

NMUN • LATIN AMERICA

QUITO, ECUADOR 2010

The International Court of Justice



NATIONAL MODEL
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BACKGROUND GUIDE 2010



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My most sincere Greetings and welcome to the International Court of Justice at the 2009 Latin American Model United Nations Conference (LATAMUN). My name is Andrés Ochoa and I am very honored to serve as your Director for this the first Latin American simulation. I can sincerely tell you how thrilled I am to take the part of director for this committee as my passion and interests lay in international law and its practice. It is because of this that I enjoy very much to work with people who also wish to enter the field or have an interest in learning more. To tell you a little about myself, I am a native from Ecuador, born in Quito and raised in Ambato, Ecuador. In 2010, I will graduate from Universidad San Francisco de Quito with a double degree in Law and International Relations. In the past, I have worked with Asylum Access as a Legal Advocate in their Regional Offices in Quito. At the moment, I am a research associate at the Council on Hemispheric Affairs in Washington D.C. In 2009, the idea for this committee came along with the organization of LATAMUN and the Litigation Club in USFQ, a student's club very interested in forwarding international law practice. For this we are very proud of the outcome.

This committee promises to be a very successful project as we present a different simulation program to what students are used to in the region. The simulation integrates an actual simulation of cases being litigated and discussed in the ICJ at the moment, and it includes the entirety of proceedings including oral arguments. I hope that this immersion in International Law will allow you to get to know it, grasp it and that you will enjoy your experiences as you discover a the intricacies of this field. To that end, the Director-General, Lauren Judy, and I have worked diligently to provide as much detailed preparation for the two cases below:

1. Accordance with International Law of the Unilateral Declaration of Independence by the Provisional Institutions of Self Government of Kosovo (**Request for Advisory Opinion**)
2. Pulp Mills on the River Uruguay(**Argentina vs. Uruguay**)

Although the task that lies before you may seem complicated, I want each of you to know that you will be provided with numerous resources to assist you as you begin your preparation. Traditionally, background guides on the issues in front of every committee are provided, however, a very specific delegate preparation guide for the ICJ focusing more on a legal basis is also available herein. The delegation preparation guide includes an introduction to the international legal system and the ICJ instructions and suggestions for research, oral argument details, guidelines for writing opinions and an annotated bibliography to help your work to get started. The guide also explains the differences between the contentious cases and the advisor opinions, as well as the role of other particularities of legal institutions such as the *amicus curiae* (friend of the court) parties, including NGOs as well as rules for memorials and counter memorials (the LATAMUN ICJ version of position papers submissions).

Each delegation is required to submit a specific type of position paper. However, this will vary in format and style depending your assignment within the committee. More information about this will follow in the Background Guide and the ICJ Delegate Preparation manual which will be published on November 1, 2009. LATAMUN will be accepting these papers via e-mail. All papers are due by December 15, 2009.

Please do not hesitate to contact me with any inquiries. If you have any questions, please feel free to contact Lauren or me at the below e-mail addresses. I look forward to meet each of you in January. Good Luck.

Andrés Ochoa
Director
int.court.la@nmun.org

Note:

The Committee History for the ICJ Background Guide was researched and written by Ms. Rima Gungor in coordination with the NMUN New York staff.

Message from the DG Concerning Special Features Regarding the ICJ Committee

To better simulate the actual workings of the UN system and its related organizations, the 2010 NMUN Latin America Conference is using many of the rules and procedures used by the bodies being simulated. It is vital that all materials provided in this background guide be reviewed thoroughly prior to attending the conference in January. All delegates should be very familiar with the particular rules and procedures discussed in this special message and the rules of procedure further illustrated in back of this committee background guide.

The International Court of Justice (ICJ) during the 2009 NMUN Conference will simulate the entire proceedings of three cases. These proceedings will include: the swearing in of the justices of the ICJ; the presentation of opening statements and closing statements on each case; the cross-examination of witnesses and the presentation of evidence and deliberation by the justices on the cases. Due to the use of most of the real rules and procedures used at the ICJ, it is vital that delegates fully read the delegate preparation manual which has been specifically created for those participating in this committee. The manual will be published in November of 2009. Unlike preparing for the rest of the committees at the 2010 NMUN Latin America Conference, delegate preparation for the simulation of the ICJ will rely on the preparation materials provided in this background guide and additional materials that the Director for the ICJ, Andrés Ochoa, will provide via email and on the NMUN website throughout the year.

Rules of Procedure for the ICJ Simulation

Due to the special nature of the ICJ at the 2010 NMUN Latin America Conference, a particular set of rules of procedure will be used during the simulation. These rules of procedure to be used for the ICJ simulation will be a modification of the real rules of procedure used at the ICJ. The full set of the rules of procedure will be posted on the NMUN website by November 1, 2009.

If you have any questions concerning any issue concerning the International Court of Justice simulation at the 2010 NMUN Latin America Conference, please do not hesitate to contact Andrés Ochoa, the Director of ICJ at int.court.la@nmun.org; or myself at dirgen.la@nmun.org.

Message from the Director General Regarding Position Papers for the International Court of Justice 2010 NMUN Conference

Due to the special nature of the simulation of the International Court of Justice (ICJ), please read the following points and the points in the rest of this ICJ delegate preparation manual before you construct your position paper for the ICJ.

The position papers for the Justices should not reflect their particular nation's position on the topics, but their own objective opinion based on their reading, research and assessment of the issues presented in each case. It should identify what the facts and issues are for each case as well as what possible legal standards should be applied; describe how the standards should be applied to the particular facts; and conclude how the various issues should be resolved. It should be written with the utmost objectivity and reflect on a preliminary finding of fact and law.

Justices

The Justices' preliminary opinions should reflect:

1. A statement of facts (what are the facts of the case?);
2. A statement of the applicable law (the possible legal standards should be applied, what laws, customs, precedents or treaties apply?);
3. An application of the law to the facts (How does the law view the situation?);
4. A statement of the remedies that should be required by the Court (What should the parties do to remedy the situation?); and
5. A conclusion.

Advocates/Assessors

The Advocates will produce a position paper that would serve as the memorial/counter-memorial for each State-party and will outline the arguments/positions for each side. Their position papers should reflect the following, in this order:

1. A statement of facts (what are the facts of the case, as viewed in the light most favorable to your position?);
2. A statement of the applicable law (the possible legal standards should be applied, what laws, customs, precedents or treaties apply?);
3. The detailed argument section, which discusses how the law and facts apply to the particular case as well as a counter-argument to the anticipated arguments of your adversary (how do the laws and facts support your case?);
4. An application of the law to the facts (How does the law view the situation?);
5. A statement of the remedies that should be required by the Court (What should the parties do to remedy the situation?); and
6. A summary and request for remedy (what do you want the Court to do?).

Please be forewarned, delegates must turn in material that is entirely original. The NMUN Conference will not tolerate the occurrence of plagiarism. In this regard, the NMUN Secretariat would like to take this opportunity to remind delegates that although United Nations documentation is considered within the public domain, the Conference does not allow the verbatim recreation of these documents. This plagiarism policy also extends to the written work of the Secretariat contained within the committee background guides. Violation of this policy will be immediately reported to faculty advisors and may result in dismissal from Conference participation. Delegates should report any incident of plagiarism to the Secretariat as soon as possible.

An important component of the awards consideration process is the format of the position papers. Please refer to the sample paper on the following page for a visual example of what your work should look like at its completion. The following format specifications are **required** for all papers:

- All papers must be typed and formatted according to the example in the background guides (following the specifications below will ensure this)
- Length must **not** exceed one double-sided page (two single-sided pages is **not** acceptable)

- Font **must** be Times New Roman sized between 10 pt. and 12 pt.
- Country/NGO name, School name and committee name clearly labeled on the first page
- Agenda topics clearly labeled in separate sections

The following format specifications are **required** for all papers:

- All papers must be typed and formatted according to the example in the Background Guides
- Length must **not** exceed one double-sided page (two single-sided pages is **not** acceptable)
- Font **must** be Times New Roman sized between 10 pt. and 12 pt.
- Country/NGO name, School name and committee name clearly labeled on the first page
- Agenda topics clearly labeled in separate sections

To be considered timely for awards, please read and follow these directions:

1. **A file of the position paper** (.doc or .pdf) **for each assigned committee** should be sent to the committee email address listed in the Background Guide.
2. Each delegation should also send **one set of all position papers** to: position.papers.la@nmun.org. This set will serve as a back-up copy in case individual committee directors cannot open attachments.
- 3.

Each of the above listed tasks needs to be completed no later than **December 15, 2009**.

PLEASE TITLE EACH E-MAIL/DOCUMENT WITH THE NAME OF THE COMMITTEE, ASSIGNMENT AND DELEGATION NAME (Example: AU_Namibia_University of Caprivi)

Once the formal requirements outlined above are met, Conference staff uses the following criteria to evaluate Position Papers:

- Overall quality of writing, proper style, grammar, etc.
- Citation of relevant resolutions/documents
- General consistency with bloc/geopolitical constraints
- Consistency with the constraints of the United Nations
- Analysis of issues, rather than reiteration of the Committee Background Guide
- Outline of (official) policy aims within the committee's mandate

Your patience and cooperation in strictly adhering to the above guidelines will make this process more efficient and is greatly appreciated. Should you have any questions please feel free to contact the Conference staff, though as we do not operate out of a central office or location your consideration for time zone differences is appreciated.

Sample Position Paper

The following position paper is designed to be a sample of the standard format that an NMUN preliminary opinion should follow.

Delegation from (*Insert Member State Name*)

Represented by (*Insert Delegation Name Here*)

International Court of Justice

Case Concerning Avena and Other Mexican Nationals (*Mexico v. United States*)

Facts

Mexican national Cesar Roberto Fierro Reyna has been on death row in Texas for the past two decades.¹ Fierro may soon be executed² despite the discovery of compelling evidence found, in part, by the Mexican government that he did not commit the murder for which he was sentenced.³ U.S. officials never notified the Mexican government of his detention and Mexican officials only learned of the whereabouts of their citizen when they later received a letter from Fierro's mother.⁴ Because of the delay, Mexican consular officials did not discover strong evidence that police coerced Fierro's written confession until more than a decade after a jury used it to sentence Fierro to death.⁵

Issue

The question presented is whether the United States violated the *Vienna Convention on Consular Rights* by denying Mexican national on death row access to their consular officials at the time of their arrest. Issues to be decided are whether this is predominantly an issue of municipal law that must be left to United States courts to deal with, and if not, did the United States violate the Convention? Finally, if it is determined that the U.S. did violate the terms of the Convention, what remedy should the Court fashion?

Rule

The 1963 Vienna Convention on Consular Relations generally governs consular issues de jure (i.e. imposed by law) between the United States, Mexico and the majority of the world's nations.⁶ States have traditionally appreciated a foreign consulate's function to communicate with and provide protection to its nationals.⁷ Prior to and since the entry into force of the Vienna Convention, the U.S. entered bilateral and multilateral treaties concerning consular relations with many countries.⁸ In 1942, Mexico and the U.S. promulgated the Mexico-United States Consular

¹ Case Concerning Avena and Other Mexican Nationals (Mex. v. U.S.), 2003 I.C.J. 128 (Feb. 5) [hereinafter Avena Order]; Case Concerning the Vienna Convention on Consular Relations (Mex. v. U.S.), Application Instituting Proceedings Submitted by the Government of the United Mexican States (Jan. 9, 2003) P 168, at 26 [hereinafter Application] (noting that Fierro has exhausted his primary appeals and the State of Texas may schedule his execution at any time). Fierro's latest petition for writ of certiorari was recently denied. See Fierro, 294 F.3d 674, cert. denied, 123 S. Ct. 1621 (2003). Mexico had filed an amicus curiae brief in support of Fierro's petition. Ibid

² Death Penalty Information Center, Mexican Embassy Raises Questions of Innocence, Fairness in Case of Cesar Roberto Fierro, at <http://www.deathpenaltyinfo.org> (last visited Apr. 9, 2004) [hereinafter DPIC]; A Texas Tragedy: the Shocking Case of Cesar Fierro, at <http://www.cesarfierro.com/summary.htm> (last visited Apr. 9, 2004) [hereinafter A Texas Tragedy].

³ A Texas Tragedy, supra note 4; Application, supra note 82, P 166, at 26.

⁴ See generally A Texas Tragedy, supra note 82.

⁵ *Vienna Convention on Consular Relations*, Apr. 24, 1963, art. 1(d), 21 U.S.T. 77, 80, 596 UNT.S. 261, 264 (Hereinafter Vienna Convention).

⁶ Vienna Convention, supra note 85. Since entry into force on March 19, 1967, 165 countries have become signatories. U.S. Dep't of State, Consular Notification and Access: Instructions for Federal, State, and other Local Law Enforcement and Other Officials Regarding Foreign Nationals in the United States and the Rights of Consular Officials to Assist Them, at Part 5 n.1, at http://travel.state.gov/consul_notify.html (last visited Aug 5, 2004) [hereinafter Consular Notification].

⁷ Howard S. Schiffman, Breard and Beyond: The Status of Consular Notification and Access under the Vienna Convention, 8 *Cardozo J. Int'l & Comp. L.* 27, 32 (2000).

⁸ See, e.g., Convention Relating to Consular Officers, June 6, 1951, U.S.-U.K.-Ir., 122 UNT.S. 1953, 2174 (mutually covering consular relations between the U.S. and Britain and its dependencies and many of the former British colony States);

Convention.⁹ Many of these pre-Vienna treaties with the U.S. provided for notice to the appropriate consulate of its national's detention; mandatory forwarding of any communication between the consul and the detainee; and permission for the consul to visit, privately communicate and arrange for legal representation for the detainee.¹⁰

Since the Vienna Convention, Mexico and the U.S. have signed a Memorandum of Understanding on Consular Protection of Mexican and United States Nationals.¹¹ The Memorandum mirrors the Vienna Convention by providing for notification of detained foreign nationals of their right to consular access, the right to contact consular officers, and the facilitation of communication between consuls and their nationals.¹² Similar to the Convention, the Memorandum provides for meeting places that permit confidential interviews between consuls and nationals, and allows consular officers to be present at judicial proceedings.¹³ While not legally binding, the Memorandum encourages good faith compliance with consular access rights by Mexico and the U.S. as to the foreign country's nationals.¹⁴

Article 36 of the Vienna Convention, entitled "Communication and Contact With Nationals of the Sending State," provides for reciprocal communication and access between foreign consular officers and their nationals in the receiving state.¹⁵ Paragraph 1(b) imposes duties on receiving state officials. It provides that receiving state officials shall inform the relevant consulate upon the request of the detained foreign national "without delay."¹⁶ Paragraph 1(b) also directs receiving state officials to forward "any communication addressed to the consular post" by the detained person, again "without delay."¹⁷ Finally, receiving state officials must inform the detainee, "without delay," of his or her rights to communicate with and have access to the consulate.¹⁸ Finally, paragraph 2 mandates that consular rights provided in Article 36(1) be exercised in accordance with the domestic laws of the receiving state.¹⁹ The domestic law of the receiving state, however, "must enable full effect to be given to the purposes for which the rights accorded under [Article 36] are intended."²⁰

Application and Analysis

It is clear after an initial examination of the facts that the United States clearly violated the articles of the Vienna Convention discussed above. It is my opinion that a Provisional Measures Order (PMO) should be issued, preventing the execution of any and all foreign nationals from Mexico that are currently sitting on death row in the United States, until a determination can be made that they have received the full rights afforded to them under the Vienna Convention.

The power of the ICJ to issue PMOs stems from Article 41 of the ICJ statute. Article 41 provides that the Court "shall have the power to indicate . . . any provisional measures which ought to be taken to preserve the respective rights of either party."²¹ ICJ PMOs serve to maintain the status quo so as to protect state parties' rights that might otherwise be irreparably harmed.²²

Consular Convention, June 1, 1964, 19 U.S.T. 5018 (mutually covering consular relations between the U.S. and the former Soviet republics); Consular Notification, *supra* note 39 (providing a comprehensive list of bilateral and multilateral consular relations treaties to which the U.S. is a party, and including a table of those states party to the Vienna Convention).

⁹ Consular Convention Between the United States of America and the United Mexican States, Aug. 12, 1942, U.S.-Mex., art. 6, 57 Stat. 800.

¹⁰ Schiffman, *supra* note 112, at 32.

¹¹ Memorandum of Understanding on Consular Protection of Mexican and United States Nationals (May 7, 1996), available at <http://www.migracioninternacional.com/docum/memora.html> (last visited Jul. 29, 2004).

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ Consular Notification, *supra* note 111.

¹⁵ Vienna Convention, *supra* note 85, art. 36(1) ("consular officers shall be free to communicate with nationals of the sending State and to have access to them. Nationals of the sending State shall have the same freedom with respect to communication with and access to consular officers of the sending State. . . .").

¹⁶ *Ibid.* art. 36(1)(b).

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ *Ibid.* art. 36(2).

²⁰ *Ibid.*

²¹ Statute of the International Court of Justice, June 26, 1945, chapt. III, art. 41, P 1, 59 Stat. 1005, 1062
²² Bek²³ Annan, *Speech Commemorating the Tenth Anniversary of the 1994 Genocide in Rwanda*, 2004.

History of the International Court of Justice

As one of the six main organs of the United Nations and its principle judicial organ, the International Court of Justice (ICJ) has guaranteed impartial adjudication free of political pressure or economic bargaining since 1945. The organization of this court is determined by the Statute of the International Court of Justice, an integral part of the United Nations' *Charter*, and is open for signature to Member States only. The International Court of Justice is located at the Peace Palace in The Hague, Netherlands. Its official languages are French and English.

The main functions of the Court are to achieve peaceful resolution of disputes submitted by sovereign member states in accordance with international law. Non-Member States may also appear before the Court; however, they must meet the terms outlined by the General Assembly under the recommendation of the Security Council. These non-Member States also have to accept the *Statute of the International Court of Justice*, as well as agree to abide by the decision of the International Court of Justice and make annual contributions to the Court. The Court also provides advisory opinions on questions of law submitted by the Security Council, the General Assembly, the International Labor Organization (ILO), Food and Agriculture Organization (FAO), International Monetary Fund (IMF), and the World Health Organization (WHO).

The registry of the International Court of Justice functions as the secretariat and as the administrative organ to the Court. It liaises within and its own bodies. The Court is not the sole international court; however it is the only court that secures the pacific settlements of international disputes. Other international courts include the European Court of Human Rights (ECHR) and specialized international courts such as the International Criminal Court and the International Criminal Tribunals.

The history of the ICJ began with the Hague Conferences of 1897 and 1907 as well as the Hague Convention of 1899. These gatherings called for the establishment of a permanent arbitrary body open to all states for the settlement of international disputes. The decision was made to codify international law in treaties and to establish the first permanent international court, the Permanent Court of Arbitration, which is still functional. Article 14 of the Covenant of the League of Nations, founded after World War I, allowed for the creation of a judicial body providing a peaceful method of dispute settlement based on international law. This new judicial international organization was followed through by the establishment of the Permanent Court of International Justice (PCIJ) in 1920¹. Between 1921 and 1939 the Permanent Court of Arbitration issued more than 30 decisions and 30 advisory opinions. In the spring of 1945 at the San Francisco Conference, 50 nations drafted the Charter for a new World Organization. However, there were 13 nations not party to the PCIJ Statute. The decision was made to replace the PCIJ with a new court, the International Court of Justice principle judiciary organ, and dissolve the League of Nations. Both the PCIJ and the League of Nations were dissolved in 1946. In April 1946, the International Court of Justice was installed at the Peace Palace. The cases decided by the ICJ were to carry the same weight as those decided by the PCIJ.

The International Court of Justice consists of 15 judges each with 9 years terms in office. Five of these judges come from the Western part of the world, three from Africa, three from Asia, two from Latin America, and two from Eastern Europe. The judges are elected at the United Nations Headquarters via secret ballot by the General Assembly and the Security Council. In order to be elected, each judge must receive an absolute majority in both bodies, have a high moral character, expertise in international law, and qualify for the highest judiciary in their country. The judges are independent and do not reflect or represent their governments in

¹ Website of the International Court of Justice, <http://www.icj-cij.org/court/index.php?p1=1&PHPSESSID=8e4670198fff3e6d012c70df8cf448be>.

any way. No two judges may be elected from the same county. Ad hoc judges are added when the disputing parties have no representation among the judges and these ad hoc judges also retain full voting rights. The International Court of Justice adjudicates disputes submitted to it in accordance with the terms set forth by Article 38 of its Statute. Once a nation has consented to the jurisdiction of the Court, it must accept the Court's verdict, a single opinion, as final. This decision cannot be appealed, but a Member State can apply for a revision of a judgment under Article 61 of the ICJ Statute. Case resolution encompasses settlement by the parties during the proceedings, state withdrawal from proceedings, and a court verdict. The judgment of the court must be fulfilled by the parties and the Security Council has the right to enforce the Court's judgments. The Court does not have compulsory international jurisdiction and is not governed by an international constitution. The Court bases its decisions on treaties, principles of international law, international custom, judicial decisions, and the writings of the most highly qualified experts on international law.

Procedure before the Court is governed by its Statute and the Rules of the Court. Both of these parts join aspects of the Anglo-Saxon Common Law and European Civil Law. The Court makes decisions for the majority of its cases using Article 38 of the ICJ Statute. Article 38 specifies that 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 teaching of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law².

Article 59 of the ICJ Statute clarifies the common law notion of precedent, also known as *stare decisis*, does not apply to the decisions of the Court. The Article specifically states that the decision of the Court has no binding force except between the parties and in respect of that particular case.³ The Court rarely deviates from its previous decisions and treats those decisions as precedent. The Court can also, should the disputing parties agree to allow for it, decide *ex aequo et bono*, or in justice and fairness. This allows the Court to make a reasonable decision based on what is equal and fair under special circumstances.⁴ However, this provision has yet to be used in the Court.

The International Court of Justice has authority over cases disputing parties refer to. These cases are governed by Article 36 (1 and 2) of the *ICJ Statute* which states that 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 as well as 2) the states parties to the present *Statute* may at any time declare that they recognize as compulsory ipso facto and without special arrangement, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all illegal 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; and d) the nature or extent of the reparation to be made for the breach of an international obligation.⁵ The Court retains authority over treaties and conventions that provide recourse in the Court. The Court also has inferred consent to its jurisdiction.

Resolutions of disputes between States are achieved in several steps. The proceedings have to be instituted by either or both of the parties. There are two ways to file suit. The first method is special agreement in which parties to the dispute agree to lodge a complaint. This complaint includes the subject of the dispute and parties to it. The second method is submitting an application. This application is unilateral meaning that it is

² *Statute of the International Court of Justice*, art. 38, 1945

³ *Statute of the International Court of Justice*, art. 59, 1945

⁴ *Statute of the International Court of Justice*, art. 38(2), 1945

⁵ *Statute of the International Court of Justice*, art. 36, 1945

submitted by the applicant state against the respondent state. Proceedings include written and oral phase. The written phase includes parties filing and exchanging pleadings. However, only two pleadings are allowed. The oral phase consists of public hearings addressing the Court. All proceedings are open to the public unless the parties involved request otherwise. After the completion of the proceedings each party reads their final submission. After this submission, the members of the Court retire for individual research, exchange of notes, and collective secret deliberations. Upon the deliberations, public reading of the Judgment or Opinion including separate or dissenting opinions take place in the Great Hall of Justice.

Only the five organs of the United Nations and the sixteen specialized agencies of the United Nations may ask the ICJ for what is known as an advisory opinion. Advisory opinions are governed by Article 65 of the ICJ Statute which states that 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.⁶ A written request must be submitted along with all the supporting documents. The proceedings are similar for advisory opinions as they are for court cases. Advisory opinions include written and oral statements. After completion and deliberations, the Opinion is released to the Secretary General, members of the United Nations, and Member States or international organizations. Decisions of the Court have no binding force unless the parties agree to this beforehand.

As a significant contributor to world peace, the future of the International Court of Justice lies within the cooperation of the international community. By developing the principles of international law, which provide nations of the world with a framework for coping with potential disputes, the International Court of Justice leads the way to providing greater resolutions to international conflicts. Potential challenges of the Court include the enforcement of its judgments and that the decisions made by the Court may result in catastrophic events.

⁶ *Statute of the International Court of Justice*, art. 65, 1945

***Accordance with International Law of the Unilateral Declaration of Independence by the Provisional Institutions of Self Government of Kosovo
(Request for Advisory Opinion)***

Question Presented

Is the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo in accordance with international law?

Facts

On February 17, 2008, the Assembly of Representatives of Kosovo declared itself to be an independent and sovereign State, citing the will of its people and the recommendations from the Comprehensive Proposal for the Kosovo Status Settlement of the UN Special Envoy.⁷ Following the declaration, 48 States, including 22 members of the European Union recognized Kosovo as an independent State.⁸ On February 18, 2008, the National Assembly of the Republic of Serbia adopted a resolution that pursued to annul the proclamation and reassert that the provinces of Kosovo and Metohija are inalienable part of a single and inseparable Republic of Serbia and further argued that the international agreements grant autonomy to Kosovo but maintain the territorial integrity of Serbia.⁹

After a decade of civil strife from the dissolution of the Socialist Federal Republic of Yugoslavia (SFRY), in 1998 fighting between the Serbian Army and the Kosovo Liberation Army took place in Kosovo, creating a grave humanitarian crisis which included acts of terrorism, targeting of civilians, mass killings and atrocities that resembled that of Bosnia Herzegovina.¹⁰ The situation led to international efforts to stop the atrocities and respond to the crisis, which were crystallized into an administration regime established by the *Rambouillet Agreement* and the *Security Council Resolution 1244*. *Resolution 1244* seeks to create an international interim administration.¹¹ It also establishes substantial autonomy for Kosovo while developing self-governing institutions.¹² The resolution seeks to facilitate a political process to determine Kosovo's future status.¹³

On August 15, 2008, the Permanent Representative of Serbia to the United Nations addressed a letter to the Secretary General requesting the inclusion in the agenda of the 63rd session of the General Assembly the request for an advisory opinion regarding the unilateral declaration of independence of Kosovo.¹⁴ He mentioned that to transfer the issue from the political arena to the judicial arena is the most sensible way to overcome the potentially destabilizing consequences of the unilateral declaration and that it will provide legal guidance calming tensions, avoiding negative developments and facilitating efforts of reconciliation.¹⁵ This request was granted by the General Assembly who referred the issue to the International Court of Justice seeking an advisory opinion on the legal question posed by Serbia.¹⁶ *Resolution 63/3* was adopted by 77 votes in favor, 6 against and 74 abstentions.¹⁷

Procedural History

⁷ Assembly of Kosovo, Declaration of Independence by the Assembly of Kosovo, 2002.

⁸ United Nations General Assembly, 22nd plenary meeting Official Records (A/63/PV.22), 2008.

⁹ International Court of Justice, Letter from the Permanent Rep. of Serbia to the United, 2008.

¹⁰ United Nations Secretary General, Report of the Secretary-General prepared pursuant to Resolutions 1160 (1998) and 1199 (1998) of the Security Council (S/1998/912), 1998.

¹¹ United Nations Security Council, Resolution 1244 (S/RES/1244), 1999.

¹² *Ibid.*

¹³ *Ibid.* p.4

¹⁴ International Court of Justice, Letter to the Secretary General from the Permanent Representative of Serbia to the United Nations, 2008.

¹⁵ *Ibid.* Enclosure Explanatory Memorandum

¹⁶ United Nations General Assembly, Request for an advisory opinion of the International Court of Justice, 2008.

¹⁷ *Supra*, note 3

By an order of October 17, 2008, the Court decides that the United Nations and its members are considered able to furnish information on the question, fixed April 17, 2009 as the time limit for written statements to be presented and July 17, 2009 as the time limit for presenting written comments on those written statements.¹⁸ 63 Member States of the United Nations and the authors of the unilateral declaration filed written statements on the question.¹⁹ 14 States submitted written comments on the written statements.²⁰ The statements and comments remain confidential until further decision of the Court.²¹ Public Hearings will be held December 1, 2009.²²

Jurisdiction

As basis for the advisory jurisdiction of the court, the General Assembly invokes article 65 of the Statute of the International Court of Justice²³, which grants the possibility of requesting and advisory opinion on any legal question at the request of an authorized body by the Charter of the United Nations.²⁴ The United Nations Charter provides on its *Article 96 Section a.* that the Security Council or the General Assembly may request an advisory opinion on any legal question.²⁵

Pulp Mills on the River Uruguay (Argentina vs. Uruguay)

Question Presented

Did Uruguay breach its obligations under the *1975 Statute of the River Uruguay* signed between Argentina and Uruguay in respect to the authorization, construction and future commissioning of two pulp mills on the River Uruguay, having in particular regard the effects of such activities on the quality of the waters of the River Uruguay and on the areas affected by the river?

Facts

On May 4, 2006, the Argentine Republic instituted proceedings against the Eastern Republic of Uruguay by filing in the Registry of the Court an “application instituting proceedings.” The filing requested the Court to examine the international responsibility of Uruguay for breaching its obligations relating to the *1975 Statute* and the other rules of international law to which that instrument refers. Particularly, the proceedings examine Uruguay’s obligations for the optimum and rational utilization of the River Uruguay, the provision of advanced notification to the Administrative Commissions on the River Uruguay (CARU) and to Argentina, obligations to comply with the procedures prescribed in Chapter II of the 1975 Statute, the obligation to take all necessary measures to preserve the aquatic environment and prevent pollution, among others.²⁶

According to Argentina, the Government of Uruguay unilaterally authorized the construction of a pulp mill near the town of Fray Bentos without complying with the obligatory prior notification and consultation procedure established in the 1975 Statute.²⁷ Argentina states that despite its continual protests of the project to Uruguay and CARU the “Uruguayan government has persisted in its refusal to follow the prescribed

¹⁸ International Court of Justice, *Order: Fixing of time limits: Written Statements and Written Comments*, 2008.

¹⁹ International Court of Justice, *Press Release: Public hearings to be held from 1 December 2009*, 2009.

²⁰ *Ibid.*

²¹ *Ibid.*

²² *Ibid.*

²³ *Supra*, Note 1

²⁴ International Court of Justice, *Statute of the International Court of Justice*, N.D.

²⁵ United Nations, *The Charter of the United Nations*, N.D..

²⁶ International Court of Justice, *Application Instituting Proceedings: Pulp Mills on the River Uruguay (Argentina vs. Uruguay)*, 2006.

²⁷ *Ibid.*, 9.

procedures” and, asserts that Uruguay has in fact aggravated the dispute by subsequently authorizing the construction in the same area of a second pulp mill and of a port for that mill.”²⁸

The claims state that the mills will damage the environment of the river and its influence zone affecting 300,000 residents with significant risks of pollution of the river, biodiversity deterioration, harmful effects on health and damage to the fisheries of the area.²⁹ The plaintiff also states that despite of forming a high level technical group for the solution of the controversy, after 12 meetings no agreement has been enabled.³⁰

Argentina also argued for provisional measures to be taken to stop the significant social and economic impact.³¹ Moreover, it called for the immediate cessation of the commissioning of the mills as being necessary for the serious and irreversible damages being inflicted in the environment of River Uruguay and its effluents. Argentina intended to stop a fait accompli and render irreversible the siting of the mills.³²

Procedural History

By an order of July 13, 2006, the Court fixed January 15, 2007 and July 20, 2007 as the time limits for filing in the Memorial of Argentina and the Counter Memorial of Uruguay respectively.³³ In the same date, the court issued an order that denied the request for the indication of provisional measures by Argentina.³⁴ On the January 23, 2007, the court denied the request for the indication of provisional measures by Uruguay.³⁵ By an order of September 14, 2007, the court authorized a Reply by Argentina and a Rejoinder by Uruguay fixing the limits January 29, 2008 for the Reply and July 29, 2008 for the Rejoinder.³⁶ The subsequent procedure was reserved until further decision.³⁷

Jurisdiction

As basis for jurisdiction of the court, Argentina relies on Article 36 Paragraph 1 of the *Statute of the International Court of Justice*.³⁸ This provision extends the jurisdiction of the tribunal to all litigations submitted to it and to all matters provided in the United Nations Charter or in treaties.³⁹ Moreover, the case also examines article 60 of the *1975 Statute*, which provides that any dispute concerning the interpretation of the Statute that cannot be settled may be submitted by either party to the Court.⁴⁰ Uruguay does not deny that the Court has jurisdiction under the *1975 Statute*, but states that “such jurisdiction exists prima facie only with regard to request directly related to the rights Argentina is entitled to claim under the *1975 Statute*,” whereas “the rights claimed by Argentina relating to any alleged consequential economic and social impact of the mills, including any impact on tourism, are not covered by the *1975 Statute*.”⁴¹ The court in the order July 13, 2006 concluded that it has *prima facie* jurisdiction under the *1975 Statute* to deal with the merits of the case and address the request for provisional measures.⁴²

²⁸ Ibid, 11.

²⁹ Ibid, 9.

³⁰ Ibid, 11.

³¹ Ibid.

³² International Court of Justice, *Order of 13 July 2006: Request for the Indication of Provisional Measures*, 2006

³³ International Court of Justice, *Order of 13 July 2006*, 2006.

³⁴ International Court of Justice, *Order of 13 July 2006: Request for the Indication of Provisional Measures*, 2006.

³⁵ International Court of Justice, *Order of 23 January 2007: Request for the Indication of Provisional Measures*, 2007.

³⁶ International Court of Justice, *Order of 14 September 2007*, 2007.

³⁷ Ibid.

³⁸ Ibid.

³⁹ International Court of Justice, *Statute of the International Court of Justice*, Art. 36, Retrieved on

⁴⁰ International Court of Justice, *Order of 23 January 2007: Request for the Indication of Provisional Measures*, 2007.

⁴¹ International Court of Justice, *Order of 13 July 2006*, 2006.

⁴² Ibid.

Annotated Bibliography

General Sources

American Society of International Law. (N.D.) *ASIL Guide to Electronic Research for International Law*.

Retrieved on August 20, 2009 from: <http://www.asil.org/resource/iel1.htm>

This is a very useful source to find electronic references, articles and book reviews that focus on topics on international law. The emphasis will be on Internet sites from such sources as international and regional organizations, non-governmental international entities and government agencies. Some online subscription/commercial services will also be addressed where appropriate. Although most of the sources are in English, they also have a vast section of multilingual sources that will be useful for the delegate.

Brownlie, I. (2003). *Principles of Public International Law*. Oxford, Oxford University Press.

This is one of the most comprehensive and authoritative textbooks of International Law. It included many of the developments of the last decade, as well a very strong analysis of the most current issues. Although this text requires a more advanced knowledge of International Law, it is very accessible for the students and is very helpful to identify the principles of law, its contents and boundaries. It is highly recommended to use this book when dealing with abstract issues of international law.

Damrosch, Lori F., Henkin, Louis, Pugh, Richard Crawford & Smit, Hans. eds. (4th. ed. 2001). *International Law: Cases and Materials*. St. Paul, MN: West Group.

This casebook is one of the most widely utilized international law texts and is authored by five of the most well-known and universally respected professors of international law. In the text, delegates will find virtually anything they will need to know relating to the applicable law of any of the three cases. The text covers topics including public international law, human rights, international humanitarian law and law of the sea. It also contains the texts, or selections from the texts, of the most often used international treaties, covenants, declarations and resolutions

Henkin, Louis, Neuman, Gerald L., Orentlicher, Diane F. & Leebron, David W., eds. (1999). *Human Rights*. New York City, NY: Foundation Press.

This collection of human rights law covers both international and municipal contexts and is considered the best human rights law text currently on the market. The book covers remedies provided by the major international human rights instruments and the role of non-legal institutions. There is also a documentary supplement to this book that contains the full text of all major human rights law instruments.

International Court of Justice. (2009). *The International Court of Justice*. Retrieved August 30, 2009 from <http://www.icj-cij.org>

The website of the Court is the obligated initial source of investigation for the delegates. It offers a vast array of resources regarding the basic documents of the Court among them the Statute of the Court, the Rules of the Court as well as all the documentation regarding the advisory opinion and the case. This information includes all the pleadings, orders and motions that the Court has issued. The delegates are expected to study the requests and pleadings in order to further the facts of each case and to clarify the positions of the parties.

Sands, Philippe. (2003). *Principles of International Environmental Law 2nd Edition*. Cambridge: Cambridge University Press.

This book is a very important source regarding the international environmental regime existing. It treats the issues in a very clear way while integrating case law from the most contemporary sources. It is very comprehensive and its analysis has a very depth knowledge of the legal issues in discussion on every topic.

Scharf, Michael P., ed. (2001). *The Law of International Organizations*. Durham, North Carolina: Academic Press.

This problem-oriented book will expose delegates to the most significant current legal issues relating to international organizations. Each chapter begins with a roll-play exercise or simulation in the form of an introductory problem, which places the subsequent material (excerpts from international conventions, negotiating history, decisions by international organizations, international and domestic judicial opinions, diplomatic correspondence, and scholarly articles) in a realistic context. The book is organized into twenty-two chapters. Although it covers issues relevant to many kinds of international organizations, the book focuses mainly on international organizations that are within the U.N. system, including the U.N. Secretariat, General Assembly, Security Council, Sanctions Committee, Credentials Committee, International Court of Justice, Human Rights Commission, International Financial Institutions, and International Criminal Tribunals.

Shaw, M. (2003). *International Law*. Cambridge, Cambridge University Press.

This book is one of the best introductory books for International Law that exists in the market. It is strongly recommended its usage, and if possible its acquisition, for all delegates. It studies in depth the most important themes regarding International Law and makes a superb usage of case law and international instruments in order to illustrate the theory behind the issues. It will help the delegate to get in contact with the logic and structure of International Law in a very easy and clear way while showing the rigor and style needed in the treatment of international law cases.

United Nations. (1948). *The Charter of the United Nations*. Retrieved August 30, 2009 from:

<http://www.un.org/en/documents/charter/chapter14.shtml> [accordance with International Law of the Unilateral Declaration of Independence by the Provisional Institutions of Self Government of Kosovo v.3.docx](#)

The United Nations Charter is the foundational document for the United Nations System. This is a document that establishes all the legal and philosophical foundations of the organization, and that in many senses is regarded as the constitutional document for the international order. Be sure to study it and to incorporate it in your research

I. Accordance with International Law of the Unilateral Declaration of Independence by the Provisional Institutions of Self Government of Kosovo

Assembly of Kosovo. (2002). *Declaration of Independence by the Assembly of Kosovo*. Retrieved August 12, 2009 from [http://www.icj-](http://www.icj-cij.org/docket/index.php?p1=3&p2=1&k=21&case=141&code=kos&p3=0)

This legal document is perhaps the most important one to read on the case, after the two previous. It not only states the nature of the problem, but it also incorporates the legal and philosophical issues that will most likely be discussed in the advisory opinion. Be sure to study the declaration, incorporate it on your legal analysis and set it in context as to why it was adopted and what it is intended to do.

International Court of Justice. (2008). *Request for an advisory opinion of the International Court of Justice on whether the unilateral declaration of Independence of Kosovo is in accordance with International Law*. Retrieved August 12, 2009 from <http://www.icj-cij.org/docket/index.php?p1=3&p2=1&k=21&case=141&code=kos&p3=0>

This is the request presented by the United Nations General Assembly which instituted the advisory proceedings before the ICJ. It clearly states the legal basis under which the question is presented. It includes a Dossier submitted by the Secretary-General of United Nations, which compiles all the resolution from the Security Council regarding Kosovo, all the legal documents existing regarding the United Nations Administration of Kosovo, as well as reports of KFOR, the Secretary General and many of the actions taken by Kosovo and Serbian institutions. It also includes many of the international instruments that might shed light onto some of the issues that the court may consider.

International Court of Justice. (2008.) *Order: Fixing of time limits: Written Statements and Written*

Comments. Retrieved in August 12, 2009 from <http://www.icj-cij.org/docket/files/141/14813.pdf>
This is the court order where the term of participation for interest countries is fixed and established. It establishes the guidelines for countries wishing to take part into the discussion of the advisory opinion. This order is also very important because it officially incorporates the authorities of Kosovo that made the declaration of Independence as part of the proceedings in the court. It incorporates the terms under which the General Assembly submitted the question to the ICJ.

Republic of Serbia. (N.D.) Letter from the Permanent Representative of the Republic of Serbia to the United Nations. <http://www.icj-cij.org/docket/index.php?p1=3&p2=1&k=21&case=141&code=kos&p3=0>

This is an important document to give a general context of the issue outside of the legal document presented in the docket. It gives a clear view of the position of the Serbian Government and what it is looking for with this advisory opinion.

United Nations General Assembly. (2008). *22nd plenary meeting Official Records (A/63/PV.22)*. Retrieved August 30, 2009 from <http://www.icj-cij.org/docket/index.php?p1=3&p2=1&k=21&case=141&code=kos&p3=0>

This is a very important source for the delegate since it is the official transcription of declarations and statements of the countries in the General Assembly when the questions of Kosovo independence is placed in front of UN's biggest forum. You will find many of the official positions for the countries you are representing regarding the Kosovo in the discussion that took place before the voting as well as in the explanation of the votes.

United Nations Secretary-General. (1998). *Report of the Secretary-General prepared pursuant to Resolutions 1160 (1998) and 1199 (1998) of the Security Council (S/1998/912)*. Retrieved on August 30, 2009 from <http://www.icj-cij.org/docket/index.php?p1=3&p2=1&k=21&case=141&code=kos&p3=0>

This is an indicative report from the Secretary-General, that is useful to familiarize with the context of the Kosovo conflict prior to the establishment of the interim UN administration and the cease of hostilities. It is useful as an official source to put in context this latter portion of the Balkan Conflicts.

United Nations Security Council. (June 10, 1999.). *Resolution S/RES/1244*. Retrieved August 30, 2009 from <http://daccessdds.un.org/doc/UNDOC/GEN/N99/172/89/PDF/N9917289.pdf?OpenElement>

This resolution is very important for the Advisory Opinion, because it is the basis document that both parties cite as the source of their claims regarding the Independence of Kosovo. Not only it

establishes the legal considerations for the autonomy of Kosovo, it also establishes the legal regimen that the international interim administration will follow.

Zyberi, G. (2008). *The Humanitarian Face of the International Court of Justice*. Intersentia, Utrecht.
This book is very helpful at establishing particular opinions of the Court regarding human rights and humanitarian law and the correspondent case law established by such opinions. It offers a very current selection of cases and the most important issues regarding human rights and humanitarian law.

II. Pulp Mills on the River Uruguay (Argentina vs. Uruguay)

Ad-Hoc Arbitral Tribunal MERCOSUR. (2006). *Laudo del Tribunal arbitral AD HOC de MERCOSUR constituido para entender en la controversia presentada por la República Oriental del Uruguay a la República Argentina sobre "Omisión del Estado Argentino en Adoptar Medidas Apropriadas para Prevenir y/o Hacer Cesar los Impedimentos a la Libre Circulación Derivados de los Cortes en Territorio Argentino de vías de Acceso a los Puentes Internacionales Gral. San Martín y Gral. Artigas que unen la República Argentina con la República Oriental del Uruguay"*. Retrieved August 30, 2009 from http://www.mercosur.int/t_generic.jsp?contentid=375&version=1&channel=secretaria&seccion=6 (Spanish)

This decision by a regional tribunal helps to contextualize the conflict between Argentina and Uruguay regarding the paper mills, and the political and economical consequences existing between the two countries. It also helps to show some of the points that have been made by Uruguay about the case and that have not been incorporated yet by the ICJ on its official decisions. This should be taken as a rather informational sources to be combined with the facts that must be obtained by the delegate from the petitions of both States regarding provisional measures . Unfortunately, this information has been found only in Spanish, but if you have the time, the skills and the resources I encourage you to read it since it is very helpful document.

International Court of Justice. (2006). *Application Instituting Proceedings: Pulp Mills on the River Uruguay (Argentina v. Uruguay)*. Retrieved August 20, 2009 from <http://www.icj-cij.org/docket/index.php?p1=3&p2=1&k=88&case=135&code=au&p3=0>
This is the application that instituted the proceedings before the ICJ for this case. It is a very important document when developing the facts and gaining a wider knowledge of the case. It includes a wide array of documents and instruments that will help shed light in the dispute presented.

International Court of Justice. (2006). *Order of 13 July 2006: Request for the Indication of Provisional Measures*. Retrieved August 30, 2009 from <http://www.icj-cij.org/docket/files/135/11247.pdf>
This order is very important, because it establishes the ground to deny the petition from the Argentinean government to provisional measures. The court makes a short but very precise analysis of why the measures are denied and sheds light to some legal aspects to be discussed in the case.

International Court of Justice. (2007). *Order of 23 January 2007: Request for the Indication of Provisional Measures*. Retrieved August 30, 2009 from <http://www.icj-cij.org/docket/files/135/13615.pdf>
The Uruguayan Court asked for provisional measures against de facto retaliations by Argentina and its inhabitants. This order brings into discussion some legal matters important to the case, but also allows to introduce the social upheaval provoked by the conflict and issues at hand.

International Court of Justice. (2006). *Order of 13 July 2006: Accordance with International Law of the Unilateral Declaration of Independence by the Provisional Institutions of Self Government*. Retrieved August 30, 2009 from <http://www.icj-cij.org/docket/files/135/11235.pdf>
This order establishes the time limits for memorial and counter memorial. It is a procedural order of the court and it has the guidelines for both parties to take part into the proceeding of the court in the subsequent stages of the trial. The court reserves subsequent procedure for further decision.

International Court of Justice. (2007). *Order of 14 September 2007*. Retrieved August 30, 2009 from <http://www.icj-cij.org/docket/files/135/14051.pdf>
This order establishes the limits for reply and [rejoinder.is](#) a procedural order of the court and it has the guidelines for both parties to take part into the proceeding of the court in the subsequent stages of the trial. It is also important because it recognizes the incorporation of various incidents that the parties argue happened since the memorial and counter-memorial were submitted. It is also a good example of the procedural activities of the rights of States as part of a trial in front of the ICJ since it incorporates the treatment by the court of States petitions regarding procedure.

Sands, Philippe. (2003). *Principles of International Environmental Law 2nd Edition*. Cambridge University Press, Cambridge.
This book is a very important source regarding the international environmental regime existing. It treats the issues in a very clear way while integrating case law from the most contemporary sources. It is very comprehensive and its analysis has a very depth knowledge of the legal issues in discussion on every topic.

Rules of Procedure
International Court of Justice

The rules of procedure for the International Court of Justice will be published on November 1, 2009.