



INTERNATIONAL COURT
OF JUSTICE

**INTERNATIONAL COURT OF JUSTICE (ICJ)
BOOKLET OF PROCEDURES AND COURT RULES**

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What is International Court of Justice's purpose?

The International Court of Justice (ICJ) is the principal and prior judicial organ of the United Nations (UN). It concludes the legal disputes between related states and gives advisory opinions to authorized UN organs and specialized agencies if it's needed. It is seated in the Peace Palace in The Hague, Netherlands. The ICJ aims to provide a fair, impartial and a accurate platform where it will be free but also controlled at the same time to negotiate, conciliate, enquiry and mediate.

General Historical Background

The modern history of international arbitration is firstly recognized as dating from the Jay Treaty (1794), which was signed between the United States of America and Great Britain.

This Treaty of Amity, Commerce and Navigation ended up yielding to the creation of three combined commissions, whose task it would be to settle an amount of privileged questions between the two countries. As a third-party they intended to function to some extent as tribunals. With this, they reawakened interest in the process of arbitration.

The *Alabama Claims* arbitration in 1872, between the United Kingdom and the United States, clarified the beginning of a second phase. Under the Treaty of Washington of 1871, the US and the UK agreed to submit to arbitration claims. Two countries set rules to governing the duties of objective governments that were ought to be applied by the tribunal. The arbitral tribunal's award ordered the United Kingdom to pay compensation.

The Hague Peace Conferences and the Permanent Court of Arbitration (PCA)

The Permanent Court of Arbitration was established in 1900 and began operating in 1902.

The Hague Peace Conference of 1899, convened on the enterprise of the Russian Czar Nicholas II, at a third phase in the modern history of the international arbitration. The conference culminated with the adoption of a Convention on the Pacific Settlement of International Disputes, which dealt with arbitration as with other methods of pacific settlement, such as good offices and mediation.

The 1899 Convention provided the establishmnet of permanent machinery institution which would enable arbitral tribunals to be set up as wanted and would lighten their occupation.

In 1907, a second Hague Peace Conference helded to revise the Convention and improve the rules governing arbitral proceedings.

After the instruction that the delegate got from the Secretary to work towards the creation of a permanent tribunal composed of judges who would commit their time to the trial and decision of international cases by judicial methods. Secretary wrote judges, "should be selected from the different countries that the different systems of law and procedure and the principal languages shall be fairly represented".

Choosing judges was a mojour problem. The Conference confined that the States should adopt a draft convention for the creation of a court of arbitral justice. Although this court was never in fact to make it out to the surface, the draft convention had given birth to it enshrined fundamental ideas that later on were to serve as a source of inspiration for the drafting of the Statute of the PCIJ.

The Permanent Court of International Justice (PCIJ)

Article 14 of the League of Nations gave the Council of the League responsibility for starting plans for the Permanent Court of International Justice (PCIJ), which would be not only to hear and determine any kind of dispute but also would be able to give an advisory opinion referred to it by the Council or Assembly of the League of Nations.

In 1920s, the Council appointed an Advisory Committee of Jurists to submit a special report on the creation of the PCIJ. The Committee submitted a revised draft to the Assembly, which got adopted unanimously.

This was the Statute of the PCIJ.

A resolution in 1920, called upon the Council to submit a protocol which will consist adoption of the Statute and decided that the Statute should come into force once a majority of Member States had certify it.

Before the next meeting of the Assembly, majority of the Members of the League had already signed and ratified the protocol. The Statute had entered into force and the revised version came into force in 1936.

The new Statute resolved the previously insuperable issue of the election of the members of a permanent international tribunal, with providing a system where the judges were going to be elected concurrently, by the Council and the Assembly of the League.

The Netherlands Government in the 1919 decided that the PCIJ should have its own permanent seat at the Peace Palace in The Hague. Accordingly, its inaugural sitting was held on 15 February 1922.

In conclusion, while helping to resolve some serious international disputes, the decisions of the PCIJ at the same time often clarified previously unclear areas of international law or contributed to their development.

The International Court of Justice (ICJ)

After its last public sitting and last order, the PCIJ dealt with no further judicial business and no elections of judges were held. In 1940 the Court relocated to Geneva.

In 1942, the US Secretary of State and UK declared themselves in favour of the of an international court, and the Inter-American Juridical Committee recommended that the PCIJ's jurisdiction should be extended.

In 1943, the UK took experts to London to constitute an informal Inter-Allied Committee to examine the case. The committee's report, which was published in 1944, recommended:

- that the Statute of any new international court should be based on that of the PCIJ;
- that the new court should retain an advisory jurisdiction;
- that acceptance of the jurisdiction of the new court should not be compulsory;
- that the court should have no jurisdiction to deal with essentially political matters.

In 1943, the USSR, the UK and the US issued a joint declaration recognizing the necessity "of establishing a general international organization, based on the principle of the sovereign equality of all peace-loving States, and open to membership by all States, for the maintenance of international peace and security".

This declaration caused exchanges between the Four Powers at Dumbarton Oaks. The outcome for exchanges was the publication in 1944 of proposals for the establishment of a general international organization, to include an international court of justice.

A meeting was later convened, in 1945. This Committee was responsible for preparing a draft Statute for the future international court of justice. The draft statute prepared by the Committee was based on the Statute of the PCIJ and was therefore not a completely new text.

The Conference decided against compulsory jurisdiction and in favour of the creation of a new court, which would be a principal organ of the UN, on the same footing as the General Assembly, the Security Council, the ECOSOC, the Trusteeship Council, the Secretariat, and whose statute would be annexed to the Charter.

The main reasons that led the Conference to decide to create a new court were:

- as the court was to be the principal judicial organ of the UN, it was inappropriate for that role to be filled by the PCIJ with its connection to the League of Nations,
- the creation of a new court was more consistent with the provision in the Charter that all Member States would ipso facto be parties to the court's statute;
- several States that were parties to the Statute of the PCIJ were not represented at the San Francisco Conference and, several States represented at the Conference were not parties to the Statute;
- in some quarters the PCIJ formed part of an older order, in which European States had dominated the political and legal affairs of the international community, and the creation of a new court would make it easier for States outside Europe to play a more influential role.

The Charter therefore clarified that the Statute of the International Court of Justice was based upon that of the PCIJ.

The PCIJ met for the last time in October 1945 and resolved to transfer its archives and effects to the new ICJ which was to have its seat at the Peace Palace. The election of the first Members of the ICJ took place in 1946. In 1946, the PCIJ was formally dissolved, and the ICJ met for the first time.

Key Terminologies

Applicant Party

The applicant is the party that brings the case to the court. This means that they must prove or convince the judge panel to accommodate for their complaint. They have precedence in aspects such as opening statements, presentation of evidence, presentation of witnesses and rebuttals. (The Applicant Party always go first).

Respondent Party

The respondent is the party that agrees to be part of the dispute submitted by the applicant party. This has set the respondent party to be subject to respond to any accusations brought by the applicant party. Their overall goal is to provide as many counterarguments that can halt or invalidate the applicant's case.

Memoranda

The memoranda, or memorandum for singular, are written documents that are presented to the Court by both parties. The memorandum must provide the historical background of the dispute. It can include bias, as it is set to ensure the point of view of a sovereign state. The memorandum can include a list of treaties, resolutions, historical or legal background which can provide ground to the case. The conclusion of the memoranda should include the individual party's judgement requested to the Court, which will be assessed on the verdict for the basis of such requests.

Stipulations

The stipulations or joint stipulations in other words, are a list of conditions that are presented by the both parties. Stipulations are conditions or facts agreed upon by the both sides. This could also account that the reliability of such contents mustn't be contested in throughout the trial. Stipulations could be considered as valid evidence, although not powerful enough to shape the Court's decisions.

Rebuttal

The rebuttal is when advocates are allowed to speak in order to undermine the arguments of the opposing party. This is usually done on the last day of the hearing. The rebuttal phase must not include the closing statements, but just a final argumentation towards the opposing party. During the rebuttal phase, new evidences may be presented to the Court if the opposing side approves the evidences.

Deliberation

During the deliberation period, advocates are asked to leave so that the judges are free to discuss the case presented to them. It is prohibited for advisors or organizers to enter the deliberations period, since the topics of the discussion are confidential. If a judge were to make a request of the advocates, the necessary preparations can be made to bring in the advocate. There are 4 modes of deliberation: Opening Deliberation, Evidence Deliberation, Witness Deliberation and the Final Deliberation.

Verdict

This is basically the resolution of the ICJ. The verdict contains the judgements decided by the Court in respect to the judgements requested by both parties during the final deliberation.

Opening Statements

Each party must make an opening speech that could take up around 15 minutes. During each party's opening statements, they are expected to present their cases to the Court. The overall goal is to convince of what they want for this trial. Advocates are encouraged not to make far-fetched promises to the Court regarding the case, as it may turn up against them. The applicant party may begin their opening statements first.

Resting the case

“Resting the case” is similar to “leaving the floor”, as seen in other MUN committees. Parties may usually rest their case after presenting evidence or finishing the questioning of witnesses.

Presentation of Evidence

After parties opening statements, each party must move on to present their evidence. Each piece of evidence will be presented to the Court with specific indications of the source of evidence, writer/Publisher, the title and date of the publication. The Registrar must take on the role of securing the pieces of evidence. The Registrar shall mark the pieces of evidence for the Applicant Party in numerical order (Evidence 1), while the evidences represented by the Respondent Party is marked alphabetically (Evidence A). The opposing party may object the evidence if they don't see it fit, that is if it may contain bias or has other aspects to reduce credibility. The Court has the presiding say on any objection, if they entertain objection; president will inform the advocates that they can't present the piece of evidence.

Burden of Proof

The Applicant Party has the burden of proof. The burden of proof is considered valid when the evidence provided by the applicants must convince 51% of the judges. This will allow the applicants who meet the burden of proof to “win” the case.

Deliberation on the evidence

When the evidence is presented; the advocates will be dismissed to allow the judges to deliberate on the evidence. Once a judge completes her/his findings on the evidences, they are allowed to share their findings with the court. They will then discuss the weight, relevance and credibility of each piece of evidence.

Weight of the evidence

The weight of the evidence is how much importance the judges will give during writing the verdict. The weight will ultimately depend on the credibility of the source and the relevance of its content to the case.

Objections

During the trial, advocates occupy the right to object certain activities of the opposing party. Decisions and claims by the Presidency can't be objected to. An advocate can object during presentation of non-credible evidence, hearsay questions or leading questions during direct examination. If the examination seems to sway away from the subject of the case, an objection may be raised.

Hearsay Questions

Hearsay questions are questions raised to witnesses by the advocates about what someone else, someone who hasn't been examined by the Court has said or done. For example, “So Ambassador of Serbia, what did the Ambassador of X say about the recent genocide in Guatemala?” This qualifies as a hearsay question since Ambassador of X cannot be examined or reached. The presidency cannot rule a hearsay question unless an objection is raised by a party against it.

Leading Questions

A leading question is a question that hints at the intended answer. A leading question may sound like “What is true that the state of Serbia has a low tolerance for other racial groups?” This question only brings up a Yes or No answer, thus it can be objected to only if it were to be asked during direct examination. One way of avoiding such types of question is by rewording it like “What is Serbia's opinion on racial groups?” or “Has Serbia ever avoided people's rights?”

Witnesses

Their weight to the case is examined by their relevance and credibility to the case. They must be prepared beforehand, although it is not required for them to research on the issue as they are not considered part of the Court. Their job is completely voluntary while their preparation is in the hands of the advocates. They are an important asset to the trial however, thus it is imperative that they know what they are doing.

Witness Deliberation

This deliberation period is similar to that of deliberation on evidence. The judges will discuss the credibility of the witnesses to determine the weight of their testimonies as evidence. Advocates must be dismissed during this period.

Direct Examination

A direct examination is when the advocates question their respective witnesses. The questions asked during direct examinations cannot be leading questions. The purpose of direct examinations is to retrieve information that can be presented to the judges, which will be considered as evidence.

Cross-examination

A cross-examination is when the opposing party examines the witness. Leading questions are allowed and considered to be asked in this type of examination. This will allow the opposing party to make a point from the witnesses, instead of saying it themselves.

Testimony

A testimony is everything that is mentioned by the witness during their examination, which is considered to be evidence.

Rebuttal Evidence

Rebuttal evidences are pieces of evidence moved in the rebuttal phase.

Rebuttal Questioning

The judges will have the chance to ask questions to advocates after they present their rebuttal evidence. During this, they can ask questions to the Applicants and/or Respondents. These questions are used for clarification purposes.

Closing Statement

The closing statement phase is the final phase for the advocates. During this phase, advocates must wrap up their arguments and present their final points. The advocates must present their Judgements Requested in their statements. The applicant party must speak for 15 minutes, and then the respondent party takes the floor to speak for 30 minutes, which will then wrap it up with the final 15 minutes of the applicant party's speech. (This division is entirely up to advocates, the closing statement can mimic that of the opening statement.)

Judgements Statements

The Judgements Statements are a bunch of requests the judges want to be included in the verdict. They have to be based on legal grounds that refer to their case. Judgement Statements could look like "to ask the United States of America to abide by the International Constitution of Laws". This must be included in the memorandum and closing statements, although they don't have to be the same.

Final Deliberation

During the final deliberation, judges will begin to write the verdict. They will bring up the main issues raised during the presentation of the case. They will then begin to note the most important issues from the evidences and witnesses. Judges may take three different stances: concurring, separate but concurring, and dissenting. Each of these positions will write their own perspective verdicts, which will be complicated in a final verdict document.

Duties and Obligations of the members of the ICJ President

The president shall be responsible for the implementation of the Rules of Procedure prepared for the International Court of Justice. The president also acts as a judge. He or she shall have an equal vote and say with another judge in all matters relating to the case before the Court. The President shall also have one vote in procedural voting matters. Although the President shall dictate the implementation of the Rules of Procedure in the Court, they shall not have authority over the decision of the other judges unless certain judges' opinion is obviously biased in which case the concerned judge shall be given an official warning by the President.

Registrar

The Registrar of the International Court of Justice shall be appointed prior to the commencement of the court and she/he shall remain in duty until the closing of proceedings. The Registrar will be the regular channel of communications to and from the Court, and in particular shall effect all communications, notifications and transmission of documents required by the parties. The Registrar will primarily be responsible for taking copious notes of court proceedings, arguments of the conflicted parties, deliberation of the judges and decisions of the Presidents. The Registrar will take and record the oaths of the judges, advocates, staff members of the Registry, and witnesses before the commencement of the court proceedings. In the case of witnesses, it will be before the presentation of any evidence or testimony. The Registrar can be part of the decision making process of the court, as he/she can occupy a vote. The Registrar is obliged to study the case to the detail. If need be, the Registrar may be required to share her/his knowledge of facts by the majority of the justices. This motion may only be given during the judges' deliberation phases of the trial

Judges

The Judges shall be appointed prior to the commencement of the trial and shall remain in duty until the closing of proceedings unless otherwise decided by the President. The judges will be recognized by the President before they can speak in court. Judges are responsible to determine the rules of international law on the specific case and reach a final judgment. The final judgment of the Court shall be written and announced by the judges and the President. Each judge shall have one vote in procedural and substantive voting procedures. Judge's decisions and actions must be unbiased; if they fail to meet this criterion they may be given an official warning by the President. Judges may ask questions to the assessors or witnesses in designated phases of the trial proceedings.

Advocates

Advocates will represent the sovereign states that are parties to the dispute and they shall remain in duty until otherwise is decided by the President. Advocates are obliged to defend the stance of their states. The presentation of evidence, questioning of the witnesses and other methods of proof shall constitute the instruments of advocates while carrying out their duty. Advocates of the Applicant party shall carry the burden of proof. Burden of proof can only be reversed if the Respondent has extraordinary claims such as trying to disprove an acknowledged fact or an incident that has already been proved by the Applicant party. Advocates, as any other member of the Court, are obliged to abide by the whole Rules of Procedure and final decisions of the Presidents. In the event of misconduct the advocates can be given an official warning by the President. The advocates will be required to write a memorandum prior to the conference and send it to the members of the International Court of Justice. Stipulations will be prepared by both the parties after the advocates have delivered their opening statements.

How the Court Works

The Court may entertain two types of cases: legal disputes between States submitted to it by them (*contentious cases*) and requests for advisory opinions on legal questions referred to it by United Nations organs and specialized agencies (*advisory proceedings*)

A. Contentious Cases

The Court is competent to entertain a dispute only if the States concerned have accepted its jurisdiction in one or more of the following ways:

- by entering into a special agreement to submit the dispute to the Court;
- by virtue of a jurisdictional clause, i.e., when they are parties to a treaty containing a provision whereby, in the event of a dispute of a given type or disagreement over the interpretation or application of the treaty, one of them may refer the dispute to the Court;
- through the reciprocal effect of declarations made by them under the Statute, whereby each has accepted the jurisdiction of the Court as compulsory in the event of a dispute with another State having made a similar declaration.

Proceedings may be instituted in one of two ways:

- Through the notification of a special agreement: this document, can be lodged with the Court by either or both of the States parties to the proceedings. A special agreement must demonstrate the subject of the dispute and the parties too. Since there is neither an “applicant” State nor a “respondent” State, in the Court’s publications their names are separated by an oblique stroke at the end of the official title of the case,
- By means of an application: application is submitted by applicant. It is intended for communication to the latter State and the Rules of Court contain stricter requirements with regard to its content. In addition to the name of the party against which the claim is brought and the subject of the dispute, the applicant must indicate briefly on what basis - a treaty or a declaration of acceptance of compulsory jurisdiction - it claims that the Court has jurisdiction, and must succinctly state the facts and grounds on which its claim is based. At the end of the official title of the case the names of the two parties are separated by the abbreviation The procedure described is the normal procedure. However, the course of the proceedings may be modified by incidental proceedings. The common incidental proceedings are preliminary objections, which are raised to challenge the competence of the Court to decide on the merits of the case.

International treaties and conventions in force; international custom; the general principles of law; judicial decisions; and the teachings of the most highly qualified publicists that the main source of law must apply. If the parties reach an agreement, the Court can decide a case *ex aequo et bono* without confining itself to existing rules of international law.

A case has the possibility to be brought to a conclusion at any stage of the proceedings by a settlement between the parties or by discontinuance. In case of the latter, an applicant party may at any time inform the Court that it doesn’t desire to continue the proceedings, or the two parties may declare that they have agreed to withdraw the case.

B. Advisory proceedings

The UN General Assembly and Security Council may request advisory opinions on “any legal question”. Other UN organs and specialized agencies which have been authorized to get advisory opinions can only do so with respect to “legal questions arising within the scope of their activities”.

When it gets a request for an advisory opinion the first step that the Court will take must be to assemble all the facts, and is thus empowered to hold written and oral proceedings.

A couple of days later, when the request had been filed, the Court comes up with a list of the States and international organizations that are likely to be able to furnish information on the question before the Court. Any State, which is not consulted, may ask to be added to the list.

Advisory proceedings conclude with the delivery of the advisory opinion at a public sitting.

Unlike the Court’s judgements, advisory proceedings are not binding. The Assembly or the Council, the requesting part, remains free to take action towards the Court’s opinion.

Rules Governing Debate

1. Presentation of Case

The President and Vice-President will present the case to the Court. Judges will have an opportunity to ask questions. The session of the Court will be declared formally open by the President after the presentation.

2. Deliberations

The Court will have an opportunity to discuss the case. The Court should try to agree on the facts and the legal issues to be resolved. This is also the time when Notes are drafted by the judges. The Court will proceed following a speakers list and by motioning for moderated caucuses or suspension of the meeting.

Rules Governing Speech

Motion to Dismiss Note/ Motion to Vote for Judgment

Formal Deliberations may be closed via one of two motions: A motion to Dismiss Note and a motion to Vote for Judgment.

A motion to Dismiss Note will pass with a simple majority. If the motion passes, the Court returns to the initial Deliberation phase and will continue with the speakers list. If the motion fails, the Court will return to Formal Deliberations.

Vote on Judgment

A motion to Vote for Judgment requires a two-thirds majority to pass. If the motion passes, the Court will automatically proceed to the Vote on Judgment. If the motion fails, the Court will return to Formal Deliberations.

Motions & Points

Motions may be raised at any time during discussions. Motions on procedural matters are accepted at the discretion of the president, who may put it to a vote.

Moderated Caucus

A motion for a moderated caucus is in order during deliberations and formal deliberations at any time when the floor is open and prior to voting on a judgment. The sponsor of the motion must briefly specify the purpose and the topic for the Caucus. The general speaking time for speeches will be proposed by the judge raising the motion but needs the approval of the president and shall not exceed three minutes.

During a caucus, judges signify their wish to speak by raising their placards. If nobody else wants to take the floor, the style of debate will automatically resume to formal deliberations. Once a judge believes that the content of the discussion is exhausted, he/she may propose a motion to go back to formal deliberations.

Precedence of Motions/Points

Motions and points will be considered in the following order of precedence:

a.) Points indicated below shall have precedence above all motions at all times in the following order:

- Point of Order
- Right of Reply
- Point of Information

b.) Motions indicated below shall have precedence in the following order:

- Motion to Vote for Judgment
- Motion to Dismiss Note
- Motion to Suspend the Meeting
- Motion to Move to a Moderated Caucus
- Motion to Close a Moderated Caucus
- Motion for a Roll Call Vote

Procedures of the Court

1. Presentation of the Memoranda and Stipulations (The advocates should have already sent their memorandum and list of stipulations to the Presidency)
2. The Judges read the documents prior to the conference. (Their content will not be discussed throughout the court proceedings, but can be referred to)
3. Opening Statements / Deliberation (If time permits)
4. The presentation of the case begins with the opening statements of the Applicant Party.
5. After the applicant party has rested their case, the respondent party can follow up to present their opening statements.
 - a. If the respondent party wishes to wait on opening statement, the applicant party can present their evidence. The respondent party will then repeat the similar procedure.
6. The evidence is marked and admitted to the Registrar.
7. Presentation of Witnesses, followed by Witness Interrogation
 - a. At this stage of the proceedings, the court will summon the witnesses named on the witness list given by the advocates.
8. The applicant will conduct a direct examination on the witnesses initially, followed by a crossexamination of the respondents.
9. After this, the process shall be repeated with the Respondent's witnesses summoned to the court, and the process is reversed.
10. Witness Deliberation
 - a. The judges will then move on to the deliberation of witnesses, in which they would look for the credibility, relevance and weight of the witnesses towards the overall verdict.
11. Evidence Submission, followed by questioning of Advocates
 - a. After receiving the evidence from both parties, judges can question the evidences presented to the Presidency.
12. Evidence Deliberation
 - a. The judges will then move on to a deliberation period of the evidence. The weight, credibility, and relevance will be discussed on each piece of evidence.
13. Rebuttal, Presentation of more evidence
 - a. The Court will then move to the rebuttal phase. Here, advocates have a final chance to present more evidence to counter the arguments of the opposing party.
14. After the rebuttal, judges may question the advocates.
15. Closing Statements
 - a. After the questioning, advocates will present their closing statements, which should concisely summarize their points.
16. Final Deliberation
 - a. The advocates will be dismissed and judges will move on the final deliberation
 - b. process to complete the verdict.

Parliamentary Language

The ICJ can function with first-person modes of address. All members of the Court must be addressed with proper formality. A judge should be addressed as "Judge/Justice Surname" or "Your Honor" or simply "Judge". Any panel member occupying the duties of the presidency for a case must be addressed as "Mr. /Madame President" or "President"; if the Vice President were to be addressed, he/she shall be addressed as "Mr. /Madame Vice-President" or "Vice President". The Registrar, if needed to be addressed at any point, should be addressed as "Registrar Surname". When addressing specific advocates of either party, the advocate may be called as "Advocate"; when a specific party is referred to, it may only be called by country name or "Applicants/Respondents".

Alterations for Online ICJ

Attendance

Presidency will be taking attendance at various times throughout the day to ensure that the members of the court are present during the sessions.

A report on tardy and absent students will be given to advisors and they will be contacted by the Organisation Team if the delegate is late or absent in the committee session.

Camera

Participants' cameras should be open at all times during the session, it is mandatory. The background of the member should be calibrated as the background image which will be set by the presidency.

Microphone

Participants' microphones should be muted while they are not given a right to speak by the president. The microphone should only be open when they are delivering a speech or has a point of information.

Appropriate Clothing

Participants should wear appropriate formal clothing during the conference. Advocates and the members of presidency are expected to attend the sessions with their gowns on.

Note Passing

Participants will not be given the alternative of chatting freely from zoom chatbox, only the option of direct messaging to the presidency will be held open. The president will do the announcements and elucidating if needed.

Sources

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