

INTERNATIONAL COURT OF JUSTICE

Program Guide

Kentucky YMCA Youth Association
Kentucky United Nations Assembly

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NOTE: The materials contained in this guide are NOT all of the materials needed to be successful at KUNA. Other *critical* resources will be found in the same Google Drive where this Program Guide is hosted.

I. The International Court of Justice (ICJ)

Overview

The International Court of Justice is one of the five principal bodies of the United Nations (with the General Assembly, Security Council, Economic and Social Council, and the Secretariat). The ICJ's origins predate the existence of the United Nations by more than 30 years—the idea of a “World Court” came to fruition under the League of Nations in the form of the Permanent Court of International Justice.

The purposes of the International Court of Justice are twofold:

1. To mediate disputes between states (*member countries*), and
2. To provide advice to the General Assembly on issues relating to international law

The International Court of Justice does NOT put individuals on trial; only member states of the United Nations may participate in the proceedings of the court. States may present cases on behalf of other entities (e.g. companies or groups of people within their own jurisdictions).

Structure of the United Nations' ICJ

The ICJ is comprised of 14 Justices plus one President. Justices serve terms of 9 years, and are selected by the General Assembly and Security Council. No two justices may serve from the same country—ensuring that no single state has a disproportionate effect on rulings within the court.

To ensure fairness, any state with a case before the Court may appoint an ad hoc justice to the court. This ad hoc Justice serves only for the purposes of that state's case—and may be offset by an ad hoc Justice from the opposing state. The purpose of these Justices is to ensure that each state before the chamber can properly and fully present its view of the issue at hand, with ad hoc Justices providing important reference points during case deliberations.

At KUNA, this structure will be similar, but not exactly as described above. Refer to page 5 for the structure at KUNA.

Cases at the ICJ

The ICJ both at the UN and at KUNA deal with two kinds of cases:

1. Contentious Cases: Cases in which two or more states (*member countries*) are in disagreement about a point of International Law or treaty requirements. The ICJ may exercise its jurisdiction in such cases *only* if both states agree to such jurisdiction, or if the provisions of the treaty in question include a clause specifically granting the ICJ jurisdiction in case of conflict.
2. Advisory Cases: The General Assembly, and other bodies of the United Nations, may request Advisory Opinions from the Court in order to clarify a point of International Law or procedure. Such cases are not directed at specific states, although the decision of the court theoretically applies to all states within the United Nations.

Advocates of the ICJ

1. Advocate for the Applicant: The side that files a written memorial (brief/argument) outlining its request of the Court, and the merits of its claim.
2. Advocate for the Respondent: Files their own memorial in response to the Applicant, outlining the merit of its own opposing claim.

Memorials

1. Both Applicants and Respondents submit memorials to the Court. Memorials describe the rationale and arguments that will be made during court procedures, and are used to guide the oral arguments.
2. Applicants and Respondents have access to each others memorials through the Court documents, prior to and during Court proceedings.

Enforcement Mechanisms

One of the primary criticisms of the ICJ relates to its lack of enforcement powers. States party to treaties invoking the ICJ for conflict resolution have often chosen to ignore the ICJ's jurisdiction when the decision runs counter to their national interests.

In theory, the ICJ may refer noncompliance to the Security Council, which could direct military action or sanctions against the noncompliant state. In practice, however, the Security Council has been extremely reluctant to take such actions. This leaves implementation of ICJ decisions entirely to the party states. The practical effect of this situation has been strong compliance to ICJ decisions by weaker states, who stand to gain political standing by compliance (or to lose it by noncompliance), and almost complete noncompliance by more powerful states (who stand to lose very little by noncompliance, and to gain nothing through compliance)

II. The ICJ at KUNA

Structure of Advocate Roles

Each year, Advocate teams will be assigned **ONE** of the two types of cases- Advisory or Contentious- as well as the side which they will represent- Applicant or Respondent. Each Advocate team will present oral arguments based on either the Contentious or Advisory case they are assigned.

Overview of Presiding & Supporting Officer Roles

The ICJ program will be led by two ICJ Presidents and four supporting Justices. Officers exist to serve the advocates, both on and off the bench. Advocates, use your officers as a helpful resource for the entirety of KUNA.

ICJ Presidents preside over the Court, lead fellow Justices on the bench during oral arguments, and aid in the selection process for future Justices. This position is appointed at the end of each KUNA to serve the following year.

Supporting (Associate) Justices will assist in scoring oral arguments for either the advisory or contentious case. These Justices will be selected via application. These applications will be released in the spring semester of each year.

Preparing Oral Arguments

Materials

CRITICAL NOTE: This program has a **CLOSED** docket. When preparing your oral argument outlines & oral arguments themselves, advocates are **STRICTLY LIMITED** to the materials provided in the docket. Even if a case is parenthetically cited within a supporting document but not provided within the closed docket itself, you may **ONLY** use the information provided about the case that is contained within the docket. **NO** outside research is permitted.

Memorial

Advocates will start their preparations by writing their Memorials. For the purposes of KUNA, this will be the outline of the oral argument (but will not include all the details that may be presented during arguments). Memorials will be handed in to the Presidents, and the opposing counsel during the first night's meeting. *There is an example of a Memorial AND full oral argument included in your materials, for reference on how to structure each and how to use your Memorial as a guide for your oral argument.*

Be sure to print at least 10 copies of your Memorial to provide to the teams you will compete against, as well as the Presidents. You will exchange these Memorials at the meeting on the first night, before your case is presented on the second day. This will allow each side the opportunity to review the other side's Memorial (*Note: no major changes may be made to any Memorial or oral argument once Memorials have been submitted*).

The Format of Oral Arguments at KUNA

You will have 15 minutes to present your case. The Applicant will present first, followed by the Respondent, and then the Applicant may close with a rebuttal. As the Applicant, you may reserve up to 5 minutes for the rebuttal.

While your presentation should not be a monologue, your preparation should allow you to utilize most of the time available to you without input from the Justices. Generally, Justices will allow at least the first few minutes for opening statements before beginning to interject questions.

Your arguments may take whatever form you prefer, and you may split your time between the Advocates on your team any way you choose. Each Advocate may take the podium only once over the course of the presentation; *however*, during the course of questioning from the Justices, other Advocates on your team may respond if the Advocate at the podium is unable to do so.

Many Advocate teams choose to provide a short outline ('roadmap') of their argument in their opening statements (aka a brief version of the oral argument outline), generally provided in a series of questions or points that Justices can easily note. This outline is then followed by an expansion of each of those points, usually set up with the strongest arguments coming first, followed by decreasingly strong points (to ensure that the strongest arguments aren't skipped due to time constraints).

For Example:

"Over the course of my presentation today, I will attempt to show the panel that Russia's actions were legal and within its previous agreed upon obligations to Georgia for the following reasons—first, because the actions in question were specifically allowed for in the prior treaty agreement, secondly because the United Nations Charter specifically allows for these actions, thirdly because Georgia failed to uphold its obligations in the following ways. As stated in the treaty between Russia and Georgia. . . "

When presented in this format, Justices will typically wait to begin questions until this 'roadmap' outline is complete.

Oral Argument Do's & Don'ts

During your oral argument presentation, **DO**:

- Decide in advance how you will divide the fifteen minutes. If you are the Applicant, how much time will you reserve for rebuttal (up to 5 minutes possible)? For both sides, how will you divide the argument between you and your co-counsel? Who will speak first, and for how long, and on what topics?
- Always stand whenever you address the Court.
- Start your initial argument with, "May it please the Court."
- Address the judges as "Your Honor" or "Justice Jones". Address co-counsel and opposing counsel as "Mr. Dodd" or "Ms. Perkins".
- *Briefly* discuss the facts underlying the case, if you are the Applicant. However, keep in mind that the Justices are familiar with the basic circumstances of the case. You do not need to give them a "blow-by-blow" of every detail of the case.
- Skip straight to your argument if you are the Respondent. The Applicant has the advantage of rebuttal time. But the Respondent has the advantage of going second in the oral argument – so you do not need to repeat the facts of the case to the Court, unless you think that the Applicant has misrepresented an important detail.
- Stop talking immediately when a Justice interrupts you with a question (even if you were in the middle of making a point!).
- Answer the Justices' questions clearly and directly. Often, it is best to begin your response with a simple "yes" or "no", and then explain why.
- Nearing the end of your time, you may not have had the opportunity to argue every point due to questioning from your justices- having a brief summation statement (no longer than 15 seconds) might be beneficial to end your argument.

During your oral argument, **DON'T**...

- ...be rude, disrespectful, condescending or uncivil to opposing counsel. Personal attacks have NO place in an oral argument, and will only serve to undermine your credibility with the court.
- ...get flustered when the Justices interrupt you. Expect that you will be interrupted while you are speaking. It is best to use your limited time to answer their specific questions.
- ...forget to watch the clock! The ICJ President will give you a one-minute "warning" when your time is about to expire.
- ...ignore cases that don't support your argument. Instead, briefly acknowledge those cases, and then carefully explain to the court why they are distinguishable from your client's case.
- ...be afraid of silence! It is perfectly fine to take a moment or two to gather your thoughts before answering one of the judge's questions.
- ...forget to listen carefully to your opposing counsel's argument. Take notes during their presentation. A good lawyer will directly respond to arguments made by the other side.

Procedure In the Courtroom

Interaction With Justices

As an Advocate, your interactions with the Justices should be deferential and polite. Justices should *not* be taking a clear position with regards to your argument, but they may pursue rigorous lines of questioning regarding specific points in your argument. Your responses to Justices should remain polite and deferential at all times; your role is not to debate the Justices, but to provide them with information.

Sample Justice Questions

Advocates, please note these are several sample, non-specific questions that the Justices are prepared to ask you regarding your case. These questions are meant to clarify your argument and make you articulate your thoughts before the Court. Please prepare accordingly.

- What case law or precedent (*supporting materials*) is there for your claim, Council?
- Counselor, based off of (*insert fact from case*), is it not reasonable to assume (claim contradictory to their argument)?
- Counselor, it has been stated in the fact pattern that (*insert fact*). How does this affect your claim?
- Counselor, how does the precedent of (*insert precedent*) apply to the case at bar?
- Counselor, is it not true that (*insert precedent*) would lead us to apply the law in this way? How does the knowledge of this case precedent (one that supports the opposing counsel) affect your argument?
- Counselor, could you please clarify your statement using specific precedent applied in the docket?
- Counselor, how do you justify this action by the (*petitioner or respondent*) with specific precedent?
- Counselor, your opponent contends that (X) against your argument, how do you respond?
- Counselor, the case material (*for a specific case*) provided this information: (X-info). How do you respond the idea that this supporting evidence weakens your case?
- What is the limit/boundary to which we can extend this principle? Would this decision set a dangerous precedent?
- How does this difference in the case precedent and the case at hand affect your argument?

Hints from the Bench

- Original arguments come from your own logic being fused with the provided materials. Make it a point to try and make a point that wasn't originally addressed.
- There is no penalty for stopping to think before a question.
- We only know what you tell us. Make sure to litter your arguments and answers to questions with facts and precedent that you find in a case.
- Make all of your words intentional. Having words or phrases that are repeated throughout an argument to make a point can help to make your argument more persuasive and effective.
- This is meant to feel like a conversation! Treat it like one. You have worked hard and we are confident that you know what you know what you are talking about. Just imagine you're having a casual business lunch with friends.
- Strong opening and closing statements can be the difference between a good and great speaker.
- The Justices are your friends. Not sure if something that you are doing is effective? ASK!
- Yielding questions does not mean that you are a subpar advocate. The ability to know your own strengths as well as those of your team is a strength in and of itself. You never have to feel flustered answering a question that you don't feel comfortable with.
- Reading from your paper is allowed, but it can take away from your presentation. Keeping just an outline of your argument can just as effectively steer you in the right direction when you lose your words and makes it easier to find your place after answering a question.

III. Scoring, Ranking, Awards, Elections

Scoring

Advocates of both sides will be scored based on the following criteria:

- Knowledge & Use of Facts
- Knowledge & Use of Case Law
- Effectiveness/ Persuasiveness
- Ability to Respond to Questions
- Demeanor/ Presentation

Sample Scoresheet

Round: 1 2 3

Scorer: Justice / Professional (Circle One)

Advocate Name 1:

Advocate Name 2:

Advocate Name 3:

Team School:

1-Poor 2-Below Average 3-Average 4-Above Average 5-Excellent

			Notes (Optional)
Knowledge and Use of Facts	1 2 3 4 5		
Knowledge & Use of Case Law	1 2 3 4 5		
Effectiveness / Persuasiveness	1 2 3 4 5		
Ability to Respond to Questions	1 2 3 4 5		
Demeanor / Presentation	1 2 3 4 5		
Total Score:			

Applicant Team Total (Total Score Above)			Opposing Team Total (Respondent)		
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Ranking

As is standard to the YMCA of the USA's National Judicial Competition, all program teams are ranked. Your team's rank is determined via the number of points your team accrues throughout the course of three (3) rounds of oral arguments, as determined by student Justices. The total sum of your team's points will determine your ranking within the program (for point criteria, see scoring sheet). The top ranked teams for both Advisory and Contentious will be announced at the Awards Ceremony. Your personal ranking will be listed in your score sheet packet to be picked up after the ceremony.

Awards

All Advocates are eligible for awards, regardless of school grade. You are eligible for nominations in both the first and second rounds.

These awards include:

Outstanding Advocates (4): Based on their performance and scoring by justices/legal professionals during preliminary rounds of oral arguments, 4 advocates will be selected as Outstanding Advocates to participate in our Judicial Showcase on the final morning of KYA.*

***Outstanding Showcase**

The Top **four** (4) advocates in the program will win Outstanding Advocate Awards. They will also be asked to participate in a final Showcase Round on the final morning. These four students are selected by having received the greatest number of nominations from student Justices during their three (3) rounds of oral arguments.

Outstanding Advocate Showcase Winners: Based on the final opinion and scoring of our KYA Supreme Court, the two Outstanding Advocates representing one side of the case will be named the winners of the Judicial Showcase.

Outstanding Advocate Team: Awarded to the highest ranking petitioner and respondent advocate teams based scores from three (3) rounds of oral arguments as determined by student justices and legal professionals.

Appointments

At KUNA, each ICJ President will appoint a student to serve as President for the following year. These appointees can be selected from the pool of ICJ program participants, including advocates and Associate Justices.

Associate Justices will be selected via application. These applications will be released in the spring semester of each year.

IV. Glossary

- **Advisory Opinion** - An opinion issued by a court or a commission that does not have the effect of deciding a specific legal case, but merely advises on the constitutionality or interpretation of a law. Usually issued by nations that are not involved within a case, but are still affected by it, or scientists and other pundits who have information that may sway the decision of a case.
- **Corpus Juris Gentium** - The body of the law for the United Nations. The entirety of the rules of International Law, both substantive and procedural. This includes: all local laws, all international laws and all agreements. The failure to comply with these usually leads to contention.
- **De Facto** - Synonyms include: "In fact", "In effect", or "Whether by right or not. Anything considered "de facto" should be treated as truth or law, not to be argued against. For example, if a country has been divided "de facto" then that means that are officially considered two nations.
- **Dissenting opinion** - An opinion in certain legal systems written by one or more judges expressing disagreement with the majority opinion. Although it is not a majority opinion, it *can* be used as precedent in Appellate Courts.
- **General Assembly** - The principal deliberative body of the United Nations. Each member nation is represented and has one vote.
- **Inter alia** - *Among other things*. A synonym of "also" or "as well".
- **Jurisdiction** - The official power to make legal decisions and judgments. A court must first determine if they have jurisdiction in a case before hearing it.
- **Opinio Juris Communis** - This refers to Customary International Law. These include cases and agreements that have been decided previously that could potentially have an effect on the case at bar.
- **Political settlement** - A legal compromise between two nations usually made between political elites.
- **Post Hoc** - Something occurring after the event.
- **Prima Facie** - Something based on the first impression; accepted as correct until proved otherwise. This often refers to the first time that a case was heard.
- **Security Council** - The primary instrument for establishing and maintaining international peace. They often issue resolutions which become a part of the corpus juris gentium.
- **Ultra Vires** - Something beyond one's legal power or authority. This is often used when the ICJ decides that they do not have jurisdiction in a case.
- **Vel Non** - A term used by the Courts in reference to the existence or nonexistence of an issue for determination. Also refers to the possibility that a case lacks merit. It's often used when the ICJ decides that a nation does not have a viable point of contention.