

ADVOCACY SKILLS LEGAL REASONING (INTERNATIONAL LAW MOOT COURTS) – course outline

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Office hours: Mondays from 17:30-18:30 & Tuesdays from 16:15-17:15

SEMINAR CREDIT:

1. Presence during seminars – Students are entitled to three absences during seminars(20h). Any further absence has to be passed in 2 weeks during office hours. Student is expected to have knowledge on the material discussed during the missed seminar. Absence above 50% of seminars' hours is a basis for being unclassified (no grade is obtained, a student is obliged to repeat the course next year).

2. Activity during seminars – Students are expected to be prepared and active during the seminars, including by engaging in discussions on the prescribed material. They may also be asked to prepare papers (case studies) and give presentations during the seminars.

3. Papers – Students are obliged to prepare papers (Draft pleadings, Outline of oral argumentation) within the prescribed and announced deadlines (as published on the Faculty's website)

4. Grade: memorial writing & oral argumentation – in order to obtain a positive grade at the end of the course, students are obliged to prepare memorial (a written argumentation) as well as oral argumentation. Students are entitled to choose any case (from any moot court competitions), unless it relates to Public International Law or European Union Law. In case of lack of any proposition, students will be working on the case from moot court competition, for which the Wroclaw University team has registered.

Students working in a group of 2-4 members are to prepare the written argumentation for both States parties to the dispute (Applicant and Respondent). Deadline for memorials submission is 16th of December 2016. In January 2017, students will argue orally the arguments before judges (students and seminar teacher), who are entitled to ask questions during their presentation. Requirements for oral presentation will be discussed during the seminar at the beginning of December.

Recommended readings:

- Michael Hyam, *Advocacy skills*, Oxford University Press, 2010
- Neil MacCormick, *Legal reasoning and legal theory*, Oxford : Clarendon Press, 1978.

- Timothy A. Affonso, Mastering the Art of International Mooting::The Structure, Technique and Rules of International Mooting
- Frederick Schauer, Thinking Like a Lawyer: A New Introduction to Legal Reasoning
- John Snape, Gary Watt, How to Moot: A Student Guide to Mooting

COURSE OUTLINE:

1. International law moot court computations – introduction:

- a. Purpose
- b. Types
- c. Participation: deadlines, team’s creation & composition, coaches, fees, rules of participation

Technical aspects of participation in moot court competition:

2. Case analysis and legal research

- a. Compromis construction
- b. Reading the Compromis (generalities; specifics – organization tools; preparation for research)
- c. Major Topics stemming from the case (how to divide into Prayers for Relief, and pleadings)
- d. Research in the light of art. 38 (1) ICJ Statute

3. Memorial writing

a. Memorial’s preliminary sections:

- i. Cover Page
- ii. Table of Contents
- iii. Index of Authorities /List of Sources/
- iv. Statement of Jurisdiction
- v. Questions Presented /Issues/
- vi. Statement of Facts
- vii. Summary of Pleadings
- viii. Pleadings (including Conclusion/Prayer for Relief) /Argument + Submissions/

b. Pleadings – written argumentation (requirements)

- i. Content:
 1. Practical advises from international law moot court competitions
 2. Organization of arguments
 3. Citation of sources

- ii. Interpretation in legal theory
- iii. Interpretation in international law
- iv. Legal argumentation

4. Oral argumentation

- a. Dividing arguments & dividing speaking time
- b. Procedure
- c. Style & structure
- d. Role of Applicant & Role of Respondent
- e. Questions from judges
- f. Rebuttal & Surrebuttal

UPDATE – since only two students decided to participate in TELDERS International Moot Competition, and none else submitted any other case to analyse, legal analysis will be restricted to legal issues raised in TELDERS 2017 case – analysis of the case:

The major topics raised by these Prayers for Relief are:

1. Immunity from jurisdiction & inviolability accorded to family member (Twigan ambassador's wife & Twigan Ministry of Defence's sister)
 - a. By instituting proceedings against Mrs Fisis=
 - b. Order Pundamilia to put an end to the ongoing proceedings against Mrs Fisi
 - c. Pundamilia requests to dismiss claim on the merits
2. Legal status of Twigan Cultural Centre
 - a. By searching & attaching the TCC
 - b. Property of the Republic of Twiga & Used for the purpose of diplomatic mission in Pundamilia
 - c. Order: to recognize TCC as a part of diplomatic mission & ensure protection
 - d. Pundamilia requests to dismiss claim on the merits
3. Breach of treaty obligation
 - a. by suspending the delivery of 10 military helicopters [Article I of the Military Assistance Agreement]
4. Twiga requests to dismiss claim on the merits

[update November / December 2016]

Pleading I – Mrs Fisis immunity from civil and criminal jurisdiction

- Interpretation in legal theory (presentation)
- Interpretation in international law (in the light of art. 31 & 32 of VCLT)
- Mrs's Fisis diplomatic immunity (art. 37 VCDR direct application of art 29 – 36 of VCDR)

- Procedures initiated against Mrs Fisis:
 - Criminal (“smuggling” and selling of forged Van Tembo paintings; initiated by individuals “who believing being victim of the crime can file an individual complaint” under Pundamilian domestic legal order) par. 15
 - Civil (damages, 30 000 USD lost by three Pundamilian citizens; initiated to recover money) par. 15
- **Immunity from criminal jurisdiction - Legal character, theories behind immunity from criminal jurisdiction, absolute (?) character**
 - Core argument: Reservation made by Pundamila
 - Non-retroativity of VCLT (entry int force of VCLT and VCDR) – is VCLT applicable to reservation made by Pundamila to VCDR?
 - Reservations to the treaty under VCLT / customary international law
 - Entitlement to make reservation
 - “in accordance with purpose and object of the treaty”
 - Customary character
 - Assessment of the Pundamilas reservation in the light of purpose and object of VCDR
 - Whether lack of implicit consent / implied consent / express objection affects reservation:
 - Validity of reservation
 - Legal consequences of invalid reservation
 - Pundamila is party to whole VCDR (reservation ineffective)
 - Pundamila never became party to VCDR
 - If the Court recognizes the validity and legal effects of the reservation made by Pundamila -> “professional and commercial activities” interpretation
- Immunity from civil jurisdiction
 - Core argument: “commercial or professional activity” interpretation
 - Ordinary meaning: legal definition? How to determine the ordinary meaning? Different authentic versions of the treaty?
 - Context:
 - Title of the treaty
 - Punctuation, syntax
 - Structure of the sentence
 - Use of the same term elsewhere in the treaty (as opposed to official functions)
 - Same issue in different wording

- Comparison of the same wording with analogous wording of related treaty
- Object and purpose
 - General clauses in the treaty
 - Title
 - Preamble
 - Type of a treaty
 - Whole treaty
 - Contrasting the treaty in question with relevant treaties of similar substance

[update November / December 2016]

Pleading II – legal status of Twigan Cultural Centre

TCC – September 2014

Cons	Pros
FUNDS: Mrs Fisi bought, using <u>her own money</u> , the premises located at 22 Baobab (par. 9)	Consultation with ambassador (par 9)
LOCATION: In Baobab Street this building has its own independent entrance that is located 20 meters away from the embassy’s entrance (par. 9)	LOCATION: TCC the premises located at 22 Baobab Street, adjacent to the embassy’s building. (par. 9) / 20 metres away from the embassy’s entrance / two-doors in the wall par. 14
TCC’S MISSION: display Mrs Fisi’s private art collection (par. 9)	TCC’S MISSION: promotion of cultural exchanges between Twiga and Pundamilia (par. 9) // Throughout the operation of the Cultural Centre, she kept hosting free workshops on the traditional Twigan painting technique in the room that was devoted to that purpose. (par. 13)
USAGE OF EQUIPMENT: <ul style="list-style-type: none"> • front room for an exhibition of paintings and sculptures made by Twigan artists (par. 10) • One of the back rooms: a space to host workshops on the traditional Twigan painting technique (par. 10) • the other room in the back: an office space 	USAGE OF EQUIPMENT: <ul style="list-style-type: none"> • printing facilities and phone calls she relied on the embassy’s equipment (par. 10) • asked the security guards stationed outside the embassy to keep an eye on the Cultural Centre’s front door (par. 10)

<p>(par. 10), keeping paperwork & computer</p> <ul style="list-style-type: none"> • building: plaque saying “Twigan Cultural Centre” (par. 10) 	
<p>MOTIVATION BEHIND ECONOMICAL AVTIVITY OF TCC: Mrs Fisi wanted to purchase a sculpture for the garden of her country house in Pundamilia (par. 12)</p>	<p>FINANCIAL CONTRIBUTIONS: transfer 30% of the proceeds from the sale to the embassy’s bank account, since she was using some of the embassy’s services, including for security (par. 12 / 13)</p>
	<p>EXEMPTED FROM TAX: par. 13S he never paid taxes on the property hosting the Twigan Cultural Centre, which she owned, or on the income resulting from the sales.</p>

TCC – 14-15 June 2015

- Twigan bought from Mrs Fisi the premises where the TCC was located at 22 Baobab Street, with the stated intention of expanding the premises of the diplomatic mission
- Two doors in the wall opened / access directly from embassy par. 14
- Sign: diplomatic mission
- Twigan flag
- Open for visitors – TCC /admirer & buy/
- No communication to Pundamilia authorities / no formal request for protection

Diplomatic premises

- Legal definition (VCDR)
- Legal title to diplomatic premises
- Duration of protection – test of prior notification ?
 - Express notification or
 - „Upon actual and present use of premises” ?
- Does the sending state is obliged to notify the „expansion” of diplomatic premises ? (new buildings / parts of buildings) ?
- Recognition of receiving state ? (acquiescence, estoppel ?)
 - Purpose of TCC
 - Location
 - administration & financial aspects of functioning
 - usage of embassy’s equipments / security

- TCC recognized by receiving state as part of diplomatic premises since its operation was not subject to any taxes: par. 13 case + art. 23 (1) VCDR
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[update December 2016]

Pleading III – violation of Military Assistance Treaty

- Violation of MAA
 - Possibility of invalidity of treaty under VCLT
 - Possibility of termination
 - Under MAA “imperative security reasons”
 - Under VCLT
 - Art. 63 – severance of diplomatic relations
 - “severance” mining
 - “existence of diplomatic relations is indispensable for the application of the treaty”
- Alternative argument: even if MAA was violated by Twiga, does international responsibility arise? → circumstances precluding the wrongfulness e.g. COUNTERMEASURES
 - Legal character of countermeasures (art. 49 of ARSIWA)
 - Object and limits of countermeasures
 - Obligations not affected by countermeasures
 - Proportionality
 - Conditions relating to resort to countermeasures