

THE MANFRED LACHS SPACE LAW MOOT COURT COMPETITION

GUIDANCE FOR COMPETING TEAMS

The Manfred Lachs Space Law Moot Court competition (“the Competition”) is designed to test participants’ oral and written advocacy skills in the context of international air and outer space law and, more generally, public international law. This guidance document is meant to provide an overview of the competition and an introduction to researching the relevant areas of law.

This guidance is not meant to replace the Rules of the Competition. Each team must read and follow the Rules, including any additional Rules specific to a regional round of the competition. The Rules, as well as other helpful information, can be found at <http://www.iislweb.org/lachsmoot>

Substantive Law Overview

The substantive legal areas covered by the Competition are public international law, outer space law, and, often, air law. Public international law, as a general matter, is the law between nations, which are referred to as “states.” The main sources of public international law are treaties, customary international law, and *jus cogens* norms.

One of the main governing bodies of public international law is the United Nations. The United Nations has an Office on Outer Space Affairs, as well as a Committee on the Peaceful Uses of Outer Space. The United Nations also maintains websites for each of these, which are updated regularly. The websites are <http://www.un.org> (the UN main website), and <http://www.oosa.unvienna.org> (UN Office of Outer Space Affairs). This last site is particularly valuable. It has links to the Committee on the Peaceful Uses of Outer Space, and a link for “Space Law” providing access to all the International space treaties, many national space laws, UNGA Resolutions, as well as many reports and legal studies on various subjects. This site is a gold mine of information.

International air and outer space law are specific types of public international law. Specific treaties and other sources of international law exist with respect to air and outer space law, but general principles of international law also apply. In many instances, individual states (countries) enact domestic laws governing air and outer space law; these are not sources of international law, but they may be relevant to issues raised in the Problem.

The main judicial body in public international law is the International Court of Justice (“ICJ”). The Competition is set up as if the teams were arguing before the ICJ. The teams that advance to the world championship will argue before a panel of the actual ICJ. The ICJ also maintains a website with many of its cases publicly available: <http://www.icj-cij.org>.

The Memorials

The Memorials constitute fifty percent of your final total score. As a result, it makes sense to do the best job you can on the Memorials. The best briefs are those that are thoroughly researched, well-written, and do not violate rules of spelling, grammar, or the Competition.

You may want to set aside more time than you think you need to conduct research, depending on how familiar you are with the substantive areas of law. Keep in mind that the sources may be different than those with which you are accustomed, and that this also may add time to your research. If your library does not have particular sources, properly timed (i.e., early) requests for inter-library loans can get almost any book in publication to a single school's library.

Sources you can and should use include the Journal of Space Law (published by the University of Mississippi), the AIAA Proceedings of the Colloquiums on the Law of Outer Space (these are published every year, and include each year's best briefs); and the Annals of Air & Space Law (published by McGill University). If you do not have these publications available, you should find a library that has them. Part of your research should include the technologies involved. You should have a general understanding of those technologies. The Competition's website also has links to some of these resources, including sample memorials and links to a UN site where you can find treaties and other valuable space law resources.

Where possible, the most effective briefs cite to two or three authoritative commentators agreeing on a point, preferably from more than one country, to provide the Court evidence of the validity of a position. It is very important to cite to ICJ cases on basic international law principals that are relevant. The Judges will want you to know those cases.

Some teams have different people writing the Applicant and the Respondent Memorials. Others have the entire team work on both. Neither system appears to be better than the other – do what works for your team. No matter how you divide the workload, argue the points with each other. If you write a draft, or a draft part, do not be so proud that you defend your words to the death. Putting your argument into words in a written draft concentrates the mind. It also helps discussion of the 'case' you are making for your 'client'. Very few drafts cannot be improved by discussion and argument.

When writing, give yourselves sufficient time to lay the draft aside for a few days, and then re-read it. When you are writing you know what you mean by the words and sentences you use. But to someone else, what seems clear to you may be obscure or ambiguous. By laying it aside for a few days you will be able to read the text with fresh eyes, and will often be able to improve the flow or the language. Sometimes an argument has to be re-shaped to make it more coherent or clearer.

Pay attention to the rules regarding such matters as font size for text and footnotes, page layout, length and similar requirements.

Be consistent in your spelling (including capitalisation) and in your methods of citation. Use a spell-check program if possible. If you do not have one, ask someone else to proof-read your text. Someone who has taken part in the drafting knows what to expect and may not notice spelling errors etc. Sloppiness in language and spelling, including both inconsistencies and errors, does not impress a reader.

It is very important to file the Memorials on time. Penalty points are a killer. You will need to file the Memorials both electronically and in hard copy; specific directions for doing so will be provided to you.

The Oral Argument

The Rules for Oral Argument set out the time limits, and require the time period to be shared between members of the team. Decide who is to speak to which section or sections, and adjust the time to the importance (length?) of the argument to be made in each. Save a little time for rebuttal or surrebuttal.

Be sure to practice! Your coach, members of staff, or other students can help by acting as judges when you are practicing. They should try to interrupt your flow by asking questions. You must know your material well enough to cope with interruptions and then resume your argument.

Prepare two versions of your oral argument: one that presents the arguments at length and one just summing up the claims you're going to make. The latter is for those occasions when judges ask so many questions that your time is largely eaten up. Use a written text if you have to. If you can, speaking from notes is better because it allows you some flexibility.

The first oralist should introduce the members of the team, and indicate the division of time between the speakers. Competitors are referred to as "agents" for their state, and judges are referred to as "your excellency," with the exception of the chief judge (generally the one in the middle), who should be addressed as "Mr. President" or "Madame President" as appropriate.

Speak "to" the judges; do not speak "at" them. Never address your opponents directly. Make eye-contact with the judges. Relax as much as possible. Do not speak too quickly. Do not shout, but you must be audible at least to the judges and your opponents, and preferably to the audience. Be concise. Short sentences usually convey argument better than lengthy sentences.

The Timekeeper will indicate at intervals when you have 5, 2, and 1 minute left. You must pay attention to this and stop speaking when your time runs out. The presiding judge may ask you to finish your sentence when time has run out. If you finish your presentation within the time you have set, do not improvise to fill the time. You may ask the judges to add the remaining time to that of your co-agent or rebuttal/surrebuttal.

Know your Memorial well, and be prepared to defend what is said in it. You may be asked something from it, which is not in your prepared oral argument. However, do not read out parts of your Memorial. This does not impress the judges. The judges will have read the Memorial and will recognize it. They may even follow it, turning over the pages as you go.

The judges may ask questions. US judges tend to interrupt more than European judges. If you do not understand the question, ask for it to be repeated. If the question is long and complicated, ask for it to be re-phrased if you really do not understand it, but do not irritate the judge.

Be concise in your reply to a question. The time taken up by questions and replies counts against your time allocation.

Reserve only a little time for rebuttal or surrebuttal. In rebuttal you may only present counter-arguments to what the other side has said. Do not repeat your own arguments. Such repetition or making new argument for your own position is prohibited and may result in penalty. In surrebuttal you may argue only against what has been said in the rebuttal. It is possible to decline to use your rebuttal or your surrebuttal period if you consider your opponents' arguments do not need to be countered. It is rare not to use the rebuttal period, however.