

DPS MUN 2025
JODHPUR CHAPTER VIII



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BACKGROUND GUIDE ICJ

EXAMINING THE LEGAL CONSEQUENCES OF
CONFLICTS BETWEEN DOMESTIC LEGISLATION AND
INTERNATIONAL TREATY OBLIGATIONS WITH
SPECIAL EMPHASIS ON THE JUDICIAL PRECEDENTS
INCLUDING BREARD V. GREENE AND THE NORTH SEA
CONTINENTAL SHELF CASES

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Letter from the Executive Board

Dear Delegates,

It gives us immense pleasure to welcome you to the International Court of Justice at this conference. The ICJ is one of the most unique and intellectually stimulating committees in Model United Nations, and we are delighted that you will be a part of it. Unlike other MUN committees, the ICJ does not draft resolutions or engage in political debates. Instead, it asks you to step into the shoes of judges and advocates, analysing real cases and reasoning through the fine balance between domestic law and international obligations.

This year's agenda, "Examining the Legal Consequences of Conflicts Between Domestic Legislation and International Treaty Obligations, with special emphasis on *Breard v. Greene* and the North Sea Continental Shelf Cases", challenges you to think like lawyers and problem-solvers. You will discover how international law interacts with national law, and how the ICJ has tried to ensure that justice, fairness, and global cooperation prevail over narrow interests.

We know that the ICJ may seem daunting at first, especially if it is your first time experiencing this committee. But trust us when we say that once you begin, you will find it to be one of the most rewarding simulations you have ever taken part in. Come prepared to argue your side with clarity, support your stance with precedents, and if you are a judge - ask sharp, insightful questions that test the strengths of both applicants and respondents.

On behalf of the Executive Board, I, Devansh Jaiswal, along with my co-chair Ms. Tisha Kumar, who has been instrumental in curating and designing this background guide, look forward to guiding you through the sessions. We are here not just to ensure procedure, but also to help you learn, grow, and enjoy the process.

Bring your curiosity, your arguments, and your passion for justice and we will take care of the rest.

See you all in Jodhpur!

Executive Board, International Court of Justice

1. The Mandate of the ICJ

The International Court of Justice (ICJ), also called the World Court, is the main judicial body of the United Nations. It was created in 1945 after World War II to help countries resolve disputes peacefully, instead of through violence or war.

The ICJ has two main jobs:

1. Settling disputes between countries (contentious cases). For example, if two countries disagree about a border or accuse each other of breaking a treaty, they can take the case.
2. Giving legal advice to the UN (advisory opinions). UN agencies often ask the ICJ to clarify questions of international law, like whether a certain practice violates international rules.

Note: Only countries can appear as parties in front of the ICJ. Individuals, companies, or NGOs cannot directly sue or be sued there.

2. Domestic Law vs. International Treaties

Every country makes its own domestic laws to govern its people. At the same time, countries also sign international treaties, which are agreements between states to follow common rules.

But what happens when a country's domestic law says one thing and an international treaty it signed says something else? Which one should prevail?

- Some countries (called monist states) say that once a treaty is signed, it becomes part of their domestic law automatically.
- Others (called dualist states) say that a treaty is only valid if their parliament passes a special law to accept it.

This difference creates real problems when countries face conflicts between what their national law says and what their international obligations demand. That is exactly what our agenda is about.

3. Case Studies You Need to Know

(A) Breard v. Greene (1998)

- Who? Ángel Breard, a man from Paraguay, was arrested in the United States.
- What happened? He was sentenced to death, but under the Vienna Convention on Consular Relations, he should have been informed that he had the right to contact his embassy. The US did not do this.
- Problem: Paraguay went to the ICJ, which asked the US to delay the execution. But the US Supreme Court said domestic law came first and executed him anyway.
- Lesson: This case shows the tension between domestic law (US courts following their rules) and international law (obligation to inform consulates).

(B) LaGrand Case (Germany v. USA, 2001)

- Two German brothers were executed in the US without being told of their consular rights.
- This time, the ICJ ruled clearly that the US had violated international law.
- It also said that ICJ orders (provisional measures) are binding, not just recommendations.

(C) Avena Case (Mexico v. USA, 2004)

- Mexico brought a case against the US for executing 54 Mexican nationals who were also not informed of consular rights.
- Again, the ICJ ruled in Mexico's favor, but the US Supreme Court later said ICJ judgments were not automatically binding inside the US unless Congress passed a law.
- This deepened the conflict between international and domestic law.

(D) North Sea Continental Shelf (1969)

- Countries involved: Germany, Denmark, and the Netherlands.
- They were fighting about how to divide parts of the North Sea rich in oil and gas.

- Denmark and the Netherlands wanted to use the equidistance principle (drawing a line halfway between coasts). Germany said this was unfair because of its concave coastline.
- ICJ decision:
 - Germany was not bound by the treaty since it had not signed it.
 - The equidistance principle was not yet “customary international law.”
 - Instead, the ICJ said boundaries must be drawn based on equity (fairness), not rigid rules.
- Lesson: A treaty only binds states that consent, but if a rule becomes customary international law, it can apply to all.

D. How to Represent Your Portfolio

E. What Will Happen in Committee

1. Opening Statements – Applicants and Respondents each present their side (like lawyers).
2. Arguments & Counter-Arguments – Both sides present evidence, treaties, and precedents.
3. Judges’ Questions – Judges ask questions to clarify points and challenge weak arguments.
4. Deliberation – Applicants and Respondents leave the room. Judges discuss privately and decide the outcome.
5. Final Judgment – Judges deliver a written judgment that explains the reasoning and decision.

F. Why This Agenda Matters

This agenda is not just about past cases. It is about a much bigger question:

- Should international law always override national law?
- Or should countries have the right to put their domestic interests first?

The answer to this affects human rights, trade, security, and global cooperation. That’s why the ICJ has to carefully balance sovereignty with international commitments.

G. Research Roadmap

- Read the cases: Breard, LaGrand, Avena, North Sea Continental Shelf.
- Check treaties: Vienna Convention on Consular Relations (1963), Vienna Convention on the Law of Treaties (1969).
- Understand approaches: Monist vs. Dualist systems.
- Think like your role: Applicants = argue for treaty supremacy; Respondents = defend sovereignty. Judges = neutral but sharp.

H. Why Does ICJ Matter Today?

You may ask, “Why should I care about a court sitting in The Hague?” The answer is:

- Because its decisions affect human lives. (e.g., whether a prisoner gets fair trial rights).
- Because it keeps wars from breaking out by offering peaceful solutions.
- Because it builds the idea that law is stronger than power.

4. History and Functioning of The International Court Of Justice (ICJ)

Origin of the ICJ under the UN Charter

The International Court of Justice (ICJ) was created in 1945 under the United Nations Charter as the UN’s main judicial body (Article 7). It is one of the six principal organs of the UN. The ICJ (often called the World Court) is a *civil* tribunal that hears disputes between countries. Its central task is to help achieve the purposes of the UN by settling disputes between countries through peaceful means. In doing so, it must act in line with the principles of justice and international law, ensuring that conflicts or situations which could threaten peace are resolved fairly (Article 1).

Parties to the court

The International Court of Justice only allows countries to be parties before it. All United Nations member states are automatically parties to the ICJ Statute, while non-UN members can also appear if they accept the Court’s rules and the UN Security Council approves. Individuals, companies, and international organizations cannot be parties in disputes, although UN bodies and agencies may request advisory opinions.

Jurisdiction

The word jurisdiction simply means the *power or authority* of a court to hear a case and give a decision. For the ICJ, jurisdiction is divided into two main types:

[A] Contentious Jurisdiction - Contentious jurisdiction refers to the authority of the International Court of Justice to hear and decide legal disputes between states. These disputes may involve questions of law, facts, or conflicting interests, such as border disagreements or treaty violations. Only states can bring cases before the ICJ, and the Court can only deal with a dispute if the countries involved have given their consent to its jurisdiction. Once a case is accepted and decided, the Court's judgment is legally binding on the parties.

[B] Advisory Jurisdiction - Advisory jurisdiction means the International Court of Justice can provide legal advice when asked by United Nations bodies or agencies, even though these organizations cannot appear as parties in a case. Instead of resolving a dispute between countries, the Court gives an advisory opinion, which is a formal answer to a legal question that has been submitted to it. These opinions are not legally binding, but they hold significant legal and moral authority. They often guide decisions within the United Nations, help clarify international law, and play an important role in preventing conflicts and promoting peace.

Powers of ICJ

The International Court of Justice has different kinds of powers depending on the type of case. In disputes between countries (Contentious cases), the Court's judgments are legally binding and final, which means there is no appeal. The only rare exception is if new evidence of great importance is discovered, in which case a revision may be requested. On the other hand, when the Court gives advisory opinions, these are not binding. They function more like legal advice requested by UN organs and agencies but still carry strong moral and political influence because countries often respect them. If a country refuses to follow a binding ICJ judgment, the other party can approach the UN Security Council for enforcement. In short, ICJ decisions in disputes are binding and final, while advisory opinions are non-binding but highly persuasive.

5. Understanding Domestic Legislation and Treaty Obligations

What is Domestic Legislation and Why is it Important?

Domestic legislation is the set of rules made by a country for its own people, and it always applies within that country's borders. Domestic laws are important because every country is unique. Each has its own population, culture, history, economy, and social needs. What works as a law in one country may not make sense in another. Domestic laws allow governments to create rules that best fit their people's situations.

What are International Treaties and Why Do They Matter?

International treaties are legally binding agreements between states that serve as one of the primary sources of public international law under *Article 38(1)(a) of the Statute of the ICJ*. They matter in global relations because they provide a structured framework for states to cooperate and resolve issues that cannot be addressed by domestic law alone. For example, the Geneva Conventions (1949) establish humanitarian obligations during armed conflicts, while the United Nations Charter (1945) lays down fundamental principles for peace and security among nations.

Treaty Law Approaches-

[A] Monist Approach

In monist countries, once a treaty is signed and ratified, it automatically becomes part of the country's law. Citizens can even rely on it in courts.

[B] Dualist approach

In dualist countries, a treaty does not apply within the country unless the parliament passes a new law for it. If there is a clash, domestic law usually prevails.

[C] Hybrid approach

Some countries follow a mix. Certain treaties apply directly, while others need domestic legislation.

6. Conflict: Domestic Law vs. International Treaties

One of the most important legal debates in international law is what happens when a country's domestic legislation conflicts with its international treaty obligations. On the one hand, domestic law reflects the specific needs, culture, and policies of a state, tailored to its own

population. On the other hand, treaties represent commitments that states make to the international community, often to maintain peace, protect human rights, or regulate cross-border issues like trade, environment, or security. The legal issue arises because international law, especially under the *Vienna Convention on the Law of Treaties (1969)*, requires states to honor their treaty obligations in good faith (*pacta sunt servanda*). Yet many constitutions give supremacy to domestic law within their territory. This tension creates practical problems: Can a state refuse to follow a treaty because its domestic law says otherwise? Should international obligations always override national rules? The ICJ and national courts have often faced this dilemma, and the way different countries resolve it reflects their approach to international law.

7. Evolution of Case Laws

The relationship between domestic law and international treaties has gradually developed through the decisions of the Permanent Court of International Justice (PCIJ) and later the International Court of Justice (ICJ).

An early step in this evolution was the case of *Treatment of Polish Nationals in Danzig (1932)*, where the PCIJ made it clear that a State cannot rely on its domestic legislation to avoid the obligations it has accepted under a treaty. The ICJ later expanded on this principle. In *Nottebohm (1955)*, the Court explained that although nationality is granted under domestic law, international law decides whether that nationality will be recognized by other States, which showed that domestic decisions could not always have international effect.

The ICJ continued to strengthen this line of reasoning. In *Nicaragua v. United States (1986)*, the Court held that obligations under the United Nations Charter and customary international law could not be set aside by national security arguments raised under domestic law. In the *LaGrand (2001)* and *Avena (2004)* cases, the ICJ ruled that domestic criminal procedures could not override duties created by the Vienna Convention on Consular Relations.

In addition, the Court has addressed conflicts involving broader international obligations. In the *Arrest Warrant Case (2002)*, it ruled that a domestic arrest warrant issued by Belgium could not disregard international rules on immunity. In the *Application of the Genocide Convention (2007)*, the ICJ underlined that difficulties within a country's domestic system do not excuse it from its responsibilities under international law. More recently, in the *Chagos Archipelago Advisory Opinion (2019)*, the Court emphasized that even legislative or executive decisions at

the national level cannot prevail over the right to self-determination, a core principle of international law.

Overall, these decisions reflect a clear evolution. The early cases focused on the idea that treaties prevail over domestic laws. Later judgments extended this understanding to cover customary international law and fundamental principles, showing that international obligations generally take precedence in the global order.

Please Note: This is only a basic outline of the evolution, and many other cases have contributed to shaping this important area of law.

Understanding two important cases:

Breard v. Greene (1998)

This case involved Ángel Breard, a citizen of Paraguay who was arrested and sentenced to death in the United States. Under the Vienna Convention on Consular Relations (1963), foreign nationals who are detained must be informed of their right to contact their country's consulate. Breard was not informed of this right, and both he and the Government of Paraguay argued that this was a violation of international law.

Paraguay brought the case to the International Court of Justice (ICJ), which called on the United States to delay the execution. However, the U.S. Supreme Court applied its domestic law and allowed the execution to proceed.

The case is often discussed because it demonstrates the tensions that can arise when international legal obligations and national legal systems intersect. It opens up important questions about the relationship between treaty law and domestic law, and how states should approach such conflicts when they occur.

North Sea Continental Shelf Cases (1969, ICJ)

This case involved a dispute between Germany, Denmark, and the Netherlands about how to divide the seabed of the North Sea. The seabed was thought to contain valuable natural resources, such as oil and gas, and all three countries wanted a fair share.

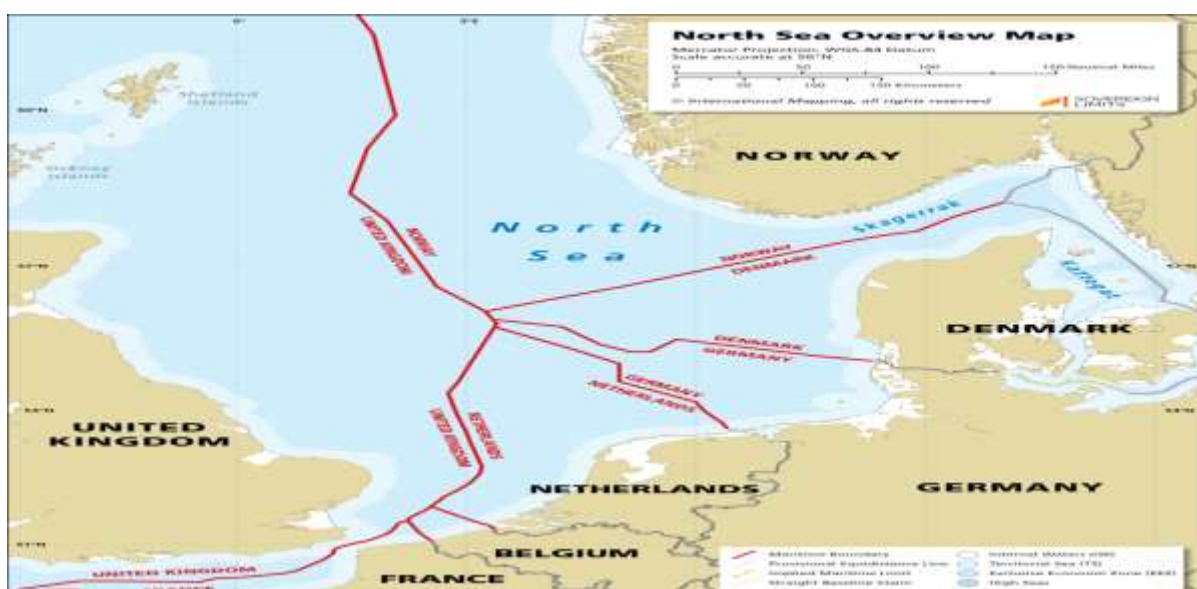
Denmark and the Netherlands argued that *the equidistance principle* should be used. Under this method, a line is drawn at equal distance between the coasts of each country. They based this

claim on the 1958 Geneva Convention on the Continental Shelf, which contained the equidistance rule. Germany, however, had not signed the Convention and objected to this method. Germany pointed out that its coastline was concave (curved inward). If equidistance was applied, Germany would end up with a much smaller portion of the seabed compared to its neighbours.

The ICJ had to decide whether the equidistance rule was binding on Germany as part of customary international law. The Court held that it was not. For a treaty rule to become customary international law, it must be widely and consistently practiced by states, and states must follow it because they believe it is legally required (*opinio juris*). The Court found that these conditions were not yet fulfilled for the equidistance principle.

Instead, the ICJ emphasized that the division of maritime boundaries should be guided by the principle of equity, meaning that each case should consider the specific geography and circumstances to ensure a fair result. For Germany, this meant not being unfairly disadvantaged by its concave coastline.

The decision is considered a landmark in international law. It clarified the requirements for transforming treaty rules into customary law and underlined that fairness and equity must play a central role in maritime delimitation. This judgment has influenced many later cases concerning the law of the sea, showing how the ICJ balances legal rules with practical fairness in disputes between states.



(Image Source: <https://sovereignlimits.com>)

If we look at this map of the North Sea, the red lines show the maritime boundaries between states such as Germany, Denmark and the Netherlands. The dispute in the North Sea Continental Shelf cases was about how these lines should be drawn. Denmark and the Netherlands relied on their domestic legislation that followed the equidistance principle, meaning the boundary should be placed exactly in the middle of their coasts and Germany's coast. If you notice on the map, Germany's coast is concave, curving inward, and applying equidistance would have confined Germany to a small wedge of the seabed. Germany argued this was unfair. The International Court of Justice held that equidistance was not a binding rule of international law and instead said that boundaries should be determined on equitable principles that consider special circumstances. This created a direct contrast between rigid domestic rules and the flexible requirements of international law. The case therefore illustrates how international obligations can override domestic prescriptions when they lead to inequitable outcomes. A similar tension appeared in *Breard v Greene*, where the United States applied its domestic procedural law even though it conflicted with its obligations under the Vienna Convention. Both cases highlight that when domestic law clashes with international commitments, the judicial precedent leans towards giving primacy to international law in order to preserve fairness and treaty compliance.

Research Roadmap-

Start by understanding the basics of the issue, then develop a stance that reflects your portfolio, and always think through an international perspective. Reading past cases and seeing how arguments have evolved will help you refine your points. The more you read, the better you will perform.

How to research beyond the background guide:

1. Start with case laws – read ICJ judgments and advisory opinions related to your issue.
2. Check treaties and conventions
3. Use scholarly articles and journals – for different perspectives and debates.
4. Look at state practice – find how different countries have argued or acted in similar situations.

5. Follow recent developments – read UN reports, press releases, and commentary from reliable legal blogs.

Remember, the background guide is just the beginning. There is always more to explore, learn, and apply. We encourage you to go beyond it and come prepared with strong, well-researched arguments.

Note: We have also shared some additional articles below to help you get started. They provide useful background but may not always be the most authoritative or reliable sources.

Additional References-

1. Hepburn, J. (2018). *Domestic Law in International Adjudication*. In H. Ruiz Fabri (Ed.), *Max Planck Encyclopedia of International Procedural Law (MPEiPro)*. (<https://opil.oup.com/display/10.1093/law-mpeipro/e3132.013.3132/law-mpeipro-e3132>)
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