

Solving International Disputes

Purpose: This lesson will allow students to see how disputes between countries can be settled in court, hopefully avoiding war. These disputes are handled in the International Court of Justice, which is the judicial part of the United Nations. The court is located in the Peace Palace in The Hague, Netherlands. Cases can come before the court in two ways: the first, one or more nations can request the Court to consider an issue or dispute between two parties; secondly, the United Nations Security Council or other specialized U.N. agencies may request the Court to render an opinion in an international dispute.

Learning Objective(s): The student will

- Examine how the International Court of Justice operates.
- Develop a written summary and arguments for a case to be heard before the International Court of Justice (called a mini-memorial)
- Participate in an International Court of Justice moot court

Standards:

National	New Mexico	Texas
		6.1 B; 6.4 D; 6.21 C & D; 6.22 C; 6.23A & B; WG.2 B; WG.5 B; WG.8B; WG.14 A-C; WG.23 A-D

Materials Needed: Handout of background information on the International Court of Justice; steps in writing a mini-memorial; background information on the dispute between Costa Rica and Nicaragua over the San Juan River.

Time Frame: two to four class periods

Procedure:

1. Handout the reading on the International Court of Justice and allow the students time to read the document, highlighting the following key ideas:
 - a. The purpose of the International Court
 - b. Two ways the International Court is organized
 - c. The jurisdiction of the International Court
 - d. How a decision by the International Court is delivered
 - e. What happens if one party does not like the decision made by the International Court
 - f. The three types of cases the reader thinks are the most important heard by the International Court
2. Discuss the ideas the students gathered from their reading to help them get an understanding of the International Court of Justice.

3. Divide the class into groups of three or four and assign an equal number of groups to represent Costa Rica and Nicaragua in the dispute over the San Juan River. Each group is to write a mini-memorial to be presented to the International Court using the instructions for a mini-memorial provided at the end of the background on the dispute.
4. When the memorials are complete and reviewed, three groups of students should be formed. The first group will be the justices. The teacher should select an odd number of students from each side to act as justices in the court. The second group will be the students that represent Costa Rica and the third group, Nicaragua.
5. The groups representing the countries should review their memorials and combine them to get the strongest arguments for their side. They should also select up to four students to be the spokespersons with each presenting ideas from the four parts of the memorial to the justices. The students that are assigned to the justices should spend this time coming up with questions they might ask during the oral arguments.
6. On the day of the hearing, arrange the room with the students who are acting as justices seated at the front of the room and the spokespersons for each side facing them. Go over the following rules for the court hearing:
 - Each side will have a maximum of 6 minutes to present the four parts of the memorial. Costa Rica will go first since they are the ones that brought the case to the International Court.
 - Each side may have up to two minutes for rebuttal if desired to counter the arguments of the other side. However, they are not to bring up new arguments.
 - The justices are encouraged to ask questions of the students during the time they are presenting their arguments. They may also ask questions at the end of the presentation if there is any time remaining.
 - The justices will have five minutes to reach a decision. One of the justices should be selected as the “president” and this person will deliver the decision of the court. After that, each justice will reveal how they voted and the reason for their vote.
7. After the court is over, the class should debrief the activity by answering the following questions:
 - Do you think this is a valid way for nations to solve disputes?
 - Did you agree with the final decision of the justices?
 - What should a country do if they don’t agree with the final decision?

The Dispute between Costa Rica and Nicaragua

The two Central American nations of Costa Rica and Nicaragua are neighbors sharing the San Juan River as their border. This river flows from the second largest lake in Latin America, Lake Nicaragua, which is very close to the Pacific Ocean on the west and to the Caribbean Sea on the east.



Since the two countries became independent from Spain in the mid 1800's, the history of the two nations has differed. On one hand, Costa Rica has long been regarded as one of the most stable democracies in Latin America. Since the late 19th century, only two brief periods of violence have marred the country's democratic development. While the country still depends on the cash crop farming of coffee, sugar, and others, the economy has expanded to include strong technology and tourism industries. One of the most striking features of the Costa Rican government is that they have been able to maintain their democracy even though they have no standing army. The standard of living is high in comparison to other Central American nations and ownership of land is widespread.

On the other hand, Nicaragua has been plagued with civil war and unrest during a good part of the 20th century. In the 1970's civil war broke out because of the oppressive and corrupt government that had been in power for over forty years. Eventually order and free and fair elections were restored in the 90's. However, the war coupled with

heavy hurricane damage from Hurricane Mitch in 1998 has made the process of rebuilding the country slow.

The conflict between the two nations revolves around the plan by Nicaragua to build a canal using the San Juan River. This idea is not new as it was proposed in the colonial era because the river empties the lake on the west coast into the Caribbean on the east coast. The United States had plans to build a canal in this area, until they were able to purchase the French interest in the Panama Canal. In an effort to rebuild the economy of Nicaragua after the tumultuous years of the 1980's and 90's, the Nicaraguan government wants to build a canal that would carry four times the tonnage that is carried through the Panama Canal. The estimated cost would be approximately 25 billion dollars. However, the upside of the canal could mean that it would reduce the time to get from New York to California by one day as well as considerably reducing the time to get goods from Europe to China and Japan. Most economists see a huge boon to the Nicaraguan economy, possible making it one of the wealthiest countries in Central America.

The country of Costa Rica is opposed to this canal for various reasons. First of all, environmentalists argue that the eco-system of the area is already in danger and further destruction of the rain forests would only make the situation worse. Secondly, the government of Costa Rica argues that this proposed canal would violate a treaty signed by both nations in 1858 which guaranteed Costa Rica perpetual right of free navigation for commercial boats and their passengers. Additionally, this treaty guaranteed that Costa Rica would not have to pay any dues to use this river; its boats could touch any part of the banks of the river; and they were not to have their navigation obstructed or impaired at any point on the river. This treaty had been upheld several times since it was adopted: once in 1888 by a ruling of the U.S. as mediator; secondly, in a 1916 Central American International Court; and finally in 1956. Finally Costa Rica has been concerned about the instability in Nicaragua which has been a problem for a long time.

In 2005, Costa Rica decided to file a case against Nicaragua in the International Court of Justice.

TASK: Each group is to prepare a mini-memorial. A memorial is similar to a brief of a case. It is submitted to an international court or panel. Include the following in the memorial:

1. Questions-What are the issue(s) and what questions need to be answered?
Hint: Remember the issue is the question or questions that the court must answer. An example-Does Nicaragua have the right to build the canal on the San Juan River?
2. Statement of facts-Summarize the key facts-who is involved, when did it happen, what exactly happened.

3. Arguments-Summarize the arguments and how the facts relate to your arguments. Try to develop a minimum of three arguments that can be supported with facts.
4. Conclusion-Develop a summary that explains why the facts and the arguments presented should result in a favorable ruling for your side.

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The International Court of Justice

The International Court of Justice is the principal judicial organ of the United Nations. Its seat is at the Peace Palace in The Hague (Netherlands). It began work in 1946, when it replaced the Permanent Court of International Justice which had functioned in the Peace Palace since 1922. It operates under a Statute largely similar to that of its predecessor, which is an integral part of the Charter of the United Nations.

Functions of the Court

The Court has a dual role: to settle in accordance with international law the legal disputes submitted to it by States, and to give advisory opinions on legal questions referred to it by duly authorized international organs and agencies.

Composition

The Court is composed of 15 judges elected to nine-year terms of office by the United Nations General Assembly and Security Council sitting independently of each other. It may not include more than one judge of any nationality. Elections are held every three years for one-third of the seats, and retiring judges may be re-elected. The Members of the Court do not represent their governments but are independent magistrates. The judges must possess the qualifications required in their respective countries for appointment to the highest judicial offices, or be jurists of recognized competence in international law. The composition of the Court has also to reflect the main forms of civilization and the principal legal systems of the world. When the Court does not include a judge possessing the nationality of a State party to a case, that State may appoint a person to sit as a judge *ad hoc* for the purpose of the case.

The present composition of the Court is as follows: President Rosalyn Higgins (United Kingdom); Vice-President Awn Shawkat Al-Khasawneh (Jordan); Judges Raymond Ranjeva (Madagascar); Shi Jiuyong (China); Abdul G. Koroma (Sierra Leone); Gonzalo Parra-Aranguren (Venezuela); Thomas Buergenthal (United States of America); Hisashi Owada (Japan); Bruno Simma (Germany); Peter Tomka (Slovakia); Ronny Abraham (France); Kenneth Keith (New Zealand); Bernardo Sepúlveda Amor (Mexico); Mohamed Bennouna (Morocco); Leonid Skotnikov (Russian Federation).

The Registrar of the Court is Mr. Philippe Couvreur, of Belgian nationality, and the Deputy-Registrar is Mr. Jean-Jacques Arnaldez, of French nationality.

Contentious cases between States

The Parties

Only States may apply to and appear before the Court. The Member States of the United Nations (at present numbering 192) are so entitled.

Jurisdiction

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:

- (1) by the conclusion between them of a special agreement to submit the dispute to the Court;
- (2) by virtue of a jurisdictional clause, i.e., typically, when they are parties to a treaty containing a provision whereby,

in the event of a disagreement over its interpretation or application, one of them may refer the dispute to the Court.

Over three hundred treaties or conventions contain a clause to such effect;

- (3) 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.

The declarations of 67 States are at present in force, a number of them having been made subject to the exclusion of certain categories of dispute.

In cases of doubt as to whether the Court has jurisdiction, it is the Court itself which decides.

Procedure

The procedure followed by the Court in contentious cases is defined in its Statute, and in the Rules of Court adopted by it under the Statute. The latest version of the Rules dates from 5 December 2000. The proceedings include a written phase, in which the parties file and exchange pleadings, and an oral phase consisting of public hearings at which agents and counsel address the Court. As the Court has two official languages (English and French) everything written or said in one language is translated into the other. After the oral proceedings the Court deliberates in camera and then delivers its judgment at a public sitting. The judgment

is final and without appeal. Should one of the States involved fail to comply with it, the other party may have recourse to the Security Council of the United Nations.

The Court discharges its duties as a full court but, at the request of the parties, it may also establish *ad hoc* chambers to deal with particular cases (6 cases have been dealt with by such chambers since 1946). A Chamber of Summary Procedure is further elected every year by the Court in accordance with its Statute. Since 1946 the Court has delivered 92 Judgments on disputes concerning inter alia land frontiers and maritime boundaries, territorial sovereignty, the non-use of force, non-interference in the internal affairs of States, diplomatic relations, hostage-taking, the right of asylum, nationality, guardianship, rights of passage and economic rights.

Sources of applicable law

The Court decides in accordance with international treaties and conventions in force, international custom, the general principles of law and, as subsidiary means, judicial decisions and the teachings of the most highly qualified publicists.

Advisory Opinions

The advisory procedure of the Court is open solely to international organizations. The only bodies at present authorized to request advisory opinions of the Court are five organs of the United Nations and 16 specialized agencies of the United Nations family.

On receiving a request, the Court decides which States and organizations might provide useful information and gives them an opportunity of presenting written or oral statements. The Court's advisory procedure is otherwise modeled on that for contentious proceedings, and the sources of applicable law are the same. In principle the Court's advisory opinions are consultative in character and are therefore not binding as such on the requesting bodies. Certain instruments or regulations can, however, provide in advance that the advisory opinion shall be binding. Since 1946 the Court has given 25 Advisory Opinions, concerning inter alia the legal consequences of the construction of a wall in the occupied Palestinian territory, admission to United Nations membership, reparation for injuries suffered in the service of the United Nations, territorial status of South-West Africa (Namibia) and Western Sahara, judgments rendered by international administrative tribunals, expenses of certain United Nations operations, applicability of the United Nations Headquarters Agreement, the status of human rights rapporteurs, and the legality of the threat or use of nuclear weapons.

Pending cases

Thirteen cases, all contentious, are currently pending:

1. *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*
2. *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*
3. *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of Congo)*
4. *Armed activities on the territory of the Congo (Democratic Republic of Congo v. Uganda)*
5. *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia and Montenegro)*
6. *Maritime Delimitation between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)*
7. *Territorial and Maritime Dispute (Nicaragua v. Colombia)*
8. *Certain Criminal Proceedings in France (Republic of the Congo v. France)*
9. *Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore)*
10. *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*
11. *Dispute regarding Navigational and Related Rights (Costa Rica v. Nicaragua)*
12. *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*
13. *Certain Questions of Mutual Assistance in Criminal Matters (Djibouti v. France)*

Website of the Court : www.icj-cij.org

E-mail address : information@icj-cij.org

Information Office :

Mrs. Laurence Blairon, Secretary of the Court, Head of the Department (tel: + 31 70 302 2396)

Messrs. Boris Heim and Maxime Schoupe, Information Officers (tel: + 31 70 302 2337)

Ms Joanne Moore, Assistant Information Officer (+ 31 70 302 2394)