ICJ Manual

27th DSAMUN

18-20 October 2024

Reviewed and amended by:

Vasiliki Mamitsa,
Secretary General

TABLE OF CONTENTS

CHAPTER 1: WHAT IS THE ICJ

I. Introduction

The International Court of Justice is one of the six principal organs of the UN and the principal judicial organ. The official languages of the Court are French and English. It was formed in 1945 according to article 92 of the UN charter and started being active in 1946. The ICJ is considered to be the successor of the PCIJ (Permanent Court of International Justice), which existed from 1922 to 1946 and was established by article 14 of the Covenant of the League of Nations. Thus, the Statute of the Court, which includes the rules and procedures of the Court, is largely based on the Statute of the PCIJ.

The ICJ is independent from the rest of the UN. It has its own permanent administrative Secretariat, the Registry. The Registry's activities are administrative, judicial and diplomatic. Currently, it consists of 100 officials that are selected and appointed by the Registry or the Court.

The ICJ should not be confused with the PCA (Permanent Court of Arbitration) or the ICC (International Criminal Court), which are located in Hague, in the Netherlands, similar to the ICJ. The PCA and the ICJ are even housed in the same building, namely the Peace Palace. The PCA provides support in resolving disputes between states, state entities, international organizations or private parties, mainly through arbitration, mediation, conciliation, and other peaceful means. Thus, it does not fall under the traditional definition of a Court. The ICC investigates and tries *individuals* that are charged with one or more of four main crimes, namely the ones of genocide, war crimes, crimes against humanity and crimes of aggression. It was founded by the Rome Statute, an international Treaty adopted in Rome.

II. Overview of the Court's Work

The International Court of Justice entertains two types of cases, contentious cases, and advisory proceedings. Contentious cases address disputes solely between states. Proceedings in contentious cases can be instituted in two ways. The first is through a special agreement between two parties. The application is considered to be a mutual decision, which indicates that there is neither an applicant nor a respondent party. Secondly through an application by one state against another, which would result in having an applicant party (prosecutor) and a respondent party (defender). The judgment of the Court in contentious cases is legally binding. If a party fails to oblige with the decisions of the Court, then the Court may request that the Security Council takes further action to impose the measures adjudged.

Advisory proceedings on the other hand address legal questions of five UN organs, the SC, the GA, the ECOSOC, the Trusteeship Council and the Interim Committee of the General Assembly and of 16 UN specialized Agencies such as the WHO or the UNESCO. The opinions of the Court are advisory, meaning that they are not legally binding. In the simulation of the ICJ in the Model United Nations, the primary cases discussed and tried are contentious cases that were instituted by means of an application, meaning that there is an applicant party (prosecutor) and a respondent party (defender).

III. Composition of the Court

a. The Advocates:

The Applicant Party (Prosecutor): The Applicant party, also called the Prosecutor, consists of two advocates that represent a state which is instituting proceedings against another state, claiming that it failed to meet its obligations under international law. The applicant party has to meet the ***burden of proof***. The burden of proof is a legal term that defines the obligation of the applicant party to prove through evidence that their allegations against the respondent party are valid. This is an obligation that *only* the applicant party has. If the applicant party fails to meet the burden of proof they lose the case. If a judge isn't convinced by any party, then the applicant hasn't met their burden of proof, and that judge will be voting in favour of the respondent party. The points which will need to be proven are points that the applicant party itself will have determined in their memorandum, in the judgment requested / prayer of relief.

The Respondent Party (Defender): The Respondent Party, also called the Defender, consists of two advocates that represent the state that is being accused of having allegedly failed to meet its obligations under international law. The Respondent party is *not* obliged to meet a burden of proof. It only has to demonstrate how the applicant party lacks arguments, pieces of evidence and valid proof and ultimately how they can't meet their burden of proof.

b. The Judges:

The ICJ is composed of 15 judges. The judges' main task is examining, analysing and evaluating the real and testimony evidence during the deliberations, in order to have a clear view on the facts of the case and to be able to adjudge if the applicant has met their burden of proof in the final voting. They lastly have to conduct the verdict with the guidance and help of the Presidency. The judges' work before the conference should be minimal. The only documents related to the case they are allowed to read are the memoranda. It is very important that all judges **refrain from researching the case beforehand** since that can and most likely will influence their opinion on the case, thus making them biased. They are not allowed to discuss

with the advocates matters of the case before and during the trial. Note passing between advocates and judges is strictly forbidden. A judge's opinion on a country and its policies should also not influence them during the trial since it's completely irrelevant to the case. Judges are advised to keep notes of everything that happens in court and should always be aware of the difference between claims and proven facts. It is highly recommended that Judges have an electronic device, such as a laptop or a tablet since they will be required to work with documents in their online version and it will additionally help them be organized and keep track of everything happening in court.

In the real UN, the judges are elected by the Security Council and the General Assembly. There can only be *one* Judge from a specific country of origin in the Panel. Every state that is a party to the statute of the court may candidate a judge through representatives in the PCA (Permanent Court of Arbitration) or similar groups. All elected judges have a nine-year term and one-third of the court changes every three years. After the election of the new members of the panel, a secret ballot takes place to elect a President and a Deputy President.

The Court may consist of more than 15 Judges in case of the participation of a judge ad hoc, which is a judge that may be part of the panel for a specific period of time, during the proceedings of a specific case, when a party to a case does not have a judge of its nationality in the panel.

c. The Presidency:

The President and the Deputy President are judges and thus have the responsibilities and tasks that any other judge has. They additionally coordinate, organize and guide the committee. They are equal to all other judges. That being said, the Presidency in the Model United Nations is more experienced than the rest of the Panel and has been selected because of their expertise. Their advice should be taken into consideration and should be respected. Lastly, the President has a casting vote in case of a tie during the final voting on the verdict, meaning that their vote counts as twice.

The Registrar is the President of the aforementioned Registry. Normally the registrar is the only one that communicates with the parties before Court since he/she is the President of the ICJ's administrative body and thus has no voting right. For practical reasons in the MUN, all members of the Presidency communicate and guide the advocates to achieve the best result. The Registrar's main task in Court is documenting all the progress made, storing and organizing the pieces of evidence in order to be able to provide the Judges and the Advocates with any piece of evidence at any time during the procedures. The Registrar is also responsible for the witnesses to go under oath at the beginning of their testimony.

CHAPTER 2: CONTENTIOUS CASES

I. Incidental proceedings

The incidental proceedings are separate from the oral proceedings and take place before them. Since the ICJ in the Model United Nations is a simulation of the oral proceedings of the case, it should be born in mind that all the incidental proceedings have supposedly already been settled beforehand and will not be discussed upon in the conference. Thus, they will only be briefly mentioned below.

A. Preliminary objections: When the Respondent party believes that the court lacks jurisdiction on the case or that the application is inadmissible, they raise preliminary objections, in order to discontinue the proceedings. The court then examines the validity of the objections.

B. Provisional Measures: When the applicant party believes that the merits on which it based its application are in immediate danger and need urgent action taken, they can request provisional measures. The court examines the need for provisional measures and makes adequate judgments and decisions.

C. Permission to intervene: When a third-party requests permission to intervene because they believe their involvement in the case is significant and the possible verdict might affect them.

The failure of a party to present itself in court and the join of two separate cases with similar claims against the same party also require additional proceedings.

II. Oral proceedings and Timeline

Timeline

(All key terms and documents are further elaborated on below in section III)

Preparation of the advocates before the conference:

1. Memorandum
2. Evidence list
3. Witness list & Preparation of the Witnesses
4. Stipulations workshop (Suggesting and deciding on the stipulations)

Procedures during the conference:

1. Role Call
    - ♦ Quorum: least number of Judges present to start the session -> 9 Judges

2. Stipulations
    - ♦ The Presidency reads the stipulations, and the advocates may object

3. Opening Statements
    - ♦ Approximately 20 minutes for each
    - ♦ The applicant party begins but it can divide its time

4. Presentation of the first real pieces of evidence (up to 10 for each party)
    - ♦ The applicant begins, the respondent proceeds
    - ♦ The parties may object

5. First Deliberation on the first 10 real pieces of evidence

6. First Questioning towards the advocates

7. Testimony Evidence (up to 3 witnesses for each party)
    - Approximately 30 minutes for each witness -> 10 mins direct examination, 10 mins cross-examination by the advocates, 10 mins cross-examination by the Judges
    - Both parties can request to redirect the examination if they have time left

8. Second Deliberation on the Witness Testimonies

9. Second Questioning towards the advocates

10. Presentation of the Rebuttals (up to 5 for each party)
    - The applicant begins, the respondent proceeds
    - The parties may object

11. Third Deliberation on the Rebuttals

12. Third and final Questioning towards the advocates

13. Closing Statements
    - Approximately 20 minutes for each party
    - The applicant party begins but it can divide its time

14. Fourth and final Deliberation
    - Voting
    - Composition of the verdict

Remarks

The time provided to each party and to the witness testimonies should be divided equally. The questioning towards the advocates is directed to both parties and thus the time that each party has may vary depending on the findings of the panel during the deliberation.

III. Written Documents and Key Terms

Written Documents

Memorandum: A memorandum is the first document prepared by the advocates and the only document related to the case that the judges come in contact with before the conference. Both parties have to prepare one. Everything included in the memoranda is from the point of view of the party that conducted it and should not be perceived as given facts or as evidence. A memorandum should include the following sections:

1. *Introduction:* In this section, the case as a whole is introduced, including why the case was brought to court, which main legal document is disputed, the main claims and allegations or the main counterclaims. The applicant party should also briefly mention how the jurisdiction of the court can be proven, but as previously mentioned the question regarding the jurisdiction of the court will *not* be dealt with during the oral proceedings in court.

2. *Historical background:* After the introduction, a more detailed description of the facts and events that led to the dispute and to the application of the case should be provided. It's recommended to either place the events in chronological order or to create a parallel timeline of events in the countries related to the case. The events prior to the case should be comprehended by all judges in order for them to have a clear insight into the case.

3. *Legal grounds:* All legal documents that work as the basis of the argumentation of each party should be listed in this section. A description of the document and its importance should also be included. These documents can be any binding legal piece of law, such as international conventions, treaties, Security Council resolutions or other legal documents that can back up one's claims. The exact article, paragraph or clause of importance should be clearly stated.

4. *Prayer of Relief/ Judgement Requested:* This part should list the decisions that the party would want the court to adjudge and declare in their final verdict. The Prayer of Relief may change during the Conference and the advocates will have to include it in their opening and closing speeches. The points that the advocates will mention in the judgment requested will have to be proven in order for them to win the case. The Judgment Requested of the Party that wins the case will also be partly included in the verdict.

Stipulations: Stipulations are facts that both parties have agreed upon. Each party prepares some facts that they think are very important to the case and should be taken for granted. The parties discuss and agree on them prior to the conference. The advocates can object to the stipulations at the beginning of the conference but are strongly advised not to. These can completely alter the result of the case, so they should be closely selected by the parties and later well studied by the judges. Since stipulations are definite facts throughout the whole conference, they do not have to be proven in court. If a piece of evidence happens to contradict a stipulation, something that normally shouldn't happen, then the piece of evidence loses its credibility and accuracy.

Evidence:

Real Evidence: Evidence lists of real pieces of evidence are presented in court twice. On the first day of the conference, both parties can provide to the court up to 10 pieces of evidence. These can include documents in written form such as legal documents, articles or reports, the evidence can be visual sources such as pictures, graphs or charts, they can be audios, videos or even objects. All pieces of evidence that are in a written form should be brought to court printed. If the advocates believe that the judges should focus on some specific parts, they can underline them. They should keep in mind though that the evidence will be examined as a whole. Evidence Lists have to follow a specific format. The format should be as follows:

(Pieces of Evidence from the Applicant Party are numbered as 1,2,3 etc.)

(Pieces of Evidence from the Respondent Party are numbered with capital Latin Letters, A, B, C)

1. Link to the online form of the document

2. Title of the Document (Specifically: If the evidence is a legal document, then the advocates should also include the articles, paragraphs or clauses that the judges should focus on)

3. Source: e.g. the United Nations Archives, the New York Times, the World Health Organization

4. Author: If the document is an article or a text written by a specific person or group of authors then they should be named here. Some background information about their country of origin, their studies, prior and current workplaces, important life events and most importantly their expertise on the matter should be listed. This will help to prove the reliability of the piece of evidence.

5. Publication date: The exact publication date of the last time the

document was edited should be listed in order for it to be deemed authentic. If the advocates want to provide the court with a previous version of a specific document, they should mention it in this section. Only pieces of evidence that were conducted before the application date of the case can be provided to court since the simulation takes place at the time of the application. Articles after the application can be brought to court only if they refer to events before the application.

6. Summary: The content of the piece of evidence should be shortly summarized. No further explanations about the reasons the piece of evidence was brought to court can be named since they could be deemed misguiding. If any questions arise, they can be answered during the questioning towards the advocates.

Rebuttals: The Rebuttals list is an evidence list with up to 5 pieces of evidence that is presented on the last day of the conference. These pieces of evidence are the last possibility that the parties have to prove that their claims and allegations can be proven. It is good to have pieces of evidence prepared prior to the conference but it is very likely that they will have to change. Often the court finds gaps or unproven allegations during the deliberation that the advocates hadn't considered before. The advocates will be able to find out what they haven't provided the court with during the questionings.

Testimony Evidence: The Testimony Evidence is considered to be equally as important as the Real Evidence. Each party can bring up to three witnesses to court for examination. It is advised that one of the witnesses is the ambassador of the country represented by the advocates. The other two witnesses can be ambassadors of other countries, organization representatives, esteemed diplomats, eyewitnesses or any individual that may help the advocates support their claims. The witnesses will be evaluated with similar criteria to the real evidence. The advocates should thus make sure that the information they provide to the witness is objective and unbiased. The witness will be evaluated on the grounds of reliability during the deliberation. Witness testimonies should generally be backed up by pieces of evidence. If the testimony of a witness contradicts a real piece of evidence, then that will be discussed and taken into consideration during the deliberation. The advocates should provide the witness list to the Presidency adequate time before the conference in order for the Presidency and the Secretariat to have time to contact the witness and their advisors.

Verdict: The verdict is the document in which the final judgment of the court is delivered. It is conducted by the Judges and the Presidency during the final deliberation. This document also follows a very specific format. There are four main sectors. The list of the stipulations, the findings of facts and/or law, which are sentences that start with the word "Whereas" and refer to the facts proven and how they were proven, the declaration and judgment regarding the burden of proof and the orders of the court, which are listed numbered. It is very likely that some parts of the

judgment requested by the winning party will be included in the orders of the court. The specific format of the verdict will be provided by the Presidency.

All documents and facts that were not brought to court as evidence and were not stipulated are considered as non-existent and do not hold any value in court.

Key terms

Opening Statements: At the beginning of the court session each party delivers an opening speech. The opening speech is thus the first possibility the advocates will have to directly address the judges and make a first impression. This is why they are considered to be of great importance. A summary of the point of view of the country, their allegations, arguments, counterarguments, their strongest evidence, the main legal grounds, the main historical facts that led to the current situation and lastly the judgment requested / prayer of relief should be included. The advocates should try during the opening speeches to provoke the judges emotionally. It is important for the judges to keep in mind that the **statements by the advocates are not considered to be either facts or pieces of evidence.**

Deliberation: Overall, four deliberations will take place during the conference. Before the deliberation, all advocates have to exit the room. They can rest, they can prepare the rebuttals, the witnesses or their closing speeches. No person, other than the members of the panel can enter the room. During the first deliberation on the real pieces of evidence, each judge will be responsible for examining one or more pieces of evidence, depending on their length. Each piece of evidence will be examined on three main criteria, its *relevance* to the case, its *reliability* and its *authenticity*. The judges are not allowed to write notes or underline anything on the actual piece of evidence since they would be altering the piece of evidence. It can also cause confusion since the pieces of evidence may be needed in the witness testimonies or during the questionings towards the advocates.

All judges will be able to shortly present the pieces of evidence they examined and their opinion on them. The panel will discuss and determine if the evidence will be taken into *maximum*, *medium* or *minimum consideration* by voting. Similarly in the next deliberation the panel will exchange opinions on the witness testimonies and vote on the consideration they should be taken into. Later, in the third deliberation, the panel will also evaluate the rebuttals in a similar manner to the first real pieces of evidence. During the fourth and last deliberation, the panel will decide if the applicant party has met the burden of proof after holding a discussion. The panel will then vote. In the case of a tie, the president has a casting vote, so their vote counts twice, as mentioned before. In the very end, the panel will compose the verdict.

Questioning towards the advocates: During the questioning towards the advocates, the judges will have the chance to ask questions that were formed during the deliberations. The advocates will be able to present their arguments clearly and back them up with pieces of evidence. They will also be able to find out where they lack pieces of evidence in order to include them in their rebuttals list.

Direct-Examination of the witnesses: Before the beginning of the direct examination the witness has to repeat the oath after the registrar: "I solemnly swear to tell the truth, the whole truth and nothing but the truth". The direct examination of the witnesses is the examination that is conducted by the party that brought the witness to court.

Cross-Examination of the witnesses (by the advocates): The cross-examination of the witnesses starts with the examination by the opposing party of the one that brought the witness to court. During the Direct Examination and the Cross-examination by the advocates, both can pose objections. The objections are listed below in *section e*. If the parties have time left, they can both *request to redirect the examination and* continue with examining the witnesses after their opposing party. The advocacies can only ask one question at a time. They should not repeat an already asked question, even if the answer received wasn't satisfying or the witness chose to refrain from answering as a whole. The witness has the right to refrain from answering a question if they wish so. This ensures that the witness doesn't feel overly pressured and anxious. When a witness refrains from answering a question, it should be respected but it will be taken into consideration during the evaluation of their testimony. If parts of the witness testimonies are contradicting strong pieces of evidence, such as pieces of international law or very strong pieces of evidence, such as visual documents like videos or objects, they will not be taken into consideration.

Cross-Examination of the witnesses (by the panel): After the examination by the advocates, the panel will have the opportunity to examine the witnesses themselves. After the cross-examination by the panel, the witnesses may return to their committees.

During all the examination of the witnesses, it is advised to provide the witness with the pieces of evidence the question is referring to, in order for them to better understand the question and answer as precisely as possible.

Closing Statements: The closing speech is the last opportunity the advocates will have to directly address the judges. The closing statements should summarize the main allegations and claims of the advocates and how they managed to prove them. They should also demonstrate how the opposing party didn't manage to prove their points and how their pieces of evidence lacked validity. The advocates should once more try to provoke the judges emotionally

IV. Objections, Points and Motions

Objections

Objections during the presentation of evidence

Both parties should be provided with the *final evidence* list of the other party before the beginning of the conference. The evidence list cannot change after being sent to the opposite party. Adequate time should be given to both parties to prepare objections on the pieces of evidence. These should be carefully selected. The Judges will be examining into which extend they stand or not during the deliberation. The objections should not be overused but rather used in all cases in which they are deemed necessary.

Grounds:

1. Relevance: This objection implies that the piece of evidence is to some extent irrelevant to the case and thus shouldn't be taken into consideration. Often the approach that the two parties decide to take when it comes to the case differs because of their contradicting interests. This why an aspect of the case that might seem irrelevant to one party, might be very important for the other.

2. Reliability/Bias: This objection implies that the source or the authors of the piece of evidence are unreliable and biased towards one of the parties. Legal pieces of evidence, such as SC or GA resolutions, International Conventions, Treaties or Agreements, and previous ICJ judgments are considered fully reliable. For non-legal pieces of evidence such as articles from news outlets, reliability will have to be proven by providing background information on the authors, their expertise and their international recognition.

3. Authenticity: This objection implies that the pieces of evidence have been altered by adding information, removing information or replacing information.

Objections during the questioning of the witnesses:

Objections can be made by both parties during direct and cross-examination of the witness (by the advocates). The advocates are advised to have printed and studied the objections in order to be able to use them during the examination. Objections are of great importance during the witness testimonies since they can change completely the results of the examination. Thus, the objections must be used carefully and shouldn't be overused. The presidency has the right to ask the advocates to further elaborate on the reasons they decided to object. It's under the Presidency's discretion to decide if the objection will be sustained or overruled.

Grounds:

1. Leading Question: This objection implies that the question posed by the party suggests the answer. The question includes the answer, and it can most of the time be answered with a 'yes' or 'no'. It can only be made during direct examination. Leading questions are allowed during the cross-examination since the witness was brought to court by the opposing party.

2. Relevance: This objection implies that the question posed is irrelevant to either the case as a whole or the testimony presented to the court.

3. Hearsay question: This objection implies that the question posed refers to, or addresses a person, organization or state that is not present in court. Thus, that person or entity cannot defend itself and shouldn't be mentioned during the questioning.

4. Badgering: This objection implies that the question posed possibly intimidates the witness and should either be rephrased in a less aggressive, provocative and disrespectful way or avoided as a whole.

5. Lack of competence: This objection implies that the witness is not required to be aware of the answer to the question posed, because they are not supposed to be an expert on the content of the question.

6. Ambiguous/Vague/ Misleading question: This objection implies that the question posed to the witness is too general, ambiguous, vague or even misleading and should be rephrased in a more clear and precise manner. The Presidency may request the advocate to provide the witness with a specific piece of evidence in order for the witness to have precise information as a foundation and thus understand the question clearly.

7. Non-Responsive Answer: This objection is the only one that does not refer to the questions of the advocates but to the answers of the witness. It implies that the answer provided is irrelevant to the question asked. It should then be rephrased in a way that specifically answers the question posed.

Points

1. Point of Personal Privilege*:* The point should be referring to the comfort and well-being of the delegate. The point of information to the Presidency *may* interrupt the Advocates, the Panel or the Board, only if pertaining to audibility.

2. Point of Order: The point of order is a question regarding procedural matters only. If there has been a procedural mistake, then the chair should state "the chair stands corrected" and correct themselves. It *may not* interrupt the Advocates or the Panel.

3. Point of Judiciary / Judicial Inquiry*:* The point of judiciary / judicial inquiry is a question towards the chair concerning the Rules of Procedure. It *may not interrupt* the Advocates or the Panel.

4. Point of Information to the Presidency: The point of information to the presidency is mostly requesting for a statement by the Presidency or a clarification on an issue. The question can be referring to anything that does not fall under the category of Point of Judiciary/ Judicial Inquiry, Point of Order or Point of Personal Privilege. It *may not interrupt* the Advocates or the Panel.

Motions

1. Motion to approach the Board*:* Requesting permission to approach the Presidency to discuss a personal matter.

2. Motion to follow up: Can only be raised by the judges during the examination of the witnesses and the questioning towards the advocates.