



MUNNAAAL 2024

Ankara Atatürk Lisesi Model United Nations

ICJ

International Court of Justice

AGENDA ITEM

Case of Jadhav
Pakistan v. India

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HANDBOOK

Overarching Diplomacy

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Beginning date of the Court: 20th May 2017.

1. Proceedings of the Court

1.1. Memorial and Counter Memorial

A memorial is a document produced in court by the applicant party that details the case, relevant facts, and laws. The applicant party will develop the memorial before the MUNAAL’24 Conference and distribute it to the respondent party’s advocates, who will then draft a counter-memorial.

A counter-memorial is a document prepared by the respondent party side that provides their viewpoint on the respondent’s facts and arguments, as well as extra evidence for the court to consider. While monuments and counter-memorials may differ in substance, their form is often similar.

a. Sample Memorial/Counter-memorial

**International Court of Justice
Case of Jadhav (Iran v. Pakistan)
Memorial of the Applicant
Memorial of the Applicant/
Counter-memorial of the Defendant**

2. Content of a Memorial and a Counter-Memorial

2.1.Introduction

The advocates will introduce the case to the honorable judges of the court, by providing a brief summary of the matter at hand, constructing the fundamentals of the case.

2.2.Jurisdiction.

In this section the advocates will be presenting the court with their own arguments for the jurisdiction of the court, requesting judicial expectations of the represented party from the court.

2.3.Facts

Relevant information, including historical or political developments, will be provided here. This section will provide a factual basis for the legal arguments of the parties. The respondent party may contest the applicant party's facts and provide their own.

2.4.Applicable law

This section establishes the legal basis for the parties' claims. Parties may adopt the appropriate legal component of the study guide partially or completely, but they are not limited to the laws provided in the guide, they may seek others. Please send all necessary legal documents, including international treaties and case law.

2.5.Claims

Parties must synthesize the law and facts in this section. Legal explanations should be given for the facts. The respondent may reject the applicant's accusations and present their own.

2.6.Submit

In this section, parties should clarify their petitions and the anticipated outcome for the court.

3. Evidence

Evidence is a part of a court hearing where the Applicant and Defendant respectively present evidence to the Court for both Party's side of the case. Evidence of the both Party's shall be in a presentation (PowerPoint/Google Slides) for the Court to see. Time allocated for the presentations shall be decided by the Presidency.

All the evidence that are presented to the Judges will be decided upon by the Judges themselves whether they are admissible or not. For evidence to be admissible it shall be decided upon by the Judges unanimously.

Advocates must start their presentations withs "May it please the Court."

4. Advocates and Judges

4.1. Advocates

Advocates are expected to present relevant evidence before the court. The secretariat will forward all party submissions to the Court's judges and attorneys. Advocates are expected to submit documents to the Court prior to the conference.

Advocates may provide visual resources to the Court, such as films or maps. However, all materials must be delivered before the meeting.

Advocates cannot submit papers registered after the Court's commencement date.

4.2. Judges

Judges must be unbiased and objective when considering cases and parties' submissions. Judges should avoid undertaking additional investigation on the parties' given information. Judges may benefit from researching legal sources and concepts.

Judges must analyse and make decisions only on the given material.

Judges should concentrate their efforts on court processes rather than investigating the case, since it is neither beneficial nor advisable.

During the trial, the Secretariat authorises the Judges to call three legal experts to testify. The Secretariat will provide profiles of these professionals. Following the trial, the Judges will issue a decision that contains accepted facts, materials, witnesses, and their findings on the matter.

b. Sample Judgment

International Court of Justice

Date of Judgment (Will be provided by the Secretariat)

Decision on the Case of

Jadhav (India v. Pakistan)

Advocate X, Y on behalf of the Applicant Party

and

Advocate A, B on behalf of the Respondent Party

1. Procedural history

This section shall be prepared by the secretariat.

2. Submissions of the Applicant Party

This section should contain of the facts, memorial, and regards that are submitted by the Applicant Party and found admissible by the Court.

3. Submissions of the Respondent Party

This section should contain of the facts, memorial, regards that are submitted by the Respondent Party and found admissible by the Court.

4. Submissions of outside parties

This section will have submissions and admissibles that are not found by the Applicant or Respondent but outside parties such as relevant practices of the similar cases, and national law enforcements.

5. Applied Law

This section shall contain the legal sources of the decision made by the court.

6. Statements of Facts and Stipulations

This section will start with the Statements of the Facts from the Memorial and Counter-memorial of the Parties. Statements of the Facts argued upon by neither by the Parties nor the Court.

If parties submitted stipulation¹s to the court, these are to be included under this section as follows:

“The stipulation concluded by the parties on (date of the stipulation) reads as:”

8. Court’s findings

Material submitted to the Court by parties that constitutes the material basis of the judgement shall be indicated here. The Court is free to exclude any piece of evidence, testimony or submission from an outside party from the judgement, however, if decided to do so, reasons has to be stated under this section.

9. Decision

¹Stipulation: An agreement, a bargain, proviso, or condition. If the stipulation complies with an applicable statute or rule of court, it will be binding. A stipulation could mean a fact, promise, or provision in a contract agreed by two parties.

This part will consist of the decisions of the Court. The required sanctions will be provided by the Secretariat.

a. Dissenting Opinion

If any of the Judges do not agree with the unanimous decision upon one of the allegations, they will be required to write their opinion upon the matter with a legal basis and will be read after the decision.

5. Updates

As the investigation and prosecution of relevant situations progress, the Court may make information requests to foreign judicial authorities, international organizations, or national law enforcement. When an update from a national agency is received by the Court, advocates have ten minutes to address the material presented and respond to queries from the justices. Following that, the Court may decide, at the president's discretion, whether to incorporate or remove the recently acquired material from the decision; nevertheless, an open vote cannot be conducted with advocates present.

5. Rules of the Hearing of International Court of Justice for Case of Jadhav (India v. Pakistan)

5.1. Members of the Court

The Court is consisted of the President Judge, Vice-President Judge, judges, Advocates of Applicant Party, and Advocates of the Respondent Party.

5.2. Quorum

Sessions of the Court may not convene unless a simple majority of the judges, the president, vice president, and one representative from each party are present. Every session will begin with a roll call to determine the quorum.

5.3. Presidency

The Presidency is responsible for appointing judges, upholding procedural rules, and preserving objectivity throughout court proceedings.

All provisions of the rules of procedure that apply to judges also apply to the presidency, unless otherwise noted; however, the presidency has the power to amend the rules of procedure.

Any modifications or suspensions of the procedural rules by the President will be communicated to the court by the vice president or the president judge.

The members of the Presidency shall be seen as equals under every circumstances. In addition, their votes are equal to those of the judges in voting procedures.

The President and the Vice President Judge have right to interfere with the questionings of both of the judges and advocates. They may also cast one vote collectively.

5.4. Judges

If a judge disregards the notion of impartiality toward the parties and the matter at hand, the presidency ought to issue a warning. Judges cannot do their own research upon the Case and shall only be learning from the advocates.

A judge may only cast one equal vote on each matter, including procedural and substantive.

Judges are not allowed to leave their seats except in the event of unmoderated caucuses.

Judges are responsible for following the Case accordingly during the sessions, take notes and concluding the case in accordance with the relevant international law, legal sources, and law enforcements specific to the Case.

Judges may interfere the advocates during the evidence, rebuttal and surrebuttal hearing and direct their questions if its granted by the Presidency.

Judges are responsible for preparing the judgment document.

5.5. Advocates

Advocates represent their respective parties and are obligated to act for the best interest of their client.

The secretariat will determine and publicize a deadline for the Applicant and the Respondent Party to submit their memorials and counter-memorials. The secretariat will provide the judges with the memorial and the counter-memorial prior to the start of the proceedings.

The parties shall submit the stipulations reached before to the presentation of the evidence. Furthermore, in the event that a stipulation cannot be reached, the parties shall notify the court as well.

Advocates won't be participating with the votings of the Court.

Advocates are obligated to refer to the judges as "Your Honor", and give their statements standing before the Court.

5.6. Objections

If any of the actions or statements made by one party fall under the category of an objection, the other party has the right to object. Whether or not to accept the objection will be decided by the president.

Judges cannot raise objections. Only advocates are granted to raise an objection.

When an advocate of a party raise an objection they shall stand and state their objection as:

"Objection (name of the objection), (statement of the reason fort he objection)."

An objection will be considered "granted" and removed from the Court's proceedings if the presidency grants it.

There are 5 grounds of objections that could be raised in the Court:

a. Immaterial:

In the event that the veracity of any material submitted to the court cannot be established, the parties may raise this objection.

b. Irrelevant:

Every document submitted before the court must be pertinent to the matter at hand. The opposing party may object if they believe that any material that a party has presented is irrelevant to the case.

c. Prejudicial:

A strong prejudice is a preconceived judgment that is formed without a basis in facts. The participants in the Court shall maintain their honesty in all legal and factual arguments. A party may object if something they say compromises the integrity of any other participant in the Court.

d. Leading

When a question aims to persuade the witness to agree with an inference or conclusion rather than obtain fresh information, it may be criticized as argumentative.

e. Hearsay

Hearsay objections can be raised by advocates when a witness or the other Party attempt to testify based on a statement given by an untestifying person.

5.7. Burden of Proof

The Applicant Party has the primary responsibility for proving a claim, which is known as the burden of proof. It is a necessary condition for the evidence.

When the Applicant Party provides evidence of an incident, the burden of proof shifts to the defendant, and the prosecutor is given the benefit of the doubt.

In the event that the Respondent Party makes unusual claims—such as attempting to refute a known fact—the burden of proof may also be shifted.

The Respondent Party has the responsibility of providing evidence to disprove the presumption or support their extraordinary claims in cases where the burden of proof is shifted.

5.8. Opening Statements

The President Judge declares the start of the trials and summons the parties for opening remarks, starting with the prosecutor, after the roll call and oaths. The parties will briefly present their positions and strategies for the trials.

Each side will have the same amount of time to make their opening remarks. The President Judge shall set the allotted time.

Proponents may move to change the time of the opening speeches as soon as the allotted time is announced. A simple majority votes in favor of this measure.

5.9. Stipulations

A stipulations document is one that contains agreed-upon facts that neither party would contest. It ought to take the form of a list outlining the incidents and information that both sides concur upon.

Every advocate must sign the stipulations.

While the court is deliberating, stipulations should be prepared following the opening statements from both parties and before to the presentation of evidence.

5.10. Statements of the Experts and Witnesses

To testify before the Court, the Presidency may call witnesses and experts. The following oath must be taken by experts and witnesses who will testify in court: *“I solemnly declare, upon my honour and conscious that I shall speak the truth, the whole truth and nothing but the truth.”*

Before the court, experts and witnesses must express their professional judgment or experience on the matter.

Advocates have the option to cross-examine the experts and witnesses in front of the Court at the president's discretion. The prosecutor will be questioned before advocates question the experts and witnesses.

The President retains the authority to end the interrogation of advocates or set a time limit. Advocates may examine witnesses and specialists until they indicate that they have no more questions, unless the president specifies otherwise.

The judges will question the experts and witnesses in front of the court. In the event that advocates are permitted to be questioned, the judges will be questioned after the advocates. Presidency reserves the right to terminate questioning.

5.11. Rebuttal and Surrebuttal

The Applicant Party will reply to Respondent Party's arguments and evidence from earlier procedures, as well as any questions the judges had previously asked, in rebuttal. The Applicant Party is not, however, permitted to make a fresh argument to the Court.

The Respondent Party must reply to the rebuttal in the surrebuttal. The rebuttal's content will be the only thing covered in the surrebuttal. Equal time will be allotted to each party for rebuttal and surrebuttal. Judges may ask questions following each speech, but they are not allowed to interrupt advocates during their rebuttal and surrebuttal arguments. This is at the presidential discretion.

5.12. Closing Speeches

In their final remarks, the parties will summarize the evidence they have presented during the trial. A recommendation regarding the verdict that the judges will render should also be included in the address. Judges are not allowed to interrupt advocates during their concluding remarks or ask follow-up questions.

Each party shall have equal time for closing speeches, which will be determined by the presidency.

5.13. Deliberation

The process of talking through and weighing possibilities and problems before making a choice is called deliberation.

Judges will proceed to deliberations after the opening and concluding speeches, evidence presentations, expert and witness statements, rebuttal and surrebuttal, and speeches.

During the last round of discussion, judges will draft their decision. The Presidency maintains the authority to start and stop discussions.

Advocates may be called to the Court to be questioned in response to a motion to summon them or at the president's discretion. A two-thirds majority is needed to approve such a move. If advocates are called at the president's discretion, there will be no vote on this issue.

With the president's approval, judges have the authority to pose questions to advocates who have been called.

The Court will, by default, be having an open discussion.

In the event that the president chooses to start a tour de table, each judge will be given a set amount of time to express their opinions on the topic under debate.

Only during discussions may a judge make a move for an unmoderated caucus.

During the final deliberation, judges will prepare the judgment based on the secretariat's submitted sample.

5.14. Voting Procedures

When voting is done in an open manner, everyone in attendance is able to view the judges' votes. Voting systems known as "closed voting" allow participants to cast ballots without seeing the judges' votes.

The right to hold any type of voting procedure for either procedural or substantive votes is reserved by the presidency. However, advocates must not be present during any open vote process on important issues.

5.15. Motions

Judges and advocates may raise following motions:

- a. Motion for suspension of the deliberations/court
- b. Motion for adjournment of the deliberations/court
- c. Motion for the closure of the deliberations
- d. Motion to summon advocates
- e. Motion for an unmoderated caucus

***FIELDS ARE NOT REGULATED BY THE RULES OF PROCEDURE OF THE
INTERNATIONAL COURT OF JUSTICE FOR THE CASE OF JADHAV (PAKISTAN V.
INDIA)***