

IHL MOOTING



Melbourne University

Law Students' Society

Updated: 23 July 2023

Table of Contents

WELCOME	3
WHAT IS MOOTING?	4
APPROACHING THE PROBLEM	5
WRITTEN SUBMISSIONS	7
ORAL PRESENTATION	8
RULES	13

WELCOME

Welcome to the 2023 International Humanitarian Law (IHL) Mooting Competition!

This guidebook is your key point of reference for you and your team as you progress through the IHL Mooting competition. Included in this guidebook is important information on the competition itself, rules and procedures and helpful advice. It is important that you and your team members read through the rules to know what is expected of teams during the competition.

This competition is a fun way to learn skills transferable to both your studies and work, and to engage and apply your legal skills outside of the classroom. If you have any questions, please do not hesitate to contact us through [<ihlmoot@mulss.com>](mailto:ihlmoot@mulss.com).

We hope you make the most of this competition and have fun! Good luck!

Isabella Scarpato and Meriam Terzic
2023 IHL Moot Co-Opts

WHAT IS INTERNATIONAL HUMANITARIAN LAW MOOTING?

International Humanitarian Law Mooting is a moot focused only in one area of law which is international humanitarian law. Other mooting competitions offered by the Melbourne University Law Students' Society encompass multiple areas of law and only centres on domestic law. This competition provides the unique opportunity to moot on significant moral issues at international law and is highly rewarding because of this.

An International Humanitarian Law moot is essentially a mock courtroom scenario showcasing oral and written advocacy skills. Each team is provided a hypothetical factual problem containing relevant legal issues in international humanitarian law. The teams occupy the role of the Prosecution or the Defence, and each team is required to present their legal case to a judge through written and oral submissions. Written submissions are submitted around a day in advance of the moot, and oral submissions are made during the moot.

Teams consist of a Senior and Junior Counsel, and an optional Instructing Solicitor if you want to have three in your team. Senior and Junior Counsel provide the oral submissions to the Court, while the Instructing Solicitor assists in legal research and preparing the written submission. The Instructing Solicitor does not speak during the moot, but may attend to provide support, time keeping, etc. Teams are encouraged to rotate roles each round so each team member obtains experience in each role.

APPROACHING THE PROBLEM

Reading the Problem:

All competitors will receive the moot problem early in the competition. The problem will be the same for each round. However, the problem is long and fairly dense. Accordingly, you should read it carefully, drawing out all of the relevant facts, and refer to it regularly between rounds to improve your arguments.

Researching the Problem:

Strong research skills are essential in moot. Research is important in preparing your written submissions and the drafting of your oral submissions. You should aim to locate the relevant principles of the law including key case authorities and statutes. You should spend most of your time researching and understanding the law as well as how it applies to your case.

We recommend setting up a shared Google Drive with your teammates to ensure all your research and ideas are accessible. The Melbourne University Law Library website includes a number of useful research guides: <http://law.unimelb.edu.au/lawlibrary/research-tools/research-guides>

As a general guide, research should take place in the following order:

- **General research:**
 - Start with commentary online to familiarise yourself with the structure and application of international humanitarian law. The International Committee of the Red Cross offers some useful resources.
 - Once you have a basic understanding of how the law works, begin going through the international humanitarian law cases, treaties, and other documents that are suggested in the Indicative Resource List of the Problem. The International Criminal Tribunal for the former Yugoslavia (ICTY) posts its cases online on its webpage – this is an excellent starting point. While these cases can be very long, you do not

have to read them in full to pull out the useful material. It is enough to refer to the paragraphs which explain and apply the law.

- **Specific research:**

- Once you have gained a basic understanding of the problem, you should start doing more specific research on the legal issues. At this point, you should begin looking into cases beyond the Indicative Resource List. The easiest way to do this is to track down other cases that are cited in the Indicative Resource List's judgments. The strongest moot performances will engage deeply with a breadth of case law rather than relying solely on the provided resources and the available commentary.

WRITTEN SUBMISSIONS

A written submission is a brief and clear summary of all legal arguments, including references to relevant cases and or statutes. The submission is sent to the judge and to opposing team members.

Once you have finished your research and developed your arguments, it is time to start drafting your written submission. It is important to note that the written submission is not just a formality. In past competitions, many competitors make the mistake of focusing less time and effort into the written submission. Your written submissions represent the first and last impression that the judge has of your team. A well-drafted written submission allows the judge to follow your argument before and during your presentation. Remember, many moots can be lost or won with small margins. The written submission can be the deciding factor between winning or losing!

Formatting

Formatting of your written submissions is significant, and teams should:

- Keep the written submission between 2–3 pages long;
- Use a style and font which is easy to read (eg Times New Roman 12 pt.);
- Employ consistent and uniform paragraph numbering;
- Ensure that cases are indented with one case per line;
- Use clear and informative headings and subheadings with the most relevant heading in bold;
- Ensure that your referencing is *AGLC4* compliant; and
- Wherever possible, use pinpoint referencing.

Case citations should be formatted clearly, and in the following order:

- First case: most relevant, highest authority
- Second: most relevant, lower authority
- Followed by: less relevant authority

ORAL PRESENTATION

Structuring Your Presentation

A moot is not a one-way speech read of a piece of paper in front of a judge. Rather than preparing a written speech, it is advisable to have a bullet list of points and an understanding of what points you want to convey. The judge will regularly interrupt your presentation to question you. By having a general outline of your presentation, you will be in a better place to return to your argument following interjections and questions. This will also give you the flexibility to adjust your argument as needed. This is why it is important to research thoroughly and understand the law and how it applies to your case.

Remember, both mooters in your team will be presenting on a different legal point, for **10 minutes each**. With two grounds of appeal, you should *not* both present on those two grounds.

The general structure of your presentation should be as follows:

- **Introduction:**
 - Introduce your argument and sign post what you are going to say. Signal clearly what you are arguing to ensure the judge can follow your reasoning.
 - The Senior Counsel should take the opportunity to briefly summarise the legal issues to be resolved and state which points will be addressed by themselves and which will be addressed by the Junior Counsel.

- **Argument:**
 - Your argument should be based on your written submissions.

- You should signpost each new point in your submission, so the judge can easily follow your argument.
 - Focus on the key points of contention and your strongest arguments. If the judge requires clarification or wants you to expand on a point, they will ask.
 - Remember to keep your presentation clear, concise and easy to follow.
 - Follow basic IRAC structure for each major point.
- **Conclusion:**
 - Reiterate what you have submitted to the judge.
 - If the moot has gone well a conclusion should be close to a mirror image of your introduction, even if the issues were not discussed in the same order.

Presentation Tips

- Be clear and confident: limit 'ums' and 'ahs' and use understated body language. You can use your hands and arms to illustrate a point but refrain from pacing or using your whole body to make an argument. Maintain eye contact with the judge(s) as much as possible. Do not feel the urge to speak quickly, maintain a pace that is easy to listen to (remember you are discussing complex issues so give the judge time to digest your arguments).
- **Cases:** do not refer to cases unless you know the facts and reasoning. Be prepared for the judge to ask you anything about any of the cases to which you refer. But do try and make proper use of authorities.
- **Questions:** questions provide the opportunity to clarify and strengthen your argument. If you are asked a question which takes you off topic, answer and return to your submissions, even if the question is addressed later in your

submission. We recommend taking a few seconds to gather your thoughts before answering. Keep answers short and concise.

- **Formality and politeness:** mooting, like real court appearances, requires you to be formal and polite at all times, regardless of whether you agree with the judge's question/interpretation or not.
- **Time management:** if you notice you are exceeding the time limit of 10 minutes, you may request an extension of time from the judge. This is at the discretion of the judge and may be one to two minutes, or no extension.

Courtroom Etiquette

There are rules of courtroom etiquette, which must be followed.

A. Modes of Address

A judge should be addressed as 'Your Honour' and your team member as 'my learned colleague'. The other team is referred to as 'my learned friends' rather than 'the opposition'.

B. Citations

For the first case you cite, the full citation should be recited. You must then ask the judge, 'if I may dispense with formal citations'. Once the judge allows you to dispense with formal citations, you would then refer to the case simply by its short title, which in most IHL cases will be the name of the defendant.

If the Senior Counsel asks the judge to dispense with formal citations, there is no need for the Junior Counsel to ask to dispense with formal citations again. (Note: Senior Counsel for the Defence, who speaks after submissions from the Prosecution, must also ask the judge to dispense with formal citations.)

C. Formal Language

Wherever possible, colloquialism should be avoided, and formal language used. Respectful terms must be used. When making assertions you should say 'I submit' rather than 'I believe' or 'I think'. As an advocate you are presenting views which may not necessarily be your personal opinions.

When a judge makes a request, e.g., 'can you please tell me the facts of that case', there is no need to reply 'yes' or 'of course'. Simply answer the judge's request and return to your submission.

When a judge asks a question, which implies they disagree with you, you are encouraged to begin your response by saying 'with respect, Your Honour'. This is because you are essentially contradicting the judge and must ensure that you are doing so respectfully. If a judge decides decisively on an issue, indicating they no longer wish to discuss it, do not continue to push the point, move on.

D. Respectful Behaviour

If there is an instructing solicitor present at the moot, they are to sit facing their team members (facing away from the judge). As the advocate you control whether the solicitor is communicating with you, not vice versa. If you would like assistance from your solicitor, ask the judge something to the effect of 'may I consult with my learned colleague for a moment?'. If you are granted permission, you can lean down and quickly, and quietly whisper to address your concern.

Order of the Presentation

1. When the judge enters the courtroom, both teams should be standing. Teams may take their seats when the judge does so. Copies of each team's written submission should be offered to the judge(s).

2. The judge will read the name of the case and ask for appearances. The Senior Counsel for the Prosecution should stand and say 'May it please the Court, my name is [Name] and I appear as Senior Counsel for the Prosecution. My learned colleague, [Name], will appear as Junior Counsel and my learned colleague, [Name] will act as Instructing Solicitor (if present)', before sitting down. The Senior Counsel for the Defence then does the same.
3. The judge will then indicate that participants may begin. Senior Counsel for the Prosecution speaks first, followed by the Junior Counsel for the Prosecution. The Senior Counsel for the Defence speaks next, followed by the Junior Counsel for the Defence.
4. Each speaker has a 10-minute time limit in which to present their argument and respond to questions. Speakers may ask the judge(s) for a one or two-minute extension. However, these are granted at the discretion of the judge(s) and may be denied. Plan to fit your entire speech within the 10-minute timeframe. Remember to account for judge(s)' questions in this 10-minute when preparing your oral submissions.
5. You should end your submission with a formal conclusion. Typically, you would say 'if there are no further questions (pausing to actually allow for said questions) that concludes my submission'.
6. At the conclusion of submissions (both Prosecution and Defence), teams will be asked to leave the courtroom, so the judge(s) can reach a decision and score participants. Teams will then be invited back into the courtroom for feedback and the result.

RULES

1. Problems will be sent to **one** member of each team (the nominated contact of the team) one week prior to the first round of the competition. It is the nominated contact member's responsibility to ensure all members gain access to the problem.

2. All teams are required to submit a copy of their written submissions (for both the defence and the prosecution) to the Moot Officers <ihlmoot@mulss.com> *and* their competitors via email no less than **24 hours prior to their first scheduled moot**.
 - For instance, students competing at 6:30PM on Tuesday will have to submit their written submissions **no later than** 6:30PM on Monday.
 - Alternatively, students competing at 7:30PM on Wednesday will have to submit their written submissions **no later than** 7:30PM on Tuesday. Please put, as the subject title of the email in the format '**[Team Name]** – Written Submissions'. Include, in the email, a copy of your written submissions with your team name as the document title.

You may resubmit an updated copy of your submissions in between rounds. Any updates sent must also be no less than 24 hours prior to the next scheduled moot.

3. Failure submit your team's written submissions on time will incur a penalty as follows:
 - 3.1 Two points will be deducted from the team's written submission score for the *first* half hour or part thereof that the written submission is late; and
 - 3.2 Two further points will be deducted from the team's written submission score for the *second* half hour or part thereof that the written submission is late; and

- 3.3 Two points will be deducted from the team's written submission score for every subsequent hour or part thereof that the written submission is late.
 - 3.4 When presenting the result, the judge should inform both parties of any relevant penalties which have been accounted for in the final scoring.
4. Teams competing in person must arrive 15 minutes prior to the start of their scheduled moot and check-in at the table located outside the LSS Office, Level 2.
5. All teams that are competing online are to be at their virtual Zoom Courts at the time of their scheduled moots, at which the co-opts will check in to greet the participants.
6. All team members are required to wear formal business attire.
7. If a team wishes to swap time slots, it is their responsibility to find another team willing to swap. The schedule for each round will be emailed and posted ahead of time to assist with this. Once confirmed, an email must be sent to the mooting officers <ihlmoot@mulss.com> **at least 48 hours** before the scheduled moot time (whichever time slot is earliest) with the following template attached.
 - Your team name;
 - Current time allocation;
 - Name of the team you are switching with;
 - Time slot you are switching into.

8. Each speaker has 10 minutes of time in which to speak. This time is inclusive of any questions or interjections made by the judge(s). An extension of time may be granted at the discretion of the judge(s).
9. The order of speakers is to be as follows: Senior Counsel for the Prosecution, Junior Counsel for the Prosecution, Senior Counsel for the Defence, Junior Counsel for the Defence.
10. At the conclusion of the moot, all teams will receive oral feedback and the result from the judge(s). Judges will **not** disclose personal scores. All teams will be emailed an electronic copy of their scoresheets accompanied with judge(s) qualitative feedback, without the numerical scores, within five days after the moot.
11. The decision of the judge and the outcome of the round is **final** and *cannot* be appealed. The only exception to this rule is where the appeal relates to the enforcement of penalties relating to late written submissions.
12. Teams are **not allowed** to contact the judge(s) following a moot under any circumstances. All queries should be directed to the Co-Opts <ihlmoot@mulss.com>.
13. Forfeiting is *strongly* discouraged. Teams are reminded that only two team members are required to speak and as such, the unavailability of a third team member does **not** provide valid grounds for forfeiting. If your team chooses to forfeit, you must do so **before** the problem is released by notifying the competition officers at <ihlmoot@mulss.com>. Teams may forfeit after the problem is released **only in exceptional circumstances, having spoken to both the Competition Officers and Directors**. Teams who forfeit without regard for the rules or their opponents may be blacklisted from competing in future competitions.

- 14.** Where one team forfeits, their opponents will be notified. The remaining team is strongly encouraged to prepare and compete in front of the judge(s). This allows you to gain feedback for your own development and receive a score which contributes to seeding and the quality of the competition.
- 15.** Competitors should remain mindful of the formal nature of the Moot Competition at all times. It is expected that all team members behave in a manner appropriate for court.
- 16.** At the discretion of the Moot Officers, failure to comply with these rules may result in a penalty.