims by states in disputes involving the use of force.<sup>7</sup> Once the Court has been notified of the case, it is given to the Court's Registrar who verifies that the formal requirements have been completed. The Registrar then enters the case on the Court's General List, informs the press, and sends a formal copy of the complaint to the other party(s), to the Secretary-General of the UN, as well as any country, institution or person who requests a copy.<sup>8</sup>

### ***Preparation for the ICJ Simulation***

The President presides at all meetings of the Court; he/she directs its work and supervises its administration. During judicial deliberations, the President has a casting vote in the event of votes being equally divided. In terms of procedure, our simulation of the ICJ will differ from most committees in its lack of structured debate. The ICJ has no Speakers' List, speaking time, resolutions, or other formalities. Parliamentary procedure will be used only minimally and then only to maintain professionalism and order.

The Director and Assistant Director, acting as the President and Vice President of the ICJ, respectively, will recognize individual judges to speak, and she or he may continue her or his

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<sup>5</sup> International Court of Justice, *Authority*. <http://www.icj-cij.org>.

<sup>6</sup> Statute of the International Court of Justice, 1945

<sup>7</sup> Statute of the International Court of Justice, 1945

<sup>8</sup> International Court of Justice, *the Proceedings*. <http://www.icj-cij.org>.

remarks as long as reasonably necessary. The ICJ thrives on active and engaged debate and discussion, and more than any other committee judges must listen to and treat each other with the respect and professionalism normally accorded to respected legal scholars. Participating in the ICJ, is less about being “right” and convincing others that you are “right” than it is about coming to some mutual understanding of the relevant legal issues, even if total consensus is never reached. Back-and-forth debate, which is not allowed in most large committees, is the most useful part of ICJ deliberations, provided it is done with consideration and respect for others.

With this in mind, judges are encouraged to ask questions and mention any uncertainties they have, particularly in the early stages of the process. As opposed to convincing fellow justices of the merits of an argument, each judge should try to make sure others understand the arguments and analysis, and leave it for others to decide individually whether the arguments make sense. The process should help each Judge arrive at her or his own reasonable decision on the case; the ICJ will not write its decision until all judges have made up their minds on all relevant legal issues. Judges must listen carefully to the statements and questions of fellow judges. Confusion is acceptable and dissension encouraged, if all debate is conducted with a mind open to change and with respect for the ideas of all Judges. The true purpose of the simulation is to discuss issues that face the Court and, to that end, all debate that enriches discussion is welcome.

It is critical that each member of the ICJ fully understands and is prepared to discuss the case at hand. Each Judge should arrive thoroughly researched, ready to participate in each debate, and with an interpretation of international law that is personally (and rationally) satisfying. Information provided to the Court during simulation is designed to enhance discussion, not replace outside research. Each Judge should look at the relevant past cases of the ICJ in these areas in an effort to become an expert in International Law before the Conference. When making your decisions, remember the ICJ is bound to apply the rules of International Law. Article 38 of the Statutes of the ICJ specify the sources of International Law, which include treaties ratified by states, the rules of customary International Law as determined by the practice observed by most states, general principles of law.<sup>9</sup> The proceedings of the ICJ begin with a written phase. For the case at hand, this includes the Memorials, and if applicable Counter-Memorials. Clearly, all judges must familiarize themselves with both the facts and arguments of the case.

### ***Flow of Committee***

Once we begin substantive debate on the case, the Judges will enter into an overview discussion of the legal questions presented. During this segment, each judge will present his or her initial views and uncertainties; from this, the ICJ will come to some sort of understanding of the primary issues involved. The judges are also responsible for formulating a list of questions to ask of Advocates (counsel) who will visit the Court to present additional informational and perspective during Oral Proceedings. **The initial views and the list of questions will be written by the judges before arriving at the conference and will be turned into the Director and the**

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<sup>9</sup> International Court of Justice, *Proceedings*. [www.ici-cij.org](http://www.ici-cij.org).

**Assistant Director on** (just as all the position papers are due for the other committees at WASMUN).

The Oral Proceedings are a chance to understand and question the legal arguments made by each side. An Advocate from each party will come before the ICJ as an expert on international law, with specific knowledge of the argument posed by his or her state. **The questions asked should focus on clarifying each State's interpretation of international law, not on ascertaining facts.** The facts presented in the background guide should be considered accurate and complete, although they may be amended, clarified, updated, or supplemented as the Director and Assistant Director deems fit. The Advocates (Counsel) who appear before the Court during oral proceedings are there to answer questions about their interpretation of facts and international law, and the consequences their analysis has on the case. The Court will then have to assess the presentations made by each party to determine the legal soundness of each argument. After the oral proceedings, the judges will be asked to present their preliminary opinions on the case in the form of a moderated caucus. These opinions are certainly not binding, for the Court will not have formally deliberated the case. However, the preliminary opinions are an opportunity to see which issues are somewhat resolved, and which are still relatively unclear. This will serve as a preliminary guide to the leanings of the ICJ and as a jumping-off point to begin formal deliberation.<sup>10</sup>

Formal deliberations will be the main phase of the Court's proceedings. During the deliberations, judges will go over the facts and aspects of international law, ultimately arriving at opinions. The Court will determine the format of the deliberations completely so long as requests remain reasonable and debate civil. Typically, judges will be recognized to speak by the President and may present comments, critiques, and questions either to specific Judges or to the Court as a whole. At times, the Court may choose to limit discussion to a particular issue or question requiring clarifications. As the deliberations progress, the views, and opinions of the Judges will become more defined, and a consensus among the Judges—or among certain groups of Judges—will be reached. Towards the latter stage of deliberations, the Court will also begin to arrive upon a methodology to deal with the case, i.e., a flow-chart-style analysis that fits individual components into a final resolution of the case as a whole.

Lastly, the Judges will write formal statements of opinions during an extended caucus. Judges will break into groups based on their legal analysis of the case. Decisions largely fall into three categories: majority, concurring, and dissenting. The majority opinion has the most supporters within the ICJ, both with respect to decision and methodology; this will be the Opinion of the Court. Some Judges may agree with the conclusion of this opinion but have different lines of reasoning; these Judges will construct one or more majority concurring opinions. Finally, judges who dissent in part or in whole with the ruling of the Court will write minority opinions. A decision may also concur in part and dissent in part. In theory, the ICJ could produce as few as one or as many distinct opinions as it has members.

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<sup>10</sup> International Court of Justice, *Proceedings*. [www.icj-cij.org](http://www.icj-cij.org).

Each decision will have a basic format, to be explained by the Director as the decision writing process begins. Examples of past decisions will be included in the Appendix of this Background Guide for judge reference before and during simulation. Many justices will be new to the ICJ simulation and the Director and Assistant Director will actively assist in moving the committee along. Additionally, justices will be expected to have a copy of this background guide with them in committee at all times to serve as a reference for procedural and substantive matters.<sup>11</sup>

## **Roles**

### ***Advocate (Agents)***

An advocate has the role of advancing the case of their nation. They will be doing most of the talking throughout the case, and as such, they have to be VERY well prepared. The biggest role of an advocate is in making their country's speech, and in responding to the questions of the judges. There will be two sides in the case we are running, and each will have a team of advocates. There is not any requirement to choose a "lead counsel" or anything of the like, but you might want to do that between yourselves. Advocates should be addressed as "Counsel", as in "Counsel for (*country*)". Quite often, the procedure for the ICJ committee is a trial simulation, where the applicant team (plaintiff) and respondent team (defendant) hold presentations to the judges, and then the judges deliberate and come up with a decision.

Each set of advocates will present a short written Memorandum of Points and Authorities to opposing counsel, the judges, and the Director. The Memorandum (position paper) should be a party's view of the pertinent facts and legal principles as espoused by its advocates. It need not give away trial strategies; however, it should present a party's position, the facts and points of law (citations may be included) to be applied. It may contradict points that are anticipated to be raised by the opposing party. Each Memorial should be written clearly and succinctly, and should be three pages in length, double-spaced. I advise using a "12" font Times New Roman for comfortable reading.

### ***Judges***

The role of a judge is to hear the case put forward by the advocate (agents), and to decide upon its merits. After the advocates make their speech, the judges will have an opportunity to question them on the certain points, or on anything which they feel needs clarification or explanation. Judges should be addressed as "Judge (*name*)" or "Your Honour".<sup>12</sup> Judges may interrupt an advocate during speeches, but a judge cannot make "objections" to advocates speeches, that is the role of the advocates.

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<sup>11</sup> International Court of Justice, *Proceedings*. [www.icj-cij.org](http://www.icj-cij.org).

<sup>12</sup> International Court of Justice, *the Court*. [www.icj-cij.org](http://www.icj-cij.org).

## **Memorials and Counter-Memorials**

### ***What is a Memorial or Counter-Memorial?***

- Memorials and counter-memorials are the written basis for arguments UN member nations make in the International Court of Justice (ICJ).<sup>13</sup> (For our purposes, they are the Position Papers of the ICJ).
- Both have essentially the same form (see style and organization instructions below) and are distinguished only by which nation is submitting one of these documents.

### ***Does our nation write a Memorial or Counter-memorial?***

- The applicant (plaintiff) nation will write a memorial and the respondent (defendant) nation will write a counter-memorial.
- The applicant is the nation bringing the dispute or claiming a breach of international law, while the respondent is the nation against which the claim is being brought.
- Example: Australia v. Japan – The applicant is always listed first, and the respondent is listed second. In this case, Australia is the applicant, and Japan is the respondent. Thus, Model UN delegates preparing this case would write a memorial if they were representing Australia and a counter-memorial if they were representing Japan.

### ***How should we organize our Memorial/Counter-memorial?***

- In most cases, the memorials and counter-memorials used in the real cases are available online. While these are useful resources, you MAY NOT copy them in whole. The justices will be familiar with the actual memorials and counter memorials and will detect any copied sections.
- Your memorial/counter-memorial should have a heading that includes the names of those arguing the case, the country you represent, your school, whether the document is a memorial or counter-memorial, and the name of the case (i.e. Australia v. Japan).
- You should continue by providing a “Statement of Fact” that discusses the factual and objective aspects of the case.
- Follow that with a list and brief description of the international law, treaties, and Charter sections that you will use in your argument.
- Next, make your argument. Here, you should use the facts and pertinent legal documents to present the case from your nation’s perspective. You may not read from your memorial/counter-memorial during your oral presentation. Rather, the written argument should be the framework off which your oral argument is based.
- After your written argument, briefly describe what specific findings you hope the Court will reach.
- Conclude with the phrase “Respectfully submitted by” and your names and signatures.

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<sup>13</sup> International Court of Justice, *Proceedings*. [www.icj-cij.org](http://www.icj-cij.org).

### ***How does the Court hear cases?***

- The Court begins hearing a case by allowing the applicant thirty minutes to present its oral argument.
- The respondent will receive thirty minutes to present its oral argument once the applicant has concluded and the President of the Court has instructed the respondent to begin.
- Either side may ask for additional time if their presentation extends beyond thirty minutes, but such time will only be granted at the discretion of the President.
- While few delegates ever use the entire thirty minutes, applicants and respondents should strive to speak for at least ten minutes. The substance of the presentation, however, is much more important than its length.
- At any time during oral arguments, a justice may interrupt the delegates with a question.<sup>14</sup>
- Maps, posters or copies of legal documents may be used to supplement your oral argument. To use these aides, make copies in advance and approach the Court President regarding their submission.

### ***What should we do (and not do) when we are presenting our oral argument?***

- The first thing to do is relax. If you have researched the case thoroughly, you should be able to deliver a compelling argument and answer any questions posed by the justices.
- Oral argument is not synonymous with memorial/counter-memorial. Do not read from your memorial/counter-memorial. If you do, the justices will stop you.
- Begin your oral argument by greeting the Court.
- From your introduction, proceed to describe the facts of the case and the international laws and treaties your nation believes to be applicable.
- Your argument must be based on international law. An applicant or respondent that simply presents the facts will likely not win the case.
- If you are the applicant, attempt to predict the argument of the respondent and explain why that argument should not be accepted.
- If you are the respondent, take notes during the applicant's oral argument and be prepared to rebut the points made in it during your oral argument.
- Conclude your argument by detailing exactly what your nation wants the Court to find in its decision.
- When addressing the Court President, use the phrase "*Mister/Madame President...*"
- When addressing a justice, use the phrase "*Justice (last name of justice)...*"

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<sup>14</sup> International Court of Justice. *The Court*. [www.icj-cij.org](http://www.icj-cij.org).



## ***Memorial (Position Paper Guidelines)***

The position paper (Memorial) is a brief document that will give you a chance to introduce yourself and your ideas to the Dais before the conference begins. Your position paper should refer to the Memorials submitted to the court. The Advocates for each country write the Memorials. However, more importantly, the position paper forces you to consider and evaluate the case before the ICJ and the laws involved in them. Obviously, traditional position papers would be useless in our simulation of the ICJ, as you will not be representing countries but rather your own experiences, reasoning, and judicial expertise. Treat your position paper like an opening statement before the Court. Begin by summarizing the case, and pointing out any aspects you may have doubts about. Address the laws/treaties involved, and relate them to the facts of the case. Explain whether or not the laws were violated and if so, how. Finally, address the direction you feel the Court should move in when deciding the case. The ICJ has no blocs, no standing national policies to research. What it does have, however, is submissions to the ICJ, and International law. The last part is essential. Though we will expect you to provide details on the submissions to the ICJ and on the international law involved, what we are really looking for in your position papers is how these interact with your logic and experience to lead you to a stance on the issue.

Your position papers should be ***three pages double-spaced with size twelve Times New Roman fonts***. PLEASE be sure to follow the format of the sample Memorial. You should bear in mind that a critical skill within the field of international law is presenting your ideas clearly and succinctly. In addition to this, please come up with a few questions to ask the Advocates, who will be providing testimony to the ICJ at the conference. Writing these questions ahead of time will help you to ask any clarifying questions on the case and on international law when the witnesses arrive. Be sure to quote the key points of law in this case as you address them to show that you have given thought to the word of the law.

## **Resources**

- The Statute of the Court is available for viewing in the official web page of the ICJ, under *Basic Documents*: <http://www.icj-cij.org>. It should be an integral part of every Justice and Advocate/Agent's file.
- The United Nations website ([www.un.org](http://www.un.org)) can provide you with a tremendous amount of information for your memorial/counter-memorial, international law, and oral arguments.
- All delegates, especially those arguing before the Court, should be familiar with the United Nations Charter.
- [www.haguejusticeportal.net](http://www.haguejusticeportal.net)
- Legal information institute. <http://www.law.cornell.edu/topics/international.html>

## ***Rules of Procedure: International Court of Justice***



- I. The President
  1. The President shall preside at all meetings of the Court and shall direct all work and supervise the administration of the Court.
  2. The President may set a time limit for Memorials.
  3. The President shall be unappealable in all circumstances.
- II. Justices
  1. The justices are obligated to remain neutral, judge fairly, and uphold International Law.
  2. Justices are selected by their home government, and cannot be removed by anyone but a duly authorized home government official.
- III. Court Proceedings
  1. The pleadings in a case begun by means of an application shall consist of a Memorial by the applicant and a Counter-Memorial by the respondent.
  2. After being recognized by the President, a justice may interrupt the Memorials only to:
    - a. Ask for a point of clarification
    - b. Ask a question
- IV. Judgment
  - A. Majority Opinion
    1. A majority opinion must be approved by at least eight (8) of the justices.
    2. The majority opinion must include the following information:
      - a. The date on which it is read
      - b. The names and home states of the concurring justices
      - c. The names of the parties
      - d. A brief summary of the facts
      - e. The decision of the Court, including any costs to either party
      - f. The legal basis for the decision
      - g. The signature of the President
  - B. Concurring Opinion
    1. A justice can vote for the majority opinion but write a concurring opinion.
    2. A concurring opinion is written when a justice agrees with the majority decision but may have different reasons for that brief.
    3. Concurring opinions include all the information that the majority opinion includes.
  - C. Dissenting Opinion
    1. A justice that did not vote for the majority opinion may write a dissenting opinion.
    2. A dissenting opinion must include the following information:
      - a. Points *a*, *c*, and *d* of the majority opinion
      - b. The name and home state of the dissenting justice
      - c. The decision of the dissenting justice
      - d. A legal basis for the dissent
      - e. The signature of the President
- V. Adjournment
  1. A motion to adjourn must be put before the Court.
  2. The motion must be passed by a majority vote of eight (8).
  3. The President must agree with the decision to adjourn in order for the motion to pass.

**In a Memorial, the format and content should be in the following way:**

**1. Statement of Jurisdiction**

2. **Statement of Law**
3. **Statement of Fact**
4. **Arguments**
5. **Summary and Prayer For Relief**

Each Memorial should be at minimum three pages in length. Below is the start to a memorial. Follow this format as a guideline and continue with your own content to a three-page minimum.

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## **Sample Memorial (Position Paper)**

IN THE INTERNATIONAL COURT OF JUSTICE

AUSTRALIA,

APPLICANT

V.

JAPAN,

RESPONDENT

MEMORIAL OF THE COMMONWEALTH OF AUSTRALIA

COMES NOW the Commonwealth of Australia and for their Memorial to the Court  
states the following:

### **STATEMENT OF JURISDICTION**

The Court has jurisdiction in accordance with the provisions of Article 36, paragraph 2 as well as Article 38, paragraph 1 (a) and (b) of its Statute by virtue of acceptance made by Australia dated 22 March 2002 and by Japan dated 9 July 2007.

### **STATEMENT OF LAW**

1. International law recognizes the importance of custom and international treaties as legally binding.

2. The Commonwealth of Australia and Japan among other states have agreed to the

regulations established within the International Convention for the Regulation of Whaling created in 1948.

## STATEMENT OF FACT

The International Convention for the Regulation of Whaling, an international environmental agreement took effect in 1948 with the primary objective of protecting whale species from overhunting.....(keep filling in the facts of the case).

## ARGUMENTS

I. Japan has failed to meet the obligations set forth in the International Convention for the Regulation of Whaling.

In 1982 the IWC adopted under article V (I) (e) of the ICRW a “moratorium” on whaling for commercial purposes which subsequently set the maximum catch limit of whales to be taken in any one season at zero. (keep filling in the facts of the first argument as described below).

II. Japan is obligated by the binding of “good faith” to abide by the ICRW as mentioned in Article 26 of the Geneva Convention. (Fill in the details of argument two the way argument number one is filled out).

III. Japan is duty-bound under the ICRW to practice non-lethal research methodologies whenever applicable. (Keep filling in the details of argument three).

## SUMMARY AND PRAYER FOR RELIEF

The Commonwealth of Australia requests the court to adjudge and declare that Japan is in breach of its international obligations in its implementation of JARPA II. (Continue, etc...)

## SAMPLE OPINION

Application of the 1946 International Convention concerning

The Regulation of Whaling

Australia vs. Japan

31 May 2010

Justices Sanchez, Dun, Ty and Bond

The Case of the application of the Convention of 1946 Concerning the Regulation of Whaling was submitted by the nations of the Australia and Japan, and the Australian and Japanese Agents,

The Opinion must include the next sections and/or paragraphs:

- Statement of the facts,
- Admissibility of the Convention or Treaty that should be applied,
- Application of the Convention or Treaty (how will it be enforced to the case).

For these reasons,

The Court

Does adjudge and declare,

That the measures taken by Japanese authorities in respects to Whaling in the Southern Ocean Sanctuary,

This Judgment

On the thirty-first day of May, two-thousand and ten , at the first session of the WASMUN International Court of Justice

Is passed by a vote 10 to 2

The Concurring Opinion of Justice Hartman and the Dissenting Opinion of Justices Badder and Manheim are attached.

**SAMPLE CONCURRING OPINION**

Justice, J. Fredrich Hartman

I concur with the Court's conclusion with one respectful exception. The Court finds that the concept of *puissance paternelle* in no way overrides Japan's obligations under the 1946 Convention. However, I feel that. (Explain why, briefly).

### **SAMPLE DISSENTING OPINION**

Justice, Baader

In this matter of Australia vs. Japan, the Court has concluded that .Respectfully, I dissent. The reasons for this are fundamental in nature and cause a profound rift between our opinion and that of the majority. (Explain why, briefly).