

# Rules of Procedure - ICC



JOHN CABOT MODEL UNITED NATIONS

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## Introduction<sup>1</sup>

The following rules of procedure apply to the International Criminal Court from the John Cabot University Model United Nations Conference 2020.

It is therefore of greatest importance that all delegates understand and follow the Rules of Procedure. For those whose it is their first time in a moot court, we highly encourage you bring the Rules of Procedure in long, as well as short form, to the sessions at JCUMUN.

According to the International Criminal Court, the Rules of Procedure and Evidence are an instrument for the application of the Rome Statute of the International Criminal Court, to which they are subordinate in all cases. In elaborating the Rules of Procedure and Evidence, care has been taken to avoid rephrasing and, to the extent possible, repeating the provisions of the Statute or protocols of the International Criminal Court.

Please, feel free to approach to any member of the Secretariat or the Chairing team for further doubts or clarifications.

Best of luck!

The JCUMUN 2020 Academics Team

<sup>1</sup> The following document is based on the Rules of Procedure and Evidence of the International Criminal court <https://www.icc-cpi.int/resource-library/Documents/RulesProcedureEvidenceEng.pdf>



## 2 Prior to the Conference

The Defense and Prosecution team must have to write a memorial (Please refer to section 3.5) that contains the arguments the party will base their pleads. All arguments should be based on legal principles and legal documents and should not be constructed under ethical or moral reasoning. The memorial made by the Prosecution should also include the penalties sought for the accused.

Each team needs to present witnesses as part of their evidence. The parties should decide to present at least one but not more than two witnesses. For this case, the accused is required to be one of the witnesses to be called by the Defense team. After the evidence list in the Memorandum, both teams must include a list of the witnesses and their relevance to the case. Each team will have time to prepare with their witnesses during the first round of deliberations by the judges.

## 3 Composition and Administration of the Court

### 3.1 The Presidency

The Presidency is elected by the Secretariat and they will act as the Chairs of the committee. They are in charge of moderating the committee sessions, timing the speeches, and closing the debates. In case of a tie, the Presidency will be able to vote. For this to occur, the Secretary-General must be informed. The Secretary-General can make independent decisions that cannot be appealed by the Presidency, Judges, or Advocates.

### 3.2 Judges

Prior to JCUMUN 2020, the judges are required to do the enough research that will allow them to understand the case. Judges should come to the debate knowing the case and thinking on the possible legal questions to be debated during the conference.



During this court case, judges are referred to as “Your Honor” or “Elder *surname*”

The judges shall make the solemn undertaking, subsequently, they meet in plenary session to exercise their functions under the Statute, the Rules and the Regulations.

It is the duty of the judges to discern facts as well as to determine the legal question or rationale behind the case as long as it is presented by the advocates. During their impartial participation, judges could consider real-life judgements rendered by the International Criminal Court, but these should be their primary base of their judgements. In addition, judges cannot judge this case using other cases or evidence that was not presented by the advocates during JCMUN 2020. The role of the judges consists on listening both the Prosecution and the Defense to distinguish facts from any inconsistencies and take legal action according to the Rome Statute texts.

As a judge, taking notes is imperative to the functioning of the court. Therefore, it is strongly advised to the judges to take their own notes in order to make a strong deliberation.

The judges must, during the procedure, **listen to arguments and proofs** brought forth by each party in the case. They seek the truth and inconsistencies in each argument and proofs by further asking questions. At the last committee session, they will deliberate in a private and separate room from the advocates in order to reach a **verdict**.

The quorum for each plenary session shall be two-thirds of the judges. Unless otherwise provided in the Statute or the Rules, the decisions of the plenary sessions shall be taken by the majority of the judges present. In the event of an equality of votes, the President, or the judge acting in the place of the President, shall have a casting vote. The Regulations shall be adopted as soon as possible in plenary session.<sup>2</sup>

### 3.3 The Advocates: The Prosecutors and The Defense

The **Prosecution** has the burden of proof, or *onus probandi*. It is their duty to convince the judges that the accused is, beyond any reasonable doubt, responsible for the crimes s/he is charged

<sup>2</sup> Extracted from: <https://www.casematrixnetwork.org/cmn-knowledge-hub/klamberg-commentary/rules-of-procedure-and-evidence/>



with. Therefore, the Prosecution must point out both that the crimes have taken place and that the defendant is responsible for the crimes in question.

The **Defense** has to prove that the accused is innocent or that they are inconsistencies which could lead to **reasonable doubt** in the case. One should note that the decision will be based only on the argumentations brought before the Court/Chamber. The defendant must point out either the crimes they are charged with did not happen or break any laws or accept that the crimes did happen, but the defendant is not responsible for the crimes.

### 3.4 Proofs

In order to convince the judges, both parties must present proofs to the court. There are two possible types of proofs:

#### a) Evidences

Evidence are proofs that are tangible in nature, such as documents, letters, correspondence, reports, excerpt of a discussion, videos, etc. Official, reliable reports from prestigious or credible sources are viewed more favorably than those which lack reliability. During the committee sessions, electronic devices can solely be used for academic purposes. If requested advocates can present electronic evidence and these can be projected in the committee during the presentation of evidence.

Evidence must be presented in its original form. For instance, if the report or document contains around ten pages but only one is of essential proof related to the case, the entire original report of ten pages must be submitted. In case that the original document is in a foreign language other than English, the **original document** must be presented, accompanied with translation. During the presentation of evidence, they should only present the relevant part of the evidence but shall not take that part out of context.

It is recommended that both the Defense and the Prosecution prepare the court case with their respective partners before the conference.



## b) Witnesses

Witnesses are persons who participate in the simulation by directly giving accounts of the case. Each party (Defense and Prosecution) has their own list of witnesses, two maximum. *For this case, the defendant has to be one of the witnesses to be called.*

The court would grant right to each party to call upon their witnesses and ask them questions related to the case. After the party calling their witnesses has exhausted their questions, the judges and the opposing party could ask further questions.

All witnesses in the selected case are considered “fictional”. The JCUMUN academics team will prepare a group of staff to act as a witness in the case. As the Defense and the Prosecution arrive at the conference, they will have the opportunity to prepare the case with their designated “witnesses”.

## 3.5 Memorial

Please refer to the supplementary document called “Memorial Guide”.

## 4. Protocol and Procedure

### 4.1 Solemn undertaking under article 45

As provided in article 45, before exercising their functions under the Statute, the following solemn undertakings shall be made: <sup>3</sup>

(a) In the case of a **judge**: *“I solemnly undertake that I will perform my duties and exercise my powers as a Judge of the International Criminal Court honorably, faithfully, impartially and conscientiously, and that I will respect the confidentiality of investigations and Prosecutions and the secrecy of deliberations.”;*

<sup>3</sup> Based on the Rules of Procedure of the ICC Moot Court and Case Matrix <https://www.casematrixnetwork.org/cmn-knowledge-hub/klamberg-commentary/rules-of-procedure-and-evidence/>



(b) In the case of the **Prosecution/Defense**: *"I solemnly undertake that I will perform my duties and exercise my powers as Prosecutor/Defendant of the International Criminal Court honorably, faithfully, impartially and conscientiously, and that I will respect the confidentiality of investigations and Prosecutions."*

#### 4.2 Charges

The President of the ICC shall read the charges confirmed by the Pre-Trial Chamber to the Accused who will then plead guilty or not guilty. Please refer to the Study Guide to see the charges confirmed.

#### 4.3 Opening statements

The Prosecutor followed by the Defendant opening statements must be a presentation of the main arguments of each team. This should be an opportunity for the Advocates to present the Judges with their arguments most effectively and persuasively. The time for the opening speeches is at the discretion of the Presidency.

The Advocates should draw before the Judges a plan of the line of argumentation they will accord to and might cite the main sources and documents of law they will allege to.

Each team is not obliged to fully describe all the pieces of evidence and arguments. No questions are allowed. It is each party's decision which Advocate will hold the opening statement first. The Advocate can also decide to split the time between the members of their team.

#### 4.4 Presentation of the pieces of evidence

The Presidency shall call the Advocate for the Prosecution to present and elaborate on their evidence. Evidence may be provided in a form of a written document, a statement by a legal scholar, online articles obtained from reliable sources, videos or photography that can be used as proof in the case and shall be accepted by the Presidency before its submission as evidence.

To be admitted by the Presidency, the source of the piece of evidence, its author as well as the date of publishing shall be provided.



The Advocate for Prosecution shall then elaborate on the significance of the evidence and its relevance on the case.

For simulation purposes, due to time constraints, each item on the list must be numbered according to the importance of the proofs. Each proof will be examined one by one. Evidences will be examined according to their ranking on the list. Witnesses, for practical reasons, could be called in after consulting with the chairs and when situation permits.

After the Prosecution presents the evidence, the Defense team will follow the same procedure.

#### **4.4.1 Procedure:**

##### **1. Presentation of the evidence**

- a) The Advocate presents to the house the evidence alleging to the order set in their list of evidence and provides them with a brief of the importance of that particular piece. The Advocates should will give a speech linking the proof to the case at hand. The Advocate should state whether the whole provided document is the piece, or only a singled-out part of it. The opposing party, at any given moment, could interrupt the speaker by shouting "objection!". The Presidency could overrule the objection if the question is not substantive or the time does not permit the interruption.

##### **1.2 Questioning by the opposing Advocate**

- a) The opposing Advocate will then have the right to 5 questions concerning a piece or the presentation of the piece. Additionally, 1 follow-up to the question in the form of another question concerning the matter raised is allowed. Follow-ups to a follow-up are not allowed. During the follow-up, advocates cannot raise any new questions or topics.

##### **1.3 Questioning by the Judges**

- a) Judges have the right to ask as many questions as they need.

##### **2. Deliberations of the Judges' panel**

- a) The Advocates are excused, and the chamber meets in-camera for deliberations. The time for deliberation will be left to the discretion of the Presidency. During



this time, advocates will be able to meet with the witnesses in order to brief them for their intervention. The judges will have the possibility of sharing their thoughts, comments, questions and doubts with other Judges. After the debate, a vote is carried out whether the Judges see a necessity of extra pieces of evidence. The judges might accord either of the sides to present up to 3 new pieces of evidence the next day.

### 3. Rebuttal and rejoinder

- a) After coming back into the chamber both the Prosecution Advocate and Defense Advocate shall proceed to a rebuttal and rejoinder speech respectively, in which they are to somewhat summarize all arguments they have posed within the presentation of the pieces of evidence. The time for each speech will be left to the discretion of the Presidency. After each speech, there shall be a possibility of 3 questions from the opposing Advocate and 5 questions from the judges. Follow-ups are not allowed.

### 4. Presentation of the Witnesses

- a) Both parties must introduce **at least one, but no more than two witnesses**. The examination shall be as follows:
  - i) A witness is briefly introduced by the Advocate, for example, by the Prosecution team.
  - ii) Respectively direct examination by the Prosecution team followed by cross-examination by the Defendant team.
  - iii) The Judges will examine the witness.
  - iv) The next witness by the opposing team will be presented.

The limit of questions per each party shall be established by the Presidency. The same procedure shall apply to Defendant Advocate. After the examination of a witness has ended, both parties could comment on the witness' statement. The time limit for this speech is left to the discretion of the Presidency.



- b) During the presentation of the witness objections to a posed question are in order.
- c) Witnesses should be presented during the same committee session.

### 5. Closing statements

- a) If no further questions are raised or no motions to present evidence or examine a witness are brought in, the Presidency will ask parties for their closing statements.
- b) The Advocate for Prosecutor shall give their closing statement first, followed by the Defense Advocate.
- c) During the closing statement, parties should sum up their case. This should be achieved by referring to relevant arguments, witnesses and evidence. Any issues of factual or legal nature relevant to the judgement should be addressed by the parties. Closing statements should include a specific recommendation for the judgment. In their closing statements, the Advocates are not allowed to introduce any new evidence

### 6. Deliberations on the judgement

- a) After the conclusion of closing statements, the Presidency will call an indefinite recess for final deliberations.
- b) Judges, assisted by the Presidency, will convene in closed session to decide whether the Defendant is responsible under charges of the Rome Statute and to what extent. breach of its obligations under International Law. Any votes during deliberations are taken by majority vote amongst the judges.
- c) The judgement, written by the judges with the support of the Presidency, shall conclude with the clearly formulated decision concerning the separate points of the claim. The court shall state its reasons (factual and legal) for its decision.
  - i) The judgement could be structured as follows:
    - 1) Statement of facts
    - 2) Jurisdiction of the court and admissibility
    - 3) Merits of the case
    - 4) Final judgement



- (a) This should also include whether or not the charges are confirmed.  
Additionally, if the defendant is found guilty, the judges should include the penalties imposed by the court.
- d) Judges who do not agree with the majority opinion concerning the verdict may draft a dissenting opinion.
- e) Judges who, while agreeing with the majority opinion on the verdict, wish to emphasize specific aspects that they consider misrepresented in the judgment may draft a concurring opinion.

## 5. Objections<sup>4</sup>

- a) *Irrelevant* All assertions by the parties shall be relevant to the case at hand and if the assertion made is irrelevant to the case the other party shall have the right to object. The final decision on the objection shall be made by the Presidency and this decision shall not be subject to appeal.
- b) *Speculation* The objection shall be raised if a Witness is asked to predict the result of an answer or possible outcome of an event.
- c) *Asked and answered* This objection can be used when a certain question has been already put before the witness and s/he has provided an answer.
- d) *Leading Question:* A question that suggests the answer to the person being interrogation. Especially a question that may be answered by a mere “yes” or “no”. In the case of a leading question during examination, the other party has the right to object. The final decision on the objection shall be made by the Presidency and this decision shall not be subjected to appeal.

<sup>4</sup> Based on the objections from Oxford International Model United Nations <http://oximun.org/wp-content/uploads/2017/10/ICJ-RoP.pdf>



- e) *Prejudicial* All assertions of law and facts shall respect the personal integrity of the Advocates, Judges, Witnesses and other present in the Courtroom
- f) *Hearsay*: A testimony that is given by a Witness who speaks not about what s/he knows personally, but what others have said. Depends on the credibility of someone other than the Witness and is considered as inadmissible evidence. 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.
- g) *Badgering* During the examination of the Witnesses, Advocates have the responsibility to refrain from intimidation and distressing methods.
- h) *Immaterial* immaterial evidence tends to indicate that some fact that is not proper or is lacking logical connection with the consequential facts.
- i) *Competence* This objection shall be raised when a speaker asserts to a technical detail which cannot be assessed by the mentioned speaker. Provisions mentioned in this article apply specifically to the case of a witness.

## 6. Court Conduct

### 6.1 Courtesy

Show common courtesy by being on time and prepared for all sessions and by speaking to fellow Judges, Prosecutors, Defendants and Presidency in a measured, moderate and appropriate tone.



## 6.2 Dress code

Please dress in compliance and standards of a Western Business attire.

## 6.3 Working language

Working language of the JCUMUN is English! Please avoid from using your native language.

## 6.4 Note passing

Note passing is allowed only for the Prosecution and Defense team **separately** in order to facilitate their communication among advocates of the same team. Judges will have time during deliberations to discuss with other judges. Note passing should not interrupt the debate.

## 6.5 Electronic devices

Electronic devices are permitted up to the Chairs discretion during session. They are allowed to be used for researching facts, writing draft resolutions and amendments. In case of an improper use of them, the chairs may forbid its use.

