



Model Courts of Justice 2022

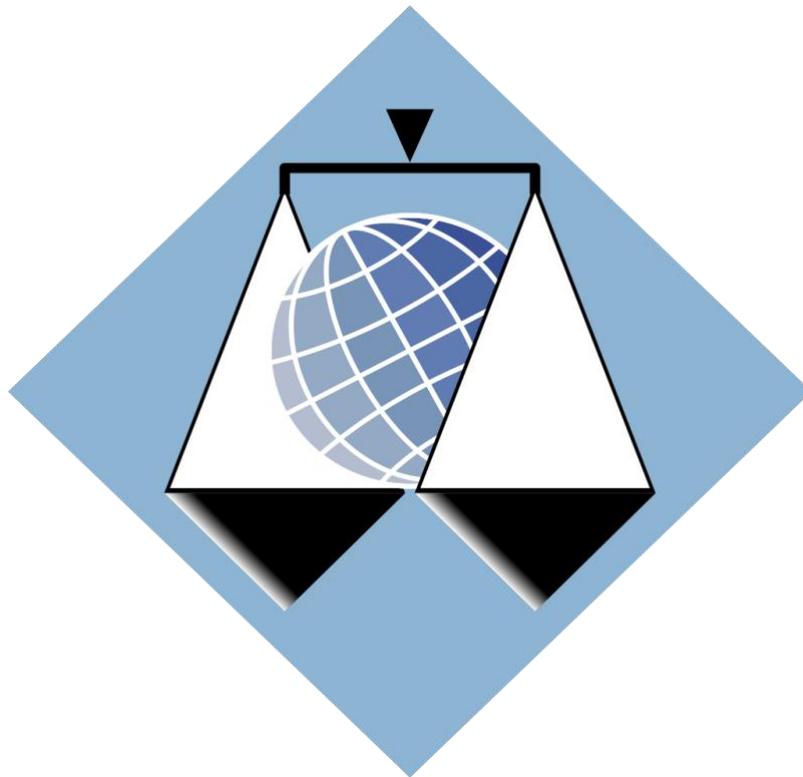
International Criminal Tribunal for the Former Yugoslavia

Handbook



MODEL COURTS OF JUSTICE 2022

**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR
THE FORMER YUGOSLAVIA**



CONTENTIOUS JURISDICTION

HANDBOOK

THE CASE OF

PROSECUTOR V. SLOBODAN MILOŠEVIĆ

A. WRITTEN PROCEEDINGS: MEMORIAL & COUNTER-MEMORIAL

Written Proceedings start with the submission of the Memorial of the Prosecutor to the Secretariat of Model Courts of Justice 2022 via icty@modelcj.org. The Secretariat shall then send it to the Defendant Party who is expected to write and submit a Counter-Memorial in accordance with the Rules of Court. Detailed information regarding the deadlines shall be duly announced by the responsible Under-Secretary-General.

A memorial is a pleading that is submitted by the Prosecutor which contains a statement of the relevant facts and law and the submission; on the other hand, a counter-memorial is also a pleading that is submitted by the Defendant Party which contains an admission or denial of the facts stated in the memorial, additional facts, a statement of law in answer, (if deemed necessary) observation the statement of law in the memorial and lastly a submission.

In Model Courts of Justice 2022, the procedure of replies will not be applied. A Memorial and a Counter-Memorial differ by the content; however, the form of pleadings is essentially the same.

1. Sample Memorial/Counter-Memorial:

The International Criminal Tribunal for the former Yugoslavia

Prosecutor v. Slobodan Milosevic

Memorial of the Prosecutor /Counter-Memorial of the Defendant Party

INTRODUCTION

A brief summary of the situation on the case will be given in this section. Different approaches of the Memorial of the Prosecutor and the Counter-Memorial of the Defendant Party will be appreciated with the references to key developments between the countries on the topic of the case.

JURISDICTION

Tribunal is expected to accept the Jurisdiction of the Court. Challenges against the Jurisdiction of the Court can be made by the defence counsel, but if the Tribunal decides that it does not have jurisdiction, then that decision will be overruled by the Secretariat.

FACTS

Facts found relevant to the case by the Parties will be mentioned in this section with the historical and political development of the case. Bear in mind that this section will compose the factual bases of legal arguments. Defendant Party may challenge what is provided and propose their own claims.

APPLICABLE LAW

In this part, the legal basis for official claims regarding the case will be given. Parties may refer to multilateral or bilateral treaties, conventions, declarations, general principles of law, relevant criminal law, and legal literature by scholars or international organizations and so on. Participants are not limited to the applicable law that is given in the study guide, especially the case-law is well-accepted as an applicable law and evidence.

CLAIMS

In this section, parties are expected to make a synthesis of the facts and the applicable law while they are finally stating their official claims. The facts should be explained with the law. Defendant Party may challenge what is provided and propose their own claims.

SUBMISSION

A submission contains the request of the parties from the Court to act and decide in their favour; parties to the case should briefly describe what conclusion they hope the Court will reach.

Submitted respectfully,

on behalf of

the Prosecutor / the Slobodan Milosevic

by

(names of the advocates)

B. ORAL PROCEEDINGS

1. Advocates

Parties are expected to submit material evidence before the Court. The Secretariat of Model Courts of Justice 2022 shall ensure that all the Judges and the Advocates receive the materials during the Conference. In order to ensure this procedure, **the Advocates are expected to hand-in their materials that will be presented before the Court, to the Secretariat, before the Conference.** Detailed information regarding the deadlines shall be duly announced by the responsible Under-Secretary-General. Such materials may include maps, conventions, agreements, treaties, declarations, customary international law documents, documents on the principles of law, former case-law, doctrines and teachings or any other visuals which would aid the presentation of the case.

2. Judges and the Registrar

a. Remarks for the Preparation to Oral Proceedings:

The Secretariat finds the objectivity of the Judges towards the case to be very important. Therefore, Judges are recommended to read the Study Guide carefully. Within due time before the Conference, the Secretariat will provide all of the Judges the Memorial and the Counter-Memorial. **We strongly recommend the Judges to not to make any additional research with regards to material evidence.** However, doing extra readings on the sources of law mentioned in the Study Guide, the Memorial or the Counter-Memorial would be in your benefit.

All in all, the Judges are expected to evaluate evidence material, obtain expert statements, listen to and thoroughly question Parties **and then** come to a conclusion on the prospective Judgment. In other words, as opposed to Advocates who need to make a strong preparation before the Conference; **the Judges have to save their full concentration to the sessions.**

The Secretariat allows the Judges to call upon three legal experts before the Court. Legal Experts will be responsible for their statements during Oral Proceedings. Detailed profiles of the Legal Experts will be given by the Secretariat.

The Registrar shall take copious notes of the sessions. He/she needs to be careful in this mission; as, in case any of the Judges misremember the statements of Experts or speeches of the Parties, the truth shall lie in the Report. By also taking the oaths of all Members and

Experts, the Registrar's role is to ensure the credibility of the Oral Proceedings. The Registrar is therefore asked to read the Study Guide, the Memorial and the Counter-Memorial carefully; in order not to confuse terms and names in the Report. The Report shall be the basis of Sections II and III of the Judgment, while also aiding the precise reflection of the Deliberations.

4. Sample Judgment:

INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA

YEAR

Date of the Judgment

Decision on the case of

(PROSECUTOR v. SLOBODAN MILOSEVIC)

Prosecutor is represented by agents (names of the Advocates);

and

Slobodan Milosevic is represented by agents (names of the Advocates).

I. PROCEDURAL HISTORY

Under this chapter, a brief summary of the case should be written, previous developments regarding the case such as the date and the institution of proceedings before the Court should be mentioned. Brief information about the situation in the Prosecutor State regarding the case topic would be appreciated.

II. SUBMISSIONS OF THE PROSECUTION

This section will be a summary of the Memorial, Evidence Material and Expert Statements of the Prosecutor. The focus shall be the submission of the Prosecutor.

III. SUBMISSIONS OF THE DEFENCE

This section will be a summary of Memorial, Evidence Material and Expert Statements of the Counsel for the Defense. The focus shall be the submission of the Defense.

IV. APPLIED LAW

Since the legal grounds are crucially important for the decision, the Court must determine the applicable law. Any legal ground applied by the Court shall be summarized in this section. If the Court decides to disregard a source of law presented by Parties, the reasons shall be indicated here.

V. STATEMENT OF FACTS

- **STIPULATIONS**

If there was a stipulation produced by the State parties during the stipulation phase, Judges are required to include it in their Judgement which is as follows:

“The Stipulation concluded by the parties of the dispute on (date of submission of the stipulation) reads as;”

- **COURT’S FINDINGS**

The evidence presented and the witness testimonies that form the material ground of the Judgement will be indicated here. The Court is free to disregard any piece of evidence or testimony and the reasons shall be given in this section.

VI. DECISION

*This section makes a synthesis of the Facts and Applied Law and gives the final decision of the Court on the case. This section constitutes the core of the Judgment. This part is expected to be detailed and to continue with the phrase **“the Court considers that”** followed by an explanation thereby. After the Court comes to a conclusion, it needs a phrase before stating the decision such as **“the Court concludes that”** should be written at the beginning of the main decision as a commencement phrase and the rest of the decision should be clear, precise and expected to be a whole sentence. If there is more than one decision, any other one should also be in the same format except the beginning since it is sort of an oppositional decision to the first. The final decision shall be in the following format:*

For these reasons,

International Criminal Tribunal for the former Yugoslavia, with

JUDGES (surnames of the Judges in the Majority) and JUDGES (surnames of the Judges Dissenting)/Unanimously

1. Finds

JUDGES (the President or Vice-President Judge is specified) (surnames of the Judges in the Majority) and JUDGES (surnames of the Judges Dissenting)/Unanimously

2. Decides

JUDGES (surnames of the Judges in the Majority) and JUDGES (surnames of the Judges Dissenting)/Unanimously

3. Rejects

JUDGES (surnames of the Judges in the Majority) and JUDGES (surnames of the Judges Dissenting)/Unanimously

DISSENTING OPINION OF JUDGE 1

If there are Judges in the minority, disagreeing with the Court; he/she may write a dissenting opinion.

CONCURRING OPINION OF JUDGE 2

If there are Judges in the majority; who have arrived to the same conclusion with the majority but on different grounds; he/she might write a concurring opinion.

DECLARATION OF JUDGE 3

The Judges in the majority may make a declaration on how they assume the Judgment should be perceived and what should be kept in mind in the meantime; may write a declaration.

REMINDER FOR ALL PARTICIPANTS

Participants of Model Courts of Justice 2022 are kindly reminded that plagiarism in the Memorials or the Judgment shall not be tolerated by the Secretariat.

Parties are recommended to use the Oxford Standard for Citation of Legal Authorities (OSCOLA) in their submissions. Yet, the Secretariat is comfortable with any other method that is found to be more efficient by the participants as long as the Memorial is consistent in itself. A bibliography shall be appreciated.

As for evidence material, the sources must be shown in order not to face an objection of immaterial by the Opposing Party or to eliminate the risk of the Judges to disregard the evidence.

The Secretariat is fully aware of the fact that the writing process of the Judgment in the Conference can be stressful. Therefore, the Secretariat shall not seek a list of references. The evidence materials need not be referenced; yet a clear indication that those segments belong to the presented cases is necessary. The Court must give references to case-law and is recommended to use the Oxford Standard for Citation of Legal Authorities (OSCOLA). Yet, the Secretariat is comfortable with any other method that is found to be more efficient by the participants as long as the Judgment is consistent in itself.