



International Court of Justice

Guide I: How to write a Memorial Brief

Welcome to the model of the International Court of Justice!

The first task of the Advocates is to prepare a written pleading called the 'Memorial Brief' for the Applicant and the 'Counter-Memorial Brief' for the Defendant, where they describe the facts of the case, their legal evaluation and propose a judgment, which is desirable for their client. The challenge is to present the facts of the case and legal arguments in a logical and convincing manner in favor of your client.

The Cases are prepared so that there is not one clear solution and any of the Parties can be the winner. The result depends on the way you, as the Advocate, manage to explain the Case and argue your interpretation of the applicable laws (mostly international treaties, case-law of international courts and custom-law).

During the conference, you will meet with the other Advocates of your client. Together you will discuss your Memorial Briefs, choose the best arguments and prepare an oral pleading, which will be delivered to the Judges by two Advocates.

The structure and substance of the oral pleading should be similar to the written pleading, however **it is certainly not advisable to read the whole pleading**. Judges will ask you questions and it is therefore important to deeply understand your arguments and the law (e.g. treaties, case-law) you use to support your arguments. More information on the oral pleading will be provided in the Guide II – The procedure.

Legally binding sources of international law are mainly **international treaties, customary international law** (rules arising out from established practice of states) and **judgments of international courts**.

In the description of the Case, we have already listed the most important sources of law necessary to solve the cases for you. However, please note that the list is by no means exhaustive. You will have to do your own research, try to find useful case-law and look for articles written by experts.

Expert opinions are not a legally binding source of law (the Court might decide contrarily to them). They are nevertheless very useful for you as a background to understand the problems and to help you with interpretation of rules incorporated in treaties or customs. Sometimes, they can even be convincing enough for the Judges to give a ruling in conformity with the expert opinions. We also strongly advise you to read **the Charter of the UN and the Statute of the International Court of Justice**.

Do not underestimate your research and work, the more effort you put in the preparation, the more fun you will have at the actual conference. If the cases are well-prepared, you truly experience great ICJ simulation with its passionate and intellectually-challenging debate.

If you have any questions about the Cases, the rules or the Memorial Briefs, feel free to contact us at katerina.novotova@gmail.com or svandova.h@gmail.com. We will make every effort to help you, but do not wait until the last minute to contact us. The deadline is final and will not be extended.

Your Memorial Brief/Counter-Memorial Brief (sections iii. – vi.) **should be about one and a half page long, the maximum is three pages**. Try to be brief, but informative and convincing. There is

no point trying to make your pleading longer if you are sure that you have already explained everything which would help your client win the case. It is not strategic :)

Memorial briefs/Counter-Memorial Briefs shall be submitted to katerina.novotova@gmail.com no later than 5th April. The briefs will be provided to the Advocates of the opposing Party before the Conference. At the end of the Conference, the Outstanding Memorial Brief Award will be given to three Advocates who prepared the best written pleadings.

All Memorial briefs must include the following sections (please note that for the purposes of our model ICJ, the structure of the Memorial Brief differs from the real ones):

i. Title Page (cover)

- contains names of the Applicant and the Defendant and name of the Advocate

ii. Table of Authorities

- a list of case-law, treaties and other sources of information upon which you rely in the preparation of your Memorial

iii. Statement of the Facts

- a presentation of the facts of the Case from the point of view of your client. Do not make up false information or details, but try to highlight the facts which support your argumentation and are beneficial for your client. This section should be about one to two paragraphs long.

iv. Summary of the Pleadings

- in this section you briefly present your main arguments. It should not be longer than two paragraphs as it is only a summary.

v. Pleadings (the argument)

- the longest and most important part of your (Counter-)Memorial Brief. In this section, you have to explain all your arguments in a logical and persuasive way while supporting it by law (treaties, customs, judgments). The best way to do so is to use the *CRAC structure*. This means: Conclusion, Rule, Application, Conclusion. An alternative is the *IRAC structure*: Introduction, Rule, Application, Conclusion.
- Conclusion - state the thesis you are going to prove. The effect on the reader is that he knows what you are going to argue for and helps him with orientation in your argumentation. Alternatively, you can start with the Issue and state what the problem is (which you are then solving in your argumentation).
- Rule – state the rules (e.g. treaties, custom or a judgment of an international court) which are relevant to the Case (to the problem). Of course, mention the laws which are in favor of your position, however, it is helpful to mention laws which seem to be against your client and then present a reason why this law does not apply to the Case at hand.
- Application – state how do the Rules apply to the Case. You show why the facts in your case are similar to or different from the facts in the rule. This is your interpretation of the rule which must be beneficial for your client. It is the substance of your argumentation. If you have more than one Rule to apply, just follow the format Rule, Application, then Rule, Application.
- Conclusion – state the thesis. You conclude here by stating what effect does the above argumentation have on the assessment of the Case. If you are the Applicant, you basically conclude that your claim is rightful. If you are the Defendant, your conclusion should in its substance be that the Applicant's claim is not rightful.

vi. **Prayer for Relief**

- how you want the Court to decide. For the purposes of our ICJ simulation, this section should be about one paragraph long

In order to help you write your (Counter-)Memorial Briefs, we will prepare a sample one, dealing with a different case than those which will be judged by our model ICJ this year. It should give you a clearer idea on what your Memorial Brief should look like. The sample Memorial Brief will be handed out next week.