Chapter 7

Oral Proceedings Stage: The Hearings

According to Article 43, para. 5 of the Statute, the oral proceedings “[s]hall consist of the hearing by the Court of witnesses, experts, agents, counsel, and advocates.” In practice, the oral stage of proceedings consists of a series of public sittings that take place in the Peace Palace at The Hague. During these hearings there is room for several procedural actions, the most important of which are, clearly, the presentation of each party’s case by its agent, counsel and advocates, on the one hand, and the production of evidence other than documents submitted during the written stage, on the other.

In addition to the presentation of legal argument, any of the following specific actions can take place on the occasion of the hearings:

- Calling and examining witnesses and/or experts;
- Obtaining of evidence proprio motu by the Court;
- Furnishing of information by a public international organization; and
- Formulating questions to the parties either by the bench or by the judges.

The rules governing these procedural devices will be considered below, after a brief discussion of the role that the oral stage of proceedings plays in actual litigation before the ICJ. The question of evidence will be the subject of a separate chapter, given the importance it possesses for the actual conduction of litigation before the ICJ.

The 1944 Informal Inter-Allied Committee devoted some time to the discussion of the relative advantages and disadvantages of the oral proceedings, because some of its members expressed their impression that these proceedings simply represented a repetition of the arguments already set out in writing. The Committee concluded that, although the written proceedings should constitute “the main part” of the proceedings before the Court, it was not advisable to eliminate the oral proceedings, “which have considerable psychological value and act as an important focusing point for the work of the Court.”\(^1\) Rather, the Committee recommended certain improvements, without suggesting that they required changes in the Statute or the Rules:

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\(^1\) *Inter-Allied Committee Report*, p. 24, para. 77.
We think... that there would be some advantage in confining the oral proceedings to two main classes of matters, namely, (a) points raised or made in the last written pleading to which the other party had not yet had an opportunity to replying; (b) points on which the Court had itself indicated to the parties in advance that it would like to hear oral arguments. To assist in focusing the oral proceedings we should also like to see a more extensive adoption of the existing practice whereby Judges may ask specific questions of the advocates in the course of the hearing, instead of simply listening in silence to their speeches.  

During the debates on the role of the Court that took place in the UN General Assembly in 1970–1974, again, a number of States indicated discomfort with the length and duration of the oral stage of proceedings in certain cases that had been handled by the Court in the immediately previous years. This was only natural, since in some cases of the period the number of oral hearings conducted was extremely high: in the celebrated Barcelona Traction case, concluded in 1970, a total of 64 hearings took place, while in the South West Africa case, decided in 1966, that number reached the staggering figure of 102.

It was even proposed that the parties to a case should be entitled to agree to dispense altogether with the oral stage or that the Court could be empowered to decide so. Against this convincing arguments were raised, among them the fact that the Court cannot deal with a case in a satisfactory manner if the parties have not argued all possible angles and have not presented their position on the facts and the law with all the necessary detail. Equally important is the insurmountable obstacle that Article 43 of the Statute provides for a dual procedure in all cases, thus making the conduction of an oral stage virtually mandatory.

However, it is important to register that under the Rules in force at that time the Court lacked the means to exercise a larger degree of control over the proceedings and could not, for instance, urge States parties to shorten the length of their oral pleadings or indicate to them those aspects of the case over which it considered itself sufficiently informed. This led the Court to take corrective measures in that regard, beginning with the 1968 reform of the resolution governing its internal practice—the essence of which was preserved in the 1976 version of the same resolution, which is still in force. One of the main objectives of the Court with the revision was to facilitate for itself and for the President the carrying out of their function to control the proceedings.

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2 Ibid.