

## FDI Moot – Case Drafting Guidance

- Discuss 4 to 6 issues that the case should address.
  - A balanced approach is ideal, but not required as long as there is at least 1 substantive and 1 procedural issue. Consider impact on the moot’s practices and on the teams’ learning process (e.g. when logically grouping issues).
  - Consider whether any issue will actually entail sub-issues that are closer to independent ones.
  - Consider not only the number of issues but also the extent of preparation and argument from the teams each issue will require (e.g., one issue may require the same amount of effort and time to prepare and argue as several other issues combined; or one issue may be considerably simpler than the other issues).
  - Remember that teams have time and draft limitations to discuss all issues.
  
- Prepare an outline of 1-2 pages addressing the following points and questions:
  - How would an arbitral tribunal clearly define legal issues in a PO?
  - What is the position of each party, for each issue? Summarize in one sentence each key submission.
  - Can issues be addressed together in a plausible fact scenario? Make sure each side has consistent positions and that overall the sides’ positions are balanced (this does not require that each and every issue have the same balance between the sides, but rather that the case as a whole be balanced).
  - Is the arbitration treaty-based or contract based (or both)?
  - What arbitration rules are to apply? Check with the Directors if there are external factors to consider (e.g. further develop a new mechanism recently adopted by an institution).
  - Are there any parallel or ancillary proceeding? If so, define whether as factual elements (pre-notification requisite) or issues to be argued (challenges, securing or admission of evidence, etc.).
  - Is the proposed treaty fully or partly inspired by existing treaties or contracts? Consider the burden of developing a full treaty or contract. Ensure consistency of any “patchwork” and avoid Frankenstein drafts.
  - What are the friction points in the selected issues? How do the issues implicate gaps in existing jurisprudence or doctrine or matters of controversy or lack of consensus therein? Discussion of novel issues should still be feasible in light of resources usually available to teams.
  
- Once the background scenario is clearly defined, start drafting.
  - Consider pros and cons of starting with the Uncontested Facts (pre-structured approach) versus starting with the parties’ submissions (practice-like scoping of a dispute).
  - Make a full list of Case Exhibits and consider how they would be placed in the case records (as exhibits to briefs or to opening Uncontested Facts):
    - Request for Arbitration and its exhibits;
    - Answer and its exhibits;

- Uncontested facts;
  - Procedural Order No. 1;
  - Procedural correspondence;
  - Any additional exhibits.
- Define tentative deadlines and allocate drafting and review responsibilities among Case Committee members (*see Appendix for Model Tracker*). Although not mandatory, consider the following options (or any variations):
  - Option 1
    - Member A drafts the RfA. Member B commences assembling the treaty/contract. Member C assembles procedural correspondence. Member D works on the Claimant's evidentiary exhibits.
    - Members A and C on one side and Members B and D on the other side exchange drafts for review.
    - Committee Members A and C begin work on the Answer and its Exhibits. Committee Members B and D provide comments.
    - Committee discuss which facts from the RfA and Answer shall be uncontested, and which remain allegations (to be supported by what Exhibit if any).
    - Committee discuss any facts not contained in the RfA or Answer that will/must be added to the Uncontested Facts. Two Members draft the Uncontested Facts while the other two draft PO 1. Exchange drafts for review.
    - One Member consolidates documents and take a first turn at reviewing. Committee take turns are review and submit to Directors for comments.
  - Option 2
    - Committee Member A is responsible for the treaty/contract and conducts research for assembling the document. Member B and C are each responsible for half of the issues and conduct research for supporting arguments and counter-arguments. Member D is responsible for Uncontested Facts and starts a draft based on outline, with place holders for inputs from Members A, B and C.
    - Committee completes an initial draft of Uncontested Facts and submits to Directors for comments.
    - Committee discuss which facts will be contained in the RfA or Answer as opposed to Uncontested Facts. Member A concludes treaty/contract and drafts PO 1. Members B and C divide RfA and Answer and exhibits. Member D assembles procedural correspondence.
    - One Member consolidates documents and take a first turn at reviewing. Committee take turns are review and submit to Directors for comments.
  - During consolidation and review, the Committee should check (i) dates, (ii) names of persons, (iii) names of companies and agencies, (iv) spelling and grammar (to a professional standard of fluent English).
    - Build a simple timeline and confirm if dates make sense in the overall context.

- The Committee should revisit all arguments for each side, for each issue and whether the case is balanced.
- Any inconsistencies or ambiguities should be addressed by either (a) further review, (b) deliberately leaving for the clarification stages – taking notes on current inputs; and/or (c) left in the case by design as an inherent part of the issue.
- Avoid leaving key facts and issues for the clarification stages.

Appendix – Model Case Drafting Tracker:

No	Title	Referenced	To do	Who	When
1.	BIT	RfA Doc. 1	Review	Member A	Month DD
2.	News Article	RfA Doc. 2	Draft	Member C	Month DD
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					

The case committee should schedule its work so that a final draft can be delivered to the FDI Moot Directors and Advisory Board by the end of November, after which only proof-reading (or minor adjustments on the advice of the Board or Directors) are needed.

A timetable should be agreed with the FDI Moot Directors from the beginning providing for the submission of: (1) a provisional list of issues and an abstract of a fact scenario; (2) a detailed outline and table assessing balance of the case; (3) first draft of the case (4) second draft of the case (5) final draft of the case.