Haarlem Model United Nations

Guide to the International Court of Justice

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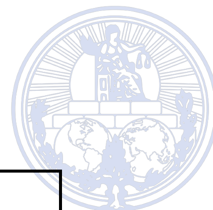

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Esteemed Advocates, Registrar and Judges,

Welcome to the International Court of Justice!

As we simulate one of the most important judicial bodies in the United Nations, you will notice that we are leaving the conventional committee procedures behind; you will not only be representing one country, but instead, you will take on the role of either an advocate or judge in a court procedure. The court is made up of the following members. The Presidency, with one main and one deputy, the 2 Applicant Advocates, one main and one deputy, the 2 Respondent Advocates, one main and one deputy and 15 Judges, with one Judge being a Registrar. All these roles have already been assigned.

As a judge, you need to formulate your verdict impartially and base your decision solely upon the facts presented in the case. In contrast, as an advocate, your role is to submit the evidence of the case and persuade the judges to support your legal arguments.

The case that will be discussed at this year's conference is; '*Request relating to the Return of Property Confiscated in Criminal Proceedings (Equatorial Guinea v. France)*'

This guide will help you through the key features of the International Court of Justice's proceedings and subsequently provide you with some contextual background on the legal problems which are likely to be raised in the Court namely—although not limited to— state responsibility, the use of force, and terrorism.

The mission of this committee is straightforward: to use the fullest extent of your knowledge to ensure that the ICJ plays a pivotal role in delivering justice.

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Presidency of the International Court of Justice

Chapter 1 | Introduction to the ICJ

The International Court of Justice (ICJ) is the principal judicial organ of the United Nations. Established in 1945, it was done so by adopting the UN Charter and Statute of the ICJ. It is the successor to the Permanent Court of International Justice in the League of Nations and now reports to the General Assembly. All major court cases and legal disputes between Member States are held here in The Hauge, The Netherlands.

The Court has two primary functions:

1. To settle, in accordance with international law, legal disputes submitted by Member States
2. To give advisory opinions on legal questions referred to it by authorized UN organs.

The "Peace Palace", home to the ICJ in The Hague since 1913

Chapter 2 | Provisional Programme of Events ICJ

Below you can find an overview of the schedule of the ICJ for the weekend of 31st of March until the 2nd of April. Please note that some parts of this schedule may change over time. As seen in the schedule below, the ICJ will be held in two locations. You will get more information on these locations later on.

Friday

Timestamp	Event/ Agenda item	
9:00	Pick-up escort to the Courthouse from the SGH	
9:10	Arrival at the Courthouse	
(54 min)	Introduction to Presidents, RoP & President Statements	
10:04	Court adjourned, move to the Opening Cermony	
12:00	Pick-up escort to the Courthouse from the Bavo Church	
12:10	Arrival at the Courthouse	
(110 min)	Opening Statements, stipulations, evidence presentation	
14:00	Pick-up to lunch	
14:50	Arrival at the Courthouse	
(120 min)	Judges: review evidence	Advocates: prepare for trial
16:50	Court session ended for day 1	
17:00	Arrival SGH	

Saturday

Timestamp	Event/ Agenda item
9:00	Pick-up escort to the Courthouse from the SGH
9:10	Arrival at the Courthouse
(10 min)	Setting of the agenda for the day
(120 min)	Witness examinations applicant state
11:20	Pick-up to lunch and committee pictures
12:10	Pick-up escort to the Courthouse
12:20	Arrival at the Courthouse

(120 min)	Witness examinations respondent state
14:20	Break
14:40	Court resumes
(130 min)	Judges state all questions
16:50	Court session ended for day 2
17:00	Arrival SGH

Sunday

Timestamp	**Event/ Agenda item**
9:00	Pick-up escort to the Courthouse from the SGH
9:10	Arrival at the Courthouse
(45 min)	Closing statements by the Advocates
9:55	Advocates are excused for the day
(135 min)	Judges draft verdict
13:30	Court resumes for final session
(60 min)	Closing of court and reading of the verdict
14:30	Court session ended for day 3
14:45	Closing Ceremony begins
15:30	Closing Ceremony ends

Chapter 3 | Functions and Roles

Article 1 - The President

The President of the International Court of Justice remains on duty until the closing of proceedings. The President is responsible for the implementation of the Rules of Procedure prepared for the International Court of Justice. This moderation duty is the same as a Director's in any other Committee. The president also has one vote in procedural voting. Although the President shall dictate the implementation of the Rules of Procedure in the Court, they do not have authority over the other judges' decisions unless a certain Judge's opinion is clearly biased.

Article 2 - The Deputy President

The chair is the president's main assistant who assumes the responsibilities and roles of the president when the latter is absent. They also aid in maintaining organization and order in the court.

Article 3 - The Registrar

The rapporteur oversees the documentation of the court and is responsible for swearing in the justices, advocates, and witnesses at the start of the conference. The rapporteur is also a judge and therefore follows all procedures and obligations that judges follow and have.

Article 4 -The Advocates

The Advocates are divided into two groups, Applicants and Respondents. The four advocates are divided equally among the two respectively. The Applicants represent the Member State that submitted the complaint, in this case, The Republic of Equatorial New Guinea. The Respondent is the defendant, representing the Member State that has been taken to court, in this case, The Republic of France.

The groundwork required of the advocates before the ICJ must be extensive, and it is essential to the program. We suggest that no later than one week before the trial, the advocates will be fully prepared. They will have read all the materials thoroughly, working regularly with their co-counsel and fully discussing and preparing the case with him or her. They will have devised a plan, a strategy, that best presents their case and divides the responsibilities between them. During the preparation stage, each team of advocates must talk with opposing counsel, which should be done weekly from the beginning. Talking with the co-counsel several times a week and with opposing counsel weekly saves enormous amounts of time. It prevents wasting time on most issues, such as those which may be stipulated, or, which may turn out to be non-issues. All documents, see preparation document, must be forwarded to the Presidency at least **one week** before the court convenes.

Often, it is not the brightest advocate who “wins” a case, but the one who is the best prepared. Said another way, a thoroughly prepared advocate never “loses” a case. Advocates: do not take a verdict personally. If you did your best, that is all a client can expect. Of course, you cannot be successful in every case!

Article 5 - The Judges

A solemn declaration shall be made by each Judge individually before the trial; “I, Judge ″Surname″, solemnly declare that I will perform my duties and exercise my powers as a Judge honourably, faithfully, impartially and conscientiously.” Judges are responsible for determining the rules of international law on a specific case and reaching a final Judgment. The Court’s final Judgment is written by the members of the Court and announced by the President. Each Judge has one vote in procedural and substantive voting procedures. Judge’s decisions and actions must be unbiased. If they fail to meet this criterion, the President may give them an official warning. Judges may ask the Advocates or Witnesses questions in the designated phases of the trial proceedings.

Being a judge of the ICJ is not like being a member of a delegation. All chance of compromise has seemingly ended at the time a case is heard. Judges do not represent a particular delegation or a country. Uniform general principles of law must be followed. Judges cannot bend the rules so that each party leaves “with a little something”. Judges are bound to follow the law, whatever the outcome.

Judges must also take care to take extensive notes when the Advocates are presenting their evidence. When later on in the proceedings the Judges are allowed to ask the Advocates questions about the evidence, it must be regarding something the Advocate has said.

For example, what evidence is admissible (documents, tangible evidence or testimony) is a question of law. The advocates present evidence to the judges. When an advocate **objects** to the attempted presentation of certain evidence, i.e., "I object, your honour, Hearsay," usually, the advocate is objecting to the admissibility of the evidence. If the objection is sustained, the judge(s) agree with the advocate objecting, and the statement, document, etc. cannot be heard/seen, or "admitted into evidence". If the objection is overruled, the judges refuse the objection, and the statement, document, etc., can be heard/seen, thus considered as evidence by the "finders of fact" (again, in our case, the judges themselves). In some jurisdictions, the legal issues, determined by the judges, are presented to the jury at the end of a case in the form of written instructions, which the jury must consider. Also, the degree to which the evidence can be considered is often discussed in jury instructions, and it is referred to as the "weight" given to the evidence, sometimes a lot, sometimes only in relation to other factors and, therefore, just a little. Since there is no jury in the ICJ, the judges are the triers of law and the finders of fact, the arbiters of both roles. Note that in our circumstances, the president or co-presidents will rule on objections, although the other judges should be consulted on complex matters. Presidents have the last word in all rulings.

Judges should be addressed as "Judge (name)" or "Your Honour". Advocates should be addressed as "Counsel", as in "Counsel for (country)". Also, please note that judges may ask limited questions of any witness in the proceedings, whether on direct or cross-examination. The questioning of witnesses and advocates by the judges is discussed later in this brief. Judges, a general preparation of the facts and issues should be sufficient. The major burden is on the Advocates.

Normally, it is improper for judges to substitute themselves for advocates. Judges do not investigate cases on their own. They only accept the evidence that is presented to them by the advocates. Our ICJ works a bit differently. It allows judges some latitude in the investigation during the case. Therefore, I believe some limited preparation beforehand is appropriate, if for no other reason, than to give you something to do before the program. You should read any material sent to you by the ICJ program (judges are always allowed to read the filed original pleadings, although they are NOT evidence). Also, judges may do some extended reading regarding the issues on their own. Under no circumstances should judges discuss this matter with, or read any material submitted to you by, the advocates until the cases are formally presented at the program; nor should you speak to any prospective witness. Put yourselves in the shoes of the advocates and think of all of the possible relevant issues and questions that pertain to each of the cases. At the same time, you must remain as objective and unbiased as possible. NEVER pre-judge! No case can be properly determined until ALL of the evidence is presented, i.e. 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.

Chapter 4 | Presentation of Evidence

An essential part of the court's proceedings is the presentation of real evidence by both sets of advocates. Any tangible object that is in relation to the case is considered real evidence. These include newspaper articles, interviews or any other physical objects.

Once the advocates present their pieces of evidence, the justices must decide whether the presented piece of evidence is credible, reliable and a valid source of information.

A very important rule is that **the statements of advocates are NOT evidence**. They present evidence to the judges in the form of tangible items (e.g. documents) and elicit the statements of witnesses. These are the only forms of evidence that a judge may consider. Advocates do not lie, misinform, or misrepresent their evidence. They are trying to teach judges, persuade judges, and educate judges, about their position, but they are being "paid" by their principal, and, therefore, there may be some bias/slant in their presentation. Judges must listen and read carefully, and ferret out the truth and relevancy of the evidence presented to them by both sets of advocates.

Following their research, each pair of advocates will present a short written Memorandum of Points and Authorities aka **Memorandum** to opposing counsel, the judges, and to the Presidency (ICJ@hmun.nl) **one week** prior to the convening of the court. The Memorandum should be a party's view of the pertinent facts and legal principles/points of law as espoused by its advocates. It need not give away trial strategies; however, 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 succinctly. I recommend a length of approximately 2-3 pages, no more, and We advise using a "12" font for comfortable reading.

Also on the same date, one set of **Stipulations** will be submitted by both sets of advocates. Stipulations are significant facts of the case that are agreed to by the parties, and, therefore, do not need to be proven or disputed. It is crucial that opposing counsel discuss those relevant issues of fact and of law to which an agreement can be reached **before** the case is presented. Once agreed by both parties, these stipulated facts become real evidence, which will save advocates and the judges (the Court) vast amounts of time. Immediately following the presentation of the Opening Argument by the Applicant, the President of the Court will ask for Stipulations, which should be in writing and, of course, agreed to by both sides (if not, they are not stipulations). The single form should state: "The parties stipulate that: (1)...,(2)..., etc.". Again, stipulations are evidence to be considered by the judges and should be agreed to by the advocates and sent to all the judges and to me at the same time as the Memorandum is submitted. Crucially, Stipulations are facts completely unbiased, as both Applicant and Respondent must agree on them. Stipulations serve as the groundwork, for example, 'South Africa is a sovereign country, It has three capitals, Pretoria, Cape Town and Bloemfontein.' These statements are facts, with no bias to a certain opinion or belief. The stipulations should be the same.

Each set of advocates must provide opposing counsel (and judges) with a **list of their real evidence** at the same time as they submit their **Memorandum, Stipulations and Witness List**. They will submit a list with the title of the document, its author, the date, and the source (web-cite) of the document to judges and opposing counsel. They will also have **3 copies of their real evidence at the trial** (one for the court, one for opposing counsel, and one for themselves). **This is a must**!

A **Witness List** shall be submitted by each set of advocates, Applicants and Respondents. This list will state whom each set of advocates intends to call as witnesses. These documents, Memoranda, Stipulations, and Witness Lists shall be submitted to the President, who will then send them out to everyone on the List Serve---well ahead of the trial.

The respective witness lists should be exchanged between advocates on the same date as the Memoranda and Stipulations are submitted, with a copy to me, and to both the President and Co-President (if there is one) of the Court. That will give opposing counsel a few weeks to interview the other side's witnesses if they wish. Witnesses need not speak to opposing counsel if they choose not to; however, the judges may take that into consideration when giving weight and credibility to their evidence.

NEVER take anything personally, and **NEVER** "hit an opponent below the belt". **ALWAYS** act as a professional! Note that this includes being on time for every session of the program, as I said above. **Never** be late!

Burden of proof**:** ICJ cases are civil, not criminal, matters. In most circumstances, the two general issues are liability (responsibility) and damages (if any). The Applicant/ Moving Party has the ultimate burden of proof. It is neither Beyond a Reasonable Doubt (since ours are not criminal cases) nor Clear and Convincing (as in administrative hearings). The burden of proof is **Preponderance of the Evidence**, which is the lowest burden possible. It means that the Applicant must persuade a simple majority of the judges that its position carries its weight or is persuasive by at least a majority, or 50.001%.

Interestingly enough, each piece of evidence presented by each set of advocates can be viewed in this manner. Regardless of which side is requesting its admissibility, the question can be asked about an individual piece of evidence: "Is it persuasive by 50.1%"? Then the totality of evidence is "weighed" in the same manner at the end of the case.

Of course, some evidence is given more weight or credence than others, but the question of a "preponderance of the evidence" is the burden to be met. If in the end, the moving party has met its burden, it is successful, if not, it is unsuccessful.

Experts may disagree, but there is one principle that seems to repeat itself over and over again. Think about it and decide if it is right for you and for your case. If you are the moving party (Applicant), be specific in what you want and how you present it. Clear and concise are the best principles; stay focused and do not allow the other side to get you muddled. If you are the responding party (Respondent), throw in everything you can, like pots and pans in a kitchen sink. Muddy 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 behaviour and proper legal presentation.

Chapter 5 | Court proceedings in general

Article 1 - Opening Statements:

An Opening Statement is similar to the Introduction of an essay. The purpose of an Opening Statement is to tell the Court what you intend to show/prove by the presentation of your case. It is best to say, "We intend to show..." or "We intend to prove..." etc. Never make assertions or promises to the judges that you cannot keep. The opposing counsel will make certain that the judges remember what you promised in your opening statement to prove something you failed to do. **Fifteen minutes** for each

side is the minimum, and only **one** advocate presents the Opening Statement for each side. State your "**prayer**" in the Opening Argument. What is it you want the court to find/do?

> The Applicant presents the Opening Statement first. Normally, the Respondent gives its Opening Statement after the Applicant has rested/presented its case. In our proceedings, however, the Respondent will give its Opening Statement immediately after the Applicant has marked all of its tangible evidence (see below).

A party (aka a side/set of advocates) should be allowed approximately three hours to present its case on direct examination, including the presentation of real evidence and the time by opposing counsel for **reasonable** cross-examination and questions of witnesses by judges. Organisation is key. It is like a well-written exam paper: an introduction, a series of paragraphs as the body, and a conclusion. You are preparing for the summation. Each paragraph builds to the conclusion in a rational, intelligible order. Do the same in presenting your evidence.

Article 2 - Presenting evidence

The presentation of evidence during a trial is governed by principles called rules of evidence. Judges use a balancing test carefully weighing whether a trial would be fairer with or without a piece of evidence in question (remember the questions of the law spoken of above). As mentioned above, we generally deal with two types of evidence, "real" and "testimony". Real evidence consists of objects of any kind, which include books, papers, articles, and documents. Testimony is the statements of competent witnesses.

After the Applicant's Opening Statement, the Stipulations are read out to the judges. The Applicant reads each stipulation (generally 5 to 10) separately. 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.

Then, written documentation and other tangible evidence are presented in the following manner: First, the item must be **marked**. The Applicant or Moving Party's evidence is marked in numbers, and the Responding Party's evidence is marked in letters, e.g., Applicant's "1" and Respondent's "A". Counsel should ask that a piece of evidence be marked. Then, they must authenticate the piece of evidence, that is, establish the writer, maker, or source of the evidence, the date it was written, published, or discovered, and the website or source. Fifteen (15) pieces of real/tangible evidence is the maximum submitted by each party. The judges cannot take in more than this number in so short a deliberation period. **CAVEAT: 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 used as evidence.**

(i) When marking the evidence, the advocates will read the title of the document several times to the judges (so it is clear and can be written down), then the source of that document, followed by the date of the document. The President will ask if opposing counsel has seen the piece of evidence (hopefully the answer is YES). Then opposing counsel will be asked if there is an objection to AUTHENTICITY or RELEVANCE (only). Opposing counsel likely will not agree with the truth of the document. The document's truth or accuracy can be raised later in Closing Argument. At this juncture, the only issues are whether it is authentic and/or relevant (not necessarily truthful).

If there is no author, it could have been written by Maartje Maria Kitty Kan and therefore not authentic. In a real legal case, we have the person who wrote the article or document,

testify before the judges. However, we cannot do that in our simulation. We simply have to submit the article, try and authenticate it, and go from there. Once the tangible evidence has been authenticated, and testimony has been received as to its purpose, reliability, accuracy, relevance, etc., it is then subject to cross-examination or evidence that rebuts its credibility, reliability, and/or truthfulness.

(ii) After attempting to establish authenticity, the advocate presenting the piece of evidence will state what it says, paraphrasing certain points and stressing certain passages, articles, etc. but NOT how it helps his or her case. The presentation of evidence is used only to explain what that piece of evidence literally says. What the advocates MUST NOT DO at this time is state how the piece of evidence pertains to its case. They may not discuss what any piece of evidence purports to say, infers, or implies. They may only do so during their Closing Argument. That is the time to relate a piece of evidence to their case.

(iii)The reliability, credibility, and/or truth of the document is another issue (presented when **admitting** the evidence later in the trial), at which time, the **weight** of that evidence can be argued. Cross-examination may establish that the item is not what it purports to be (Mr. Jones did not write the document—it may not be his handwriting or his style of writing, etc.). Further, it may show **bias**; therefore, it may not be admitted into evidence by the judges, or, if so, it may be given very little weight because of the bias. Also, the knowledge or expertise that the evidence is attempting to establish may be very weak; thus, it may be given little or no weight. All in all, we are trying to determine the authenticity, relevance, reliability, credibility, trustworthiness, *ergo*, the truth of the evidence. Does it fairly go to the weight of the evidence, and, if so, to what degree?

After the Applicant has marked all of its evidence, the Respondent will present its Opening Statement. Then, the Respondent will mark its real/tangible evidence, just as the counsel for the Applicants have done. The same rules apply to the Respondents as required of the Applicants.

Next, the advocates will be asked to leave the courtroom for approximately an hour and a half. During this time, they will have time to speak to, and complete any 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. Because of the volume of evidence, some judges may end up with two pieces of evidence.

They will then have approximately 30 minutes to quietly review and analyse their piece(s) of evidence. Next, starting with Applicants "1", each judge will stand up for approximately 2 minutes and summarize his/her findings regarding those pieces of evidence to the entire body of judges; thus, what his/her piece of evidence purports to say, whether it helps the side who presented it or, perhaps, the other side, and how much weight the judges should give to that piece of evidence---- a lot, some, very little, or none. We do not have time to give every piece of evidence to each judge, so this method helps to resolve that problem. Each judge is the "expert" of one or two pieces of evidence, teaching the others about that piece of evidence.

Article 3 - Testimony/The Preparation of Witnesses

Next, it time for witness testimony. Questioning 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.

(i) The first point to note regarding direct examination is that witnesses should be very well-prepared, i.e., well-coached. Witnesses should know what questions will be asked of them on direct examination, what answers are expected (as long as they are truthful), and, most important, what questions to expect on cross-examination. Preparation of witnesses hould take place well before the trial/event---**not at the conference**. Cross-examination of a witness, which follows a direct examination of the witness, is meant to create a dispute about the witness's statements, and/or to place the witness's credibility (believability) into question. This includes the witness's demeanour.

(ii) During direct examination, advocates must follow two basic rules:

First, for our purposes, advocates cannot ask **leading** questions. Leading questions are those questions that suggest the answer by the very nature of the question. "You saw him, didn't you?" "You are a good student, are you not?" Questions such as "did you see him" or "are you a good student" is not leading because we are not certain by the nature of the question whether the answer will be "yes" or "no". The answer is not suggested by the form of the question. Again, we are searching for the TRUTH!

Second, you cannot ask **hearsay** questions. Hearsay is difficult to define, and there are many exceptions to the rule. Basically, you cannot ask a witness about an out-of-court statement or act allegedly made by someone other than the witness. It is testimony a witness provides that is not based on personal knowledge but is a repetition of what someone else said. It is usually not admissible because it is impossible to test its truthfulness on cross-examination. "Mr. Jones, what did Mr. Smith say?" Objection, hearsay! Why? Because Mr. Smith is not available to be cross-examined to determine the veracity/truth of the matter stated. You can ask Mr. Jones what he (Mr. Jones said), but not what someone else said unless it is an exception to the rule, e.g. a party, or in certain circumstances, a witness to the case. The principles directed at achieving truth generally fall under the headings of trustworthiness and relevance. The basic criterion for admissibility of evidence is trustworthiness. The object is to ensure that only the most reliable and credible facts, statements, and/or testimony are presented to the triers of fact.

(iii) 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. Cross-examination cannot exceed, or be outside, the scope of the direct examination of the witness. Cross-examination is an art. No hearsay is allowed, but, if done properly, **every** question should be a leading question. Essentially, you **tell** the witness what you want him/her to say by leading, e.g. "You were lying when you said you saw the defendant in the store, weren't you?" "Isn't it true that the person you saw was not the defendant, but someone else?" Advocates direct the answers, and most, if not all answers, should be either a "YES" or a "NO" (although witnesses often may explain their yes or no answers). Again, a witness who can withstand vigorous cross-examination may be (I stress "may be") more credible than not.

Ask only leading questions on cross- examination! First we have Direct testimony, then Cross Examination, then re-direct and re-cross, until both sides say no more questions. Short questions, no narratives, no speeches, and, please, do not repeat the same questions over and over. Know when you have made your point and argue it in Closing Argument.

(iv) Technically, at any time during the testimony of a witness, a judge, subject to the approval of the President(s), may ask a question of the witness. However, rather than interfere with the flow of testimony, it is prudent in our simulation for judges to wait until all direct testimony and cross-examination of a witness is completed, at which time judges will have the opportunity to ask questions of the witness. Following these questions, advocates will be given a very brief opportunity to ask further questions (one or two) of the witness. Because of time, judges' questions, and follow-up questions by advocates, must be kept to a reasonable minimum by the President(s). I suggest that the total time for each witness (i.e. direct, cross, judges questions, and one or two final questions by each set of advocates be limited to between 30 and 45 minutes. **Caveat**: WITNESSES MUST TESTIFY FROM MEMORY. They may look at and comment about marked evidence as they testify, but they may NOT use any personal notes/scripts. Also, refer to a witness as “the witness”, rather than “you”.

(vi) Further, some quick pointers: Try to reinforce the credibility of your witnesses for truth and accuracy, while attempting to establish that the credibility of certain opposing witnesses is poor. **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. Do not assume the judges know where you are headed with your questions. Further, one advocate from a team should question a witness, not both advocates. This is true whether on direct or cross examination. 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. Finally, as noted above, sometimes, it is best to know when to stop. It is a wise advocate who knows when to say either “no further questions,” or even “no questions”. Strategy and timing are very important.

(vii) Please have your witnesses ready to testify at the ICJ. Precise timing is always a problem, especially in real life, but the witnesses must be available; needless time is wasted trying to locate the next witness.

Just prior to Judges’ Questions of the advocates, each party presenting tangible evidence asks the Court to have their evidence **admitted** (e.g. responding party requests that the respondent’s letter “A” be **admitted** into evidence). Opposing counsel may object on the grounds of authenticity, reliability, accuracy, and/or relevance. Reliability or accuracy usually goes to the weight a piece of evidence will be given. Therefore, the Court may admit the evidence but, as stated, give it limited weight in relation to other evidence presented because of the arguments made by opposing counsel. Generally, doubts as to trustworthiness (authenticity) and relevance, assuming they are well presented, are the better objections for keeping evidence from being admitted. In the search for truth (of which the rules of evidence are intended to achieve this end), a judge who feels that either he/she or a jury would give certain evidence undue weight or would be greatly prejudiced by seeing or hearing it, will not allow that evidence to be presented.

Normally, the authors of books, journals, articles, or any publications, cannot be cross-examined at our ICJs. Therefore, assuming authentication is not an issue, each publication may be admitted into evidence but given nominal weight. The more authors saying the same thing, or the more credible the

source, the more weight the evidence in the publications can be given. The use of stipulations between advocates would be very helpful here.

The pleadings (Application and Response) are each party's position in the case, and are thus not evidence. Any supplemental material for a case presented to us by the actual ICJ is not evidence unless an advocate attempts to place it into evidence, using the rules stated above.

Some facts or information are common knowledge, i.e. today's date. Rather than having to go through the process of authentication, direct testimony, cross-examination, and so forth, the court may take "Judicial Notice" of the fact, document, decision, etc.

Because we only have two full days to do a case, there is no time for separate Rebuttal Evidence. Advocates can rebut opposing counsel's evidence in the time they have for Direct Examination, using Cross Examination effectively, and during Judges Questions and Closing Argument.

Next, the judges may ask questions of the advocates. EVERY judge should participate, usually going around the room, judge by judge. The co-presidents shall monitor the questioning, and, above all, they **must keep order**. Judges should not take on an adversarial role when asking questions. Their questions are meant for clarification of issues, facts, and points of law. Judges should act professionally when asking questions. I suggest a time limit of one hour, with a possible extension f 15 minutes, if necessary. 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, by specifically referring to the "advocate (or counsel) for the Applicant" or "advocate (or counsel) for the Respondent". Questions are not open-ended. A follow-up question by a judge is solely at the discretion of the President.

Repeating again: the statements of advocates are **not** evidence. Advocates are there to present evidence to the judges for their consideration. They present facts and law or object to improper evidence being admitted by the other side. They may comment on the facts and law **only** during Closing Argument. They may not argue their case until Closing Argument. Restated, advocates cannot discuss what something purports to say, infers, or implies, nor can they argue the facts, the law or the case — **until Closing Argument**. During the presentation of evidence, they may explain what a document says, for example, "the document says that X is blue and Y is green" (assuming it does, in fact, say that). Only in closing argument, may they interpret what that phrase means, for example, "after reading this document, you will conclude that X is blue and Y is green". They put everything together and argue what it all means, says, or concludes. This is difficult for students, but I will be quite strict on this issue at the Model ICJ.

Completing the case, the advocates present their **Closing Arguments**. One or both advocates may present the Closing. Each side is given 30 minutes maximum to sum up its case and tie together the evidence and the legal elements. The moving party goes first but may reserve a part of its time. The responding party goes next. Finally, the moving party may use up the time it has reserved. Therefore, the moving party can sum up twice (but not to exceed the 30 minute maximum). During Closing, the advocates must state their "prayer", what each side is requesting for a judgement. Usually, it is best for the advocates to state what they think the issues are, what the answers to those issues are, and what the decision (or their "prayer" from the court) should be. They may also comment on the evidence they have presented and the evidence presented by opposing counsel. If damages are involved, it is incumbent upon the advocates to state what amount(s) they think the Court should award—and why. Proof is essential with regard to damages, although, in most of our ICJ cases, liability can be determined by the Court with the damage issue reserved for a hearing at a later time.

Now, it is time for **deliberation**. The advocates are not in the room during deliberations, and no further evidence can be taken. Deliberations are closed to the public, with the exception of MUN Directors, members of any Board of Directors, or Board of Advisors of the organization. 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 list the issues on a flip chart until they are all on the chart, such as the applicability of treaties and other documents and liability issues, damages, if any, etc.. Past lists have numbered from 6-12 issues. These issues are then put in priority order by a vote of the judges. We often take a straw poll (just a gut feeling) at this point, each judge taking a few seconds to state how and why they would vote at the time if they were compelled to. Then, each issue should be discussed and determined. Once each issue is determined, it is easier for the Court to reach a decision/judgement/verdict. But, I must warn you that in the past it has often taken the judges three hours or more to reach a verdict. Experience shows that judges may change their minds several times during deliberation. Therefore, I would allocate at least that much time. Also, it is rare that one side receives no votes. You are not trying to reach a consensus. If you feel strongly about your position, hold to it!

The final vote is complicated. I will explain it twice. The party receiving the most votes is the "Majority Opinion". This constitutes the Court's ruling and is the judgment that will be read in the Closing Ceremony of the conference. Judges who agree with the majority decision but differ on the reasons why will write a "Separate But Concurring Opinion". Judges who arrive at a decision, which is in the minority, write a "Dissenting Opinion". Judges who dissent but differ on the reasons why write a "Separate But Dissenting Opinion". These decisions are all published by the conference.

Finally, **judgments** must be written out, and this, too, takes a long time to find the correct wording. I have templates that should be used. If there is a large number for the Majority or Dissent, committees are formed to write the judgments.

Chapter 6 | Points and Motions

· Normal MUN points and motions are not used in the ICJ.

· The president is referred to as "your honour".

· If a justice wants to ask the president for anything, he may ask him at any time by saying "your honour" and then proceed to ask the question after being prompted by the president as long as it does not hinder the debate and discussion.

· All members of the court must be standing when speaking.

Chapter 7 | Objections

Advocates may object to any question asked to their witness by the opposing side; however, the advocates should know the basis of objecting as an unjustified or an uncalled for objection would look very bad in the eyes of the judges. What follows is the list of objections either council can object to:

· **Ambiguous, confusing, misleading, vague, and unintelligible:** the question is not clear or precise enough for the witness to properly answer it.

· **Argumentative**: when the question involves an argument rather than a definite answer.

· **Asked and Answered:** when the same attorney continues to ask the same question despite receiving an answer. Usually seen after direct, but not always.

· **Assumes facts not in evidence**: when the question assumes something as true for which no evidence has been shown.

· **Badgering**: when the counsel antagonize the witness or annoy him to provoke a response, either by asking questions without giving the witness an opportunity to answer or by openly mocking the witness.

· **Calls for a conclusion**: when the question asks for an opinion rather than facts.

· **Calls for speculation:** when the question asks the witness to guess the answer rather than to rely on known facts.

· **Compound question**: when multiple questions are asked together.

· **Hearsay**: when the witness does not know the answer personally but heard it from someone.

· **Incompetent**: when the witness is not qualified to answer the question.

· **Leading question (Direct examination only):** the question suggests the answer to the witness. Leading questions are permitted if the attorney conducting the examination has received permission to treat the witness as a hostile witness. Leading questions are also permitted on cross-examination, as witnesses called by the opposing party are presumed hostile.

· **Narrative**: when the question asks the witness to relate a story rather than state specific facts. This objection is not always proper even when a question invites a narrative response, as the circumstances of the case may require or make preferable narrative testimony.

· **Irrelevant or Immaterial:** when the question is not about the issues in the trial.

· **Misstates evidence/ misquotes witness/ improper characterization of evidence:** this objection is often overruled but can be used to signal a problem to witness, judge and jury.

· **Counsel is testifying:** this objection is sometimes used when counsel is "leading" or "argumentative" or "assumes facts not in evidence".

· **Lack of Foundation**: Advocates should not assume witnesses are familiar with certain pieces of evidence or information, and instead should establish this familiarity before proceeding with the next question.

· **Non-responsive**: Witnesses have to answer the question being asked. They are not allowed to provide an answer to a question that was not asked.

· **Nothing pending**: Witnesses may not speak on matters irrelevant to the question.

· **Privilege**: Parties may not ask witnesses a question if the witness is protected by law from

answering the question.

Chapter 8 | Brief overview of the Rules of Procedure

Article 1 - Prosecution presents opening speech;

· Should be a minimum of 10 minutes and a maximum of 20.

· Should provide the judges with a brief introduction to the case from the point of view of the prosecution.

Article 2 - Defense present opening speech;

· A minimum of 10 minutes and a maximum of 20.

· Everything that applies to the prosecution, applies to the defendants at this stage.

Article 3 - Stipulations presented and accepted;

· Stipulations are statements which are facts agreed between the two pairs of advocates prior to the conference (facts which both sides agree on). For example, a stipulation may read "Jordan is located in the Middle East and its capital city is Amman".

· It is advised that at least 5, well thought through stipulations are presented to the court.

· Stipulations should not be biased since they are the facts of the court.

Article 4 - Prosecution present their pieces of evidence;

· Pieces of evidence may be written documents, articles found online or YouTube videos which help your case. The presentation of each piece of evidence is as follows:

a) When the piece of evidence is introduced, advocates have to state: the origin (website/YouTube link/etc.) of the piece of evidence; the author with a very brief biography (nationality, age, and qualifications); and the date the document was published.

b) After the piece of evidence is introduced, advocates can then proceed with stating and explaining how the piece of evidence helps their case.

c) There is no time limit for the presentation of the pieces of evidence, as this process has to be done very thoroughly. However, we hope it would not exceed 1 hour per advocate pair.

Article 5 - Defendants present their pieces of evidence;

· The same format as above applies

· It is strongly encouraged that each advocate pair has a minimum of 5 pieces of evidence and a maximum of 10.

Article 6 - Judges deliberate on pieces of evidence;

Article 7 - Judges' questions to advocates;

· This is an opportunity for the justices to ask the advocates any questions they may have. These questions should be related to the pieces of evidence or the opening speeches – it is not in order for justices to ask about something that has not been mentioned by either of the advocates.

Article 8 - Witness testimony;

· Procedure is as follows:

a) **Each pair of the advocates is entitled 3 witnesses; no more, no less.** Witnesses are delegates who will be excused from their original committee (e.g. HRC) to testify in the ICJ. The witnesses are prepared and briefed by the advocates prior to the conference.

b) **Witnesses take on the role requested by the advocates** (e.g. a Minister of Foreign Affairs or an army officer or even a former president, in all cases the witness must be based on a real-life character).

c) **Direct examination;** advocates question their witness. There is no limit to the amount of questions asked.

d) **Cross examination;** the witness is questioned by the opposing advocates.

e) **Judges questions** – judges question the witness.

f) Re-direct and re-cross examination.

Article 9 - Final judges' questions to advocates;

· Questions may relate to anything that has been stated.

Article 10 - Prosecution's closing statement;

· It is perhaps the most important speech.

· It should last for at least 15 minutes.

· It should be a powerful, persuasive summary of the case from the prosecution's perspective.

· Advocates should relate to anything the opposing side has stated; to the pieces of evidence and witness testimony.

Article 11 - Respondents' closing statement – as above.

Article 12 - Judge deliberation commences (advocates dismissed).

Article 13 - Voting procedure under judges.

Article 14 - Writing and announcing the verdict by the ICJ President.

We hope this letter on the Rules of Procedure of the International Court of Justice was helpful, and we wish you luck in your journey to the ICJ.

Sincerely,

The Presidency and the Secretariat

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