

Burden of Proof in ICJ cases

The thing to realize about ICJ cases is that they are in a way similar to appellate cases in the Supreme Court. Thus, the facts in the case are considered given and non-debatable. What really is debatable is the interpretation of the law. Article 36 of the statute of the ICJ covers the areas where the court has jurisdiction and Article 38 describes the documents the court may use to decide a case. The real question in deciding a case is whether the actions of one party can be seen as violating its international obligation with regard to the other party as defined by international treaty or customary international law. Thus, the accusing party (prosecuting) will indicate which portions of treaties or customary international law have been violated by the actions of the second party. These clauses are stated in the memoriam presented to the Court. Each party interprets the treaties or customary international law in question a different way and thus arises the dispute. It's the interpretation of the clauses (wording, definitions, etc.) of these treaties that is being debated in the ICJ.

Attorneys task is to make a distinction between the law and the facts.