

INTERNATIONAL LAW MOOT COURT COMPETITIONS: RESEARCH METHOD AND TOOLS

what, how and where

1. What is International Law?

Broadly defined, it is the body of legal rules, norms, and standards that apply between sovereign states and other entities that are legally recognized as international actors such as United Nations, WTO etc.

2. In what ways is International Law (IL) different from Municipal Law (ML)?

There are two fundamental differences between the two which lead to many others. These are:

- **Field of Operation:** ML governs a society of individuals with a common law making body, uniformly applicable and binding laws, common judiciary and law enforcement agency. IL governs the functioning of an international society comprised of independent and sovereign states, WITHOUT a governance system akin to a state.
- **Entities/Subjects:** The primary subjects (players) in IL are states whereas individuals are the primary subjects in municipal law.

The most important fact to be borne in mind is the difference in the interests of the subjects of IL and municipal Law. States have economic and security interests which are sought to be protected through treaties, conventions and agreements. These instruments are essentially contracts whose formation heavily depends on international politics and diplomacy. On the other hand, an individual's concerns are significantly narrower and mostly common with other individuals in a society. A government seeks to protect these interests through laws enacted by a democratic and parliamentary process wherein politics has a lesser role to play.

These differences in the formation of IL and ML lead to differences in interpretation, adjudication and enforcement.

3. In what ways is International Law dispute resolution (and mooting) different from Municipal Law adjudication (mooting)?

The differences between IL and ML significantly impact their respective dispute resolution too, most notably in the following respects:

- **Parties Involved**

An IL dispute is a State v. State dispute which lends it a different character from an individual v. individual or individual v. Government dispute.

- **Interests at Stake**

The interests at stake in an international dispute are different and generally much more significant than they are in a national dispute. States are related to each other at different levels: political, cultural, economic and military. For instance, two states having a border dispute may also enjoy strong economic ties. Hence this border dispute cannot be approached in a way so as to negatively impact their trade relations and consequently their economies to an extent. Therefore the basic approach

Further, there are incomparably fewer states than individuals on earth. Hence the outcome a municipal case is not as significant as that of an international case. This influences the nature and content of oral and written submissions as explained below.

- **Facts leading to the dispute (Problem/Compromis)**

An IL dispute is based on a **Compromis** which is a statement of facts mutually agreed to between the parties whereas a national dispute is based on facts decided by the judge as true. A Compromis is defined as "a formal document, executed in common by nations submitting a dispute to arbitration, that defines the matter at issue, the rules of procedure and the powers of the arbitral tribunal, and the principles for determining the award." [Origin: 1590–1600]

Unlike a national moot, the facts stated in a Compromis cannot be tempered with to suit one's submissions. The **Compromis** commands mutual respect of the parties as it is a mutually agreed and signed document.

- **Written Submissions**

States are sovereign entities and are consequently not submissive in their arguments unlike an individual is in a court of law. Remember, they are respectful to the Court and the judges, not submissive. Hence phrases such as “it is humbly submitted”, “it is humbly averred”, “it is asseverated”, “it is respectfully submitted” and the like are not used in the memorial. At best, one can state “**it is submitted**” at the beginning of the principal submission but not at the start of every paragraph or sentence.

- **Oral Submissions**

- **Forms of Address:**

- Agent: The principal counsel for a state is called an “Agent of State”
- Your Excellency (plural Excellencies): A judge of the international court of justice or any other court constituted by the United Nations. Please note that judges of non-UN courts are addressed differently, such as The Honourable Judge, Your Honour etc.¹

- **Role of an Agent:** An Agent’s role is to assist the judge by submitting arguments on behalf of the state it is representing. Hence the Agent use phrases mostly in the second person such as “the State of X believes, submits, requests etc”, when making submissions.

- **Nature of the Moot: A Formal Discussion NOT Argumentation:** This is one of the fundamental aspect of international law dispute resolution often ignored by Indian participants. The role of an Agent is make submissions to the court which will help the court in arriving at a mutually agreeable and equitable outcome. An Agent of State doesn’t FIGHT a case; a lawyer in a domestic court fights a case to win it, irrespective of its impact on relations between the parties. Hence the entire style of speaking changes. In response to the judges’ questions, an Agent explains his state’s position, the position of law and facts in its opinion and discusses it with the judge. He doesn’t ARGUE with the judge at any time during the proceedings.

- **Responding to questions:** You need to remember all times that a judge asks you certain questions to know the correct position of law, facts etc. He doesn’t question YOU. Hence you should not take things personally and become aggressive, go over the top to prove a point. All the judge to complete his question, think and respond with cool and composed head.

- **Approach and demeanour:** As in the written submissions, the Agents are only respectful to the court not submissive. States exist beyond the dispute at hand hence the Agent needs to be mindful of his language and demeanour and ensure respect to his counterpart from the other state at all times.

- **Pace of Speaking:** Indians are by nature fast and argumentative speakers. This can prove disastrous in international moots. Judges from foreign judges and those from non-English jurisdictions take time to get used to the Indian accent. Hence you need to speak at a significantly lower pace to allow the judge to fully comprehend you.

4. Steps involved in international law moot research?

Stage I. Understanding the Basics of International law:

- The nature and theory of international law
- Sources of International law
- Subjects of international law
- Formation of international law
- Difference between International Law and Municipal Law

¹ Only heads of states and top diplomats of the UN are addressed as Your Excellency. Article 19 of the ICJ Statute in provides for diplomatic protection to the member of the court when the court is conducting its business. This diplomatic protection extends to addressing the judges of ICJ as Your Excellency.

- Role of International politics and diplomacy in international law

Sources:

- **Janis**, *An Introduction to International Law*
- **Starke**, Introduction to International Law
- **DJ Harris**, Case and Materials on International Law

Stage II: Understanding the Compromis

- Identifying the broad areas of law involved (such as Human Rights Law, Humanitarian Law, international Environmental Law, Space Law etc)
- Understanding the basics of the areas involved

Sources:

- **Brownlie**, *Principles of Public International Law*
- **Cassese**, *International Law*
- **Shaw**, *International Law*
- **Oppenheim**, International Law

Stage III: Issue Specific research

With a good background of “what is international law and how it works” coupled with the nature of the dispute in hand, the research proceeds to the issues involved in the resolution of the dispute. International law issues are mostly breakable into sub-issues which further helps in streamlining the research. Sub-issues become clearer with the progress in research.

This stage forms 70-75% of the moot preparation and calls for the following:

- Identification of facts critical to the dispute
- Understanding the law in a manner applicable to the facts of the case
- Analogising with case(s)/real life situation(s) factually and/or legally similar to the present one
- Distinguishing apparently similar case(s) with the one in hand

This will require you to resort to the sources of international law which are discussed below.

5. What are the sources of international law?

Broadly, the following are recognised as sources of international law²:

- **Treaties, conventions and similar instruments:** Agreements between States
- **Customary International Law:** state practice and *opinion juris*
- **General Principles of law recognized by civilised nations:** Fundamental principles of municipal laws such as equity, estoppel etc.
- **Judicial Decisions:** Decisions of the International Court of Justice and other international tribunals
- **Writings** of most highly qualified publicists: These include Ian Brownlie, Oppenheim, Lauterpacht, Akhurst, Malcom Shaw etc.

6. What are the resources for various sources of international law?

A. Treaties

- Treaties deposited with the UN Secretary General: <http://untreaty.un.org/English/treaty.asp>
- ISIL Handbook United Nations Treaty Series
- West Law or Google Search

² Article 38(1)(a) of the Statute of the International Court of Justice

B. Customary International Law

- Text Books and Commentaries
- Year Book of Various States (such as the British Yearbook of International Law)
- Digest of United States Practice in International Law
- Yearbook of International Organizations
- International Law Reports
- Legislations of Foreign Countries
- Decisions of Domestic Courts
- General Assembly Resolutions
- Official Records of Countries on formal Issues such as press releases, diplomatic exchange etc.

C. Judicial Decisions

- West Law, Lexisnexis and Goggle
- Websites of the concerned court, such as:
 - International court of Justice:
<http://www.icj-cij.org/homepage/index.php?lang=en>
 - European Court of Human Rights:
<http://www.echr.coe.int/ECHR/EN/Header/Case-aw/HUDOC/HUDOC+database/>
 - Inter-American Court of Human Rights:
<http://www.oas.org/oaspage/humanrights.htm>
 - International Criminal Court: <http://www.icc-cpi.int/home.html&l=en>

D. Writings of Jurists

Text Books and law journals available in the library as well as research databases such as Westlaw, Lexisnexis etc. At times its better to first Google a topic for articles, take the citation and get the full text from Westlaw or Lexisnexis. This is because google search tends to be more exhaustive and efficiency.

7. General Resources of International Law

NLIU Library

- Text Books in the International Law section
- Cases reported in the International Law Reports
- Cases and Articles on Research Databases such as [LexisNexis](#) and [Westlaw](#)

Online Sources

- *Research Portals*
 - Electronic System for International Law: <http://www.eisil.org/>
 - American Society of International Law Guide to Electronic Resources for International Law :
<http://www.asil.org/resource/home.htm>

Others

- Library of the [Indian Society of International Law](#)

8. Preparing the Memorials

The hallmarks of a well drafted, legally sound and convincing memorial are:

- Free flowing sentences

- Use of simple legal language (*not simplistic*)
- Submissions in the nature of a legal story
- Closely knit narrative of facts and law without questionable assumptions

Method

- Having the first draft ready of the memorial 4-5 days in advance
- At least 2-3 rounds of proof reading of the various drafts by team mates and 2-3 rounds of review by experienced mooters

Resources

Base Templates

- Best Memorials of the 2008 Philip C. Jessup International Law Moot Court Competition: Home Page: <http://www.ilsa.org/jessup/>
2008 Best Memorials available at:
 - Applicant: <http://www.ilsa.org/jessup/jessup08/applicant.pdf>
 - Respondent: <http://www.ilsa.org/jessup/jessup08/respondent.pdf>
- Best Memorials of the 2008 Willem C. VIS International Commercial Arbitration Moot: Home page: <http://www.cisg.law.pace.edu/cisg/moot/mootlist.html#top>
 - 2008 Best Claimant Memorandum available at: <http://www.cisg.law.pace.edu/cisg/moot/claimant15-1.pdf>
 - 2008 Best Respondent Memorandum available at: <http://www.cisg.law.pace.edu/cisg/moot/respondent15-1.pdf>

9. Preparing Oral Submissions

This section should be read in conjunction with Section 3 on differences between international law mooting and municipal law mooting.

To make proper submission before a court, one needs to understand the following

- Role of an “**Agent of the State**”
- Rules of Conduct And Procedure of the forum (for ICJ see “How the Court Works” at <http://www.icj-cij.org/court/index.php?p1=1&p2=6> and its Rules Of Procedure at <http://www.icj-cij.org/documents/index.php?p1=4&p2=3&p3=0>

Article 60, paragraph 1, of the Rules of Practice of the ICJ provides:

“The oral statements made on behalf of each party shall be as succinct as possible within the limits of what is requisite for the adequate presentation of that party’s contentions at the hearing. Accordingly, they shall be directed to the issues that still divide the parties, and shall not go over the whole ground covered by the pleadings, or merely repeat the facts and arguments these contain.”

- Complete command over the facts with an analysis of material and immaterial facts
- Knowledge of directly applicable, inapplicable as well as general law on the subject
- Respect for the opponent Agent and regard for its concerns in the case

Method

- In order to achieve the above listed objectives, the following is required:
- Minimum of twenty five to thirty practice rounds with team mates and experienced mooters
- Minimum of three to four video recordings of submissions in order to analyse body Language, demeanour and other aspects of one’s delivery.

Sources:

- 2006 Jessup Cup DVD available with the MCA
- Stetson International MCC Video at:
 - Part One : <http://in.youtube.com/watch?v=ELR4cLy56Ww>
 - Part Three: <http://in.youtube.com/watch?v=cAvard82qqM>
 - Part Two: <http://in.youtube.com/watch?v=3JAVkyOrPdQ&feature=related>
 - Part Four <http://in.youtube.com/watch?v=UZJYISTQMko&feature=related>
- Functioning, rules, jurisdiction and general information on the International Court of Justice: <http://www.icj-cij.org/homepage/index.php?p1=0>

10. General

International Moot Competitions with Regularly NLIU Participation

Competition name	Area of Law	Sponsoring Institution	Court Forum
Philip C. Jessup International Law Moot Court Competition http://www.ilsa.org/	International Law	International Law Students Association, Chicago, USA	International Court of Justice
Manfred Lachs Space http://www.spacemoot.org/	Space Law	International Institute of Space Law, Sydney, Australia	International Court of Justice
Willem C. Vis (East) Interantional Commercial Arbitration Moot http://www.cisgmoot.org/	International Commercial Arbitration	Hong Kong International Arbitration Centre, Law Asia, CIETAC	Arbitral Tribunal
Willem C. Vis Interantional Commercial Arbitration Moot http://www.cisg.law.pace.edu/vis.html	International Commercial Arbitration	Pace Law School Institute of International Commercial Law, Vienna	Arbitral Tribunal
International Environmental Moot Court Competition http://www.law.stetson.edu/environmental/	International Environmental Law	Stetson University, Florida, USA	International Court of Justice
D. M. Harish Memorial Government Law College International Moot Court Competition http://www.glc.edu/mootcourt/index1.htm	International Law	Government Law College, Mumbai, India	International Court of Justice

List and information about these and other International Law Moot Court Competitions around the world can be found at the following web link:

<http://www.ilsa.org/listings/intlmoots.php>
