Model International Court of Justice

A brief written on Trial Procedure for the Model International Court of Justice at Model United Nations Bilbao

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Introduction

The ICJ has been a highly successful programme due to the students' strong dedication to it. **Each conference Model of the International Court of Justice depends solely on the participants and how well prepared they are and how well they follow the rules.**

The procedures of the ICJ are based on the International Court of Justice Rules of Court, and for that reason I believe it is key for an ICJ participant to read this brief.

The ICJ at MUN Bilbao selects a pending case of the actual ICJ. It is composed of 19 participants, 4 advocates (2 for each side), 12 judges and 2 or 3 officers (President, Deputy President if needed and a Registar). The Role of the President is to direct how the court should take place, under my tutelage. In case there is a Deputy President it will have assigned duties by the President. The Registrar maintains the evidence and swears in the witnesses. I will get in touch with the officers via Meet prior to the conference.

I will send out a welcome email to all the participants expressing my expectations especially of the way the case should be prepared. In return I would like to receive from each participant a brief introduction to the group, telling us about yourself (your name, age, where are you from, why you have chosen to be a part of the ICJ, any hobby you may have, and so on). Then you will have two months to work on the case. For any questions that may arise at any time, I will always be available via email.

The work the advocates should do must be extensive, as a detailed knowledge of the material is essential for the program. I suggest that no later than 2 weeks before the trial the advocates should be close to being fully prepared and having well prepared their witnesses. When the advocates know which witnesses they would like to call, they get in touch with me and I will provide them with the proper contact details for them to reach out to the witnesses.

Advocates should read everything I send them and work politely and properly with their co-counsel in order to create a strategic plan. During preparation, each group of advocates must talk with the

opposing counsel, more or less weekly to prevent wasting time on issues which may be stipulated to, or, which may turn out to be non-issues.

If done properly, all of the preparation can be completed approximately 3 weeks prior to the trial. After that date, it is time for the participants to question opposing counsel's witnesses, review the information they have and get ready for the ICJ to start. Often, it is not the brightest advocate who "wins" a case, but the one who is the best prepared.

General Rules

1. **Punctuality**. Being on time for each session is key for the participants since they can miss something important which will not be repeated. I also would like to ask you to be punctual since being late hinders the course of the trial.
2. **No food in the courtroom**. Food may cause odors that can bother others. To eat there is a playground and a canteen.
3. **Stand when speaking**. Every time you speak in the courtroom, advocates and judges should stand.
4. **Committees photos**. You are not a member of a committee so you may not leave for a committee photo. The ICJ has its own photo.
5. **Use of a personal tablet or computer**. A personal tablet or computer must be brought by each member in order to be able to take notes, which are of extreme importance for the judges.
6. **No phones.** They must be out of sight and on silent mode.You may use them during breaks.
7. **Dress code**. The dress code is proper business attire.

Procedural Points

1. JUDGES' RESPONSIBILITIES

- Being a judge of the ICJ is not like being a delegate. Judges do not represent a particular delegation or country. Judges should follow the general principles of law, they are bound to follow the law. Decisions will be taken according to legal principles.
- Judges must take notes during the proceeding. This step is essential since it will help you to keep track of what is happening in the trial and it will help you to ask questions , furthermore will help you when it comes the time to make your statements.
- When there is a jury (there is none in the ICJ), all issues or questions of fact are determined by the jury. All issues or questions of law are determined by the judge(s). When there is no jury, as in the case of the ICJ, the judges take on both roles.
    - What evidence is allowed (such as documents, physical objects, or witness statements) is a legal decision made by judges. Lawyers present evidence to the judges, and if a lawyer objects to certain evidence (for example, saying "I object, your honor, hearsay"), they are arguing that the evidence should not be allowed. If the judge agrees with the objection, the evidence cannot be used; if the judge disagrees,

the evidence is allowed. In some places, judges give the jury written instructions at the end of a case about the legal issues and how much importance, or "weight," to give to the evidence. In the International Court of Justice (ICJ), since there is no jury, the judges decide both the legal matters and the facts of the case. The president or co-presidents of the court make the final decision on objections, though they may consult with other judges on complicated issues. The president has the last word on all rulings.

- Judges should be addressed as “Judge + name” and advocates as “Counsel for (country)” .

- Judges should not investigate the case themselves, they should only focus and accept the evidence provided by the advocates. However some preparation beforehand is appropriate, such as any material sent to you by the advocates or me or/ and background information. Judges must do some extended reading about the issue on their own.
- Under no circumstances should judges discuss this matter with the advocates until the cases are formally presented at the program. Judges must remain as objective and unbiased as possible. NEVER prejudge!
- After BOTH sides have presented their respective cases. Also, judges should not discuss the case with other judges until the deliberation phase of the trial.

judges questions

Every judge should participate by asking questions to the advocates. Their questions are meant for clarification of issues, facts, and points of law.This is the time for judges to go through their notes and the evidence admitted, and ask the burning questions on their minds. Judges, be sure to direct your questions to one set of advocates or the other. The question time will be monitored by the president.

2. ADVOCATES

- The statements of the advocates are not evidence. The advocates will submit their evidence in form of 1. Stipulations or 2. tangible evidence (docs, reports, treaties,articles,...), and the statements collected from witnesses. Those will be the only type of evidence that judges will accept. Judges must listen and read carefully and seek the truth and relevancy of the evidence presented to them by both sets of advocates.
- Each pair of advocates should present a written Memorandum to the opposing counsel, the judges and me 2 weeks prior to the conference. It should present a party's position, the facts and points of law (citations may be included) to be applied. It may contradict points that are anticipated raised by the opposing party. Each Memorandum should be written clearly and briefly. I recommend a length of approximately 2-3 pages, no more, and I advise using a "12" font for comfortable reading.
- Furthermore on the same date each set of advocates should present a list of stipulations. Those are relevant facts of the case that are agreed by both sides and they do not need to be proven or discussed. These stipulated facts become evidence, which will save advocates and the judges (the Court) vast amounts of time. It is mandatory that the stipulation document contains at least 7 of these and a maximum of 15, once presented to the court they cannot be “taken back”.
- Each group of advocates must provide the opposing advocates(and the judges) with a list of their actual exhibits at the same time they submit their memorandum, stipulations, and witness list. They will submit a list with (1) the title of the document, (2) its author, (3) the

date, and most importantly, (4) the source (website) of the document to the judges and opposing advocates. The plaintiffs' exhibit list is numbered, and the defendants' exhibit list is marked with letters. The minimum number is 10 and the maximum is 15.

- A Witness List shall be submitted by each set of advocates, Applicants and Respondents, which should include name and the role at the trial of the witness. This list should be made public at the same time as the Memorandum, Stipulations, Evidence list to the President of the Court.
- Burden (weight) of proof : In the International Court of Justice (ICJ), the "burden of proof" means the responsibility to show enough evidence to convince the judges that your side of the case is correct. The Applicant has to provide evidence to support their arguments. If they cannot prove their claims, the court will not rule in their favor. The judges decide whether the evidence is strong enough to meet this burden. The level of proof needed in the ICJ is usually based on a balance of probabilities, meaning the evidence should show that one side's version of events is more likely than the other's.
- If you are the applicant (moving party), be specific in what you want and how you present it. Do not let the other party confuse you. If you are the Respondent, throw in whatever you haveMuddy the waters, confuse the issues, prevent the moving party from being clear, concise, and focused. Each of these two tactics requires great skill, and demands appropriate behavior and proper legal presentation.

3. THE CASE IN CHIEF

- Opening Statements : An opening statement is similar to the introduction of a composition. The opening statement should make clear to the court what you intend to prove by the presentation of the case. No personal pronouns are not accepted as well as making assertions or promises to the judges that you can not keep. The opening statement should last a maximum of 15 minutes and a minimum of 10, and only one advocate presents the opening statement for each side. Express your position and your wishes clearly in the opening argument. What do you want the court to do?
- The Applicant presents the Opening Statement first. The Respondent gives its Opening Statement after the Applicant has read out the stipulations to the judges. The Respondent is asked if they agree. If so, the President says "so-stipulated", and that single stipulation is evidence, which can be considered by the judges.
- Body of the case: Each set of advocates must provide a list with Real Evidence at the same time they submit their Memorandum, Stipulations and Witness List. They will submit a list with (1) the title of the document, (2) its author, (3) the date, and most importantly, (4) the source (website) of the document to the judges and opposing advocates. The plaintiffs' exhibit list is numbered, and the defendants' exhibit list is marked with letters. The minimum number is 10 and the maximum is 15.
- Advocates cannot argue their case (how the evidence helps their case) until the closing argument.
- Presenting evidence: the presentation of the evidence during a trial also follows some rules, those are called rules of evidence. Judges use a test that helps them to weigh the evidence and see if the trial would be fairer with the piece of evidence or not. We deal with two types of evidence, "real" and "testimony". Real ones include books, papers, articles and documents. Testimony is the statement of the witnesses.
- All written documentation and evidences are presented in the following manner:
    - The item must be marked,

■ The evidence submitted by the Applicant is marked in numbers.

■ The evidence submitted by the Respondent is marked in letters.
    - ○ The piece of evidence must be authenticated by the submitting party
        - ■ establish the writer, or maker, or source of the evidence, discuss (if possible) very briefly some background about the author, the date it was written, published, or discovered, and the web cite or source.
    - ○ The maximum number of real evidence is 15 and the minimum 10 by each party.
    - ○ **No Pleadings filed at the ICJ and no judgments or writings by the ICJ that directly refer to the case we are trying may be marked as evidence.**
- ● After the Applicant has shown all its evidence, the Respondent will give its Opening Statement. Then, the Respondent will present its physical evidence, just like the Applicant did. The same rules that applied to the Applicant also apply to the Respondent.
- ● Then, the advocates will be asked to leave the courtroom for approximately two hours. During this time, they will have time to speak to, and complete final preparation of, their witnesses, or opposing counsel's witnesses, and find out where their witness will be located when it is time for them to be called. While the advocates are fine-tuning their witnesses, judges, *in camera*, will become familiar with the marked evidence. The Registrar will give each piece of evidence to one of the judges.
    - ○ Judges will then have approximately 45 minutes to analyze their evidence.
    - ● Then starting with the evidence submitted by the applicants, each judge will stand up for a maximum of 2 minutes and teach the others about that evidence.
        - ○ What his/her piece of evidence purports to say, whether it helps the side who presented it or the other side, pros and cons, and how much weight the judges should give to that piece of evidence.
- ● <u>Testimony/The Preparation of Witnesses : Q</u>uestioning your own witnesses is done during **direct examination**. **Cross-examination** is when you question an opposing side's witness after the witness has been questioned by opposing counsel during their direct examination.
    - ○ Witnesses should be very well-prepared. They should know what questions are going to be asked of them on direct examination, what they should respond (of course real information) and what questions to expect on cross-examination.
    - ○ The preparation of the witnesses should be done before the trial, not at the conference.
    - ○ During **direct examination**, two basic rules must be followed:
        - ■ Advocates cannot ask **leading** questions.
        - ■ You cannot ask a witness about an out of court statement or act allegedly made by someone other than the witness.
    - ○ Each witness who testifies in direct examination may be cross-examined by opposing counsel. The purpose of cross-examination is to impugn or negate the credibility of the witness. After strong cross-examination, judges are better equipped to determine the truth and veracity of a witness. The questions on cross-examination must relate to the questions asked on direct examination. Here you CAN make leading questions, if done well every question should be a leading one.
    - ○ Short questions, no speeches and do not repeat questions.
    - ○ When cross examination is over, judges will be able to make direct questions to witnesses.Following these questions, advocates will be given a very brief opportunity to ask one, maximum two further questions of the witness

- WITNESSES MUST TESTIFY FROM MEMORY
- The witnesses must be real and they must have something to do with the case.
- No personal pronouns, use the "witness of…", "the advocate", "the judge".
- If a witness cannot recall a fact or legal principle or piece of evidence, an advocate or a judge may begin a question with "If I told you that…." If the witness disputes this, the person asking the question can then show the witness a piece of evidence proving the existence of the fact or legal principle
- **Never**, ask a witness a question to which you yourself do not know the answer. **Never** ask a witness "WHY"! **Do not** argue with a witness! Lay a foundation with your questioning. "Is the witness familiar with…." Do not assume the judges know where you are headed with your questions. One advocate from a team should question a witness, not both advocates
- The questioning of witnesses is done in the following pattern: direct, cross, redirect, re-cross, and so on, until each side has no further questions to ask the witness.

4. CLOSING ARGUMENTS

At the end of the case, the lawyers give their Closing Arguments. One or both lawyers can do this. Each side has a maximum of 30 minutes to summarize their case and connect the evidence with the legal points. The side that brought the case speaks first but can save some of their time for later. The other side speaks next, and then the first side can use the time they saved. During Closing Arguments, the lawyers explain what they believe the key issues are, how those issues should be answered, and what the decision should be. They also refer to the evidence they presented and the evidence from the other side.

5. DELIBERATION

- The advocates are not in the room during deliberations. The first thing the judges MUST DO is to determine what issues are to be decided before a decision can be reached. Each judge shall pick his/her top three issues. Then we will make a list of them on the whiteboard until we have all of them written down. Then we will organize them in priority order by voting.
- All the judges say what they would vote for and why. This decision should be taken taking into consideration the legal principles, the law and the facts of the case.
- The final vote process is a bit complex, so I'll explain it twice. The side that gets the most votes wins, and this becomes the Court's decision. This decision is called the "Majority Opinion," and it will be read during the Closing Ceremony of the conference. Judges who agree with the winning side but have different reasons for their agreement will write a "Separate But Concurring Opinion." Judges who disagree with the winning side and are in the minority write a "Dissenting Opinion." If a judge disagrees with both the majority and the main dissenting judges, they will write a "Separate But Dissenting Opinion." All these decisions are published by the conference.
- After the votes, the judgments must be written down, and this can take time to find the right wording. I have templates that should be used for this. If there are many judges on either the Majority or Dissent side, committees are created to help write the judgments. The first draft usually takes about an hour or more. Then, the draft is shared with the other judges for review and corrections, and I make the final changes. Overall, it can take almost two more hours to finish writing the judgments.