

# General Legal Background and Pertinent Law

The League of Nations established an international court called the Permanent Court of International Justice, which lasted from 1922 to 1945. When the United Nations formed in 1945, the court was re-chartered as the International Court of Justice (ICJ). This court, housed in the Peace Palace in the Hague, Netherlands, was set up to settle disputes between nations through arbitration and to try individuals for crimes against humanity. The court was designed to help nations to resolve their differences peacefully, rather than through armed conflict.

The ICJ is the setting for our simulated trial. For the purposes of this activity, Japan (the plaintiff), is bringing a civil suit against the United States (the defendant) for monetary damages to compensate the nation and the Japanese citizens for the death and destruction caused by the firebombing of Tokyo. Japan alleges the attack was part of a massive "terror bombing" strategy, in clear violation of international law. Students will be able to question and cross-examine a witness.

The ICJ judges based on international law, not on the laws of any single nation. Article 38 of the Statute of the International Court of Justice explains this:

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



Photograph, *Public Hearing at the International Court of Justice, International Court of Justice.*

The statute states that the court primarily uses international agreements and conventions the nations had previously signed. Member nations also can rely on the court to decide the case *ex aequo et bono* (in justice and fairness) if no international convention, law or agreement exists on which to base a cause of action. This has never been done, however, since the court has always been able to find applicable international law.

<sup>1</sup>Statute of the International Court of Justice," International Court of Justice, last modified 2017, accessed June 27, 2017. [http://www.icj-cij.org/en/statute#CHAPTER\\_II](http://www.icj-cij.org/en/statute#CHAPTER_II).

## General Legal Background and Pertinent Law cont.

As a result of this legal framework, Japan is suing the United States under the Hague Rules of Air Warfare. Aerial bombardment was used for the first time in World War I. This 1923 agreement was prompted by the International Red Cross, who called for limits on aerial bombardments to prevent civilian casualties during war.

Great Britain and France refused to adopt the Hague Rules of Air Warfare, but the United States and Japan adopted the rules and pushed other nations to do so throughout the 1920s.<sup>2</sup> This convention was recognized by both the United States and Japan in 1945. This serves as the primary legal basis for Japan's lawsuit.

Japan is pointing specifically to Article XXIV, which states:

"1) Aerial bombardment is legitimate only when directed at a military objective, that is to say, an object of which the destruction or injury would constitute a distinct military advantage to the belligerent.

"2) Such bombardment is legitimate only when directed exclusively at the following objectives: military forces; military works; military establishments or depots; factories constituting important and well-known centres [sic] engaged in the manufacture of arms, ammunition, or distinctively military supplies; lines of communication or transportation used for military purposes.

"3) The bombardment of cities, towns, villages, dwellings, or buildings not in the immediate neighborhood of the operations of land forces is prohibited. In cases where the objectives specified in paragraph 2 are so situated, that they cannot be bombarded without the indiscriminate bombardment of the civilian population, the aircraft must abstain from bombardment.

"4) In the immediate neighborhood of the operations of land forces, the bombardment of cities, towns, villages, dwellings, or buildings is legitimate provided that there exists a reasonable presumption that the military concentration is sufficiently important to justify such bombardment, having regard to the danger thus caused to the civilian population.

"5) A belligerent State is liable to pay compensation for injuries to person or to property caused by the violation by any of its officers or forces of the provisions of this article."<sup>3</sup>

In this simulation, Japan is arguing that the United States resorted to "terror bombing" tactics and that according to Article 24 Section 5 of the Hague Rules of Air Warfare, the United States is liable to pay compensation for injuries to persons and property involving the deliberate targeting of civilians. This is the legal basis of the case.

<sup>2</sup>Alexander Gillespie, *A History of the Laws of War: Volume 2: The Customs and Laws of War with Regards to Civilians in Times of Conflict* (Portland: Hart Publishing, 2011).

<sup>3</sup>"The Hague Rules of Air Warfare," International Law of War Association, last modified December 8, 2010, accessed June 27, 2017. [http://lawofwar.org/hague\\_rules\\_of\\_air\\_warfare.htm](http://lawofwar.org/hague_rules_of_air_warfare.htm).



Photograph, The International Court of Justice, located at the Peace Palace at the Haque, 2017.