

MOOTING 101¹

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What is Mooting?

Mooting is a practice in which law students, lawyers, or legal professionals simulate a court proceeding to argue hypothetical legal cases. Mooting allows individuals to gain practical experience in advocacy, research, and public speaking. Typically, moot courts are conducted in a simulated court setting where teams of two or three law students argue a hypothetical case before a panel of judges or other legal experts. The case is based on real-life scenarios and the participants must present oral arguments, relying on case fact, legal authorities and principles of law to support their position. Moot court competitions are held at the national and international level, and are considered a valuable training tool for law students and aspiring lawyers. Through mooting, participants learn how to develop legal arguments, present their case persuasively, and respond to questions from the bench.

Firstly, the two competing teams submit their stances on the case fact in the form of individual **memorials**. Memorial is the written document where arguments in favour are presented with the desired relief. E.g., If the case fact deals with the murder of Christina Grimmie, Prosecution's memorial would focus on why the accused, Mr. X is indeed liable and deserves the highest degree of punishment. On the other hand, defence, in favour of the accused, would write down the arguments as to why he is not liable and should be set free. The arguments backed up with factual data, relevant statutory laws or treaties, recognized general principles of laws, case precedents or judicial decisions, scholarly publications; chronologically².

After submission of the memorial phase is the oral round.

Each competition usually requires: two mooters and a researcher. The mooters or oralists are the ones presenting the case before the honourable judges whereas the researcher is solely responsible for as the name suggests, "research" and drafting arguments in the memorial. Expectedly, for preparing themselves, the oralists would also draft their own arguments but the researcher not only drafts but formats the overall memorial and aids the oralists with research throughout the competition.

Both the tentative format of memorial and oral submissions will be discussed later in this note.

¹ It is to note that the rules and guidelines drafted out are from individual experience of the author and vary from competition to competition. Hence, it is ideal to refrain from absolute reliance on the procedural instructions e.g., etiquettes and citation styles, given in this note. The rules of the competition would be of highest of regard. However, the basic theory remains unchanged e.g., what is mooting, its importance, etc.

² See, Art. 38(d) of the Statute of the ICJ for a general understanding of the chronological use of laws

Difference between Mooting and Mock Trials

Since both mock trials and mooting competitions take place in a court setting, it could be tricky to detect their differences of nature. Mock trial and mooting require similar set of skills of advocacy but their structures are different from one another, as depicted by Snape & Watt.³

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There is, however, a fundamental difference between a moot and a mock trial.

A mock trial is an adversarial exercise intended to *test the evidence* in a hypothetical case set in a hypothetical court. In other words, a mock trial is designed to establish the *facts* of the case. By contrast with a mock trial, the participants in a *moot* have to assume that the evidence has already been tested, and that the facts of the case have been determined, as set out in the moot problem (see the answer to Question 1.1). Rather than being designed to test the participant's ability to argue a question of law, as in a moot, a mock trial is designed to test the participant's skills of *handling and presenting evidence*, and examining, cross-examining and re-examining witnesses.

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³How to Moot: A Student Guide to Mooting, Oxford University Press (2010), p. 6-7.

Structure of a Memorial⁴

- Cover page
- Table of contents
- Table of abbreviations
- Index of authorities
- Statement of jurisdiction
- Statement of facts/ Summary of Facts
- Issues raised /Statement of Issues
- Summary of arguments/ summary of pleadings
- Arguments advanced/ Pleadings
- Prayer

Cover page

Essentials: Team code, name of competition with year, memorial on behalf of ---(party name)

⁴ Subject to change as per competition rules

Team Code

The Title of the competition

The name of the Court

In the matter of:

Plaintiff v. Defendant
Petitioner v. Respondent
Appellant v. Respondent
Prosecution v. Defense

Memorandum / Memorial on behalf of the Petitioner / Respondent

Table of Contents

Locate every part or component of the memorial

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II. President Azizi Garba is not liable for the destruction of the Nadawada River in Momaayo under Article 8(2)(b)(iv) of the Rome Statute.	2
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Table of Abbreviations

Every abbreviated word in the memorial is introduced here first in a tabular form.

TABLE OF ABBREVIATIONS

ABBREVIATION	FULL-FORM
¶	Paragraph
&	And
AIR	All India Reporter
All.	Allahabad
art.	Article
ed.	Editor
Hon'ble	Honourable
id.	Ibidem
I.J	Law Journal
Mad	Madras
No.	Number
Ors.	Others
p.	page
para	Paragraph
pt.	Point

Index of Authorities

List of all the sources of information used, chronologically. The laws, cases, scholarly publications, etc.

Index of Authorities

Treaties:

1. International Law Commission Articles on State Responsibility (2001) - (Page 1)
2. Rome statute of ICC, 1998 - (Page 1, 6)
3. Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, of 8 June 1977 (Page 3)
4. Saint Petersburg Declaration of 1868 (Page 3)

UN Documents:

1. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 1990 (Page 7)
2. Guideline no 5(e), GUIDELINES FOR IMPLEMENTATION OF THE UN BASIC PRINCIPLES ON THE USE OF FORCE AND FIREARMS BY LAW ENFORCEMENT OFFICIALS, 2015 (page 9)

Judicial Decisions:

International Criminal Court:

1. ICC, Prosecutor v. Bemba, 01/05-01/08-14, Decision on the Prosecutor's Application for a Warrant of Arrest Against Jean-Pierre Bemba Gombo, 10 June 2008 (Page 10, 11)

International Criminal Tribunal for the Former Yugoslavia

1. ICTY, Prosecutor V Blaškić, IT-95-14-A, Appeal Judgement. 3 March, 2000 (Page 12)
2. ICTY, Prosecutor V. Čelebići, IT-96-21-A Appeal Judgment, 20 February 2011 (Page 12)
3. ICTY, Prosecutor v Delalić (Zejnil) and ors, IT-96-21-A, Appeal Judgment, 20th February 2001 (page 13)
4. ICTY, Prosecutor V. Hadžihasanović and Kubura, IT-01-47-A, Hadžihasanović and Kubura Appeal Judgment, 22 April 2008 (Page 10)
5. ICTY, Prosecutor v. Halilovic, IT-01-48-T, Trial Judgment, 16 November 2005 (page 12)
6. ICTY, Prosecutor v Orić (Naser), IT-03-68-T, Trial Judgment, 30 June, 2006 (page 12)

Books:

1. BC Rodick, The Doctrine of Necessity in International Law (Columbia University Press, New York, 1928) - (page 4)
2. E Jiménez de Aréchaga 'International Responsibility' in M Sørensen (ed) Manual of
3. Public International Law (Macmillan London 1968) - (page 3)
4. Schindler, D. & Toman, J. (eds), The Laws of Armed Conflicts: A Collection of Conventions, Resolutions and Other Documents, (4th ed., 2004) - (page 3)

Journal Article:

1. Alison Carswell, Rory Shaw, John Hunt, Antonio Rafael Sánchez-Rodríguez, Karen Saunders, Joseph Cotton, Paul W. Hill, Dave R. Chadwick, Davey L. Jones & Tom H. Misselbrook, 'Assessing the benefits and wider costs of different N fertilisers for grassland agriculture', Archives of Agronomy and Soil Science (2019) (page 2)
2. Laura I. Faustino, Ana P. Moretti, Corina Graciano, 'Fertilization with urea, ammonium and nitrate produce different effects on growth, hydraulic traits and drought tolerance in Pinus taeda seedlings', Tree Physiology (2015) (page 2)

Statement of Jurisdiction

Proclamation of the jurisdiction of the court where case/petition is filed.

Examples:

1. It is hereinafter most respectfully submitted that the appellant has approached before this International Court of Justice to seek advisory opinion and submitted that the court has advisory jurisdiction to exercise under article 65 of the Statute of the International Court of Justice, 1945. It is humbly submitted that this Hon'ble International Court of Justice has advisory jurisdiction over the matter.
2. The Kingdom of Momaayo and the Republic of Kissaka, both countries are party to the Court's Compulsory jurisdiction and are now at the "confirmation of charges" stage pursuant to Article 61 of the 1998 Rome Statute of the ICC. The defense counsels on behalf of President Azizi Garba object to the charges placed against him and challenge the evidence presented by the Prosecution.
3. It is hereinafter; most respectfully submitted that the Petitioner has approached before the Honorable High Court Division with a Public Interest Litigation on the ground.....violation of Article 28 of the Constitution of the Republic of Bangladesh and humbly submit before the Honorable High Court Division to the jurisdiction under Article 102 of the Constitution of Republic of Bangladesh.

4. The jurisdiction of this Hon'ble High Court has been invoked under Article 226 of the Constitution of India by the Competition Commission challenging the jurisdiction of the Telecom Disputes Settlement and Appellate Tribunal (TDSAT) to pass an interlocutory Order dated 27th September, 2020. It is humbly submitted that this Hon'ble Court has jurisdiction over the matter.

Statement of Facts/Summary of the Facts

- Summarize the fact in different paragraphs
- Highlighting the most important incidents
- Avoid too much details of dates, location (unless absolutely necessary)
- The summary for each memorial of the two parties can be different – focusing on the events that are in favour of the party.
- Summary may also be neutral but the aforementioned technique is very effective to stick to one's arguments.

Issues raised/Statement of Issues

The issues raised are assertions regarding an argument. questions which the other side is supposed to respond to, to win their argument. The issues may be given in the fact or sometimes we have to create them on our own.

Summary of Pleadings/Arguments

After drafting the pleadings, summarize them here. Focusing on the core argument. You may add laws here but the details will be discussed in the "Pleadings" portion.

SUMMARY OF PLEADINGS

FIRST PLEADING

The Frost Files are admissible before this Court, Riesland's surveillance programs violate international law, and Amestonia is entitled to immediate cessation and a guarantee of non-repetition of such surveillance programs. This Court does not exclude evidence on the bases of reliability or providence. In any event, the Frost Files are of sufficient reliability and probative value to warrant their admission, and Amestonia did not violate international law in accessing and submitting them. The Frost Files and additional evidence prove the existence and scope of Riesland's surveillance programs. These programs violated Riesland's treaty obligations under the ICCPR and the Broadcasting Treaty, as they deprived Amestonian civilians of their fundamental human rights and contravened Amestonian law. These programs further violated Amestonia's territorial integrity and U.N. Ambassador Cornwall's diplomatic immunities. Amestonia is entitled to immediate cessation and a guarantee of non-repetition of Riesland's programs, as Riesland continues to store unlawfully-collected Amestonian data and is otherwise likely to develop analogous programs.

SECOND PLEADING

Amestonia's arrest and detention of VoR employees and seizure of VoR property did not violate the Broadcasting Treaty or Amestonia's other international law obligations. The immunities and privileges of the employees and premises terminated pursuant to Article 36 upon the station's use as a pretext for the Carmen Program. Alternatively, the station ceased to function as envisaged when it was abandoned. In any event, *exceptio non adimpleti contractus* justifies Amestonia's non-performance of its obligations. Furthermore, the treaty was suspended

It may also look like this, depending on how you want to summarize it:

Issue 1

- I. President Azizi Garba is not liable for the destruction of the Baobab Tree Sanctuary in Momaayo under Article 8(2)(b)(iv) of the Rome Statute.

Issue 2

- II. President Azizi Garba is not liable for the destruction of the Nadawada River in Momaayo under Article 8(2)(b)(iv) of the Rome Statute.

Issue 3

- III.A. The attack done by Kissakan troops was self defense.
- III.B. The object of the attack was not personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations.
- III.C. The action done by the UN Police Officer was inappropriate and Illegal because the police officer fired in a situation where it wasn't needed.

Arguments advanced/ Pleadings

The most crucial part of the memorial – the statements to win/lose the case. Explaining and supporting your issue with the factual argument, statutes/laws, extensive cases, reports, scholarly publications etc. The more legal sources used incorporated with the assertions, the stronger the argument will be.

Commonly used citation: Oxford University Standard for the Citation of Legal Authorities (OSCOLA)

- II. **President Azizi Garba is not liable for the destruction of the Nadawada River in Momaayo under Article 8(2)(b)(iv) of the Rome Statute.**

- The RMA and PMMA were heavily armed; guarding the last resort of survival, the access point of oil surrounding the Nadawada river. Alongside the increase of public pressure from the citizens of Kissaka, President Garba had to work in accordance to his state's needs. The only legitimate object which States should

endeavour to accomplish during war is to weaken the military forces of the enemy- that for this purpose it is sufficient to disable the greatest possible number of men.⁹

- In so far as objects are concerned, military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage – as such the Nadawada river in this case.¹⁰
- In view of the current state of international law, even for the use of the most lethal weapon on Earth, nuclear power, the ICJ embarking upon the elements of fact at its disposal, could not conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defence, in which the very survival of a State would be at stake.¹¹ If nuclear power can be used in situations of peril, infiltrating a river is incomparable to the least.
- Scholarly debate arose as to the possibility of identifying, force majeure and distress, a further exception to the unlawfulness of conduct in breach of an international obligation, similarly based on a factual situation of necessity *latu sensu*.¹² The prevailing view is that state of necessity has arisen in this case which applies to involuntary or coerced conduct, including of a collective nature when consciously acting in violation of international law under a situation of danger for the State as a whole, or its population; on the other hand, while distress may be

⁹ Art. 48, Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, of 8 June 1977; Saint Petersburg Declaration of 1868, paras 2-3 of the Preamble; Schindler, D. & Toman, J. (eds), *The Laws of Armed Conflicts: A Collection of Conventions, Resolutions and Other Documents*, (4th ed., 2004) p. 91

¹⁰ Art.2, Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977.

¹¹ ICJ, *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, ICJ Reports 1996, the operative para, at page 44

¹² E Jiménez de Aréchaga 'International Responsibility' in M Sørensen (ed) *Manual of Public International Law* (Macmillan London 1968) 531–604.

Prayer

The remedies sought before the honourable Court. To understand better, it is the reply to the issues framed by each party. Both the parties will have different prayer to the Court.

Prayer for Prosecution:

Prayer

For the reasons stated above, the Office of Prosecution humbly prays to the Court to frame the following charges against President Garba to be held liable:

- I. For the destruction of the Baobab Tree Sanctuary, not justified by military necessity and carried out unlawfully and wantonly under Article 8(2)(b)(iv) of the Rome Statute
- II. For the destruction of the Nadawada River, not justified by military necessity and carried out unlawfully and wantonly under Article 8(2)(b)(iv) of the Rome Statute
- III. For the killing of the five UN personnel under the international law of armed conflict under Article 8(2)(b)(iii) of the Rome Statute
- IV. For the killing of 170 men and boys in the town of Dunanti under Article 8(2)(b)(i) of the Rome Statute

Respectfully Submitted,

The Office of Prosecution

Prayer for Defence:

Prayer

For the reasons stated above, the defense humbly prays to the Court for the discharge of President Garba on the basis of dismissal of the charges brought against him and declare that:

- I. President Azizi Garba is not liable for the destruction of the Baobab Tree Sanctuary in Momaayo under Article 8(2)(b)(iv) of the Rome Statute
- II. President Azizi Garba is not liable for the destruction of the Nadawada River in Momaayo under Article 8(2)(b)(iv) of the Rome Statute
- III. President Azizi Garba is not responsible for the killing of the five UN personnel under the international law of armed conflict under Article 8(2)(b)(iii) of the Rome Statute
- IV. President Azizi Garba is not responsible for the killing of 170 men and boys in the town of Dunanti under Article 8(2)(b)(i) of the Rome Statute

Respectfully Submitted by
Counsels on behalf of President Azizi Garba

ORAL SUBMISSIONS

How to submit before the court?

Direct as excellency for international courts, lordship for national courts.

1. May it please your excellencies/lordships. *Seeking permission to begin*
2. Much obliged your excellencies/lordships. *Thanking them after they give you permission*
3. Your excellencies/lordships, this is the 1st counsel on behalf of the Appellant/Prosecution/Petitioner OR Defendant/Defense/Respondent.

The 1st counsel would speak for ----- minutes and the second counsel would speak for ----- minutes. ----- minutes reserved for rebuttal. **(TIME ALLOCATION)**

4. If your excellencies/lordships do not have any queries regarding the fact of the case, the counsel would like to proceed with the arguments.

If judge says proceed, you move to the next step, if not, you proceed to explain the fact briefly.

5. Much obliged your excellencies/lordships.
6. Your excellencies/lordships, the first issue that is going to be addressed by the first counsel is

state the issue and start with your arguments

7. If your excellencies/lordships do not have any queries regarding the first issue the counsel/agent would like to proceed with the next issue.

If judge says proceed, move onto the next step, if not, answer their query first.

8. Much obliged your excellencies/lordships.

describe the next issue

9. If your excellencies/lordships do not have any queries regarding the issues submitted by the 1st counsel, then the counsel would like to call upon the 2nd counsel to make submission before the honourable court.
10. Much obliged your excellencies/lordships.

first counsel leaves, second counsel enters and bows

11. May it please your excellencies/lordships
12. Much obliged your excellencies/lordships
13. Your excellencies/lordships, this is the 2nd counsel on behalf of the Appellant/Prosecution/Petitioner OR Defendant/Defense/Respondent.
14. Your excellencies/lordships, the issue that is going to be addressed by the 2nd counsel is

proceeds to argue on the issue(s)

15. If your excellencies/lordships do not have any queries regarding the issue(s) presented by the 2nd counsel, the counsel would like to pray before the honourable court.

2nd counsel very humbly prays before the judges while the 1st counsel and researcher stands up and keeps bowing looking down

16. The Appellant/Prosecution/Petitioner OR Defendant/Defense/Respondent rests its case.

bows and leaves, without showing their back to the judges

- For rebuttals, it is very simple as the bench officer first calls the Appellant/Prosecution/Petitioner followed by the Defendant/Defense/Respondent. Any of the two counsels would come and rebut. Simply begin with “May it please your excellencies/lordships”.
- It is recommended to rebut in points saying “your excellencies/lordships, the counsel would like to rebut on 7 points. Firstly, the defense has misinterpreted the fact” (for example):
 1. May it please your excellencies/lordships.
 2. The counsel would like to rebut on 7 points. The points are ----

Key points: what sets the two counsels apart is that the first counsel usually allocates the time, may explain the fact – simply said, strongly introduces the case.

The second counsel prays before the court – strongly ends and summarizes what it really seeks from the Court.

It is intricate yet interesting once a mooter gets a hold of the procedures and etiquettes.

Happy Mooting!

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- Alisdair A Gillespie, MOOTING FOR LEARNING (2007) 5 Journal of Commonwealth Law and Legal Education 1, 19-37