

**Addressing the issue of South China Sea
(Philippines vs China)**

GalMUN XV

Advocate

Guidebook

2018

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Advocates of China:

Advocates of Philipines:

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Foreword

Congratulations on being appointed as an advocate in the International Court of Justice at the GALMUN XV Conference! The position of an advocate in ICJ commands high respect, but at the same time, it is also a position that demands a lot of hard work, both before and during the conference. Preparation up to the conference is essential for the success of the conference, as you will be the ones presenting the case. Without well prepared advocates, the success of the ICJ would be severely limited; therefore any delay in the preparation schedule will in turn significantly impact the quality of the conference. Thus, we would like to urge all advocates to PLEASE keep to the due dates in mind (write them down on your calendars), to be active in your ICJ preparation, and to communicate with your advocate partner frequently.

To make your tasks simpler, the Student Officers of GALMUN ICJ this year have decided to compile a guide for you on how to go about creating the documents that advocates are required to create prior to the conference. This document should be printed out and referred to when writing your memorandums and stipulations and compiling your evidences. We will be e-mailing you periodically to check your progress from now up to the start of the conference.

That is all for now, if you have any questions, please do not hesitate to contact either of us.

We wish you all the best of luck in your preparation!

Alin & Emre-Mihai

Stipulations

What are Stipulations?

The list of stipulations is a piece of written evidence that has been agreed upon by both councils. The purpose of the stipulation is to help advance the case quickly by avoiding disagreement on basic aspects of the case, such as definition of terms or history of events.

Stipulations should contain, in bullet form:

- Definition of key terms
- Important historical events
- Activities by both countries
- Relevant treaties and special agreements

Prior to the conference, both councils should work in collaboration to produce one final list of stipulations to present to the court. During their research, each council should first compile a list of draft stipulations individually. The drafts should then be sent to the opposing council for evaluation. Communication between the two councils can take place in the form of email, Skype, or any other medium the two councils prefer. Advocates should attempt to correct, combine, and rephrase the stipulations where appropriate.

The final stipulations, generally 1 to 1.5 pages long (font 10 Times New Roman), should be compiled after two to three exchanges between the councils. The final list of stipulations, once agreed upon by all four advocates, should be sent to presidents and registrar electronically. Advocates are not required to make copies of stipulations for the court.

It is important to keep in mind that the final list of stipulations is considered evidence and is not debatable in court, so please make sure that all stipulations are approved by both parties before a final copy of the document

Example of Stipulations

International Court of Justice

Beijing Model United Nations 2007

Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge

Advocates of Singapore: Richard Yeung, Emily Cho

Advocates of Malaysia: Philip Mar, Henry Sackville-Hamilton,

A. A treaty between the Sultan of Johor and the British was signed on Feb. 6th 1819, acknowledging British rule over Singapore.

B. Both the British and Dutch held joint occupation of the Malay region (including Malaysia, Singapore, and Indonesia) until the Anglo-Dutch treaty was signed in 1824 in which the Dutch withdrew all objections to British rule over Singapore.

C. Thus Singapore and the 10 nautical miles of sea around it were lawfully given to the British East India Company

- D. Malaysia and Singapore were under Japanese rule in the earlier 1940's during war, until the British rule resumed in 1945.
- E. The Rendel Constitution, introduced in 1955, granted Singapore self-independent governance.
- F. The Malaysia Agreement was signed in 1963, establishing the Federation of Malaya, which included Sabah, Sarawak, and Singapore.
- G. The Republic of Singapore Independence Act of 1965, the Constitution of Singapore Act, and the Constitution of Malaysia Act finalized the full independence of Singapore.
- H. The Separation Agreement between Singapore and Malaysia, in 1965, did not address the issue of sovereignty over Pedra Branca.
- I. The construction of the Horsburgh Lighthouse on Pedra Branca was rightfully granted by the Sultan of Johor in 1844, and established in 1851.
- J. Malaysia began publishing maps that indicated Pedra Branca as Malaysian territory in 1979.
- K. Malaysian maps in 1974 indicated Pedra Branca as Singaporean territory.
- L. Radar communication facility and helipad were built on the island in 1989 and 1991 respectively.
- M. On Feb. 6th 2003 Malaysia signed "the Special Agreement for Submission to the International Court of Justice of the Dispute between Malaysia and Singapore Concerning Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge" in Putrajaya, Malaysia
- N. Both Singapore and Malaysia have agreed to conditions set forth by the International Convention on the Law of the Sea.
- O. The use of the names Pedra Branca/Pulau Batu Puteh or vice versa, or the use of only one or the other by any party will not have any bearing on the judgment or argument of either party or judge before, during or after the Court session.
- P. Sovereignty will be defined as a nation's right to full independent control of a specific area
- Q. Status Quo will be defined as the existing state of affairs
- R. Pedra Branca also known as Pulau Batu Puteh in Malaysia, is a small island located where the Straits of Johor and South China Sea meet, Latitude 1° 19' 48" and Longitude 104° 24' 28", and has the area of 2,000 m².
- S. The Johor Sultanate gave permission to the British to construct a lighthouse in 1844.
- T. Singapore was given administration over the Horsburgh Lighthouse on Pedra Branca/ Pulau Batu Puteh by the British Straits Settlement.
- U. Singapore, Malacca and Penang, became the British Straits Settlements in 1826, under the jurisdiction of British India, and a Crown Colony in 1867.
- V. On 16 September 1963, Malaysia was formed, made up of the Federation of Malaya, Singapore, Sarawak and North Borneo.
- W. Both governments have signed unto the Special Agreement and recognize the articles within.

Memorandums

What is a memorandum?

A memorandum is a document that advocates in the International Court of Justice write up to the judges and opposing counsel with regard to the overview of the case, facts of the case, your party's view on the issue, along with legal principals that you may apply to this case. Memorandums are not considered evidence. Some advocates also find it useful to withhold some trial strategy in the "Arguments" section. The memorandum should be written in bullet-points, and be about 1.5 to 2 pages long in Times New Roman font size 10.

Format of a Memorandum

Memorandum of [Country's name]
International Court of Justice

Submitted by: Advocate (Surname)
On Behalf of: (Country represented by advocates)
Date: (Self Explanatory)

I. Statement of Jurisdiction:

In this part of the memorandum, you will write a brief introduction on what the case is about. You need to address on how this case came about to become a dispute and how it got to be heard in the ICJ.

II. Statement of Law:

In this section of the memorandum, advocates need to present to the judges and opposing parties of the relevant law, treaty which your party will rely upon greatly. This should also insert further clarification on how these treaties and laws help or build your case. This is very crucial in that this would help judges understand these large documents easier. However, the judges do not take this as evidence. It is merely a way to communicate to the judges on how you think these treaties help you.

III. Statement of Facts:

In this section, you will provide some of the details on what this case is, and also provide few brief points on how some of the previous attempts made to resolve this issue. However, one must bear in mind to always put up this section in support of your party's cause.

IV. Arguments:

This is where you list your points of arguments on why you believe that the law is on your side. Along with each argument, one should narrate on how such treaty of laws or legal principals help you in your case. These should make up your major arguments because at frequent occasions, judges refer back to this to achieve the point you are trying to communicate. Therefore, it is very important you insert the relevant articles or annexes where you base your claim on. However, some advocates do not wish to communicate all of their arguments, as it is useful to have a "secret weapon", so they need not put it in the memorandum.

V. Summary and Prayer for Relief:

The summary and Prayer of Relief is what you the advocates wish the court to rule. This is one of the possible verdicts. After deliberations, the judges will choose between the two Prayers of Reliefs on which they favor more towards. Judges cannot stray away from these Prayers of Relief to give a bit of everything to both parties. They have to choose between the two and therefore, it could be strategically advantageous to write one's Prayer of Relief in a more neutral manner instead of a harsh, one-sided one, as judges tend to disagree, and therefore would more likely be able to come to a consensus on a more neutral Prayer of Relief.

Last Reminders

The applicant (advocates of Peru, in this case) has to insert the following paragraph after the "date"

To the Registrar

I, the undersigned, duly authorized by the Government of the Republic of Peru of which I am the Agent, have the honor to submit to the International Court of Justice, in accordance with Articles 36 (I) and 40 (I) 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.

Evidence

What is evidence?

While in most MUN committees, the conference revolves around resolutions, in the ICJ, it revolves around Evidences. Evidence is most essential and critical part of the ICJ forum. All your points and arguments have to be presented to the judges through your evidence.

Where can you find evidence?

Evidence is nothing but the documents from where you found your arguments. Evidences can include:

- Web-pages
- Pages from books, magazines, newspapers, journals -Treaties
- UN Declarations and other documents

How should evidence be presented?

Before starting the case, advocates will be made to present their evidence to the rest of the forum. During this period of time, judges will evaluate the evidence and determine its value based on a number of criteria, as mentioned below. Please note that each pair of advocates will have to have three copies of your evidences prepared (one will be given to the ICJ Officers and Judges, one will be given to the opposing council, and one will be for yourselves). When presenting their evidence to the forum, advocates will have to provide the following information:

- Name of Document/Title
- Date of Publication (if this is not available, try and find the latest date of editing)
- Source (website URL/Publication's name)
- Author

If the information for one of the above categories cannot be found, it is OK; however, advocates please note that during the evaluation of the evidence, the determined value of this piece of evidence would have more reason to be weighed lower than normal.

For documents (especially large documents such as declarations and treaties), advocates are expected to highlight the important clauses, sentences, statistics and other information. However, non-highlighted information can also be used as evidence. Furthermore, during their research, advocates may come across extremely large documents. Sometimes these documents could even stretch to tens and hundreds of pages. In such cases, advocates need only print out the important pages of the documents (Cover page, index, first page, last page, and any other required pages as evidence).

IMPORTANT NOTE: When taking the print outs of evidence from web-pages or any form of online source, advocates must print out the document as it is. Evidence which has been copied into a Word Document or has been edited or altered from its original formatting will not be accepted by the ICJ.

How will evidence be weighted?

Judges will evaluate evidence on the following criteria:

- Bias
- Relevance
- Lack of information (Reliability)
- Date of Publication (the more recent the document, often the better; for treaties this is not the case)
- Accuracy

Evidence can be weighed as that of low importance. Advocates, please note that judges have the supreme power to eliminate evidences, if they feel it is not substantial. If a piece of evidence is not admitted, that piece of evidence cannot be used to support your arguments.

How much evidence is needed?

There is no limit to the minimum or maximum number of pieces of evidence that can be admitted. However, usually about 5-8 pieces of evidence are sufficient.

Witnesses

Important note: Witnesses require time to prepare. Therefore Advocates must provide the Court a list of witnesses they wish to call not later than 21 April 2018. This will give the Court time to notify the witnesses and for the witnesses to prepare. Advocates are to send their witness list to the President of the Court.

What are witnesses?

Witnesses are representatives chosen by the advocates to give testimonial to the court. They are usually asked to play the role of ambassador of a certain nation that the advocates think will support their side of the case. At this conference, the roles of witnesses will be filled by other delegates at the conference, who may or may not be representing the same nation in the ICJ as they are in their own committee. Therefore, it is up to the advocates to prepare the witnesses with the information they will need to represent their nation and its policy on the case at hand, including any specifics about treaties, statistics, stipulations, and other facts of the case. Unlike advocates, anything that witnesses say during testimonial is counted as evidence by the court, so it is important that witnesses understand what they are saying. In any case where the witness is asked a question that they do not know the answer to, they are advised to answer honestly. Each council will be allowed 2-3 witnesses of their choosing for this case.

What do witnesses do?

Each witness has an hour in the ICJ room where they will be questioned by the advocates. The advocates that chose the witness will begin with “direct examination” where they will ask non-leading questions (questions that do not imply a given answer) of the witness to get across one point. After this, the opposing council will be allowed to “cross-examine” the witness, where they are allowed to

ask leading questions of the witness, within the scope of the previous cross examination. After this, the first council is allowed to re-direct examine the witness to address new points, followed by re-cross, etc, until the hour is up. No hearsay questions are allowed during questioning (hear-say questions are questions to the witness about something another party has said). After advocates have questioned the witness, the judges will be allowed to briefly question the witness to clarify anything the witness has previously said on the case.

Research Starting Points

As an advocate, your first and most important task will be to research and understand the case at hand. This is not an easy task, and so you are advised to begin this as soon as possible and be as in-depth as you can, while also remembering to coordinate with your partner and note down relevant sources that you may want to use later on. For your convenience, we have compiled a few sources that may be useful to you during this process.

-All ICJ participants need to survey the documents related to this case:

<https://pca-cpa.org/wp-content/uploads/sites/175/2016/07/PH-CN-20160712-Award.pdf>

-United Nations Treaty Collection (very useful for finding copies of treaties for use as evidence):

<http://treaties.un.org/>

-BBC (good for a basic introduction to the case and orienting yourself): <http://www.bbc.co.uk/>

Embassy Communication

Another avenue that you may want to take is to contact the representatives of your respective embassies in order to gain a better understanding of your nation's stance on the case so that you may better formulate your arguments. The email addresses of the Philippines and Chinese embassies are included below:

Phone: (4021) 319-8252 / 319-8254 / 319-8256

Fax: (4021) 319-8253

Email: bucharestpe@rdsmail.ro / bucharestpe@dfa.gov.ph

Telefon: (0040-21) 232.88.58 (protocol); (0040-21) 232.17.32 (informații)

Fax. (0040-21) 233.06.84

chinaemb_ro@mfa.gov.cn

If you do decide to contact the embassy, please ensure that you are polite in your communications. A template for an email correspondence is included below if you wish to use it.

Sirs/Madams,

My name is _____. I am a student at _____ and a member of our Model United Nations club. I am preparing to represent the country of _____ at an upcoming Model United Nations conference as an advocate in the International Court of Justice on the issue of _____. In order to most realistically represent _____, I would like to correspond with, or be able to speak with on the telephone, a representative from your embassy.

I would like to learn a wide range of information on the country, such as (here you can be more specific as to the types of questions you want to ask to help you better understand the country and its perspective on the case)_. This will help me to realistically formulate my arguments as well as answers to any questions I may be asked. I will also be better able to form my position on the issue at hand in a way that more realistically represents what might be the actual position of the country of _____.

I do look forward to a response from your embassy.

Thank you very much,

(Your Name)

(Your School)