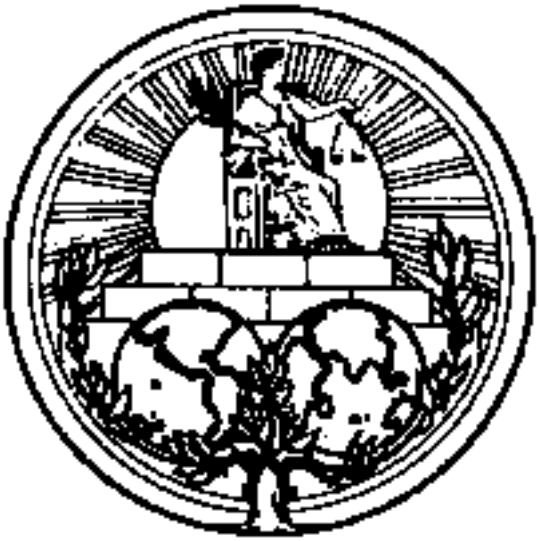
# Model International Court of Justice



A Brief written on Trial Procedure for the
Model International Court of Justice at
The Hague International Model United Nations

**by Robert S. Stern**

# INTRODUCTION

The ICJ at THIMUN is now several years old. The program has been a great success; of which I am very proud. There have been some growing pains along the way; thus, it is now appropriate to begin to make corrections and additions to some of our procedures. Each year's program depends solely on the participants, in other words, how well you follow the rules and policies. This brief, which will be updated annually, is an attempt to make the program run more smoothly. In general, it is meant to supersede all other briefs, booklets, and manuals previously published for THIMUN's ICJ.

The procedures of the THIMUN ICJ are loosely based on the International Court of Justice **RULES OF COURT**. It is imperative that each participant reads the Rules, particularly, Articles 54 through 78. However, because of our time limitations, and the complex rules of evidence, some of our methods will be a hybrid of procedure, predominantly American and English (because I am most familiar with these).

A fairly strict schedule preceding the ICJ in January is important. I begin by hoping that the cases will be selected as close to 1 October as possible. Then, by mid-October, each participant should have received:

1. all relevant materials regarding the cases, and

2. a list of all the participants, including addresses, phone numbers, and fax and E-Mail addresses, if available.

The preparation required of the advocates prior to the ICJ in January must be extensive, and it is essential to the program. I suggest that by the end of October, the advocates will have read all the materials thoroughly, and, even more important, they will have contacted their co-counsel and fully discussed the case with him or her. Then, they should devise a plan that best presents their case and divide the responsibilities between them. Each team of advocates must talk with opposing counsel, and this should be done on a regular basis also beginning in late October. Talking with co-counsel and with opposing counsel will save enormous amounts of time. It prevents wasting time on issues that may be stipulated to, or, which may turn out to be non-issues.

The preparation of witnesses is crucial. Waiting to prepare witnesses in January at THIMUN is unhelpful. Witnesses should be prepared **long** before the program. Each director of a THIMUN delegation has a list of other delegations, including directors, addresses, and phone numbers. With a few telephone calls, an advocate can track down a member of another delegation who is a prospective witness, make contact with that person, and begin preparation. Due to time constraints, I recommend 3-5 witnesses.

If done properly, all of the preparation can be completed by Christmas break. After Christmas break (when things are otherwise quite hectic) is the time for participants to question opposing counsel's witnesses, then review and polish what they have, and comfortably cruise into THIMUN ready to proceed. Often, it is not the brightest advocate who "wins" a case, but the one who is the best prepared. Said another way, a thoroughly prepared advocate never really "loses" a case.

Finally, I think it is best if all participants meet on the program's initial Sunday afternoon for a briefing. I would expect the presentation and question time to last about ninety minutes, from 3:00□m to 4:30□m. This meeting is mandatory. Failure to attend will be unhelpful to both the participant and the program. Be ready with your questions.

There are a number of points I wish to discuss with you at this time:

## 1. MY ROLE

As a teacher and the MUN director at TASIS, The American School in England, a lawyer from the United States, and having worked in the legal field in Britain, my job is to ensure that things run smoothly, efficiently, and as accurately as possible. I do interrupt the proceedings in order to keep everyone on track; however, I notice that as the week proceeds, and you become accustomed to the procedures, I am compelled to intervene less and less.

## 2. JUDGES' RESPONSIBILITIES

a. Being a judge of the ICJ is not like being a member of a delegation. All chance of compromise has seemingly ended at the time a case is heard. Uniform general principles of law must be followed. Judges cannot bend the rules in order that each party leaves "with a little something". Judges are bound to follow the law, whatever the outcome.

b. Judges must take copious notes of the proceedings. Good note-taking is essential, because:
   1. one cannot remember everything that is presented, and
   2. even if we had a court reporter, one could not continually request his/her notes.

   I use a common technique in taking notes. Take your notebook and draw a line down the centre of each page. On the left side of the page, write your basic notes; on the right and across from your entries, put down significant points that are raised by a particular note. Jot down questions you wish to ask when it is your turn, as a judge, to question the advocates. Most important, raise the issues that you feel are crucial to the case—those issues that you feel should be listed for consideration during judges' deliberations. I cannot stress enough the importance of taking good notes.

c. The fact/law relationship is an interesting one, and like many legal principles, it is very conceptual. I will do my best to explain:

When there is a jury (there is none in the ICJ), all issues or questions of fact are determined by the jury. All issues or questions of law are determined by the judge(s). When there is no jury, as in the case of the ICJ, the judges take on both roles as "finders of fact" and "triers of law"

The advocates present evidence to the judges. When an advocate **objects** to the attempted presentation of certain evidence, i.e., "I object, your honour, Hearsay," usually, the advocate is objecting to the admissibility of the evidence. If the objection is sustained, the judge(s) agree with the advocate making the objection, and the statement, document, etc. cannot be heard/seen, or "admitted into evidence". If the objection is overruled, the judges oppose the objection, and the statement, etc., can be heard/seen or considered as evidence by the "finders of fact" (again, in our case, the judges themselves). The degree to which the evidence can be considered is often discussed in jury instructions, and it is referred to as the "weight" given to the evidence, sometimes a lot, sometimes only in relation to other factors and, therefore, just a little. In our circumstances, the two co-presidents will rule on objections, although the other judges should be consulted on complex matters. The co-presidents, sitting as judges, have the last word in all rulings.

Judges should be addressed as "Judge (*name*)" or "Your Honour". Advocates should be addressed as "Counsel", as in "Counsel for (*country*)". Also, please **note** that judges may ask limited questions of any witness in the proceedings, whether on direct or cross-examination. The questioning of advocates by the judges is discussed later in this brief.

d. Normally, it is improper for judges to substitute themselves in for advocates. Judges do not investigate cases on their own. They only accept the evidence that is presented to them by the advocates. The ICJ works a bit differently. It allows judges some latitude in investigation during the case. Therefore, I believe some limited preparation beforehand is appropriate, if for no other reason, than to give you something to do before January. You should read any material sent to you by the ICJ program (judges are always allowed to read the filed original pleadings). Also, you may do some extended reading regarding the issues on your own. Under no circumstances should you discuss this matter with, or read any material presented to you by, the advocates until the cases are formally presented to you at The Hague; nor should you speak to any prospective witness. Put yourselves in the shoes of the advocates and think of all of the possible relevant issues and questions that pertain to each of the cases. At the same time, you must remain as objective and unbiased as possible. NEVER pre-judge! Trust me when I say that no case can be properly determined until ALL of the evidence is presented, i.e. after BOTH sides have presented their respective cases.

# 3. ADVOCATES

a. Each set of advocates will present a short written Memorandum of Points and Authorities to opposing counsel, the judges, and to me by the 2nd Monday in December. The Memorandum 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 Memorandum should be written clearly and succinctly, and I recommend a length of approximately 1,000 words (but not to exceed 1,500 words). I advise using a "12" font for comfortable reading.

b. **NEVER** take anything personally, and **NEVER** "hit an opponent below the belt". **ALWAYS** act as a professional! Note that this includes being on time for every session of the program. Never be late!

c. Stipulations**:** Please discuss with opposing counsel those relevant issues of fact and of law to which an agreement can be reached **before** the case is presented. It will save you and the judges (the Court) vast amounts of time. Just prior to the presentation of opening arguments, the President of the Court will ask for your stipulations, which should be in writing and, of course, agreed to by both sides (if not, they are not stipulations). The single form should state: "The parties stipulate that: (1)...,(2)...,etc.". I suggest that all stipulations be agreed to by the advocates and sent to all the judges and to me by the 2nd Monday in December.

d. Burden of proof**:** The Applicant/ moving party has the ultimate burden of proof. It is neither Beyond a Reasonable Doubt nor Clear and Convincing Evidence. The burden of proof is **Preponderance of the Evidence**, which is the lowest burden possible. It means that the Applicant must persuade a simple majority of the judges that its position carries its weight or is persuasive by at least 51%.

   Interestingly enough, each piece of evidence presented by each party can be viewed in this manner. Regardless of which side is requesting its admissibility, the question can be asked about each individual piece of evidence: "Is it persuasive by 51%"? Then the totality of evidence is "weighed" in the same manner at the end of the case. Of course, some evidence is given more weight or credence than others, but the question of a "preponderance of the evidence" is the burden to be met. If at the end, the moving party has met its burden, it wins, if not, it loses. It is really quite simple but, perhaps, not so easy to explain. We shall discuss it further at the ICJ program.

e. The kitchen sink approach, or not: Experts may disagree, but there is one principle that seems to repeat itself over and over again. Think about it and decide if it is right for you and for your case. If you are the moving party (Applicant), be specific in what you want and how you present it. Clear and concise are the best principles; stay focused and do not allow the other side to get you muddled. If you are the responding party (Respondent), throw in everything you can, like pots and pans in a kitchen sink. Muddy the waters, confuse the issues, prevent the moving party from being clear, concise, and focused. Each of these two tactics requires great skill, and demands appropriate behaviour and proper legal presentation.

f. Opening Statements: The purpose of an Opening Statement is to tell the Court what you intend to show/prove by the presentation of your case. It is best to say, "We intend to show..." or "We intend to prove..." etc. Never make assertions or promises to the judges that you cannot keep. The opposing counsel will make certain that the judges remember that you promised in your opening statement to prove something you failed to do. Fifteen minutes for each side is adequate.

   The applicant presents the opening statement first. The respondent may give its opening statement immediately thereafter, or wait until the applicant has rested its case and give its opening statement just prior to putting on its own case. Your choice! Also, it is best that one advocate present the opening statement; however both may share in presenting the closing argument.

g. Body of the case: Assuming there are two cases and no Advisory Opinion, each side should be allowed three hours to present its case on direct examination (**including** the time by opposing counsel for **reasonable** cross-examination which I estimate will total no more than one hour). Here, organisation is the key. It is like a well-written exam paper, with an introduction, a series of paragraphs as the body of the work, and a conclusion. You are preparing for the summation or closing of the work. Each paragraph builds to the conclusion in a rational, intelligible order. Do the same in presenting your evidence.

h. Presenting evidence**:** The presentation of evidence during trial is governed by principles called rules of evidence. Judges use a balancing test carefully weighing whether a trial would be fairer with or without a piece of evidence in question. We generally deal with two types of evidence, "real" and "testimony". Real evidence consists of objects of any kind, which includes papers and documents. Testimony is the statements of competent witnesses.

   (i.) Testimony: Questioning your own witnesses is done during **direct examination**. **Cross-examination** is when you question an opposing side's witness after the witness has been questioned by opposing counsel during their direct examination.

The first point to note regarding direct examination is that witnesses should be very well-prepared, i.e., well-coached. Witnesses should know what questions you intend to ask them on direct examination, what answers are expected (as long as they are truthful), and, most important, what questions to expect on cross-examination. Cross-examination of a witness, which follows direct examination of the witness, is meant to create a dispute about the witness's statements, and/or to place the witness's credibility (believability) into question. This includes the witness's demeanour.

During direct examination, you must follow two basic rules. First, unless a witness is established as an expert, you cannot ask **leading** questions. Whether a witness qualifies as an expert is decided by the court after the witness is asked several specific questions (called voir dire) about his/her expertise in the filed—education, years of practice, publications, number of times used as an expert witness in other cases, etc., Leading questions are those questions which suggest the answer by the very nature of the question. "You saw him, didn't you?" "You are a good student, are you not?" It is rare that we consider a witness an expert at our ICJ.

Second, you cannot ask **hearsay** questions. Hearsay is difficult to define, and there are many exceptions to the rule. Basically, you cannot ask a witness about an out of court statement or act allegedly made by someone other than the witness. It is testimony a witness provides that is not based on personal knowledge but is a repetition of what someone else said. It is usually not admissible because it is impossible to test its truthfulness on cross-examination. "Mr. Jones, what did Mr. Smith say?" Objection, hearsay! Why? Because Mr. Smith is not available to be cross-examined to determine the veracity/truth of the matter stated. You can ask Mr. Jones what he (Mr. Jones said), but not what someone else said unless it is an exception to the rule, e.g. a party, or in certain circumstances, a witness to the case. The principles directed at achieving truth generally fall under the headings of trustworthiness and relevance. The basic criterion for admissibility of evidence is trustworthiness. The object is to ensure that only the most reliable and credible facts, statements, and/or testimony are presented to the triers of fact.

Each witness who testifies in direct examination may be cross-examined by opposing counsel. The questions on cross-examination must relate to the questions asked on direct examination. We say that they cannot exceed, or be outside, the scope of the direct examination of the witness. Cross-examination is an art. No hearsay is allowed, but, if done properly, **every** question should be a leading question. Essentially, you **tell** the witness what you want him/her to say by leading, e.g. "You were lying when you said you saw the defendant in the store, weren't you?" "Isn't it true that the person you saw was not the defendant, but someone else?" You direct the answers, and most, if not all answers, should be either a "YES" or a "NO" (although witnesses often may explain their yes or no answers). Unless the witness is qualified as an expert, on direct examination, ask no leading questions on cross-examination ask only leading questions.

Technically, at any time during the testimony of a witness, a judge, subject to the approval of the President(s), may ask a question of the witness. However, rather than interfere with the flow of testimony, it is prudent for judges to wait until all direct testimony and cross-examination of a witness is completed, at which time judges will have the opportunity to ask questions of the witness. Following these questions, advocates will be given a very brief opportunity to ask further questions of the witness. Because of time constraints, judges' questions, and follow-up questions by advocates, must be kept to a reasonable minimum by the President(s).

Further, some quick pointers: Try to reinforce the credibility of your witnesses for truth and accuracy, while attempting to establish that the credibility of certain opposing witnesses is poor. **Never**, ask a witness a question to which you yourself do not know the answer. **Never** ask a witness "WHY"! **Do not** argue with a witness! Further, only one advocate from a team should question a witness, not both advocates. This is true whether on direct or cross-examination. The questioning of witnesses is done in the following pattern: direct, cross, redirect, re-cross, and so on, until each side has no further questions to ask the witness. Finally, sometimes, it is best to know when to stop. It is a wise advocate who knows when to say either "no further questions," or even "no questions". Strategy and timing are very important.

This next point is very important. The witnesses must be "real". That is, they must have a particular capacity within their delegation/committee/commission, role at THIMUN, etc., and be used in that capacity. A few years ago, one set of advocates selected someone from a delegation as a Serbian general, which was not his role or position at THIMUN. We allowed that situation as a one-off, but noted that it would not be acceptable in the future. Therefore, witnesses will only be allowed from delegations, committees, commissions, etc., and in their official capacity within those groups. Try and sort this out among yourselves. If you have doubts, talk with one another, including opposing counsel. If the doubt persists, call the Presidents. If they have questions or concerns, they should contact me.

It is appropriate to have a witness list, i.e. the names of the witnesses each set of advocates intends to call, their address and phone number, their relation to the case, and a very brief statement as to their testimony, that which they intend to provide. The respective witness lists should be exchanged between advocates by a specific date with a copy to me, and to both the President and Co-President of the Court. I suggest that the witness lists for all cases be exchanged, and thereby received, no later than the 2nd Monday in December. That will give opposing counsel a few weeks to interview the other side's witnesses if they wish. Witnesses need not speak to opposing counsel if they choose not to; however, the judges may take that into consideration when giving weight and credibility to their evidence.

Finally, please have your witnesses ready to testify at the ICJ. Precise timing is always a problem, especially in real life, but the witnesses must be available; needless time is wasted trying to locate the next witness.

(ii.) Real Evidence: Written documentation and other tangible evidence are presented in the following manner: First, the item must be **marked**. Moving party's evidence is marked in numbers, and responding party's evidence is marked in letters, e.g., Applicant's "1" and Respondent's "A". Counsel should ask that a piece of evidence be marked. Then, he/she must authenticate the piece of evidence, that is, establish the writer, or maker, or source of the evidence. Remember, we are trying to determine the authenticity, reliability, truth, and, of course, the relevancy of the evidence. Does it fairly go to the weight of the evidence, and, if so, to what degree? I recommend that no more than 15 pieces of real evidence be submitted by each party. The judges cannot take in more than this number in so short a deliberation period.

Cross-examination may establish that the item is not what it purports to be (Mr. Jones did not write the document—it may not be his handwriting or his style of writing, etc.). Further, it may show **bias**; therefore, it may not be admitted into evidence by the judges, or, if so, it may be given very little weight because of the bias. Also, the knowledge or expertise that the evidence is attempting to establish may be very weak; thus, it may be given little or no weight.

Once the tangible evidence has been authenticated, normally by having someone testify as to its authenticity ("I recognise the signature of the writing as being that of Mr. Jones"), and testimony has been received as to its purpose, reliability, accuracy, and relevance, etc., it is then subject to cross-examination.

Just prior to Judges' Questions of the advocates, each party presenting tangible evidence asks the Court to have their evidence **admitted** (e.g. responding party requests that respondent's letter "A" be **admitted** into evidence). Opposing counsel may object on the grounds of authenticity, reliability, accuracy, and/or relevance. Reliability or accuracy usually goes to the weight a piece of evidence will be given. Therefore, the Court may admit the evidence but, as noted above, decide to give it only limited weight in relation to other evidence presented because of the arguments made by opposing counsel. Generally, doubts as to trustworthiness (authenticity) and relevance, assuming they are well presented, are the better objections for keeping evidence from being admitted. In the search for truth (of which the rules of evidence are intended to achieve this end), a judge who feels that either he/she or a jury would give certain evidence undue weight or would be greatly prejudiced by seeing or hearing it, would not allow that evidence to be presented.

Normally, the authors of Books, journals, articles, or any publications, cannot be cross-examined at THIMUN's ICJ. Therefore, assuming authentication is not an issue, each publication may be admitted into evidence but given nominal weight. The more authors saying the same thing, or the more credible the source, the more weight the evidence in the publications can be given. The use of stipulations between advocates would be very helpful here. I shall discuss this in January at our Sunday meeting.

i. The pleadings (Application and Response) are each party's position in the case, and are thus not evidence. Any supplemental material for a case presented to us by the actual ICJ is not evidence unless an advocate attempts to place it into evidence, using the rules stated above.

j. Some facts or information are common knowledge, i.e. today's date. Rather than having to go through the process of authentication, direct testimony, cross-examination, and so forth, the court may take "Judicial Notice" of the fact, document, decision, etc.

k. Most important of all, the statements of advocates are **not** evidence. Advocates are there to present evidence to the judges for their consideration. They present facts and law, or they object to improper evidence being admitted by the other side. They may comment on the facts and law **only** during Closing Argument. They may not argue their case until Closing Argument. During the presentation of evidence, they may literally explain what a document says, for example, "the document says that X is blue and Y is green" (assuming it does, in fact, say that). Only in closing argument, may they interpret what that phrase means, for example, "after reading this document, you will conclude that X is blue and Y is green". Restated, advocates cannot discuss what something purports to say, infers, or implies, nor can they argue the facts, the law or the case — **until the Closing Argument**. It is during Closing Argument when they put everything together and argue what it all means, says, or concludes. This is difficult for students, but I will be quite strict on this issue at the Model ICJ.

## 4.

Following the presentation of direct examination by each party, they may then put on the rebuttal portion of their cases. At this stage, no new evidence is to be presented, but witnesses and documentation may be admitted into evidence to "rebut" evidence presented by opposing counsel on direct. The same rules apply. Here, each side shall have a maximum of 30 minutes not including cross-examination).

## 5.

After rebuttal, each piece of marked evidence is submitted to the judges by counsel for admission into evidence, subject to objection by opposing counsel. The judges shall then meet *in camera* to review the evidence admitted. Usually this means that each judge is given one or two pieces of evidence to study and report/summarize his/her findings regarding those pieces of evidence to the entire body of judges (there is not enough time for each judge to carefully review each piece of evidence). Then the judges have a turn at asking questions of the advocates. EVERY judge should participate, usually going around the room, judge by judge. The co-presidents shall monitor the questioning, and, above all, they **must keep order**. The judges should not take on an adversarial role when asking questions. Their questions are meant for clarification of issues, facts, and points of law. The judges should act professionally when asking questions. I suggest a time limit of one hour, with a one-time extension of 15 minutes, if necessary. This is the time for judges to go through their notes and the evidence admitted, and ask the burning questions they have been waiting to ask. Judges, be sure to direct your questions to one advocate or the other, by specifically referring to the "advocate (or counsel) for the Applicant" or "advocate (or counsel) for the Respondent".

## 6.

Now it is time for **Closing Arguments**. Each side should have 30 minutes maximum to sum up its case and tie together the evidence and the legal elements. The moving party goes first but may reserve a part of its time. The responding party goes next. Finally, the moving party may use up the time it has reserved. Therefore, the moving party can sum up twice. The "prayer" must be stated by the advocates. The "prayer" is what each side is requesting for a judgement. Usually, it is best for the advocates to state what they think the issues are, what the answers to those issues are, and what the decision (or their "prayer" from the court) should be. If damages are involved, it is incumbent upon the advocates to state what amount(s) they think the Court should award—and why. Proof is essential with regard to damages, although, in most of our ICJ cases, liability can be determined by the Court with the damage issue reserved for a hearing at a later time.

## 7.

Finally, it is time for deliberation. The advocates are not in the room during deliberations, and no further evidence can be taken. Deliberations are closed to the public, including MUN Directors (but not to the Board of Directors or Board of Advisors of the organization). The first thing the judges MUST DO is to determine what issues are to be decided before a decision can be reached. We list the issues on large pieces of paper, e.g. liability issues, then damage issues. Past lists have numbered from 5-10 issues. Then, each issue should be discussed and determined. Once each issue is determined, it should be fairly easy for the Court to reach a decision/judgement/verdict. But, I must warn you that in the past it has often taken the judges three hours or more to reach a verdict.

Experience shows that judges may change their minds several times during deliberation. Therefore, I would allocate at least that much time. Finally, a judgement must be written out, and this, too, takes a long time to find the correct wording. Usually, a committee of four or five of the judges is chosen to write the verdict. The first draft often takes about an hour or more. It is then presented to the remaining judges for their review and correction. Overall, it often takes close to another two hours just to write the judgement.

The decisions of the Judges have several titles. The position with the most votes is called the "Majority Opinion". Some judges may agree with the decision but differ on the reasons why. They may write a "Separate, But Concurring Opinion". Those judges in the minority, arriving at a different decision, will write a "Dissenting Opinion". Finally there may be Judges who dissent, but they differ on the reasons why. They may write a "Separate, But Dissenting Opinion".

## 8.

Assuming you have your tour of the Peace Palace on the Monday morning, we shall begin with the first case early Monday afternoon. The co-presidents will decide which case is to be presented first, and they should let you know well ahead of time. The second case shall begin early Wednesday afternoon. In fact, as much as twelve to fifteen hours (2 full days) should be allocated to each case from its beginning to the written completion of the judgement.

## 9.

I hope this brief is helpful. I do expect over time that it will be corrected and refined. If you follow this brief/guide, it should make your work easier, your presentation better, and I will have to interrupt less. The flow will be natural and comfortable.

I look forward to seeing you in January. If you have any questions, please do not hesitate to contact me. I can be reached by:

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Best of luck,

Robert (Bob) Stern
ICJ-THIMUN ADVISOR

# The Statutes of the International Court of Justice

Article 1
The International Court of Justice established by the Charter of the United Nations as the principal judicial organ of the United Nations shall be constituted and shall function in accordance with the provisions of the present Statute.

CHAPTER I
ORGANIZATION OF THE COURT

Article 2
The Court shall be composed of a body of independent judges, elected regardless of their nationality from among persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are jurisconsults of recognized competence in international law.

Article 3
1. The Court shall consist of fifteen members, no two of whom may be nationals of the same state.
2. A person who for the purposes of membership in the Court could be regarded as a national of more than one state shall be deemed to be a national of the one in which he ordinarily exercises civil and political rights.

Article 4
1. The members of the Court shall be elected by the General Assembly and by the Security Council from a list of persons nominated by the national groups in the Permanent Court of Arbitration, in accordance with the following provisions.
2. In the case of Members of the United Nations not represented in the Permanent Court of Arbitration, candidates shall be nominated by national groups appointed for this purpose by their governments under the same conditions as those prescribed for members of the Permanent Court of Arbitration by Article 44 of the Convention of The Hague of 1907 for the pacific settlement of international disputes.
3. The conditions under which a state which is a party to the present Statute but is not a Member of the United Nations may participate in electing the members of the Court shall, in the absence of a special agreement, be laid down by the General Assembly upon recommendation of the Security Council.

Article 5
1. At least three months before the date of the election, the Secretary-General of the United Nations shall address a written request to the members of the Permanent Court of Arbitration belonging to the states which are parties to the present Statute, and to the members of the national groups appointed under Article 4, paragraph 2, inviting them to undertake, within a given time, by national groups, the nomination of persons in a position to accept the duties of a member of the Court.
2. No group may nominate more than four persons, not more than two of whom shall be of their own nationality. In no case may the number of candidates nominated by a group be more than double the number of seats to be filled.

Article 6
Before making these nominations, each national group is recommended to consult its highest court of justice, its legal faculties and schools of law, and its national academies and national sections of international academies devoted to the study of law.

Article 7
1. The Secretary-General shall prepare a list in alphabetical order of all the persons thus nominated. Save as provided in Article 12, paragraph 2, these shall be the only persons eligible.
2. The Secretary-General shall submit this list to the General Assembly and to the Security Council.

Article 8
The General Assembly and the Security Council shall proceed independently of one another to elect the members of the Court.

Article 9
At every election, the electors shall bear in mind not only that the persons to be elected should individually possess the qualifications required, but also that in the body as a whole the representation of the main forms of civilization and of the principal legal systems of the world should be assured.

Article 10
1. Those candidates who obtain an absolute majority of votes in the General Assembly and in the Security Council shall be considered as elected.
2. Any vote of the Security Council, whether for the election of judges or for the appointment of members of the conference envisaged in Article 12, shall be taken without any distinction between permanent and non-permanent members of the Security Council.
3. In the event of more than one national of the same state obtaining an absolute majority of the votes both of the General Assembly and of the Security Council, the eldest of these only shall be considered as elected.

Article 11
If, after the first meeting held for the purpose of the election, one or more seats remain to be filled, a second and, if necessary, a third meeting shall take place.

Article 12
1. If, after the third meeting, one or more seats still remain unfilled, a joint conference consisting of six members, three appointed by the General Assembly and three by the Security Council, may be formed at any time at the request of either the General Assembly or the Security Council, for the purpose of choosing by the vote of an absolute majority one name for each seat still vacant, to submit to the General Assembly and the Security Council for their respective acceptance.
2. If the joint conference is unanimously agreed upon any person who fulfills the required conditions, he may be included in its list, even though he was not included in the list of nominations referred to in Article 7.
3. If the joint conference is satisfied that it will not be successful in procuring an election, those members of the Court who have already been elected shall, within a period to be fixed by the Security Council, proceed to fill the vacant seats by selection from among those candidates who have obtained votes either in the General Assembly or in the Security Council.
4. In the event of an equality of votes among the judges, the eldest judge shall have a casting vote.

Article 13
1. The members of the Court shall be elected for nine years and may be re-elected; provided, however, that of the judges elected at the first election, the terms of five judges shall expire at the end of three years and the terms of five more judges shall expire at the end of six years.
2. The judges whose terms are to expire at the end of the above-mentioned initial periods of three and six years shall be chosen by lot to be drawn by the Secretary-General immediately after the first election has been completed.
3. The members of the Court shall continue to discharge their duties until their places have been filled. Though replaced, they shall finish any cases which they may have begun.
4. In the case of the resignation of a member of the Court, the resignation shall be addressed to the President of the Court for transmission to the Secretary-General. This last notification makes the place vacant.

Article 14
Vacancies shall be filled by the same method as that laid down for the first election subject to the following provision: the Secretary-General shall, within one month of the occurrence of the vacancy, proceed to issue the invitations provided for in Article 5, and the date of the election shall be fixed by the Security Council.

Article 15
A member of the Court elected to replace a member whose term of office has not expired shall hold office for the remainder of his predecessor's term.

Article 16
1. No member of the Court may exercise any political or administrative function, or engage in any other occupation of a professional nature.
2. Any doubt on this point shall be settled by the decision of the Court.

Article 17
1. No member of the Court may act as agent, counsel, or advocate in any case.
2. No member may participate in the decision of any case in which he has previously taken part as agent, counsel, or advocate for one of the parties, or as a member of a national or international court, or of a commission of enquiry, or in any other capacity.
3. Any doubt on this point shall be settled by the decision of the Court.

Article 18
1. No member of the Court can be dismissed unless, in the unanimous opinion of the other members, he has ceased to fulfill the required conditions.
2. Formal notification thereof shall be made to the Secretary-General by the Registrar.
3. This notification makes the place vacant.

Article 19
The members of the Court, when engaged on the business of the Court, shall enjoy diplomatic privileges and immunities.

Article 20
Every member of the Court shall, before taking up his duties, make a solemn declaration in open court that he will exercise his powers impartially and conscientiously.

Article 21
1. The Court shall elect its President and Vice-President for three years; they may be re-elected.
2. The Court shall appoint its Registrar and may provide for the appointment of such other officers as may be necessary.

Article 22
1. The seat of the Court shall be established at The Hague. This, however, shall not prevent the Court from sitting and exercising its functions elsewhere whenever the Court considers it desirable.
2. The President and the Registrar shall reside at the seat of the Court.

Article 23
1. The Court shall remain permanently in session, except during the judicial vacations, the dates and duration of which shall be fixed by the Court.
2. Members of the Court are entitled to periodic leave, the dates and duration of which shall be fixed by the Court, having in mind the distance between The Hague and the home of each judge.
3. Members of the Court shall be bound, unless they are on leave or prevented from attending by illness or other serious reasons duly explained to the President, to hold themselves permanently at the disposal of the Court.

Article 24

1. If, for some special reason, a member of the Court considers that he should not take part in the decision of a particular case, he shall so inform the President.
2. If the President considers that for some special reason one of the members of the Court should not sit in a particular case, he shall give him notice accordingly.
3. If in any such case the member Court and the President disagree, the matter shall be settled by the decision of the Court.

Article 25

1. The full Court shall sit except when it is expressly provided otherwise in the present Statute.
2. Subject to the condition that the number of judges available to constitute the Court is not thereby reduced below eleven, the Rules of the Court may provide for allowing one or more judges, according to circumstances and in rotation, to be dispensed from sitting.
3. A quorum of nine judges shall suffice to constitute the Court.

Article 26

1. The Court may from time to time form one or more chambers, composed of three or more judges as the Court may determine, for dealing with particular categories of cases; for example, labour cases and cases relating to transit and communications.
2. The Court may at any time form a chamber for dealing with a particular case. The number of judges to constitute such a chamber shall be determined by the Court with the approval of the parties.
3. Cases shall be heard and determined by the chambers provided for in this article if the parties so request.

Article 27

A judgment given by any of the chambers provided for in Articles 26 and 29 shall be considered as rendered by the Court.

Article 28

The chambers provided for in Articles 26 and 29 may, with the consent of the parties, sit and exercise their functions elsewhere than at The Hague.

Article 29

With a view to the speedy dispatch of business, the Court shall form annually a chamber composed of five judges which, at the request of the parties, may hear and determine cases by summary procedure. In addition, two judges shall be selected for the purpose of replacing judges who find it impossible to sit.

Article 30

1. The Court shall frame rules for carrying out its functions. In particular, it shall lay down rules of procedure.
2. The Rules of the Court may provide for assessors to sit with the Court or with any of its chambers, without the right to vote.

Article 31

1. Judges of the nationality of each of the parties shall retain their right to sit in the case before the Court.
2. If the Court includes upon the Bench a judge of the nationality of one of the parties, any other party may choose a person to sit as judge. Such person shall be chosen preferably from among those persons who have been nominated as candidates as provided in Articles 4 and 5.
3. If the Court includes upon the Bench no judge of the nationality of the parties, each of these parties may proceed to choose a judge as provided in paragraph 2 of this Article.
4. The provisions of this Article shall apply to the case of Articles 26 and 29. In such cases, the President shall request one or, if necessary, two of the members of the Court forming the chamber to give place to the members of the Court of the nationality of the parties concerned, and, failing such, or if they are unable to be present, to the judges specially chosen by the parties.

5. Should there be several parties in the same interest, they shall, for the purpose of the preceding provisions, be reckoned as one party only. Any doubt upon this point shall be settled by the decision of the Court.
6. Judges chosen as laid down in paragraphs 2, 3, and 4 of this Article shall fulfil the conditions required by Articles 2, 17 (paragraph 2), 20, and 24 of the present Statute. They shall take part in the decision on terms of complete equality with their colleagues.

Article 32
1. Each member of the Court shall receive an annual salary.
2. The President shall receive a special annual allowance.
3. The Vice-President shall receive a special allowance for every day on which he acts as President.
4. The judges chosen under Article 31, other than members of the Court, shall receive compensation for each day on which they exercise their functions.
5. These salaries, allowances, and compensation shall be fixed by the General Assembly. They may not be decreased during the term of office.
6. The salary of the Registrar shall be fixed by the General Assembly on the proposal of the Court.
7. Regulations made by the General Assembly shall fix the conditions under which retirement pensions may be given to members of the Court and to the Registrar, and the conditions under which members of the Court and the Registrar shall have their travelling expenses refunded.
8. The above salaries, allowances, and compensation shall be free of all taxation.

Article 33
The expenses of the Court shall be borne by the United Nations in such a manner as shall be decided by the General Assembly.

CHAPTER II
COMPETENCE OF THE COURT

Article 34
1. Only states may be parties in cases before the Court.
2. The Court, subject to and in conformity with its Rules, may request of public international organizations information relevant to cases before it, and shall receive such information presented by such organizations on their own initiative.
3. Whenever the construction of the constituent instrument of a public international organization or of an international convention adopted thereunder is in question in a case before the Court, the Registrar shall so notify the public international organization concerned and shall communicate to it copies of all the written proceedings.

Article 35
1. The Court shall be open to the states parties to the present Statute.
2. The conditions under which the Court shall be open to other states shall, subject to the special provisions contained in treaties in force, be laid down by the Security Council, but in no case shall such conditions place the parties in a position of inequality before the Court.
3. When a state which is not a Member of the United Nations is a party to a case, the Court shall fix the amount which that party is to contribute towards the expenses of the Court. This provision shall not apply if such state is bearing a share of the expenses of the Court

Article 36
1. The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force.
2. The states parties to the present Statute may at any time declare that they recognize as compulsory ipso

facto and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning:

a. the interpretation of a treaty;
b. any question of international law;
c. the existence of any fact which, if established, would constitute a breach of an international obligation;
d. the nature or extent of the reparation to be made for the breach of an international obligation.

3. The declarations referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain states, or for a certain time.
4. Such declarations shall be deposited with the Secretary-General of the United Nations, who shall transmit copies thereof to the parties to the Statute and to the Registrar of the Court.
5. Declarations made under Article 36 of the Statute of the Permanent Court of International Justice and which are still in force shall be deemed, as between the parties to the present Statute, to be acceptances of the compulsory jurisdiction of the International Court of Justice for the period which they still have to run and in accordance with their terms.
6. In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court.

Article 37

Whenever a treaty or convention in force provides for reference of a matter to a tribunal to have been instituted by the League of Nations, or to the Permanent Court of International Justice, the matter shall, as between the parties to the present Statute, be referred to the International Court of Justice.

Article 38

1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:
   a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
   b. international custom, as evidence of a general practice accepted as law;
   c. the general principles of law recognized by civilized nations;
   d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.
2. This provision shall not prejudice the power of the Court to decide a case ex aequo et bono, if the parties agree thereto.

CHAPTER III
PROCEDURE

Article 39

1. The official languages of the Court shall be French and English. If the parties agree that the case shall be conducted in French, the judgment shall be delivered in French. If the parties agree that the case shall be conducted in English, the judgment shall be delivered in English.
2. In the absence of an agreement as to which language shall be employed, each party may, in the pleadings, use the language which it prefers; the decision of the Court shall be given in French and English. In this case the Court shall at the same time determine which of the two texts shall be considered as authoritative.
3. The Court shall, at the request of any party, authorize a language other than French or English to be used by that party.

Article 40

1. Cases are brought before the Court, as the case may be, either by the notification of the special agreement or by a written application addressed to the Registrar. In either case the subject of the dispute and the parties shall be indicated.
2. The Registrar shall forthwith communicate the application to all concerned.
3. He shall also notify the Members of the United Nations through the Secretary-General, and also any other states entitled to appear before the Court.

Article 41

1. The Court shall have the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to preserve the respective rights of either party.
2. Pending the final decision, notice of the measures suggested shall forthwith be given to the parties and to the Security Council

Article 42

1. The parties shall be represented by agents.
2. They may have the assistance of counsel or advocates before the Court.
3. The agents, counsel, and advocates of parties before the Court shall enjoy the privileges and immunities necessary to the independent exercise of their duties.

Article 43

1. The procedure shall consist of two parts: written and oral.
2. The written proceedings shall consist of the communication to the Court and to the parties of memorials, counter-memorials and, if necessary, replies; also all papers and documents in support.
3. These communications shall be made through the Registrar, in the order and within the time fixed by the Court.
4. A certified copy of every document produced by one party shall be communicated to the other party.
5. The oral proceedings shall consist of the hearing by the Court of witnesses, experts, agents, counsel, and advocates.

Article 44

1. For the service of all notices upon persons other than the agents, counsel, and advocates, the Court shall apply direct to the government of the state upon whose territory the notice has to be served.
2. The same provision shall apply whenever steps are to be taken to procure evidence on the spot.

Article 45

The hearing shall be under the control of the President or, if he is unable to preside, of the Vice-President; if neither is able to preside, the senior judge present shall preside.

Article 46

The hearing in Court shall be public, unless the Court shall decide otherwise, or unless the parties demand that the public be not admitted .

Article 47

1. Minutes shall be made at each hearing and signed by the Registrar and the President.
2. These minutes alone shall be authentic.

Article 48

The Court shall make orders for the conduct of the case, shall decide the form and time in which each party must conclude its arguments, and make all arrangements connected with the taking of evidence.

Article 49

The Court may, even before the hearing begins, call upon the agents to produce any document or to supply any explanations. Formal note shall be taken of any refusal.

Article 50
The Court may, at any time, entrust any individual, body, bureau, commission, or other organization that it may select, with the task of carrying out an enquiry or giving an expert opinion.

Article 51
During the hearing any relevant questions are to be put to the witnesses and experts under the conditions laid down by the Court in the rules of procedure referred to in Article 30.

Article 52
After the Court has received the proofs and evidence within the time specified for the purpose, it may refuse to accept any further oral or written evidence that one party may desire to present unless the other side consents.

Article 53
1. Whenever one of the parties does not appear before the Court, or fails to defend its case, the other party may call upon the Court to decide in favour of its claim.
2. The Court must, before doing so, satisfy itself, not only that it has jurisdiction in accordance with Articles 36 and 37, but also that the claim is well founded in fact and law.

Article 54
1. When, subject to the control of the Court, the agents, counsel, and advocates have completed their presentation of the case, the President shall declare the hearing closed.
2. The Court shall withdraw to consider the judgment.
3. The deliberations of the Court shall take place in private and remain secret.

Article 55
1. All questions shall be decided by a majority of the judges present.
2. In the event of an equality of votes, the President or the judge who acts in his place shall have a casting vote.

Article 56
1. The judgment shall state the reasons on which it is based.
2. It shall contain the names of the judges who have taken part in the decision.

Article 57
If the judgment does not represent in whole or in part the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.

Article 58
The judgment shall be signed by the President and by the Registrar. It shall be read in open court, due notice having been given to the agents.

Article 59
The decision of the Court has no binding force except between the parties and in respect of that particular case.

Article 60
The judgment is final and without appeal. In the event of dispute as to the meaning or scope of the judgment, the Court shall construe it upon the request of any party.

Article 61
1. An application for revision of a judgment may be made only when it is based upon the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgment was given, unknown to the Court and also to the party claiming revision, always provided that such ignorance was not due to negligence.
2. The proceedings for revision shall be opened by a judgment of the Court expressly recording the existence of the new fact, recognizing that it has such a character as to lay the case open to revision, and declaring the application admissible on this ground.
3. The Court may require previous compliance with the terms of the judgment before it admits proceedings in revision.

4. The application for revision must be made at latest within six months of the discovery of the new fact.
5. No application for revision may be made after the lapse of ten years from the date of the judgment.

Article 62

l. Should a state consider that it has an interest of a legal nature which may be affected by the decision in the case, it may submit a request to the Court to be permitted to intervene.
2. It shall be for the Court to decide upon this request.

Article 63

1. Whenever the construction of a convention to which states other than those concerned in the case are parties is in question, the Registrar shall notify all such states forthwith.
2. Every state so notified has the right to intervene in the proceedings; but if it uses this right, the construction given by the judgment will be equally binding upon it.

Article 64

Unless otherwise decided by the Court, each party shall bear its own costs.

CHAPTER IV
ADVISORY OPINIONS

Article 65

1. The Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request.
2. Questions upon which the advisory opinion of the Court is asked shall be laid before the Court by means of a written request containing an exact statement of the question upon which an opinion is required, and accompanied by all documents likely to throw light upon the question.

Article 66

1. The Registrar shall forthwith give notice of the request for an advisory opinion to all states entitled to appear before the Court.
2. The Registrar shall also, by means of a special and direct communication, notify any state entitled to appear before the Court or inter-national organization considered by the Court, or, should it not be sitting, by the President, as likely to be able to furnish information on the question, that the Court will be prepared to receive, within a time limit to be fixed by the President, written statements, or to hear, at a public sitting to be held for the purpose, oral statements relating to the question.
3. Should any such state entitled to appear before the Court have failed to receive the special communication referred to in paragraph 2 of this Article, such state may express a desire to submit a written statement or to be heard; and the Court will decide.
4. States and organizations having presented written or oral statements or both shall be permitted to comment on the statements made by other states or organizations in the form, to the extent, and within the time limits which the Court, or, should it not be sitting, the President, shall decide in each particular case. Accordingly, the Registrar shall in due time communicate any such written statements to states and organizations having submitted similar statements.

Article 67

The Court shall deliver its advisory opinions in open court, notice having been given to the Secretary-General and to the representatives of Members of the United Nations, of other states and of international organizations immediately concerned.

Article 68

In the exercise of its advisory functions the Court shall further be guided by the provisions of the present Statute which apply in contentious cases to the extent to which it recognizes them to be applicable.

CHAPTER V
AMENDMENT

Article 69

Amendments to the present Statute shall be effected by the same procedure as is provided by the Charter of the United Nations for amendments to that Charter, subject however to any provisions which the General Assembly upon recommendation of the Security Council may adopt concerning the participation of states which are parties to the present Statute but are not Members of the United Nations.

Article 70

The Court shall have power to propose such amendments to the present Statute as it may deem necessary, through written communications to the Secretary-General, for consideration in conformity with the provisions of Article 69.