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# International Law

## Critical Thinking Frameworks in International Law

Gleider Hernández, *International Law* (Oxford University Press, 2019)

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### International legal argument, advocacy, and mooting

Various competitive ‘mooting’ competitions have become very popular across law schools and faculties, and the specific approach to international legal advocacy provides a highly compelling first taste of the practice of international law, albeit in a relatively stylized setting. ‘Mooting’ is the term for a mock legal hearing; it probably arises from the fact that it does not deal with actual, pending issues, but issues that are ‘moot’. Students usually take on the role of legal counsel and deliver oral arguments before judges. In competitive settings, sometimes the judges are real judges on international courts!

Mooting helps students to practice designing and delivering persuasive arguments based on the law; to debate and respond to questioning from judges; and to think quickly. These are crucial skills for law students considering a career in legal advocacy or the Bar.

#### A step-by-step guide to effective oral advocacy

**Step 1. Know your arguments fully.** When planning a moot presentation, ensure that you are fully acquainted with the nuances of your argument, that you know the merits of your argument. In particular, it is in your interest to know the law in great detail, mastering the facts of the cases to which you cite, as well as any relevant treaty provisions or other instruments. A detailed, in-depth knowledge will help you to frame your case and will assist in responding to any questions that are asked. Preparation is key, so take the opportunity to research and to practice.

**Step 2. Anticipate questions.** A well-drafted moot problem will pose difficult questions for both sides, problems that can be seized upon by the judges. Anticipate

these weaker points and possible questions that might arise. Be prepared for questions at all levels of difficulty: some judges will have decades' worth of experience on precisely the question at hand, but others might not be fully comfortable with that area of law.

**Step 3. Focus on your core arguments.** You will not be able to explore every possible facet of an argument, so focus on a selection of the most crucial arguments that you must raise. Though you should not only select the most convincing arguments for your side, you should find an opportunity to arrange your argument so that, ideally, you are able to focus on the strongest points of your argument. Do not just try to identify the problems in the opposing side's arguments.

**Step 4. Listen carefully.** Most professional legal argument is a matter of conversation between advocates and bench; it is not a purely formal or stylistic exercise. When judges pose a question, too often an ill-prepared mooter will rush into answering without fully reflecting on what the question being posed actually is. Take a step back and reflect for a few seconds, in order to ensure that you have fully understood the question and have an idea of how to respond.

**Step 5. Know when to concede.** In some situations, you may need to concede. You can firmly, but respectfully, express disagreement with the judges, but do not do so if such resistance is more out of stubbornness or principle than to do with the law and the facts. If you are asked about a case that you have not read, or when you have exhausted all the possible arguments that benefit your side, it is perfectly fine to concede a lack of knowledge or a weakness in your case. Just do so in a way that does not undermine the entire basis of your side's argument.

**Step 6. Remain calm.** Mooting can take place in a highly pressurised, often fast-paced setting. Judges sometimes seek to provoke or unbalance mooters. Keep your composure; you are the master of your argument, and you are always best served by presenting your argument in a calm, measured manner.

**Step 7. Responding and rebutting.** Most mooted competitions offer both sides a rebuttal or 'sur-rebuttal'. Do not use this opportunity to rehash existing arguments, and do not feel obliged to respond to all of your opponent's points. Be selective and

use the opportunity to address any legal or factual errors or misrepresentations the other side may have made and where you have the legal arguments to rebut in a powerful manner. Be succinct—this is your last opportunity to present before the judges, so you want them to give them every opportunity to rule for your side.