

# World Affairs Council of Philadelphia

## *Mock ICJ Student Training Session*

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## Training for Counsel and Judges

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# The Basis for Your Case: Article 38 of the ICJ Statute

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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 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.

# Recap

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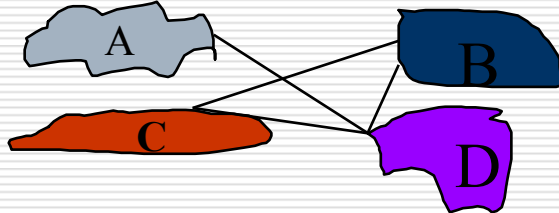
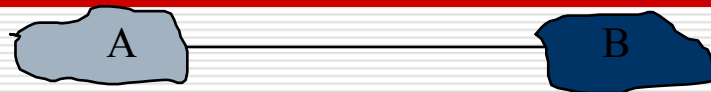
## □ Sources

- Treaties
- Custom
- General Principles

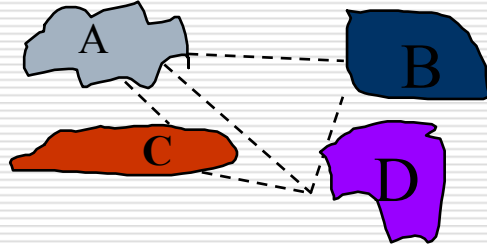
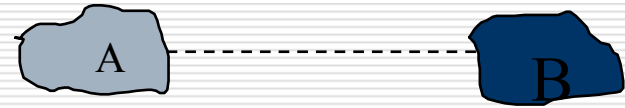
## □ *Subsidiary* Means

- Jurists
- Publicists (Scholars)

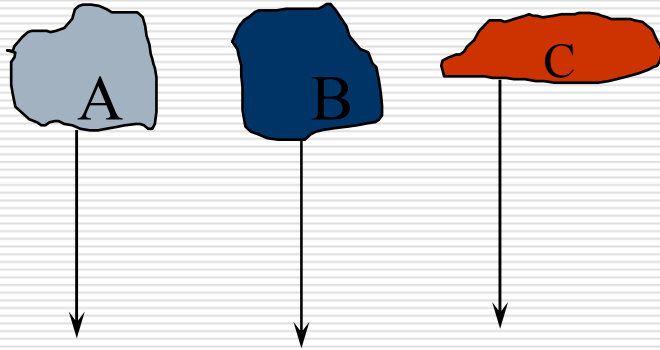
# Visualizing Sources of International Law -- Recap



Treaties



Customary International Law



General Principles

# The Role of Counsel

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- ❑ Make the best case for your client
- ❑ Demonstrate that your client is entitled to relief based upon the *law, facts, and policy*
  - Know what relief your client seeks
  - Know what relief the ICJ can award
  - Prove your client's case through testimony and admission of evidence
- ❑ Be a "zealous advocate," . . . but be a credible, forthright advocate as well.

# The Role of Judges

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- Rule on the case before the Court, taking into consideration appropriate sources of law
  - Memorials (legal briefs)
  - Oral argument
    - In model ICJ, there is a simulated *trial* instead of appellate-style oral argument
    - Clarify counsel's arguments by asking questions of counsel

# Steps for Counsel's Preparation

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- Review AIP
- Research law
- Prepare witnesses
  - Your side's witnesses
    - Direct examination
    - Re-direct
  - Opposing party's witnesses
    - Cross-examination
    - Re-cross
- Opening
- Closing

# Steps for Judges' Preparation

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- Review AIP
- Research law
- Determine where there are gaps, ambiguities, or problems with the law
- Prepare questions for use during simulation
- Clarify decision-making process

## For next week (counsel and witnesses)

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- Start to determine what information/evidence you need to submit to the Court to prove your client's case
  - Will the evidence be produced on direct or cross-examination?
  - Will the evidence result from testimony, documents, or both?
- Think about the order of presenting your witnesses

# Contact Information

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