



# XXXV TECMUN

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## Official Protocol for the International Court of Justice

**XXXV TECMUN  
OFFICIAL PROTOCOL**

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## **1. The International Court of Justice**

This committee represents the International Court of Justice (hereinafter referred to as ICJ), the principal judicial body of the United Nations; whose role is to settle, in accordance with international law, legal disputes submitted to it by States, and to give advisory opinions on legal questions referred to it by authorized United Nations organs and specialized agencies. Said committee is composed by the Presidency, the Registry, and the Judicial Division. The Presidency and the Registry will be composed by members of the committee's Chair. In total, the maximum capacity of the committee will be of 21 delegates distributed in the aforementioned divisions. Its members may speak in first person as they represent legal physical persons. This committee simulates the Trial Chamber of the Court and deals with affairs, instead of topics, under current investigation of the Court.

## **2. Judicial Division**

It consists of 15 judges from across the globe represented by delegates upon individual application. The members of the Court do not represent the government of their country or any other authority, since they are independent magistrates whose first act is to declare solemnly and in public before the Court that they will exercise their powers impartially. Judges must represent the main civilizations and legal systems of the world.

### ***2.1 Presidency and Registry***

The Presidency will be composed by the Presiding Judge, which is represented by the President of the committee as well as by a member of the Chair that will represent the Vice-President. The other members of the Chair will represent the Registry, counting with one Registrar and Deputy Registrars. In an extraordinary case, the President can admit another member into the Presidency, being there, the Presiding Judge, First Vice-President, and Second Vice-President.

#### ***2.1.1 Presidency***

The Presiding Judge will have a full understanding of the rules of procedure concerned by the Court, as its Statute and Regulations, together with the Procedure and Evidence procedures and the Elements of Crime establish. Furthermore, the Presiding Judge will be responsible for the procedural functions of the committee and will serve in any question regarding the affairs. The Presiding Judge does not play a part in the debate nor vote, as its title is only representative of the International Court of Justice.

In like manner, the Presidency will be also composed by the Vice-President, who will represent the current Vice-President of the actual Court, -or by the First and Second Vice-Presidents if given the case-; the Vice-President will have the same understanding on legal procedures as the Presiding Judge and will support him in any of his regular functions, under the terms of the TECMUN Official Protocol.

#### ***2.1.2 Registry***

The Registry will be composed as well by the other members of the Chair; one of them representing the Registrar, who will assist the Presidency in administrative and servicing matters, or other duties assigned by the Presiding Judge. There will only be one Registrar since

the other members of the Chair will represent the Deputy Registrars and will attend the same faculties that the Registrar; assisting in the duties of the Registry based on what is determined by the Presidency, not the Registrar.

## ***2.2 Judges Ad Hoc***

A judge ad hoc is a magistrate appointed by a special procedure for a specific affair, or period only, in contrast to a regular judge within the Court. Under Article 31(2)(3), of the Statute of the Court, a State Member to an affair submitted to the International Court of Justice which does not have a judge of its nationality on the Bench may choose a person to serve as judge ad hoc in that only affair, in accordance with the conditions laid down in Articles 35 to 37 of the Rules of Court. Judges ad Hoc do not necessarily have to be, and often do not, nationals of the State that designates them.

## ***2.3 Agents***

These are composed by the Agent Plaintiff, the Agent Defense, Deputy Agent Plaintiff, and the Deputy Agent Defense from each State represented in the current affair of the Court. For practical purposes of the Court, delegates who represent either agents or judges ad-hoc will change the country represented according to the affair opened at the time of the starting session. These will be represented by four delegates each upon individual application and may act independently of the Court, this means they are not part of the judicial body that presents a verdict, and therefore cannot vote at the indicated motions.

A delegate who represents an Agent, must present an Indictment, in case of the Agent Plaintiff along with the Deputy Agent Plaintiff, or a Position Paper, in case of the Agent Defense and the Deputy Agent Defense. This paper must include a statement of facts which is a context and facts of the case, a statement on applicable law based on the Charter of the United Nations, the initial approach of the witnesses or evidence, and a conclusion; the work must include its respective references and shall be delivered to the Chair before the deadline.

### ***2.3.1 Agent Plaintiff and Deputy Agent Plaintiff***

The Agent Plaintiff and Deputy Agent Plaintiff happen to be a delegate who files a lawsuit because the defendant, or the other party defending the lawsuit, has failed to properly fulfill what is referred to in the Charter of the United Nations. Thenceforth, the Agent Plaintiff begins the lawsuit by filing a complaint before the International Court of Justice.

### ***2.3.2 Agent Defense and Deputy Agent Plaintiff***

Alike, Agent Defense and Deputy Agent Defense happens to be the delegate who represents the Defendant State, who has failed to fulfill what is stated in the Charter of the United Nations. Thenceforth, the Agent Defense is submitted to a trial before the International Court of Justice in petition of the Agent Plaintiff.

## **3. Debate initiation**

### ***3.1 Opening of the session***

The session must be open by a member of the Presidency. During the roll call, the other offices/agencies will only respond as “present” but not voting, as they are not part of the judicial body of the Court; otherwise, judges will respond as “present and voting”. The Role call may proceed in the following order:

1. Agent Plaintiff
2. Agent Defense
3. Deputy Agent Plaintiff
4. Deputy Agent Defense
5. Judge ad Hoc Plaintiff
6. Judge ad Hoc Defense
7. And all the other judges in alphabetical order

Once the session has been opened, before taking up their respective duties, the judges, and all parts of the Court shall each make a solemn undertaking in open Court. In case of a judge, he/she/they/them must say before the Presiding Judge:

“I solemnly undertake that I will perform my duties and I will exercise my magistrate powers as a (role in the Court) of the International Court of Justice honorably, faithful, impartial and conscientious”.

### ***3.2 Topic selection***

At the beginning of the first session, the only motion that can be established is a *Motion to open Affair A/B (6.1)*, and all the procedures should be carried out according to the specifications of said motion. There are two affair options, which are previously announced by the Presidency, and are fully invariable and definitive. The Court shall debate at least one of the affair options, determined by the described voting in the motion’s procedure. The remaining affair is only debated once a *Verdict of the Court (9.2)* of the first affair is reached.

### ***3.3 Speaker’s List***

The Speaker’s List is the base for the development of the debate and a space for the exposition of each member of the Court’s point of view for a determined time. The Speaker’s List consists of the order in which judges and agents expose their arguments about a matter related to the debated topic. Its order is definitive and it is the only procedure that is automatically closed until the resolution of the topic. The introduction of the Speaker’s List should be made at the beginning of any topic’s debate and according to what the *Motions to open The Speaker’s List (6.2)* points out.

Each time that the floor is opened, and no other motion is established, the debate proceeds with the next speaker on the list. In the given case that a judge or agent is not present at the moment of his or her turn during the Speaker’s List, the place is yielded to the next participant and the missing judge or agent should be reassigned to the end of the list.

#### **4. Debate development**

The Affairs will be determined beforehand by the administration from the Situations Under Investigation by the International Court of Justice, and from the pending Affairs. In each affair submitted to the Court there will be two or more States involved, the one or those who present the case before the ICJ as well as the one or those who'll be referred to as the accused. They will be represented by Agent Plaintiff and Agent Defense respectively, together with its Deputies (the committee will have to judge all accused that the affair presents). Depending on the Affair, the Accused can be under trial of the Court, or under pre-trial, and can either be under custody of the Court. If this last was the case, the Court will also have to determine what must be done in order to put the fugitive under custody of the Court.

##### ***4.1 Trial***

When the accused State or one of the accused is under trial, it means that the Court has already gathered enough evidence to proceed to pronounce a sentence, in this case the agents still can introduce evidence to reinforce their position. Judges will have to determine the sentence that corresponds according to the crimes the accused State is being charged with.

##### ***4.2 Pre-trial***

When the accused State or one of the accused is under pre-trial, it means that the Court has not gathered enough evidence to declare him guilty of one or more charges. In this case, the Agents may introduce evidence to defend or incriminate the accused State of charges.

#### **5. Voting procedure**

All motions and procedures that are submitted to voting as established by the aforementioned protocol can only be considered in order if they count with a simple majority consistent of 50% + 1 (fifty percent of the committee plus one vote), being the only voting options in favor, against, and abstentions –excluding exceptions. In case of not counting with said requirement, the motion does not proceed and cannot be proposed again immediately. The voting procedure can only be repeated in case not all judges and agents participated.

For logistical reasons, abstentions are considered as votes favoring the final result, whether in favor or against. The said principle is only fulfilled if the results of the voting procedure are uneven. If the results turn out equal, they will be automatically deemed negative since the simple majority principle is not satisfied.

##### ***5.1 Exceptions to the voting procedure***

1. The Verdict is voted on differently, as established in *Verdict of the Court* (8).
2. There can be no abstentions in the *Motion to open Affair A/B* (6.1), and only those motions and procedures hereby established can be not voted on to be approved.

3. Agents shall not vote in any round of voting process of Motion *to open Affair A/B (6.1)*, *Motion to introduce Evidence (6.4)* and the *Verdict of the Court (8)*.

## **6. Motions**

To make any motion, judges or agents must raise his or her placard and another judge or agent must second it by doing the same action.

### ***6.1 Motion to open Affair A/B***

The procedures to open either Affair A or B will be as determined by the TECMUN Official Protocol, but Agents and Judges ad Hoc cannot propose the motions, speak in favor or against and can't participate during the voting process.

### ***6.2 Motion to open the Speaker's List***

The Speaker's List of the Court already has an established order, so once the motion has been seconded and voted, it will proceed according to the committee's list regardless of who proposed and seconded the motion. The order of the Speaker's List will be in the following order:

1. Agent Plaintiff
2. Agent Defense
3. Deputy Agent Plaintiff
4. Deputy Agent Defense
5. Judge ad Hoc Plaintiff
6. Judge ad Hoc Defense
7. All the other judges in alphabetic order

So, the Agents will start with opening states previously examined which will present their positions regarding the Affair; any agent shall then introduce evidence as stated hereinafter. In such case, judges will examine the presented evidence and continue deliberating the case based on what was stated before by the Agents.

### ***6.3 Motion to change the Working Language of the Court***

This motion may apply at any moment and the Chair will decide if it is in order or not; in case the motion is accepted, it must be seconded and voted in favor by the majority of the committee, it must be accepted by the Chair in case it is proposed by the Agents and immediately followed by a "Motion to Introduce Evidence", that in like manner must be seconded and voted on by the rest of the committee. In case the Working Language of the Court has been changed; this motion must be proposed in such language to re-establish the Working Language of the committee. The Presidency may authorize the use of any language in the introduction of evidence if it considers that it would facilitate the efficiency of the proceedings.

#### ***6.4 Motion to introduce Evidence***

This motion can only be introduced by the Agents and Deputy's to present evidence that supports their position before the committee. The evidence can be multimedia material (photographs, video, audio), legal briefs (or other official documents) or a witness. The Chair can only pass the motion if the evidence has been presented and accepted accordingly before the session is opened; if evidence not accepted is presented, they will be granted a warning. In case it is a witness, it must be a person from outside the committee that has not been present in the debate as a hearer before and can only speak in the elected working language of the committee. The witness may be introduced by the Agent or Deputy that proposed the motion and can only speak for its Agent or Deputy without mentioning other parts of the case: Otherwise, or in case of inappropriate behavior, the witness will be vetoed from the committee and the agent will be granted a warning.

The procedure to present a witness or evidence is that the Agent or Deputy must propose a "Motion to introduce evidence/witness" then the Agent or Deputy should establish an opening statement, explaining all the points, context, and relation within the affair as well as with the submissions. After the evidence is presented, the Chair will proceed to introduce "an Extraordinary Session of Unlimited Questions", where judges shall question either the agents or its deputies about their evidence, or the witness itself. Consequently, judges must propose a Moderated Caucus of 5 minutes to deliberate if the evidence is either faithful or not and if it should be taken into consideration for the Court's verdict. Neither agent nor its deputies may participate during this moderated caucus. Afterwards, a "Second Extraordinary Session of Unlimited Questions" must take place to give a follow up to any other point mentioned in the Moderated Caucus; and right away the Agent or Deputy who presented either an evidence or a witness may establish a closing statement in which they may determine why its evidence should be taken into consideration for the Court's verdict. To conclude with the evidence process, Agents, Deputies, and if given the case, the witness must leave the room so that the chamber can proceed with the voting process towards the evidence or witness. The judges will vote in favor or against, with no abstentions, and the result of the voting will be announced to the Agent or Deputy who presented the evidence when it reenters the room.

Any point or motion different from the ones aforementioned will proceed as specified in the TECMUN Official Protocol.

### **7. Objections**

An objection, within the International Court of Justice, is a formal protest raised in Court during the trial to disallow a violation of the rules of evidence or another procedural law.

#### ***7.1 Relevance***

Used to object to the relevance of evidence either if a piece of evidence or a witness is saying has nothing to do with the affair or it is not important in determining the judgement.

#### ***7.2 Prejudicial***

Used to object whenever an evidence presented would unfairly turn the Chamber against a party even when the evidence is considered to be relevant within the affair.

### ***7.3 Leading Questions***

It is used to object any time a party poses a question on direct examination that leads either a witness or other party to a certain answer, leading questions usually occur within the case of yes or no questions.

### ***7.4 Argumentative***

It is only used when the questioning attorney is not properly asking a question and is instead making an argument of law or application of law that should be argued in summation. In addition, it is only valid when the witness is not being asked a question that he, she, they or them can properly answer.

### ***7.5 Speculation***

Used when any party to the affair, or if given the case a witness, does not have first-hand knowledge of the fact it is testifying to, being that this could be what someone else thought or why someone did something.

### ***7.6 Assumed Facts not in Evidence***

Used whenever a question by the directing attorney contains information not yet in the recorded evidence.

### ***7.7 Lack of Foundation***

Used when an evidence has not been entered that would make this admissible. This could be proof that a confession has been made knowingly and voluntarily, that a witness is competent to testify to a fact, or that a document is admissible.

### ***7.8 Repetitive***

Also described as asked and answered, it is used at the time in which during the evidence process either a judge or agent might ask the same question over and over again; perhaps in slightly different ways or re-ask a question they had asked earlier towards the evidence or if given the case, a witness.

### ***7.9 Non-responsive***

Whenever a judge or an agent responds to a question with information that is completely unrelated to the same question, it can be objected to as being non-responsive. This can be especially important in the evidence process or when looking for very specific answers.

### ***7.10 Vague***

It is a vague question when it is either difficult or impossible to tell what the question is about. If the question is objected to, the questioning judge or agent might then be able to ask the question in a different way that makes more sense or is more specific.

### ***7.11 Hearsay***

A statement made out of Court and offered in Court to prove the truth of the matter asserted. A statement is not hearsay if the words spoken are relevant, not what the words mean.

## **8. Verdict of the Court**

The verdict will be written up mainly by the judges of the Court, who can be helped by the Agents in specific aspects but not in entire dispositions, as the points within the verdict can only be agreed by the judges. The Verdict will contain the basic information about the accused State, the specific charges, and the final deliberation of the Court: the sentence, and the terms under which the last steps of the trial will be taken. The content of the verdict may differ from an affair on stage of trial or pretrial. The verdict will never be related to issues corresponding to other sectors than the application of justice on the accused State. In like manner, the voting process of the verdict will proceed just like a committee resolution as specified in the TECMUN Official Protocol, with the only exception that the Agent Plaintiff, Agent Defense, Deputy Agent Plaintiff and Deputy Agent Defense will not be able to partake in any round of the voting. The Court can only close an affair if it has reached a verdict; this last will have the same qualities as the resolutions specified in the Tecmun Official Protocol

### ***8.1 Application of treaties and conventions within the international law***

The ICJ, as the principal judicial organ of the United Nations, settles judgment upon international disputes of legal nature submitted by the States concerning matters provided and bases within the United Nations Charter or current treaties and conventions being that following Article 93(1)(2) of the Charter all Members of the United Nations are ipso facto (something reasonable to state based on facts already known) parties to the Statute of the Court and, in like manner, any State which is not a Member of the United Nations may become a party to the Statute of the International Court of Justice on conditions to be determined in each case by the General Assembly as well as upon the recommendation of the Security Council. Is so, that following Article 94(1)(2) of the United Nations Charter in which it is provide a formal machinery of enforcement of its judgments and, in like manner, it is stated that:

1. Each Member of the United Nations undertakes to comply with the decision of the International Court of Justice in any case to which it is a party;
2. If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment (United Nations, 1945).

Ergo, the United Nations principal organs as the General Assembly, the Security Council and the International Court of Justice must ensure respect for the rule of law and the mission of the organization. In regard of the decisions of the International Court of Justice, within the Article 36 of the Statute of the Court it is then established that the jurisdiction of the Court comprises all affairs in which the parties refer to it and all matters specially provided for in the UN Charter or in treaties as well as international conventions in force. Consequently, all

parties to the present Statute are allowed, at any time, to declare their recognition as compulsory ipso facto and with no special agreement, in relation to any other State by accepting the same obligations, the jurisdiction of the Court in all legal disputes concerning:

- (a.) the interpretation of a treaty; (b.) any question of international law; the existence of any fact which, if established, would constitute a breach of an international obligation;
- (c.) the nature or extent of the reparation to be made for the breach of an international obligation (International Court of Justice, 1946).

The fact that both the judgement and the verdict of the International Court of Justice has a declarative nature does not imply, necessarily, that States involved in international disputes should not subsequently take specific actions to give effect to the Court's ruling. Thus, if given the case that the ICJ rule on the determination of territorial or maritime sovereignty it will be evident, and even when the Court does not pronounce as such, that if armed forces or separatist groups are positioned in part of the territory that has been adjudicated in favor of another State by virtue of the verdict, they must proceed to vacate it.

Under Resolution A / RES/ 43/512, it was approved the “declaration on the prevention and elimination of controversies and situations that may threaten international peace and security and on the role of the United Nations in this area” (United Nations Library of International Law, 2013). In the afore mentioned resolution, States agreed that they should act in such ways as to prevent the emergence or aggravation of both controversies and situations within international relations, particularly by complying in good faith with their obligations under international law. Overall, there has been a substantive change in attitude on the part of the States vis-à-vis (one that is face to face with another) the Court; being that in this way the International Court of Justice is used as a fruitful mean to solve their disputes and consolidate peace among nations. Nevertheless, it must be mentioned that it is considered that failure to fulfill obligations under a judgment of the International Court of Justice undermines the judicial authority of the principal judicial organ of the United Nations.