

# Oakridge MUN – ICJ Background Guide

## Message from the Executive Board

Greetings, dear delegates.

This is a *concise* guide designed with the purpose of providing you a *basic* understanding of the agenda and the conduct of the simulation. Note that the perusal of this guide's content will be *insufficient* if you wish to enjoy a healthy and competitive debate. Use the information you find between these pages as *just an accompaniment* to your research efforts.

We shall be available to clarify any and all of your doubts before the conference. However, we would suggest you consider querying us as an option to be exercised as *last resort*, not first move.

Regards,

Presidency, International Court of Justice

### Contact information:

M. R. Vishwavasu Aprameya, President

E-mail: [recoverymahabala@gmail.com](mailto:recoverymahabala@gmail.com)

Yamini Tumu, Vice-President

E-mail: [yamininena@gmail.com](mailto:yamininena@gmail.com)

## About the ICJ

### What is ICJ?

The International Court of Justice (ICJ) is one of the six principal organs of the United Nations (UN). It is the principal judicial organ of the UN. The ICJ is tasked with the duty to settle legal disputes submitted by Member States on the basis of international law and to give advisory opinions on legal questions referred to it by authorized United Nations organs and specialized agencies.

The Court is composed of 15 judges, who are elected for terms of office of nine years by the United Nations General Assembly and the Security Council.

### Source

Further reading:

1. Statute of the ICJ
2. Pg. 1057–1117, *International Law (Sixth Edition)*, Malcolm N. Shaw
3. Pg. 578–589, *Akehurst's Modern Introduction to International Law (Ninth Edition)*, Alexander Orakhelashvili

## Work of the ICJ

### Advisory proceedings

Since States alone are entitled to appear before the Court, public (governmental) international organizations cannot be parties to a case before it. However, a special procedure, the advisory procedure, is available to such organizations and to them alone. This procedure is available to five United Nations organs, fifteen specialized agencies and one related organization.

Contrary to judgments, and except in rare cases where it is expressly provided that they shall have binding force (for example, as in the Convention on the Privileges and Immunities of the United Nations, the Convention on the Privileges and Immunities of the Specialized Agencies of the United Nations, and the Headquarters Agreement between the United Nations and

the United States of America), the Court's advisory opinions are not binding. The requesting organ, agency or organization remains free to decide, as it sees fit, what effect to give to these opinions.

Despite having no binding force, the Court's advisory opinions nevertheless carry great legal weight and moral authority. They are often an instrument of preventive diplomacy and help to keep the peace. In their own way, advisory opinions also contribute to the clarification and development of international law and thereby to the strengthening of peaceful relations between States.

[Source](#)

### **Contentious cases**

International Court of Justice settles disputes of a legal nature that are submitted to it by States in accordance with international law. An international legal dispute can be defined as a disagreement on a question of law or fact, a conflict, or a clash of legal views or interests.

Only States may apply to and appear before the International Court of Justice. International organizations, other authorities and private individuals are not entitled to institute proceedings before the Court.

Article 35 of the Statute defines the conditions under which States may access the Court. While the first paragraph of that article states that the Court is open to States parties to the Statute, the second is intended to regulate access to the Court by States which are not parties to the Statute. The conditions under which such States may access the Court are determined by the Security Council, subject to the special provisions contained in treaties in force at the date of the entry into force of the Statute, with the proviso that under no circumstances shall such conditions place the parties in a position of inequality before the Court.

[Source](#)

Further reading:

## 1. How the Court Works | ICJ

---

### **Agenda: Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. India)**

#### **Preface**

For the purpose of this simulation, we shall be disregarding the current status of the case in the real-life ICJ. All representatives are expected to assume and act as if, as on session one of day one of the conference, thus far only the application for institution of proceedings has been filed and the memorials from both parties have been submitted. From then on, as per the schedule provided in the rules of procedure document, your proceedings shall follow.

This does not mean that you may not refer to the documents submitted to the Court by either party or use arguments from them. However, the results from such proceedings will not be the same. For instance, in the case in the actual Court, India secured a judgement on 5<sup>th</sup> October 2016 from the Court which could be broadly called as in favour of India (this does not imply that they are materially better on paper or that their case was better) <sup>1</sup> but it does not mean that the representatives representing India will also be entitled to such a judgement as a result of the proceedings at the conference, even if they make the exact same arguments as the ones that legal team of India did before the actual Court. The reason for this being very simple: we evaluate arguments independently in the context of the proceedings at the conference and also base our evaluations solely on the depth and clarity with which the arguments are presented. We shall not be prejudiced by the events that have occurred or will be occurring in the real world outside the conference.

## **Introduction and starting points**

In order to remain neutral and not influence your research in any particular direction, this section shall provide information directly from the ICJ's documents as we deem it to be representative of objective facts that both parties may agree upon. We shall provide links to other resources that maybe of help to you in your research efforts in the further reading section but please bear in mind that we do not endorse those sources nor do we require you to use them. Those resources are given simply for your reference and to help you begin your research.

## **Background facts**

From [Judgement of 05-10-2016](#):

Since the creation of the United Nations, and in line with its purposes under Article 1 of the Charter, the issue of disarmament has been central to the Organization's concerns. In this regard, the Charter gives three separate bodies a role in international disarmament efforts: the General Assembly (Art. 11, para. 1), the Security Council (Art. 26) and the Military Staff Committee (Art. 47, para. 1). The General Assembly has been active in the field of international disarmament generally and nuclear disarmament in particular. With respect to international disarmament generally, the General Assembly created the first United Nations Disarmament Commission under the Security Council in 1952 (resolution 502 (VI) of 11 January 1952). In 1978, it held a Special Session on disarmament, at which it established the current United Nations disarmament mechanisms consisting of: the First Committee of the General Assembly, the mandate of which was redefined to deal exclusively with questions of disarmament and related international security questions; a new Disarmament Commission as a subsidiary organ of the General Assembly, composed of all Member States of the United Nations (replacing the United Nations Disarmament Commission created in 1952); and a Committee on Disarmament devoted to negotiations (resolution S-10/2 of 30 June 1978, paras. 117, 118 and 120). The latter was re-designated the Conference on Disarmament with effect from 1984 (General Assembly resolution 37/99 K, Part II, of 13

December 1982; Report of the Committee on Disarmament to the United Nations General Assembly, 1 September 1983, doc. CD/421, para. 21) and now consists of 65 members.

With respect to nuclear disarmament efforts in particular, it may be recalled that, in its very first resolution, unanimously adopted on 24 January 1946, the General Assembly established a Commission to deal with “the problems raised by the discovery of atomic energy” (resolution 1 (I) of 24 January 1946; this Commission was dissolved in 1952 when the first United Nations Disarmament Commission, mentioned above, was established). As early as 1954, the General Assembly also called for a convention on nuclear disarmament (resolution 808 (IX) A of 4 November 1954) and has repeated this call in many subsequent resolutions. In addition, the mechanisms set out above, created by the General Assembly in view of general international disarmament efforts, have also dealt specifically with questions of nuclear disarmament.

By resolution 21 of 2 April 1947, the United Nations Security Council placed a group of Pacific Islands, including those making up the present-day Marshall Islands, under the trusteeship system established by the United Nations Charter, and designated the United States of America as the Administering Authority. From 1946 to 1958, while under this trusteeship, the Marshall Islands was the location of repeated nuclear weapons testing. By resolution 683 of 22 December 1990, the Security Council terminated the Trusteeship Agreement concerning the Marshall Islands. By General Assembly resolution 46/3 of 17 September 1991, the Marshall Islands was admitted to membership in the United Nations.

The Respondent gained independence on 15 August 1947. At that time, it was already a Member of the United Nations (India was one of the few founding Members of the United Nations which were not yet sovereign when they joined the Organization; it became a Member on 30 October 1945). India conducted a first nuclear test in 1974 and possesses nuclear weapons.

Following extensive negotiations in the 1960s, in which both nuclear-weapon States and non-nuclear-weapon States participated, the Treaty on the Non-Proliferation of Nuclear



Weapons (hereinafter “NPT”) was opened for signature on 1 July 1968. It entered into force on 5 March 1970 and was extended indefinitely in 1995. Review conferences have been held every five years since its entry into force, pursuant to Article VIII, paragraph 3, of the NPT. One hundred and ninety-one States have become parties to the NPT; on 10 January 2003, the Democratic People’s Republic of Korea announced its withdrawal. The Marshall Islands acceded to the NPT on 30 January 1995; India has not become a party to it.

The NPT seeks to limit the proliferation of nuclear weapons and provides certain rights and obligations for parties designated as “nuclear-weapon State Part[ies]” and “non-nuclear-weapon State Part[ies]” (including, inter alia, the right of all States to develop and use nuclear energy for peaceful purposes, the obligation of nuclear-weapon States parties not to transfer nuclear weapons to any recipient, and the obligation of non-nuclear-weapon States parties not to receive such a transfer). The Preamble to the NPT also declares the intention of the parties “to achieve at the earliest possible date the cessation of the nuclear arms race and to undertake effective measures in the direction of nuclear disarmament”. In this connection, Article VI of the NPT provides:

“Each of the Parties to the Treaty undertakes to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control.”

For the purposes of the NPT, a “nuclear-weapon State is one which has manufactured and exploded a nuclear weapon or other nuclear explosive device prior to 1 January 1967” (Art. IX.3). There are five nuclear-weapon States under the NPT: China, France, the Russian Federation, the United Kingdom and the United States of America. In addition to India – which, as noted above (see para. 17), is not party to the NPT – certain other States possess, or are believed to possess, nuclear weapons.

By resolution 49/75 K of 15 December 1994, the General Assembly requested the International Court of Justice to give an advisory opinion on whether the threat or use of nuclear weapons is permitted in any circumstance under international law. In the reasoning of its Advisory Opinion of 8 July 1996, the Court appreciated “the full importance of the recognition by Article VI of the [NPT] of an obligation to negotiate in good faith a nuclear disarmament” (Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I), p. 263, para. 99). It added that this obligation went “beyond .... a mere obligation of conduct” and was an “obligation to achieve a precise result – nuclear disarmament in all its aspects – by adopting a particular course of conduct, namely, the pursuit of negotiations on the matter in good faith” (ibid., p. 264, para. 99). The Court stated that “[t]his twofold obligation to pursue and to conclude negotiations formally concerns [all] States parties to the [NPT], or, in other words, the vast majority of the international community”, adding that “any realistic search for general and complete disarmament, especially nuclear disarmament, necessitates the co-operation of all States” (I.C.J. Reports 1996 (I), p. 264, para. 100). In the conclusions of the Advisory Opinion, the Court unanimously declared that “[t]here exists an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control” (ibid., p. 267, para. 105 (2) F).

In its resolution 51/45 M of 10 December 1996, the General Assembly “[u]nderline[d] the unanimous conclusion of the Court that there exists an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control” and

“[c]all[ed] upon all States to fulfil that obligation immediately by commencing multilateral negotiations in 1997 leading to an early conclusion of a nuclear-weapons convention prohibiting the development, production, testing, deployment, stockpiling, transfer, threat or use of nuclear weapons and



providing for their elimination”.

The General Assembly has passed a similar resolution on the follow-up to the Court’s Advisory Opinion every year since then. It has also passed numerous other resolutions encouraging nuclear disarmament.

### **Further reading**

#### **Relevant sources of international law**

1. [Charter of the United Nations](#)
2. [Advisory opinion of the ICJ in ‘Legality of the Threat or Use of Nuclear Weapons’](#)
3. [Treaty on the Non-Proliferation of Nuclear Weapons](#)
4. [Articles of Responsibility of States for Internationally Wrongful Acts](#)

#### **Articles**

1. [Analysis of the case in Harvard Journal of International Law](#)
2. [Analysis of the case at EJIL blog](#)
3. [Analysis of the case by Legal Service India](#)
4. [Implications Of The Marshall Islands Case For Nuclear Disarmament](#)

---

### **Specific contentious rules**

This section covers the Presidency’s views on some of the contentious rules that usually create confusion, conflict, and consternation when not explicitly stated in advance. The judgement and scoring during the MUN will be based on the views expressed here.

### **Regarding this guide and evidence**

Any resource presented as evidence shall be evaluated based on its own merit; it shall not be deemed admissible or authoritative

simply owing to its reference in this background guide.

Why? – Because of the eclectic nature of the resources:

The guide has resources of wide variety. Some of the resources could be opinion-based articles, some may be from sources sympathetic to one party in the conflict, some could be outdated (we will try our best to not share such resources but we cannot control for things such as emergence of new facts post guide publication).

### **Plagiarism**

Any and all submissions made to the Presidency shall be checked for plagiarism. Due to the nature of legal writing, a 20% plagiarism rate will be tolerated. But plagiarism of any higher rate will render the submission inadmissible. Citations and quotations shall be exempt from the plagiarism check.

### **Personal pronouns**

This particular Presidency does not care very much about whether a representative uses personal pronouns to refer to herself/himself. As long as the language employed by the representative is diplomatic in both tone and content, we will not mind the usage of personal pronouns.

---

Chapter XV