

#MUNLAWS18

Faculty of Law, University of Ljubljana
October 26th – 28th 2018

RULES OF PROCEDURE



Permanent Court of Arbitration

October 2018

I. General rules

Article 1: Scope

1. These rules apply to the Permanent Court of Arbitration of MUNLawS conference and will be considered adopted in advance of the session.
2. In case of doubt or conflict between these Rules of Procedure and any other procedural regulation laid down in either the Charter of the United Nations, or the Statute of the Permanent Court of Arbitration, these Rules shall prevail. The Secretariat shall have the final word in every case.

Article 2: Language

1. English will be the official and working language of the conference.

Article 3: Courtesy and Disciplinary Rules

1. All members of the Arbitral tribunal and Agents hold the responsibility to show respect to each other and shall act accordingly.
2. One to one discussions during the sessions are strictly prohibited, with the exception of communication through the note passing.
3. The President of the Arbitral tribunal (hereafter the President) will immediately call to order any member of the Arbitral tribunal who fails to comply with this rule.

Article 4: Communication through Note Passing

1. Written notes are the only means of communication between the members of the Arbitral tribunal not recognized to speak.
2. Notes are distributed by the Administrative Staff present in the Arbitral tribunal.
3. All notes must be in English and the content of the notes shall not be irrelevant or abusive, otherwise the Administrative Staff may take the note to the President for investigation and the President may decide not to pass the note if the language or the content is found to be inappropriate.
4. Communication through note passing between an Arbiter and an Agent is strictly prohibited.
5. Computers and other electronic devices may be used in the courtroom only with permission of the President.

Article 5: Statements by the Secretariat and Organization Team

1. The Secretary-General or a member of the MUNLawS team whom s/he appoints may at any time make either written or oral statements to the Arbitral tribunal.

Article 6: Quorum

1. The participants are expected to attend on time and not to skip any sessions unless there is an urgent health issue at stake.
2. The quorum is met if at least two-thirds of the registered Arbitrators are present.
3. Verification of quorum shall take place at the beginning of every session by a roll call conducted by the President.
4. When a member of the Arbitral tribunal is late for the roll call of the session, a note should be sent to the President with a request for being noticed.
5. A quorum will be assumed to be present during sessions, unless specifically challenged and shown to be absent by a roll call or deemed as such by the President.
6. Decisions taken during the Arbitrators' Deliberation sessions shall be taken by the referred majority of the Arbitrators present.

II. Members of the Arbitral tribunal

Article 7: President

1. MUNLawS 2018 conference shall have one President of the Arbitral tribunal.
2. President of the Permanent Court of Arbitration shall be appointed by the Secretariat prior to the conference amongst the applicants and s/he shall remain in duty until the closing of proceedings unless otherwise is decided by the Secretariat.
3. The President shall be responsible for the implementation of the Rules of Procedure prepared for the Permanent Court of Arbitration. This moderation duty will be the same as a Director's in another Committee.
4. The President also acts as an Arbitrator. S/he shall have an equal vote and say with other Arbitrators in all matters relating to the case before the Arbitral tribunal.
5. President shall also have one vote in procedural voting.
6. The President is obliged to follow the instructions given by the Secretariat. In case of any disagreement or ambiguity relating to the application of a certain article or provision of this Rules of Procedure to a specific situation, the decision of the Secretariat shall be final.
7. Although the President shall dictate the implementation of the Rules of Procedure in the Arbitral tribunal, s/he shall not have authority over the decision of the other Arbitrators unless certain Arbitrator's opinion is obviously biased in which case the concerned shall be given an official warning by the President or the Secretariat.

Article 8: Rapporteur

1. The Rapporteur of the Permanent Court of Arbitration shall be appointed by the Secretariat prior to the conference and s/he shall remain in duty until the closing of proceedings.
2. The Rapporteur shall not possess the right to participate in decision-making process ; s/he does not have the right to vote in procedural and substantive matters.

3. The Rapporteur will take the oaths of the Agents and Witnesses before the opening statements of the Agents or the testimony of the Witnesses.
4. The Oath shall be declared as: "I solemnly declare upon my honor and conscience that I will speak the truth, the whole truth and nothing but the truth".

Article 9: Arbitrators

1. The Arbitrators shall be appointed by the Secretariat amongst the applicants prior to the conference and shall remain in duty until the closing of proceedings unless otherwise decided by the Secretariat.
2. A solemn declaration shall be made by each Arbitrator prior to the arbitration; "I, Arbitrator "Surname", solemnly declare that I will perform my duties and exercise my powers as an Arbitrator honourably, faithfully, impartially and conscientiously."
3. Arbitrators are responsible to determine the rules of international law on the specific case and reach a final Award. The final Award of the Arbitral tribunal shall be written by the members of the Arbitral tribunal and announced by the President.
4. Each Arbitrator shall have one vote in procedural and substantive voting procedures.
5. Arbitrator's decisions and actions must be unbiased. If they fail to meet this criterion they may be given an official warning by the President or the Secretariat as stated by Article 7, paragraph 7.
6. Arbitrators may ask the Agents or Witnesses questions in the designated phases of the arbitration proceedings. The rules from Article 13, paragraph 3-7 apply for the Questioning of the Arbitrators.

Article 10: Agents

1. Agents shall be divided by the Secretariat prior to the conference amongst the Applicant's and Respondent's party. They shall remain in duty until otherwise is decided by the Secretariat.
2. Agents represent state parties in the case as two for the Applicant and two for the Respondent and they are obliged to act in the best interest of their clients. The written memorials, presentation of evidence, questioning of the Witnesses, rebuttal and surebuttal of their counter-party statements and evidences, and other methods of proof shall constitute their instruments while carrying out their duty.
3. Agents, as any other member of the Arbitral tribunal are obliged to abide by the Rules of Procedure and final decisions of the President. The official warning procedure for the Arbitrators in Article 7, paragraph 7, also applies to the Agents.
4. The Agents will be required to write a memorial prior to the conference and send it to the Secretariat. Chairpersons will notify the delegates regarding the deadline for submission of memorials.
5. Agents do not have the right to vote in substantive or procedural voting. However, they may raise some motions following the rules in Section III of MUNLawS PCA Rules of Procedure.

6. Agents may also raise a Point of Order, Point of Parliamentary Inquiry or Point of Personal Privilege following the rules in Section IV of MUNLAW'S Rules of Procedure. However, they cannot raise a Point of Information.

III. Phases of Arbitration

Article 11: Opening Statements

1. Opening statements are brief speeches which can be considered as the re-statement of the memorial. The parties intend to show what they will try to prove during the arbitration.
2. The time allocated for each party is set by the President and it can be amended by the Agents or Arbitrators before the arbitration phase begins. Once it begins, it cannot be amended.
3. Prior to the opening statements, the Rapporteur shall have the Agents take their oaths as stated by Article 8, paragraph 4. An Agent refusing to take the oath will not be able to continue counseling.
4. The Applicant shall have the first opening statement and after the Applicant completes the opening statement, the Respondent shall proceed. The time allocated for the opening statements shall be divided between both of the Agents representing one party.
5. Questioning of the Agents by the Arbitrators will not be possible until both sides conclude the presentation of their evidence.

Article 12: Presentation of Evidence

1. Evidence is any any piece of tangible information decided to be reliable by the Arbitral tribunal. It can be newspaper articles, multilateral or bilateral treaties, reports, resolutions or anything that in essence helps the Agents prove their arguments.
2. The procedure related to the time allocated for the opening speeches shall be applied to the presentation of evidence *mutatis mutandis*.
3. The President may *ex officio* decide that evidence is unacceptable. This decision must be announced and it can be appealed by one of the Arbitrators or the Agents. In event of an appeal, the Arbitrators vote on whether the evidence should be considered acceptable.
4. If the decision of the President is successfully appealed, the evidence will stand as valid. If no appeal takes place or if the decision of the President stands after the appeal process, that piece of evidence cannot be referred to during the presentation.
5. The Applicant party shall present their evidence and establish its relation to the case first. They will be followed by the Respondent.

Article 13: Questioning of the Agents by the Arbitrators Following the Presentation of Evidence

1. After finishing the presentation of evidence, the Arbitrators shall have the floor to question the Agents. In order to ask questions, the Arbitrators shall be recognized by the President first.
2. The Arbitrators may question any side they prefer; however, they may only pose one question at a time.
3. There shall be no certain time limitation for the questioning of the Agents; nevertheless, the President may at any time determine to end the questioning. This decision of the President is subject to appeal. In event of an appeal, the Arbitrators vote on the President's decision.
4. The questions of the Arbitrators shall not be limited by the scope of the presentation.
5. One Agent from each side shall answer the question of an Arbitrator. Intervention from the other Agent will not be allowed. However, the parties are free to decide which Agent will answer any given question.
6. The Agents shall answer the questions, stand upon the stand and seek for the permissions directed by the President to leave the stage.
7. The President may at any time rule a question or answer out of order and this decision cannot be appealed.

Article 14: Testimony of the Witnesses

1. Prior to the conference the Applicant and Respondent parties must specify the name of one Witness each, their positions and relation to the case. The Secretariat shall afterwards provide the Agents with the Witnesses and their contact information, so that the Witnesses can be prepared by the Agents before the arbitration.
2. These Witnesses shall be called upon by the Rapporteur. After they take their oaths the Arbitral tribunal may proceed with the testimony of the Witnesses.
3. There shall be no certain time limitation for the testimony of Witnesses. However, the President may warn the Agents or Arbitrators should the testimony needlessly exceed a reasonable amount of time.
4. The testimony of Witnesses shall consist of two main parts ; direct examination and cross examination.
5. During the direct examination, the sides shall be questioning their own Witnesses. The side that is examining directly shall not be able to ask leading questions. Such questions are subject to the objection of other party. The Presidents shall also be able to rule the question out of order ex officio.
6. Examining the opposition's Witness is called a cross examination. During the cross examination the side questioning the Witness may only ask questions related to what the Witness has said during the direct examination. Any other questions shall be ruled out of order by the President or objected by the opposing party.
7. Hearsay questions are not in order. Such questions are subject to the other party's objection. The President shall also be able to rule the question out of order ex officio.

8. Questions to the Witnesses shall be related to the Witness' own experience only. It must be possible for the source of the information to be examined directly during the cross- examination.
9. Applicant shall be the first to present the Witness. After the direct examination by the Applicant, the Respondent shall have an opportunity to cross-examine the Witness. Finally, the Witness shall be questioned by the Arbitrators. However, the Arbitrators' questions are not limited by the Witness' statements during the direct examination. The same procedure will apply to the Witness of the Respondent.

Article 15: Rebuttal and Surebuttal

1. During the rebuttal and surebuttal the introduction of new evidence shall be strictly forbidden. However, the Agents will ask the Arbitrators to admit previously presented documents and Witnesses into evidence.
2. During rebuttal and surebuttal the parties shall try to determine where their argument was lacking and try to compensate. The rebuttal and surebuttal shall be delivered by only one Agent for each party.
3. The time allocated for rebuttal and surebuttal is set by the President and it can be amended by the Advocates or Judges before the trial phase begins. Once it begins, it cannot be amended.
4. After each party finishes their rebuttal and surebuttal, the Arbitrators will have the opportunity to question the sides. Questioning of a certain side starts immediately after they have delivered their rebuttal. The rules from Article 13, paragraph 3-7 apply for the Questioning of the Arbitrators.

Article 16: Arbitrators' Deliberation

1. After the conclusion of the rebuttal phase, the Agents are asked to leave the Courtroom for Arbitrators' Deliberation. The Arbitrators discuss the case in private.
2. During the deliberation the methods of open debate, moderated caucus and unmoderated caucus as explained in Articles 13 and 14 of MUNLawS Rules of Procedure, will be adopted. However, the Arbitrators are not required to stand up or go up to the podium while making speeches.
3. Length of the Arbitrators' deliberation will be determined and announced by the President. The President may extend the time if needed; however, his or her final decision is not a subject to appeal.

Article 17: Closing Statements

1. Closing statements shall be given by the Agents for each party to the case.
2. During closing statements the Agents shall try to present what they have proven through their evidence, legal elements and Witnesses and deliver their prayer for relief. The time for speakers shall be determined by the President. The procedure in Article 11, paragraph 2 will be applied mutatis mutandis.

IV. Objections

Article 18: General Provisions Governing Objections

1. Where one of the parties' action or statement is considered as falling under the scope of any objection set forth in this Section, the other party has a right to raise an objection.
2. The final decision on the objection shall be made by the President and this decision shall not be subject to an appeal with the exception of an immaterial objection.
3. The President shall announce the decision on the objection as "granted" or "overruled".
4. Objections may interrupt the speaker.

Article 19: Hearsay

1. Hearsay is a testimony that is given by a Witness who speaks about not what s/he knows personally, but what others have said, which therefore depends on the credibility of someone other than the Witness. Such testimony is inadmissible under the rules of evidence.
2. Questions to the Witness shall be related to the Witness' own experience only. It must be possible for the source of the information to be examined directly during cross- examination.
3. If one of the parties to the case asks hearsay questions to a Witness, the other party has the right to raise an objection.
4. The final decision on the objection shall be made by the President and this decision shall not be subject to appeal.

Article 20: Leading Question

1. Leading question is a question that suggests the answer to the person being interrogated; especially a question that may be answered by a mere "yes" or "no."
2. In case of a leading question during the direct examination the other party has the right to object. The final decision on the objection shall be made by the President and this decision shall not be subject to appeal.

Article 21: Speculation

1. Speculation is the act or practice of theorizing about matters over which there is no certain knowledge.
2. This objection shall be raised if a Witness tries to predict the result of an answer or possible outcome of an event.
3. In case of speculation the other party has the right to object. The final decision on the objection shall be made by the President and this decision shall not be subject to appeal.

Article 22: Irrelevant

1. All assertions by the parties shall be relevant to the case at hand.
2. If the assertion made is irrelevant to the case the other party shall have right to object. The final decision on the objection shall be made by the President and this decision shall not be subject to appeal.

Article 23: Badgering

1. During the examination of the Witnesses, Agents have the responsibility to refrain from intimidation and distressing methods.
2. If one of the parties fails to meet this criterion, the other party shall have the right to raise an objection. The final decision on the objection shall be made by the President and this decision shall not be subject to appeal.

Article 24: Immaterial

1. Immaterial evidence tends to prove some fact that is not proper or is lacking logical connection with the consequential facts.
2. If one of the parties fails to abide by this rule, the other party shall have right to object. The decision on the objection by the President may be subject to an appeal. In the event of an appeal the final decision shall be made by the Arbitrators' vote.

Article 25: Prejudicial

1. All assertions of law and facts shall respect the personal integrity of the Agents, Arbitrators, Witnesses and others present in the Courtroom.
2. If an assertion by one of the parties harms the personal integrity of a person, an objection may be raised by any of the persons mentioned above. The final decision on the objection shall be made by the President and this decision shall not be subject to appeal.

Article 26: Competence

1. This objection shall be raised when a speaker asserts to a technical detail which cannot be assessed by the mentioned speaker.
2. The objection shall only be raised by the other party. The final decision on the objection shall be made by the President and this decision shall not be subject to appeal.

V. Award

Article 27: General Provisions Governing Award

1. The simple majority vote of the Arbitrators will be required for deciding on claims and writing of the Award.
2. Each Arbitrator shall have one vote. In the event of an equality of votes, the President or the Arbitrator who acts in his place shall have a casting vote.
3. The Award shall include the following aspects:
 - a) The date of Award
 - b) The names and signatures of the Arbitrators authorizing the Award.
 - c) Names of the parties and Agents
 - d) Summary of the arbitration
 - e) Statement of the facts
 - f) Legal ground
 - g) The Merits of Each Claim
 - i. The Position of the Parties
 - ii. The Tribunal's Assessments
 - h) Decision
 - i. Dissenting and concurring opinions
4. Dissenting opinion can be written and added to the Award by Arbitrators who oppose the Award of the Arbitral tribunal.
5. Separate opinion can be written and added to the final Award by Arbitrators who agree with the final Award despite having different legal basis.