International Court of Justice Handbook

For MEDMUN 2020

History of the ICJ

Although only established by the UN Charter in June 1945, the history of the International Court of Justice is the product of a longer story of development in international arbitration, one that ran parallel to the gradual growth of international law. Its immediate history, fraught with failures of the international legal system, began most clearly with the First and Second Hague Peace Conferences of 1899 and 1907, and the concurrent foundation of the Permanent Court of Arbitration in 1900. The groundwork of an internationally recognised court of law was subsequently consolidated in the aftermath of the First World War, after Article 14 of the Covenant of the League of Nations promoted the establishment of the Permanent Court of International Justice (PICJ) — ratified by a majority of the Members of the League in September 1921.

For various reasons, not least the Court's inability to ensure the pacific settlement of international conflict, the PICJ was ineffective. However, in the immediate period following the Second World War, the founding Member States of the United Nations voted to adopt measures for the creation of a new International Court of Justice to replace the PICJ, taking up its former residence at the Peace Palace in The Hague. In April 1946 the PICJ was officially dissolved, followed by the election of President Judge José Gustavo Guerrero of El Salvador by the ICJ Judges. Following an inaugural public sitting on 18 April 1946, the ICJ received its first case in May 1947, concerning

incidents in the Corfu Channel between Albania and the United Kingdom. It has presided over matters pertaining to international arbitration and international law ever since.

Structure of the ICJ

The simulation of the International Court of Justice of MEDMUN 2018 will be organised on the basis of two independent chambers, each composed of eight judges, and two teams of lawyers. Among the judges, one will be President of the Chamber and the other Vice-President, while each team of lawyers will include two lawyers. The President is responsible for directing the Court's debates and proceedings, initiating each stage of the Court's proceedings and ensuring compliance with formalities. In the absence of the President, the Vice-President shall assume all the functions of the President.

Even if they are expected to be unfailingly objective, judges have a responsibility to prepare for the conference by considering the case to be dealt with and the evidence provided by the teams of lawyers.

Teams of lawyers are either assigned the position of plaintiff or defendant in the case. It is imperative that teams of lawyers communicate before the conference and work together to formulate arguments and memoranda essential to both teams before the conference.

Before the Conference

Each participant must read the ICJ Rules, in particular Articles 54 to 78. The procedure at the ICJ of MEDMUN is based on this document. Whenever there is a discrepancy between these rules and this handbook, the latter is paramount and reflects the practice of the ICJ MEDMUN. In addition, judges and lawyers should read the entire handbook and be comfortable with its content. The President and Vice-President should be contacted for procedural matters.

A) STIPULATIONS, prepared by the teams of lawyers.

Lawyer teams must prepare a set of stipulations. Stipulations are matters of fact and law on which both parties agree before the case is presented. These are presented as a single document, indicating: "The parties stipulate it: 1...2...etc". This will be submitted to the ICJ Coordinator on the date indicated on the due date list.

B) MEMORANDUM

Each team of lawyers will prepare a memorandum of points and authorities. It is a document that presents the party's views on the relevant facts and legal principles adopted by its lawyers. It should present a party's position, facts and legal issues to be applied (quotations may be included), but it is not necessary to provide trial strategies. The memorandum must be at least 2,000 words long. It will be submitted to the ICJ Coordinator no later than the date indicated on the list of deadlines.

C) PREPARATION OF WITNESSES

LAWYERS CAN PREPARE ANY DELEGATE TO BE A WITNESS IN ANY CAPACITY THEY CHOOSE. THEY MAY BE EYEWITNESSES, EXPERTS, GOVERNMENT OFFICIALS, AUTHORS OF

EVIDENCE OR OTHER QUALIFICATIONS THAT THE LAWYERS CONSIDER RELEVANT, SUBJECT TO THE APPROVAL OF ICJ COORDINATOR.

The lawyers must be prepared to justify the use of the witness, and the ICJ Coordinator has the right to make a final decision on the relevance, and therefore the use, of any witness. These witnesses must be selected and contacted well in advance of the conference, and a list of witnesses must be provided to the ICJ Coordinator within the prescribed time frame. This list should include the witness's contact information, the witness's chosen abilities and a brief summary of his or her planned testimony. Each of the lawyers may present up to three witnesses.

The lawyer must prepare the witnesses well before the conference. Witnesses should be aware of the questions that the lawyers intend to ask during the direct examination. The lawyers should keep in mind that the witness's behaviour and authenticity are important in determining the importance that judges place on the testimony.

For these purposes, witnesses must testify from memory, that is, they may not have written notes during their testimony. Details of the direct examination and cross-examination are explained in the "Evidence" section of this handbook.

More importantly, witnesses should not make up facts or distort the truth, and lawyers should take that into account when preparing their witnesses.

D) PREPARATION OF THE JUDGES

Judges are required to read all documents sent to them by the MEDMUN ICJ, and are free to read on the matter, but in doing so, they must remain objective and impartial. Judges should refrain from reading the judgments of the original ICJ case, in order to avoid prejudice and therefore an unfair case. In addition, any separate document or communication submitted by the lawyers or witnesses to a judge should not be considered.

PROCEDURES

Time restrictions will be established prior to the conference on the basis of the official conference calendar. These time limits will be applied and added by the President to the best of his ability.

I. THE TRIAL

SUMMARY

1. Presentations
2. Opening speech: first the plaintiff, then the respondent. State the request clearly at the end.
    a) 10 - 15 minutes each
    b) State the request clearly at the end
3. Stipulations read from the file - read by the applicant, the respondent approves.
4. Submission of actual evidence, first the plaintiff, then the respondent
    a) Name of evidence, author, date of publication, asks if opponent has any

objections to authenticity, summary, explain relevance (do not argue about how it helps this case)

5. Witnesses - Applicant, then Respondent
    a) Direct, cross, direct again, cross again, cross again, etc. until there are no more questions, questions from the judges, then speak again to the lawyers for two questions each (direct/cross)
    b) The cross-examination of a witness may only relate to questions put to him or her during the direct examination.
6. Complete the examination of witnesses as explained below. Weighting by the judge of real and testimonial evidence.
7. Weighting by the judges of real and testimonial evidence.
    a) Judges read the evidence, present in turn before the court in the order of the plaintiff and then present the respondent's exhibits
    b) They provide a brief summary including authenticity, relevance, potential bias, weighting (none, somewhat, moderately, very much) and explain why.
8. Questions from judges to lawyers
    a) General questions about the case, evidence, witnesses, etc. - anything that needs to be clarified
9. Final pleadings - plaintiff, respondent, then plaintiff again if desired
10. Deliberation
    a) Each judge states his or her initial reaction and explains the reasons for it (prioritize/rank within it)
    b) Based on the priorities established, start discussing the reasons
    c) After discussion, final vote: each judge gives his reasons, the judges who agree on the verdict do not need to agree on all the reasons (distinct but concordant, distinct but dissenting)
11. Complete the deliberation as explained below. Write the verdicts. Judges are grouped according to their vote.
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DETAILED DESCRIPTION

OPENING STATEMENT

Each team of lawyers has 20 to 25 minutes to present their opening statement. This tells the Court what lawyers intend to show or prove in the presentation of the case. It must also include the party's "prayer" (request that is stated in the memoranda), that is to say, the judgment requested by the lawyers. The applicant first submits the opening statement and the respondent submits his statement immediately thereafter.

PRESENTATION OF EVIDENCE

The presentation of evidence during the trial is governed by principles called "rules of evidence". Judges weigh the evidence, assessing whether the trial would be fairer with or without the evidence in question. Two types of evidence are presented at the ICJ MEDMUN, namely real evidence and testimony. First, the stipulations are considered as

evidence, followed by the presentation of actual evidence by each team of lawyers.

The authenticity, reliability, veracity and relevance of the evidence are determined by the judges as the evidence is presented.

a. Real evidence :

The real proof is made up of all types of material. These are presented as follows:

Marking: the President / Vice President shall mark the evidence in question. The evidence of the applicant is noted in numbers and that of the respondent is noted in letters, e. g. the applicant's "1" and the respondent's "A". A lawyer requests that an item of evidence be marked and must then authenticate that item of evidence, i.e. establish the author, manufacturer or source of the evidence. For reasons of time, it will not be necessary to present witnesses to authenticate each piece of evidence, but this should not limit lawyers in choosing the author or manufacturer of an item of evidence as one of their witnesses. Teams of lawyers can present up to 15 pieces of evidence. the lawyers should note that the role of judges is to determine the authenticity, reliability, veracity and relevance of the evidence, and thus to give it weight. This must be taken into account when selecting, presenting and authenticating evidence.

While newspaper articles, academic journals and other similar evidence may be useful, lawyers should remember that the ICJ is a court of law. Therefore, most of the evidence must be based in law, i.e., on legal documents, treaties, etc. The ICJ Coordinator will review the evidence and inform the lawyers if they have a certain amount of unacceptable evidence.

Admission: Before the judges' questions, each party presenting real evidence asks the Court to admit its evidence, piece by piece. The lawyer for the ad party may object the basis that the element is not what it claims to be, namely bias, authenticity, reliability, accuracy and/or relevance. Reliability or accuracy generally depends on the weight given to an item of evidence. Doubts about authenticity and relevance are objections that may lead judges to prevent the admission of evidence or, if they are, to give it little weight. In addition, if the knowledge or expertise that the evidence attempts to establish is weak, it may also be given very little weight.

It should be noted that a judge who believes that he or she would give too much weight to certain evidence or that he or she would be significantly harmed if he or she saw or heard it would not allow that evidence to be presented.

Note, as far as the real evidence is concerned:

The more authors who say the same thing, or the more credible the source, the more weight can be given to evidence in publications. The ICJ's procedural documents (Request and Answer) constitute the position of each party in the case and therefore do not constitute evidence.

Any additional material for a case presented to the ICJ is not evidence unless a lawyer

attempts to have it recognized as evidence, using the rules set out above. Some facts or information are public knowledge, such as the current date. Rather than having to go through the process of authentication, direct testimony, cross-examination, etc., the court may take "judicial advice" from the fact, document, decision or other information in question. The lawyers' statements are not evidence. They present the facts and the right to judges to examine them and oppose the admission of inappropriate evidence.

The lawyers may not comment on the evidence or plead his or her case before the closing argument. In other words, they do not discuss what the evidence claims to say, or implies. The presentation of evidence is only used to explain factually what the evidence says.

(b) Witness testimony:

Testimony is the statement of a competent witness. This testimony is as follows:

Direct examination: At this stage, the team of lawyers arguing for their case questions their own witnesses. The lawyer cannot ask suggestive questions.

Suggestive questions: suggest the answer by the nature of the question, for example: "You saw it, didn't you?" The exception to this rule is if the witness is established as an expert. E.g.: The court decides whether a witness is an expert by conducting a "voir dire", that is, by asking specific questions about his or her expertise in the field, including training, years of practice, publications and the number of times he or she has testified as an expert. Under no circumstances may the lawyer ask the witness a question that can be expected to be answered by hearsay. A statement will be considered hearsay if it is: (i) an affirmative statement (ii) made by a witness outside the courtroom (iii) offered to prove the truth of the case. For example, Louis testifies that he talked to Julie at the electronics store on Saturday, and she said, "I'm going to steal an iPod." If Julie is tried for stealing an iPod and this statement is used to establish that she stole the iPod, that is hearsay. If Julie is tried for the murder of a person in the parking lot of the electronics store and Louis' testimony is used to establish her presence in the vicinity of the parking lot that day, then they are not hearsay.

Cross-examination: At this stage, the opposing party's lawyer questions the witness. Its purpose is to create a dispute about the witness's statements and/or to question his or her credibility. Questions relating to cross-examination may not go beyond direct questioning. They must be related to the questions asked during the direct examination. The lawyer may not ask hearsay questions of the witness, but may ask leading questions.

Judges' Questions: Once all direct testimony and cross-examination of a witness have been completed, the judges, subject to the approval of the president / vice president, may ask a question to the witness.

The order of questioning is as follows: direct, cross, redirected, redirected, re-crossed, etc... until there are no more questions. At this stage, the judges' questions are taken into consideration. The lawyers then have the opportunity to ask two other direct and

cross-questions.

As with real evidence, testimonies are weighted according to authenticity, reliability, truth and relevance of the evidence. This means that the credibility and behaviour of the witness is important in deciding the weight of evidence, which judges and lawyers must take into account.

REVIEW OF EVIDENCE BY JUDGES

Each piece of marked evidence (real and witness) is submitted to the judges by the lawyers for admission into evidence, subject to the objection of opposing lawyers. The judges then meet in camera to examine the admitted evidence. Each judge receives one or two pieces of evidence to review and report to all judges on his or her conclusions regarding that evidence.

REBUTTAL

If time permits, after the judges have reviewed the evidence, the teams of lawyers proceed to the rebuttal part of their case. At this stage, no new evidence is presented, but witnesses and documentation may be admitted as evidence to "refute" the evidence previously presented by opposing lawyers. The same rules of evidence apply and each team of lawyers must present their rebuttal.

QUESTIONS FROM JUDGES

The judges then have the opportunity to question the lawyers. These questions clarify questions, facts and legal issues. Each judge will ask questions in turn. Questions should be directed to either lawyer, calling them "plaintiff's lawyer (or the lawyers)" or "respondent's lawyer". Judges must act professionally when asking questions and not be accusatory.

II. FINAL PLEA

In the final plea, the teams of lawyers have the opportunity to plead their case. They gather everything together and discuss what it means, or concludes. At this stage, they can comment on the evidence, discuss their inferences and implications and argue the facts, the law and the case. Usually, lawyers state what they think the questions are, what the answers to these questions are, and what the judgment should be. They must repeat their "prayer". In the case of damages, the lawyers indicate the amount(s) they think the Court should award, supported by evidence.

Each team must present their closing arguments (30 minutes). The applicant goes first, but may set aside some time for the end, by making the order plaintiff, respondent, plaintiff.

III. DELIBERATION

The judges' deliberations are the final step in the case. the lawyers are not present in the room during the deliberations and no further evidence can be gathered. The deliberations are closed to the public.

The first step in the deliberation process is for each judge to state his or her initial decision and reasons. These reasons shall be recorded in writing, and an account shall be taken to prioritize the reasons according to the number of judges who cite them as reasons.

The reasons/motifs are listed on a large sheet of paper. The list usually includes 5 to 10 numbers. Each item is discussed in turn. The Court then issues a verdict.

The majority opinion is then written by the largest group of judges who agree on both the verdict and the reasons.

There is often more than one judgment. The one with the most votes is the "majority opinion". This is the Court's judgment and it is the judgment that will be read at the closing ceremony of the conference. Judges who agree with the decision, but disagree on the reasons, write a "separate but concomitant opinion". Judges who reach a different decision and are in a minority write a "dissenting opinion" and judges who disagree, but whose reasons differ, write a "separate and dissenting opinion". These additional judgments will be published on the MEDMUN website at the end of the conference.

IV. THE ROLE OF THE EXECUTIVE TEAM

Within the ICJ MEDMUN, the main role of the members of the Bureau (President and Vice-President) is to conduct the trial and deliberations and ensure that the correct procedure is followed. To fulfill this role, they have the following powers:

- Decide on the relevance and use of a witness
- Decide on the consequences of delay or inappropriate behaviour by those in the courtroom
- Choice of time allocated for each section of the case
- Decision on objections to leading questions and hearsay (by consulting other judges on complex issues)

The agents also act as judges in this case.

V. ADDITIONAL NOTES FOR THE LAWYERS

Communication Co-lawyers should communicate frequently and from the outset to develop a plan for presenting their case, allocating responsibilities among themselves. Opposition lawyers should also communicate often to minimize problems and maximize stipulations.

Preparation The preparation required before the ICJ must be thorough and is essential to the conference. Often, it is not the most successful lawyer who "wins" a trial, but the one who is best prepared. In other words, a well-prepared lawyer never really "loses" a case. There are specific deadlines that lawyers must meet when submitting their preparation material. Witnesses must be prepared well in advance of the conference. Opposition lawyers' witnesses should be interviewed prior to the conference so that the lawyers can travel to the conference well prepared.

Tactics

- Lawyers should not face judges with statements or promises that they cannot keep. Opposing lawyers will certainly remind judges later of the promises made in the opening statement that were not kept
- Often, the applicant specifies what he or she wants and presents his or her case in a clear, concise and unconfused manner in the eyes of opposing lawyers. The respondent can add everything he can, confusing the questions and preventing the plaintiff from being clear, concise and concentrated. These tactics are not appropriate in all cases, and both require competence, appropriate behaviour and appropriate legal presentation. The tactics chosen by the advocacy team should be carefully considered.
- In direct questioning, it is important to avoid hearsay and leading questions (unless the witness is an expert, leading questions may then be asked). Testimony may appear fragile if the questions are constantly "out of order"
- In cross-examination, leading questions may be asked. They can be skillfully used to make the witness say what the lawyer wants him to say, by directing the answers and providing questions in the form of a "yes" or "no" answer, for example: "You were lying when you said you saw the accused in the store, weren't you? ». "Isn't it true that the person you spoke to was not the accused, but someone else? ». Most, if not all, of the questions in the cross-examination should be directed, but hearsay should be avoided.
- The lawyers should try to enhance the credibility of his or her witnesses, while at the same time trying to establish that the credibility of opposing witnesses is low.
- The lawyer should not ask witnesses questions to which the lawyer does not know the answer, or ask them "why", or argue/debate with them.
- It is an important quality of the lawyer to know when to say "no further questions", or even "no questions". Strategy and timing are very important.

And finally:

- Never take anything personally
- Never "hit an opponent below the belt" / make low blows
- Always act professionally

VI. ADDITIONAL NOTES FOR THE JUDGES

THE ROLE OF A JUDGE IS TO DECIDE ON THE CASE EXCLUSIVELY ON THE BASIS OF WHAT HAS BEEN HEARD AND PRESENTED DURING THE PROCEEDINGS, AND TO RENDER A FINAL VERDICT. THE JUDGES OF THE MEDMUN ICJ SHOULD RESPECT THE FOLLOWING PROCEDURES AND GUIDELINES THROUGHOUT THE

CONFERENCE:

1) Never have an a priori on the case! The judge must remain impartial and objective throughout the proceedings, as far as possible. The case cannot be properly determined until all the evidence has been presented and all the arguments have been heard, so a decision should not be made until the judges have deliberated. In fact, a judge may even change his or her mind several times during the deliberation process.

2) The judge must take plenty of notes at trial. It is impossible to retain everything that is presented and it is therefore the responsibility of each judge to take note of the points and arguments of the lawyers. The notes should cover the following areas:

a) Fundamental points raised by the lawyers,
b) Important points established during the trial
c) Validity and strength of the arguments of the evidence and witnesses
d) Questions for the lawyers
e) Questions that are crucial to the case (i.e. questions that should be the subject of a examination as part of the deliberation)

3) Judges are required to respect the general principles of law. You can't circumvent the rules to satisfy each party. A decision must be based on written law and precedents.

4) Within the ICJ, judges have a dual role. Normally, when there is a jury - which is not the case in the ICJ - all factual questions (is the fact true or not, did it really happen, etc.) are decided by the jury. On the other hand, all questions of law are decided by the judge(s). Thus, since there is no jury at the ICJ, judges assume both roles. A judge is therefore a "discoverer of facts" and a "judge of law". This dual responsibility must be kept in mind during the procedure.

5) The role of "fact-finding investigator" gives the judge the right to retain or reject an objection made by a lawyer to evidence. For example, the plaintiff could object to evidence from the respondent by invoking hearsay. If this objection is accepted, it means that the court agrees with the person making the objection, in this case the plaintiff. If it is rejected, it means that the judges object to the objection and that the evidence can be presented by the respondent. At the MEDMUN ICJ, the President will rule on all objections.

6) Some of the evidence presented by the lawyers may appear more reliable or credible than others. As a result, the degree of value given to a piece of evidence will be determined by the judges during the deliberation. Some evidence may be more relevant to the case or more important, so judges may give them more weight, while other evidence may receive less.

Case Background

Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar vs United Arab Emirates)

On 5 June 2018, as a response to the blockade by the United Arab Emirates, Saudi Arabia, Egypt and Bahrain, Qatar filed a report to the ICJ against the UAE, based on the International Convention of the Elimination of All Forms of Racial Discrimination (CERD). Qatar alleged that certain actions taken by the UAE after the start of the blockade, such as the expulsion of Qatari citizens as well as the restriction to education of Qatari students were based on national origins and therefore violated the obligations under the CERD. The Court ruled on 23 July 2018.

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