

SRMUN Charlotte 2014
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Fostering Prosperity and Forward Movement
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International Court of Justice Addendum to the SRMUN Rules of Procedure

Introduction

The International Court of Justice (ICJ) is one of the six primary organs of the UN system, and it plays a critical and increasingly important role in international politics. The ICJ is also one of the most complex entities of the United Nations, which makes it a challenging, but rewarding, body to simulate at any model United Nations conference. In order to deliver this unique experience at SRMUN, a number of changes have been made from the manner in which most committees are managed.

One of the most striking differences that delegates with experience in other committees will notice is the dual role for delegates as both Justices of the Court and Advocates for the state they represent. There are four cases for the ICJ at SRMUN, and each delegate will act as an Advocate for one case and a Justice for the remaining cases. As an Advocate, delegates will represent the viewpoint of their assigned Member State and deliver an argument that accomplishes his/her state's goals. This system is somewhat similar to the formal presentation and questioning process in the US Supreme Court. For the other three cases before the Court, each delegate will act as a Justice. The Justice will listen to case presentations, question Advocates from all parties, and work towards reaching a sound legal decision with his/her fellow Justices. Unlike when delegates are serving as Advocates, Justices should represent their own legal minds and views as residents of their assigned Member State, but should not represent the interests of their government.

In certain circumstances such as Advisory Opinions, one or both sides of an issue may be represented by an entity such as the Economic and Social Council rather than a state. In these cases, all parties involved should refer to these representatives as the party they are representing, and not their home state. For example, when drafting legal documents or making speeches, Advocates should refer to themselves as representing the Economic and Social Council, or any other body they have been assigned, rather than their own state.

It is also important for Court members to realize that the rules of procedure for SRMUN's ICJ simulation are not the same as the rules for other committees at SRMUN, or the Statute of the ICJ. The SRMUN ICJ Rules of Procedure take precedence over other rules of procedure. For example, the ICJ Statute explains the procedure for third-party Court briefings, which are not permitted during SRMUN ICJ simulations. If there are any questions about the rules or how they should be applied, the final decision on these matters rests with the Chief Justice of the Court.

Role of the Justice

Justices of the Court are required to ensure that their opinions, questions, and eventual judgments pertaining to all cases are given without bias towards the interests of any state or entity - even the state in which the Justice resides. Justices are encouraged to read each case guide carefully and examine the sources presented, but Justices should strive to evaluate these sources only so far as to ascertain a general understanding of the case before the Court. In other words, Justices must strive not to make preliminary judgment for or against the Applicant or Respondent. Justices are required to deliberate on each case and each set of evidence presented by the Advocates before the Court, and not to simply reach a summary judgment based on evidence not formally presented before the Court.

Justices must also understand that Advocates before the Court only serve as Advocates for one case. This means that Justices should strive to cooperate with each other throughout their tenure. Despite the adversarial nature of these cases and the need for Advocates to firmly stand behind a position when addressing the Court, anyone serving as a Justice before the Court is required to act in a professional manner at all times. Any disagreements two Advocates may have with each other during a case are not to be carried over to their role as Justices.

Justices of the Court are to ensure that the deliberations of the Court are kept secret. All Justices are required to recite a solemn Oath of the Court to start their tenure and they will be expected to uphold their promise to the Court. This oath of secrecy sustains until the Closing Ceremonies and the unveiling of the decisions. This applies to communication with any persons not declared Officers of the Court by the Chief Justice. This includes members of your Member State's delegation, pages, visitors, and Faculty Advisors. This process is in place to ensure that all Advocates are given a fair chance to present their case to a non-biased panel of Justices. If any Faculty Advisor, Justice, or other interested party has a question about this policy, please feel free to speak to the Chief Justice.

Role of the Advocate and Memorial/Counter-Memorial Writing Guide

Advocates are charged with representing the interests of their state or body before the Court to the best of their ability. Advocates should be prepared to give a significant presentation to the Court, and they should be prepared to answer difficult questions from Justices or Advocates. Advocates are encouraged to research as much as possible about their case in order to provide a competent defense of their point.

While presenting to the Court and having a presentation ready are crucial to becoming a great advocate, the Memorial/Counter-Memorial writing process is a critical first impression for Advocates. The Memorial and Counter-Memorial are also great ways to ensure that an Advocate's research is focused on the topic at hand and helps them to streamline the process. These documents are the backbone of the Advocate's case, and include a Statement of Relevant Facts, a Statement of Relevant Law, and a conclusion section in which the Advocate makes specific requests of the Court.

The Statement of Relevant Facts should include all relevant facts of the case that the Advocate feels are necessary. This may include sections of relevant text from a transcript of a speech, official statement, or other document, parts of a Resolution or other similar document, statistical data that helps to prove the Advocate's case, or any other relevant facts the Advocate finds useful in preparing for his/her case. As with all other parts of the Memorial or Counter-Memorial, you must ensure that anything you cite in this section is properly documented and that the document is brought with you to the Court. For example, if you site a statistic from the UN, a printout or electronic copy of the document must be brought with you to the Court.

The Statement of Relevant Law should be a comprehensive list of case law the Advocate wishes to cite during her/his presentation. This may include text from a Treaty, Charter, or other relevant document to which the interested parties are obligated to. This may also include relevant Customary law or other law the Advocate feels both parties should be legally bound by. For example, an Advocate may wish to cite text from the Nuclear Non-Proliferation Treaty, the Universal Declaration of Human Rights, or the UN Charter itself. While some documents such as the UN Charter are considered common knowledge and may be cited without documentation, it is strongly encouraged that the Advocate brings copies, either paper or electronic, of all sources researched. If an Advocate cites a legal statute or other relevant document, and the Advocate doesn't provide a proper citation, it is at the discretion of the Justices of the Court and ultimately the Chief Justice as to whether to consider the legal citation.

The final section of the Memorial or Counter-Memorial is the Advocate's conclusion. This section is where the Advocate makes their final requests of the Court. This section is not simply a summary of previous statements, but actually a final product of the evidence presented previously. For example, an Advocate representing State A believes State B has violated its sovereign territory and offered trade agreements for land which State A alleges belongs to itself. In State A's conclusion, State A could ask the Court to nullify any previous trade agreements made between State B and other parties involving the disputed territory, and further request that State B pay reparations to State A for the value of the lost resources that State B's agreements cost State A. While all three sections are equally important to an Advocate's case, this section should be particularly carefully worded as it will be the basis of the Advocate's request of the Court for any action, and the Justices will carefully consider the requests of each Advocate when reaching their final decision.

Finally, Advocates are once again reminded that all evidence should be carefully documented and brought to the Court. Advocates may choose to provide paper evidence in a binder with each piece of evidence easily identifiable, or Advocates may bring an electronic copy of their sources sorted by file directory for each type of evidence. Aside from "common knowledge" documents such as the UN Charter, any evidence or statement presented by Advocates that does not have accompanying evidence with it may not be considered. The decision to consider evidence is at the discretion of the Justices of the Court with final determination made by the Chief Justice of the Court.

Rules of Procedure for the ICJ

Article 1

The International Court of Justice, established by the United Nations as its principal judicial organ, shall be constituted and shall function in accordance with the provisions of the present Statute and Rules.

Article 2

The Court shall be composed of a body of independent judges, elected or appointed from among persons of high moral character.

Article 3

Section 3.01 The Court shall consist of at least twelve Justices, not including the Chief Justice and Assistant Chief Justice.

Section 3.02 Membership on the Court shall be determined by the Chief Justice at the beginning of the calendar year.

Section 3.03 Each Justice shall have one seat on the Bench, except while a state is being represented in the case currently being heard by the court. Such members shall recuse themselves for the duration of the proceedings of the case in question.

(a) Each seat on the Bench shall be represented in formal procedure by a Justice of the Court. Justices of the Court must be present for the entirety of all proceedings of the Court.

(b) The declaration to be made by every Member of the Court shall be as follows:

"I <state your name> do solemnly swear to uphold the Charter of the United Nations and the Statute of the Court, and to act only on the basis of law, independently of all outside influence or interventions whatsoever, in the exercise of the judicial function entrusted to the Court alone by the Charter and its statute. I further swear to keep the confidentiality of the Court, and to avoid discussing any matters related to deliberations of the Court until authorized by the Chief Justice."

Article 4

Section 4.01 The Chief Justice of the Court shall have final discretion in all matters of the Court, both procedural and substantive.

Section 4.02 The Chief Justice and Assistant Chief Justice may vote in substantive and procedural matters to break a tie.

Article 5

Section 5.01 The Assistant Chief Justice shall retain all rights of access afforded to the Chief Justice.

Section 5.02 When the Chief Justice is not present, the Assistant Chief Justice shall act as a representative for the Chief Justice and shall have all rights and privileges afforded to the Chief Justice.

Article 6

Members of the Court shall be bound, unless prevented from attending by illness or other serious reasons duly explained to the Chief Justice of the Court, to hold themselves permanently at the disposal of the Court while the Court is in session.

Article 7

Section 7.01 If, for some special reason, a member of the Court considers that he or she should not take part in the decision of a particular case, he or she shall so inform the Chief Justice of the Court.

Section 7.02 If the Chief Justice of the Court considers that for some special reason one of the members of the Court should not sit in a particular case, he shall give him or her notice accordingly.

Section 7.03 If in any such case the member of the Court and the Chief Justice disagree, the matter shall be settled by a two-thirds majority decision of the members of the Court.

Section 7.04 In no case shall a member of the Court sit in a case where his or her state is a party.

Article 8

Section 8.01 The full Court shall sit on all cases except when it is expressly provided otherwise in the present Statute.

Section 8.02 A quorum of nine judges – including the Chief Justice – shall suffice to constitute the Court. In cases where a fewer number of Justices sit, the quorum shall remain proportional thereto.

Article 9

Shall there be several parties in the same interest, they shall be reckoned as one party only and shall be represented by the Member State or appropriate agent listed on the Docket of the Court. Final decisions on this matter shall be settled by the Chief Justice.

Article 10

Only states or entities specifically enumerated in the Statute of the International Court of Justice may be parties in cases before the Court. Final decisions in this regard will rest with the Chief Justice.

Article 11

The Court, subject to and in conformity with its Rules, may request of public international organizations information relevant to cases before it, and shall receive such information presented by such organizations on their own initiative.

Article 12

In the event of a dispute as to the Court's jurisdiction, the matter shall be settled by a majority decision of the Court.

Article 13

Section 13.01 The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:

- (a) International conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
- (b) International custom and Customary Law, as evidence of a general practice accepted as law;
- (c) The general principles of law recognized by the United Nations;
- (d) Judicial decisions and the teachings of the most highly qualified publicists of the various members of the United Nations, as subsidiary means for the determination of rules of law.

Section 13.02 The validity of all sources of law and evidence presented before the Court shall be determined by the Court.

Section 13.03 This provision shall not prejudice the power of the Court to decide a case *ex aequo et bono* (according to the commonly accepted standards of what constitutes appropriate behavior), if the parties agree thereto.

Article 14

The Court shall have the power to indicate, if it determines that circumstances so require, any provisional measures which ought to be taken to preserve the respective rights of either party. Pending the final decision, notice of the measures suggested shall forthwith be given to the relevant parties.

Article 15

Section 15.01 The parties involved in any matter before the Court shall be represented by Agents whose credentials shall be examined and verified by the Court upon initial submission of an Application instituting proceedings before the Court.

Section 15.02 The Agents shall serve as Advocates for their respective case before the Court.

Article 16

Section 16.01 The procedure of the Court shall consist of two parts: written and oral.

Section 16.02 The written portion shall consist of the communication to the Court of Memorials, Counter-Memorials and, if necessary, Replies and Rejoinders. All evidence and sources of law cited by Advocates will also be included with these documents, and shall be subject to the full scrutiny of the Court.

- (a) The Court may authorize or direct that there shall be a Reply by the applicant and a Rejoinder by the respondent if the parties are so agreed, or if the Court decides of its own volition or at the request of one of the parties, that these pleadings are necessary.
- (b) A Memorial shall contain:

- 1) A statement of the relevant facts; and
- 2) A statement of relevant law.
- (c) A Counter-Memorial shall contain:
 - 1) An admission or denial of the facts stated in the Memorial;
 - 2) Any additional facts, if necessary;
 - 3) Observations concerning the statement of relevant law in the Memorial; and
 - 4) A statement of law in answer thereto.
- (d) The Reply and Rejoinder, whenever authorized by the Court, shall not merely repeat the parties' contentions, but shall be directed to bringing out the issues that still divide them.
- (e) Every pleading shall set out the party's submissions at the relevant stage of the case, distinctly from the arguments presented, or shall confirm the submissions previously made.
- (f) There shall be annexed to every pleading copies of any relevant documents cited in support of the contentions in the pleading.
- (g) A list of all documents annexed to a pleading shall be furnished at the time the pleading is filed.
- (h) These communications shall be made through the Chief Justice, in the order and within the time fixed by therein.
- (i) A copy of every document produced by one party shall be communicated to the other party.
- (j) After the closure of the written proceedings, no further documents may be submitted to the Court by either party except with the consent of both parties or upon request of the Court.
- (k) If a new document is produced under Section 16.02(j), the other party shall have an opportunity of commenting upon it and of submitting documents in support of its comments.

Section 16.03 The Court's Docket shall be determined by the Chief Justice, and should correspond to the order in which the Court receives the Memorials.

Section 16.04 The oral proceedings shall consist of the hearing by the court of Advocates and witnesses, experts, or other parties at the request of the Court and upon approval by the Chief Justice.

- (a) The Applicant shall present its case first, and shall be allotted twenty minutes to do so.
- (b) The Respondent may question the Applicant for a period of fifteen minutes.
- (c) The Court shall question the Applicant on the merits of its case for fifteen minutes.
- (d) The Respondent shall then present its case and respond to the questions of the Applicant and the Court in the same manner and within the same time allotments as the Applicant.
- (e) The Respondent, followed by the Applicant, shall make closing remarks not to exceed five minutes.
- (f) Should the Respondent find the Applicant's closing remark grossly offensive or inaccurate, it may rise to a Right of Reply, which may be granted at the discretion of the Chief Justice and shall not exceed one minute.
- (g) The time restrictions imposed by Section 16.04 may be extended at any time at the discretion of the Court and final authorization by the Chief Justice.
- (h) No reference may be made during the oral proceedings to the contents of any document which has not been produced in accordance with Section 16.02, unless this document is part of a publication readily available to all parties at the time the reference is made, or if the document is part of accepted public knowledge.
 - 1) The determination of whether a document or piece of evidence is part of "accepted public knowledge" is at the discretion of the Chief Justice.
- (i) Without prejudice to the provisions of the Statute concerning the production of documents, each party shall communicate to the Chief Justice, in sufficient time before the opening of the oral proceedings, information regarding any evidence which it intends to produce or which it intends to request the Court to obtain.
- (j) The Court may, if necessary, arrange for the attendance of a witness or expert to give evidence in the proceedings. These witnesses will be evaluated by the Justices upon the approval of the Chief Justice to ensure that their testimony before the Court is germane and accurate.
 - 1) Every witness shall make the following declaration before giving any evidence:
"I solemnly declare upon my honor and conscience that I will speak the truth, the whole truth, and nothing but the truth";
 - 2) Every expert shall make the following declaration before giving any evidence:
"I solemnly declare upon my honor and conscience that I will speak the truth, the whole truth, and nothing but the truth and that my statement will be in accordance with my sincere belief."

Section 16.05 The hearing shall be presided over by the Chief Justice of the Court.

Section 16.06 The hearing in Court shall be open to the public upon acquisition of appropriate credentials. This is not meant in any way, however, to construe a right of open access to deliberations of the Court.

(a) All parties executing or observing the functions of the Court must display official credentials issued by the Secretariat of the United Nations or the Court at all times. Entry may be denied to any party not displaying proper credentials or upon notice from the Chief Justice.

(b) At the discretion of the Court or Chief Justice, members of the press may be temporarily or permanently dismissed from any hearing.

Section 16.07 The Court may, at any time, call upon the Advocates to produce any document or to supply any explanations. Formal note shall be taken of any refusal.

Section 16.08 During the hearing, any relevant questions are to be put to the witnesses and experts under the conditions laid down in Section 16.04.

Section 16.09 When, subject to the control of the Court, the parties have completed their presentation of the case, the Chief Justice shall declare the hearing closed. The Court shall withdraw into private deliberations upon completion of the hearing.

(a) The Chief Justice and Justices not otherwise barred from the proceedings subject to the Statute will participate in deliberations.

(b) The deliberations of the Court shall take place in private and remain secret until they are authorized to be released by the Chief Justice.

(c) No representative of the states party to the case being deliberated may observe any part of the deliberations for any reason.

(d) No representative of the press may observe the deliberations.

(e) Individuals wishing to gain access to the deliberations of the Court must submit a written request. Only upon the acceptance of that request by the Chief Justice will credentials for access to the Court be granted. Credentials are revoked upon departure from the Court. All individuals wishing further access must resubmit their request in order to gain access.

(f) All parties executing or observing the deliberations of the Court must display official credentials issued by the Court at all times. All parties receiving credentials have, in displaying credentials, accepted the rules of the Court and are therefore bound to them. This particularly applies to Section 16.09(b). Access to the Court shall be denied to any party not displaying proper credentials.

(g) When the deliberations of the Court result in a draft judgment with apparent support of several Justices, the Chief Justice shall call a formal vote.

(h) Justices will vote by indicating their favor or opposition in writing to the Chief Justice.

(i) If the draft judgment receives a majority of the votes, the Chief Justice will assign a Justice to write the judgment. The Chief Justice will also assign Justices to write the dissenting opinions as necessary. The Chief Justice may also authorize concurring or per curiam (by the Court) opinions as the Chief Justice feels necessary.

(j) If the draft Judgment fails to receive a majority of the votes, the Chief Justice will instruct the Justices to continue deliberations.

(k) Each judgment and dissenting opinion shall state and explain the reasons on which it is based.

(l) Each judgment or other opinion shall contain an abstract of 200 words or more, and the abstract shall not exceed one page.

(m) Judgments shall be submitted to the Chief Justice for review and processing.

(n) Justices shall not reveal the nature of their judgment votes. Such information will be revealed at the reading of the Court's judgments and dissenting opinions when specifically authorized by the Chief Justice.

(o) Deliberations may be extended by a majority vote of the Justices at the discretion of the Chief Justice.

(p) All opinions, decisions, deliberations, and documents generated by the Court during deliberations shall remain secret until specifically authorized to be publicized by the Chief Justice.

Article 17

The Chief Justice or the Court, at his or her discretion, may declare any person in breach of any of the Statute and Rules to be in contempt of Court. If the person in contempt is a Justice, the Chief Justice may remove their speaking privileges for a period of time determined by the Chief Justice. If the person is an observer, the Chief Justice may remove that person from the Court indefinitely.

Article 18

Whenever one of the parties does not appear before the Court, or fails to defend its case, the other party may call upon the Court to decide in favor of its claim. The Court must, before doing so, satisfy itself, not only that it has jurisdiction, but also that the claim is well founded in fact and law. The Chief Justice may determine whether those requirements are met, and either reschedule the proceedings or remove the case from the Court docket.

Article 19

The judgment of the Court shall be binding on any state that agrees to be bound by the decision of the Court during the Application process. All other decisions of the Court shall be considered Advisory Opinions.

Article 20

The judgment of the Court is final and without appeal. In the event of a dispute as to the meaning or scope of the judgment, the Court shall provide written explanation upon request of any party.

Article 21

Section 21.01 Should a state consider that it has an interest of a legal nature which may be affected by the decision in the case, it may submit a request to the Court to be permitted to make a presentation before the Court explaining what stake it may have in the case. The Court, and ultimately, the Chief Justice, will make the final determination on this matter.

Section 21.02 Whenever the construction of a convention to which states other than those concerned in the case are parties is in question, the Chief Justice shall notify all states forthwith. Every state so notified has the right to intervene in the proceedings. If the state uses this right, the construction given by the judgment will be equally binding upon the state.

Article 22

Section 22.01 Advisory opinions may be requested by certain authorized bodies of the United Nations as specifically enumerated in the Statute of the International Court of Justice.

Section 22.02 Questions upon which the advisory opinion of the Court is asked shall be laid before the Court by means of a written request containing an exact statement of the question upon which an opinion is required, and accompanied by all documents likely to impact the question at hand.

Section 22.03 The Court shall deliver its advisory opinions in the same manner as binding judgments, upon authorization by the Chief Justice. Such opinions shall remain secret, including their deliberations, until specifically authorized by the Chief Justice.

Section 22.04 In the exercise of its advisory functions, the Court shall further be guided by the provisions of the present Statute which apply in contentious cases to the extent to which it recognizes them to be applicable.

Article 23

If at any time a party to a case feels that these rules have been violated, any member of the Court or Advocate to the Court may submit a written or oral objection. The objection shall be ruled upon by the Chief Justice whose decision on the matter shall be final.

Article 25

The rules herein will supersede all conflicting rules within the Rules of Procedure for SRMUN. Where there is no conflict in these rules, the aforementioned document will be applicable to the function of the Court. All final decisions in this regard, including, but not limited to, interpretations of said rules and documents as to how they may or may not pertain to the Court, shall be made by the Chief Justice.

Article 26

The working language of the Court shall be English. Any party involved with the Court proceedings not wishing to use English must provide a complete, simultaneous translation to English of all oral and/or written statements they may wish to bring before the Court. Refusal to provide translation will result in the record being stricken of any non-English statements made by any party, and may result in the party being charged with contempt of Court.

Glossary of ICJ Terms

Advisory Opinion – Case before the Court in which the Court may issue an Opinion, but it will not be binding. This type of Opinion can be requested by an organ of the United Nations or select sub-bodies of the United Nations.

Advocate – Official agent of state or other entity with business before the Court.

Amendment – Formal document changing a portion of a current document before the Court.

Applicant – Party that initiates proceedings in the Court – known in American law as “prosecution”.

Contentious Case – Case before the Court where both sides have agreed to abide by the ruling of the Court. In other words, decisions reached in contentious cases are binding on all parties to the case. Enforcement of these decisions is dependent on the Security Council.

Counter Memorial – Respondent's evaluation of case law, issue before Court, and its position on the case and possible action the Court could take.

Justice – Legal expert on the International Court of Justice appointed to judge and rule upon cases before the ICJ based on sound legal knowledge.

Memorial – Applicant's evaluation of case law, issue before Court, and its position on the case and action the Applicant wishes the Court to take against the Respondent.

Rejoinder – Respondent's response to the formal Reply of the Applicant. Document should respond to fallacies of case law in Reply and issues in dispute with Reply

Reply – Applicant's response to the Counter-Memorial of the Respondent. Reply should cite improper interpretation of case law in Counter-Memorial and general issues in dispute with Counter-Memorial.

Respondent – Party that responds to initial proceedings – known in American law as “defense”.

Operational Technicalities

Time line for Court proceedings:

- 20 minute presentation by Applicant
- 15 minute cross-examination by Respondent
- 15 minute questioning of the Applicant by Justices
- 20 minute presentation by Respondent
- 15 minute cross-examination by the Applicant
- 15 minute questioning of the Respondent by Justices
- 5 minute closing remarks by Respondent
- 5 minute closing remarks by Applicant
- Advocates excused followed by 60 minute deliberation period from Justices

Motions in the Court:

- Motions in the ICJ are handled differently than in other committees. While the Chief Justice is the final authority on the validity of any motion within the Court, the following are some common motions that are generally acceptable in the ICJ:
 - Motion to extend questioning or deliberations: This motion would be acceptable if a Justice believes that more time is needed for questioning an Advocate or for closed deliberations. To pass, this motion requires a majority of the Justices and approval of the Chief Justice. Advocates may not make this motion.
 - Motion to end questioning or deliberations: This motion shall be valid if a Justice believes that adequate time has passed during the questioning or deliberation process, and that the respective period should be ended early. This motion requires a majority of the Justices and approval of the Chief Justice. Advocates may not make

- this motion.
- Objections should be made in a respectful manner, and they should be used minimally to avoid disruption in the Court
 - The Chief Justice reserves the right to rule on the merits of any objections.
 - Objections should be made on law or procedure, and not simply on whether or not the Advocate or Justice agrees or disagrees with a statement.

Sample Memorial and Counter-Memorial

Please note that all of the text below is directly quoted from the original text of the Memorial and Counter-Memorials for the relevant cases from the International Court of Justice website. These are ideal examples of the general framework that all Memorials and Counter-Memorials should be based on. However, when creating your own Memorial and Counter-Memorial, it is of course inappropriate for you to use official documents as your own work.

SRMUN CHARLOTTE 2014

INTERNATIONAL COURT OF JUSTICE

Memorial

INSTITUTING PROCEEDINGS

filed in the Registry of the Court

on 16 January 2008

MARITIME DISPUTE

(PERU v. CHILE)

2009 General List No. 1

I. APPLICATION INSTITUTING PROCEEDINGS

16 January 2008.

To the Registrar, International Court of Justice.

I, the undersigned, duly authorized by the Government of the Republic of Peru, of which I am the Agent, have the honour to submit to the International Court of Justice, in accordance with Articles 36 (1) and 40 (1) of its Statute and Article 38 of its Rules, an application instituting proceedings brought by the Republic of Peru against the Republic of Chile in the following case.

I. Subject of the Dispute

1. The dispute between Peru and Chile concerns the delimitation of the boundary between the maritime zones of the two States in the Pacific Ocean, beginning at a point on the coast called Concordia according to the Treaty of 3 June 1929. The dispute between Peru and Chile also involves the recognition in favour of Peru of a large maritime zone lying within 200 nautical miles of Peru's coast, and thus appertaining to Peru, but which Chile considers to be part of the high seas.

II. The Facts

2. The maritime zones between Chile and Peru have never been delimited by agreement or otherwise. Peru, accordingly, maintains that the delimitation is to be determined by the Court in accordance with customary international law.
3. However, Chile contends that both States have agreed on a maritime delimitation starting at the coast and then proceeding along a parallel of latitude. Moreover, Chile has refused to recognize Peru's sovereign rights in a maritime area situated within the limit of 200 nautical miles from its coast (and outside Chile's exclusive economic zone or continental shelf).
4. Since the 1980s, Peru has consistently endeavoured to negotiate the various issues in dispute, but it has constantly met a refusal from Chile to enter into negotiations (see e.g., Annex 1). By a Note of 10 September 2004 of its Minister for Foreign Affairs (Annex 2), Chile firmly closed the door on negotiations.

III. The Jurisdiction of the Court

5. The jurisdiction of the Court in this case is based on Article XXXI of the American Treaty on Pacific Settlement (Pact of Bogotá) of 30 April 1948 (Annex 3). This provision reads as follows :
“ In conformity with Article 36, paragraph 2, of the Statute of the International Court of Justice, the High Contracting Parties declare that they recognize, in relation to any other American State, the jurisdiction of the Court as compulsory *ipso facto*, without the necessity of any special agreement so long as the present Treaty is in force, in all disputes of a juridical nature that arise among them concerning :
(a) the interpretation of a treaty ;
(b) any question of international law ;
(c) the existence of any fact which, if established, would constitute the breach of an international obligation ;
(d) the nature or extent of the reparation to be made for the breach of an international obligation. ”
6. Both Peru and Chile are Parties to the Pact of Bogotá. No reservation in force at the present date has been made by either Party under the Pact.

IV. The Legal Grounds upon Which Peru's Claims Are Based

7. The principles and rules of customary international law governing maritime delimitation, as reflected in the relevant provisions of the 1982 United Nations Convention on the Law of the Sea (“ UNCLOS ”) and developed by the jurisprudence of the International Court of Justice and other tribunals, constitute the main sources of law applicable to the present dispute.
8. The fundamental guiding principle for the delimitation of the exclusive economic zone and the continental shelf between States with adjacent coasts, as expressed in Articles 74 and 83 of the Convention, is that the delimitation “ shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution ”.
As interpreted by the recent jurisprudence of the Court, this principle is largely

similar to the principle of “ equidistance/special circumstances ” concerning the

delimitation of the territorial sea between States with adjacent coasts, as expressed in Article 15 of the Convention.

9. Under international law, both Peru and Chile are entitled to a maritime domain adjacent to and prolonging their respective land territory to a distance of 200 nautical miles from their baselines. On this basis and due to the geographic configuration of the coast, their entitlements overlap. As long as no agreement has been reached by the Parties in respect of the delimitation of their respective maritime zones and in the absence of special circumstances of such a nature as to put into question the equidistance line, such equidistance line achieves an equitable result. The maritime boundary between the Parties should be determined accordingly.
10. In contrast, a dividing line along a parallel starting from the coast, advocated by Chile, does not meet the fundamental requirement of achieving an equitable result, nor does it stem from any agreement between the Parties.
11. The delimitation should begin at a point on the coast called Concordia, the terminal point of the land boundary established pursuant to the Treaty and Complementary Protocol to settle the issue of Tacna and Arica — Treaty of Lima — of 3 June 1929 (Annex 4), the co-ordinates of which are 18° 21' 08" S and 70° 22' 39" W (see Annex 5) and extends to a distance of 200 nautical miles from the baselines established by the Parties. This is in conformity with Article 54, paragraph 2, of the Peruvian Constitution of 1993 (Annex 6), the Peruvian Law No. 28621 on the Maritime Domain Baselines of 3 November 2005 (Annex 5), the Peruvian Supreme Decree No. 047-2007-RE of 11 August 2007 (Annex 7) and Article 596 of the Chilean Civil Code as amended by Law No. 18.565 of 23 October 1986 (Annex 8) which all concur in fixing the outer limit of their respective maritime entitlements up to a distance of 200 nautical miles measured from the baselines.
12. Under well-established principles and rules of international law, Peru is also entitled to the maritime areas lying within 200 nautical miles of its baselines and beyond 200 nautical miles from Chile's baselines, and Chile's contentions to the contrary are devoid of merit.

V. Decision Requested

13. Peru requests the Court to determine the course of the boundary between the maritime zones of the two States in accordance with international law, as indicated in Section IV above, and to adjudge and declare that Peru possesses exclusive sovereign rights in the maritime area situated within the limit of 200 nautical miles from its coast but outside Chile's exclusive economic zone or continental shelf.
14. The Government of Peru, further, reserves its right to supplement, amend or modify the present Application in the course of the proceedings.
15. For the purposes of Article 31 (3) of the Statute and Article 35 (1) of the Rules of the Court the Government of Peru declares its intention of exercising the right to designate a Judge *ad hoc*.

All communications relating to this case should be sent to the Embassy of the Republic of Peru in the Netherlands, Nassauplein 4, 2585 EA The Hague, the Netherlands.

Respectfully submitted,
(Signed) Allan Wagner,
Agent of the Government of the Republic of Peru.

SRMUN CHARLOTTE 2014

INTERNATIONAL COURT OF JUSTICE

COUNTER MEMORIAL

filed in the Registry of the Court

on 28 September 2009

(Malaysia/Singapore)

2009 General List No. 1

I. Comment on Facts Stated in the Memorial of the Republic of Malaysia

1. Malaysia's claim to Pedra Branca is based on an alleged "original title" held by the Johor-Riau-Lingga Sultanate (called the "Sultanate of Johor" in

Malaysia's Memorial) before 1824, which was subsequently transmitted to Malaysia through an elaborate chain of "succession".

2. According to Malaysia, this alleged chain of "succession" proceeded as follows:

(a) the 1824 Anglo-Dutch Treaty split the region into British and Dutch spheres of influence and resulted in the division of the Johor-Riau-Lingga Sultanate into two successor entities – one north of the Strait of Singapore, the other south of the Strait of Singapore;

(b) after the split, Pedra Branca became a territory of the northern successor entity (i.e., the State of Johor);

(c) when the State of Johor joined the Malayan Union in 1946, Pedra Branca became part of the territory of the Malayan Union;

(d) when the Malayan Union was replaced by the Federation of Malaya in 1948, Pedra Branca became part of the territory of the Federation of Malaya;

(e) when the Federation of Malaya was reconstituted as the Federation of Malaysia in 1963, Pedra Branca became part of Malaysia.

II. Additional Facts

1. In contrast, Singapore's case is based on well-documented and uncontroverted acts of lawful possession undertaken by Great Britain, Singapore's predecessor in title. Lawful possession of Pedra Branca was taken

by agents of the British Crown during the years 1847-1851 for the purpose of constructing a lighthouse. Possession was taken openly without seeking the permission of any Malay chief or any other power in the region, and without protest from any of them.

2. Britain's (and Singapore's) title over Pedra Branca was time and again recognised and acknowledged by Malaysia and her predecessor, the State of Johor. Such recognition included:

(a) Malaysia seeking permission from Singapore for her officials to conduct activities around Pedra Branca;

(b) Malaysia requiring Singapore to cease flying the Singapore Marine Ensign on the lighthouse on Pulau Pisang (which belongs to Malaysia), but at the same time making no such requests with respect to Horsburgh Lighthouse on Pedra Branca; and

(c) publishing a series of official maps from 1962-1975 which attributed Pedra Branca to Singapore.

3. Not only did Malaysia and her predecessor, the State of Johor, consistently recognise and acknowledge Singapore's title, in 1953, the State of Johor expressly, unconditionally and unequivocally disclaimed title to Pedra Branca.

III. Observations Concerning the Statement of Relevant Law in the Memorial of the Republic of Malaysia

1. In her Memorial, Malaysia has sought to deny Singapore's title by arguing that:

(a) under the Crawford Treaty of 1824 only the island of Singapore and all the islands within 10 geographical miles⁷ from its coasts were ceded to the British,⁸ and Pedra Branca is located outside this zone;

(b) under international law, the mere construction and operation of a lighthouse does not confer sovereignty upon the lighthouse operator: *a fortiori*, when the lighthouse, as in the case of Pedra Branca, was built and operated with the permission of the territorial sovereign;

2. Malaysia's arguments run contrary to the evidence: the Crawford Treaty of 1824 is irrelevant. It does not circumscribe British competence in acquiring other territories in the region. Singapore's claim is not based on this Treaty but on Britain's lawful taking of the island in 1847;

(b) British officials did not seek permission from any local rulers for their activities on Pedra Branca;

(c) contrary to Malaysia's contention, this Court has recognised that the construction of navigational aids "can be legally relevant in the case of very small islands".¹³ In any event, Singapore's activities on the island are not confined to the operation of the lighthouse,

but include a vast range of other acts of State authority, including legislative, administrative and quasi-judicial acts, performed over a period of 150 years on the island and in the waters around it;

IV. Statement of Relevant Law:

1. The present section demonstrates that when the British took possession

of Pedra Branca in 1847, Johor had no prior title to the island, whether assessed under classical principles of international law or under regional custom of allegiance:

2. While the law applicable to the British acquisition of Pedra Branca in 1847 was clearly the law of the nations as adopted by the European powers,

there is less certainty concerning the applicable law by which Malaysia's claim to an "original title" should be evaluated. This is because of Malaysia's complete failure to explain the legal basis of her alleged "original title" and also because Malaysia has not made clear how and when this alleged "original title" arose, apart from some vague hints in her Memorial that her alleged "original title" dates from the 16th century.

3. Malaysia's avoidance of this critical issue has made it necessary for Singapore to discuss both the regional custom of allegiance and classical principles of international law. Whether examined under the local context of allegiance or under classical international law, the evidence clearly establishes that, immediately before the British took possession of Pedra Branca in 1847, there was an absence of title on the part of Johor.

V. Conclusion

Accordingly, on the basis of the facts and arguments set forth in this Counter-Memorial, and without prejudice to the right further to amend and supplement these submissions in the future, the Republic of Singapore asks the Court to adjudge and declare that:

1. For the reasons set out in this Counter-Memorial and in Singapore's Memorial, the Republic of Singapore requests the Court to adjudge and declare that:
 - (a) the Republic of Singapore has sovereignty over Pedra Branca / Pulau Batu Puteh;
 - (b) the Republic of Singapore has sovereignty over Middle Rocks; and
 - (c) the Republic of Singapore has sovereignty over South Ledge.

The Republic of Singapore has designated the undersigned as its Agents for the purposes of these proceedings. All communications relating to this case should be directed to this Agent.

Respectfully submitted,

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Prof. Tommy Koh