



MUIMUN

Change Today, Shape Tomorrow.

Simulation Primer

International Criminal Court



MUIMUN 2019

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CHANGE TODAY, SHAPE TOMORROW

Point of No Return?

Altering the Course Towards a Future That Lasts

Simulation Primer: International Criminal Court



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I. Preface

Honourable Delegates,
Esteemed Chairs and Rapporteurs,
Dear Guests and Friends,

It is with great delight that we, the General Secretariat of MUIMUN 2019, can welcome you to the 13th edition of the Münster University International Model United Nations conference.

In March 2019, you will be among students from all over the globe coming to Münster, the city of the Westphalian Peace. In the historic castle or “Schloss” of Münster University, we will convene once again to fiercely debate in committees, attend exciting socials and build lasting relationships.

Nonetheless, Model United Nations conferences are about more than just resolutions, socials and coffee breaks. At these conferences, many different cultures, worldviews and interests are confronted with each other, both in and outside of the debate. One quickly experiences that decisions in a setting of international politics aren't easily made. To reach a consensus with various actors and varying positions, it takes time, compromise and a vision of cooperation instead of confrontation. As challenging as these decisions are, they hold special value, as supranational or intergovernmental organisations such as the United Nations have the freedom of a decision making that is independent of legislative periods, presidential terms and party politics. To find sustainable solutions in a globalised, multi-cultural and interconnected world, cooperation and participation of all nations and actors are quintessential.

With our motto “Point of No Return? – Altering the Course Towards a Future That Lasts” we



question the sustainability of today's politics, policies, and polities.

Sustainability, or the lack thereof, is relevant in all aspects of life. As seen in countless conflicts around the world, the underrepresentation of minorities has a lasting negative impact on societies. Unregulated and corrupt financial markets can plunge the world economy into crisis. Nationalistic, populist and firebrand politics endanger the rules-based international system and cast an uncertain light on the future. And last but not least, the ever-growing challenges of climate change demand immediate action, by the leaders of today and tomorrow.

We are therefore looking forward to welcoming you to our humble conference. For five days, together with the Delegates, Chairs, Rapporteurs and Legal Service, all of us will be part of a unique world inside the Münster Castle. Coming together from all corners of this planet, we will work on our vision of a shared future through challenging debates, during much-needed coffee breaks and at our dazzling late-night socials. Everyone from our beloved organising team has worked incredibly hard to make this conference an unforgettable experience for all of you.

We cannot wait for you to come to Münster, challenge yourselves, find new directions, think beyond borders, build bridges, and alter the course towards a future that lasts.

Yours sincerely,

Valentina Breitenbach and Adam Teufel

III. Introducing the Chairing Team

Fury Jain is a fifth-year law student at the Army Institute of Law, India. She has been associated with Model UN for the past nine years, and has been a part of more than 35 conferences across Asia, Europe and North America in the capacity of a delegate, Chair, Trainer and Organiser. She has chaired at many prestigious conferences including ROMUN (Rome), KAIHL MUN (Istanbul), and KIIT MUN (India), and has also worked as a Trainer at the 2018 WFUNA Youth Camp in South Korea. Passionate about sustainable development and climate justice; she joined Samsung Engineering as a Facilitator for their Eco-Engineering Academy 2017 in Seoul, and recently presented her paper on Climate Financing at ICCF 2018 in Dhaka.

Most recently, she was adjudged as the 2nd Best Oralist at the 2018 Nelson Mandela World Human Rights Moot Court - referred to as the Olympics of Human Rights - organised by the UN OHCHR in Geneva, Switzerland. Having presided over numerous legal/court simulations in the past, she is thrilled to be the Presiding Judge for ICC, and looks forward to a mutually enriching experience.



Olha Krylova currently is pursuing an academic career in private international law at the Institute of International Relations, Kyiv. In one of the projects during her studies, she was the team leader responsible for building and leading a project team; the European Moot Court Competition on WTO Law in Naples, Italy. She also participated in the 2018 TLI International Mock Trial Competition on American Common Law (Chisinau, Moldova), the 2017 Phillip C. Jessup International Moot Court Competition on Public International Law (Ukraine), and the 2016 National Moot Court Competition on Media Law (Lviv, Ukraine). Currently, she is serving as a coach of the IIR Team in the European Moot Court Competition on WTO Law.

Between 2016 and 2017, she officiated as the Director for the International Focus Programme in ELSA (European Law Students' Association). Olya believes that human rights are at the core of our sacred bond with the peoples of the United Nations.



II. Word of Welcome from the Chairs

Greetings, Counsels!

We are very pleased to welcome you to the sixth simulation of the International Criminal Court for the Münster University's International Model United Nations, at MUIMUN 2019. It will be an honour and a privilege to serve as your Chairing Team for the duration of the conference.

This Simulation Primer is designed to provide you with an overview of the International Criminal Court, and familiarise you with the flow of the simulation. It also contains valuable information about the roles of the Prosecution and Defence counsels, tips on how to research, key legal terms, etc. We remain mindful of the fact that many of you may not be international law students, and have prepared this guide with the aim of providing a level playing field for all—regardless of your academic background.

The ICC will be small in size, requiring a high level of engagement and participation, and may differ from simulations that you have been a part of before. There is no focus on country positions, but an opportunity for participants to personally represent parties and argue on matters of international criminal law. A challenging, yet highly rewarding committee, involvement in the MUIMUN ICC offers an insight into the dynamics of international criminal law and litigation. Lots of work will be required but as previous participants in Court simulations and mock trials ourselves, we promise you an exciting experienc

Finally, we would like to wish you luck in your preparation and congratulate you on being appointed to the Court. In case you have any questions, procedural or otherwise, please feel free to direct them to any member of the Chairing Team at icc@muimun.org, and we will get back to you as soon as possible. Please do not hesitate to contact us with any queries or concerns. We expect all counsels to be well-versed with the flow of the simulation and rules of the court and geared up for five days of intense legal argumentation, debate and great fun.

Looking forward to seeing you in action!

Fury Jain
President
furyjain@gmail.com

Olha Krylova
Vice President
olya.krylov@gmail.com

IV. Committee Overview

1. Historical Background

The history of the establishment of the International Criminal Court (hereinafter referred to as the ICC) began in 1872, when the Swiss President of the International Committee of the Red Cross (ICRC), Gustave Moynier, drafted the first statute for an international criminal court.¹

The first serious step for an internationalised system of justice came from the drafters of the 1919 Treaty of Versailles, who envisaged an ad hoc international court to try the German Kaiser and German war criminals of World War I. Also, the Nuremberg Tribunal and the Tokyo Tribunal² are often considered as the predecessors of the International Criminal Court.

In 1948, the United Nations General Assembly (UNGA) adopted the Convention on the Prevention and Punishment of the Crime of Genocide in which it called for criminals to be tried ‘by such international penal tribunals as may have jurisdiction’ and invited the International Law Commission (ILC) ‘to study the desirability and possibility of establishing an international judi-

cial organ for the trials of persons charged with genocide.’³ While the ILC drafted such a statute in the early 1950s, the Cold War stymied these efforts and the General Assembly effectively abandoned the effort- pending agreement on a definition for the crime of aggression and an international Code of Crimes.

As time progressed, the conflicts in Bosnia-Herzegovina, Croatia as well as in Rwanda in the 1990s and the mass commission of crimes against humanity, war crimes and genocide further highlighted the urgent need for a permanent international criminal court.⁴

Finally, the International Criminal Court was established by an international treaty in 1998, the Rome Statute, today signed by an overwhelming majority of 120 of the world’s states. The Court came into being in 2002 following the ratification of the Rome Statute by 60 states. The Court is the only permanent international judicial body to try individuals for genocide, crimes against humanity and war crimes.⁵ And it can only prosecute crimes that occurred from 2002 onwards

1 Jean de Senarclens, *The Founding of the Red Cross: Gustave Moynier, its Master Builder*, Éditions Slatkine, Geneva, 2005; François Bugnion, *Gustave Moynier, 1826–1910, Humanitarian Geneva*, Geneva, 2011.

2 History of the ICC, *Coalition for the International Criminal Court*, available at <<http://iccnow.org/?mod=icchistory>>

3 UN General Assembly, *Convention on the Prevention and Punishment of the Crime of Genocide*, 9 December 1948, United Nations, Treaty Series, Vol. 78, p. 277, available <<https://www.refworld.org/docid/3ae6b3aco.html>>

4 History of the ICC, *Coalition for the International Criminal Court*, available at <<http://iccnow.org/?mod=icchistory>>

5 The ICC in 3 minutes, *Coalition for the International Criminal Court*, available at <<http://www.coalitionfortheicc.org/explore/international-criminal-court>>

– the date of its establishment. Thus, it is not retroactive.

2. Mandate of the Court

The ICC has automatic jurisdiction over genocide, crimes against humanity and war crimes committed either (1) on the territory of a state party to the Rome Statute; or (2) by a national of a state party to the Rome Statute, irrespective of the location, (3) by a declaration of the State non-party to the Statute.⁶

Under the principle of complementarity in the Rome Statute, the ICC only acts when national courts are unable or unwilling to keep their responsibility to prosecute atrocities at home. ICC member states can challenge the ‘admissibility’ of cases before the ICC if they feel they can prosecute domestically.⁷

The Court does not have independent power to arrest and thus depends on the willingness of the states to arrest and transfer the wanted person. The Trust Fund for Victims is mandated by the Rome Statute to support and implement programmes that address harms resulting from ICC crimes.⁸

3. The Crime of Aggression

In 2010, the first-ever Review Conference of the Rome Statute held in Kampala, Uganda, adopted by consensus amendments to the Statute, which include a definition of the crime of aggression and a regime establishing how the Court will

exercise jurisdiction to investigate and prosecute individuals for this crime. This definition is now enshrined under Article 8 bis of the Rome Statute.

The crime of aggression means the planning, preparation, initiation or execution of an act of using armed force by a State against the sovereignty, territorial integrity or political independence of another state. It includes, among other things, invasion, military occupation, and annexation by the use of force, blockade by the ports or coasts, if it is considered being, by its character, gravity and scale, a manifest violation of the Charter of the United Nations.⁹

This crime has a unique jurisdictional regime, which cannot be triggered in the same manner as other crimes of the Statute. On 11 June 2010, States Parties to the Rome Statute adopted a definition of the crime of aggression. In essence, this crime is committed when a leader of a State causes that State to illegally use force against another State, provided that the use of force constitutes by its character, gravity and scale a manifest violation of the United Nations Charter.¹⁰

The Court may exercise jurisdiction over the crime either by state referral (*proprio motu*) or by the UN Security Council referral.¹¹

6 Rome Statute of the International Criminal Court. See Art. 5

7 Rome Statute of the International Criminal Court. See Art. 6

8 Trust Fund for Victims, *The International Criminal Court*, available at <<https://www.icc-cpi.int/tfv>>

9 Article 8 bis, Rome Statute to the International Criminal Court.

10 The Crime of Aggression – a Brief History, available at: <https://crimeofaggression.info/history/>

11 Rome Statute of the International Criminal Court. See Art. 15 bis

4. Proxy Wars as an Instrument of Modern Aggression

A proxy war is an indirect engagement in a conflict by third parties wishing to influence its strategic outcome.¹² ‘Indirect,’ in this context, simply means the substitution by the proxy of forces or other capabilities that the benefactor would otherwise have to commit to achieve the intended interest. It is this indirect nature of the benefactor’s involvement that distinguishes a proxy relationship from other supportive relationships, such as, for example, an alliance or partnership. A benefactor means a party, which gives a financial benefit for a proxy military support in war. A proxy is a facilitator of aggressor in war against another state. A central component of proxy wars is the ability of the superpower to influence the affairs of the conflict in its favour while avoiding direct participation in the conflict.¹³ The main technique of administering this influence is through the provision of military aid, training, and/or advisors. Support to a government, insurgent group, or organization must be for more purpose than strictly selling arms for profit.¹⁴

Proxy wars, like any other kind of war, must meet

the requirements of *jus ad bellum*.¹⁵ Since proxy wars are wars, they must follow certain fundamental principles of international humanitarian law such as just cause, proportionality, right intention, right authority, last resort, and reasonable chance of success.¹⁶ Most conceptions of *jus ad bellum* describe just cause in terms of self-defense, defense of another and humanitarian intervention¹⁷. In the case of self-defense and defense of another, what triggers a legitimate defense is an act of aggression understood as a violation of a state’s political sovereignty and territorial integrity.¹⁸ In the context of proxy wars, benefactors may not suffer an act of aggression. However, their support for a “proxy”, for facilitator that has suffered the act of aggression, will normally be permissible since defense of a victim of aggression is usually considered to be permissible and legitimate.

The asymmetry introduced by the benefactor-proxy relationships presents three morally relevant situations:

The proxy meets all elements of *jus ad bellum* and engages in the conflict; thus, benefactor support is not causally related to the initiation

12 Vladimir Rauta and Andrew Mumford, ‘Proxy Wars and the Contemporary Security Environment,’ (2017) Palgrave Handbook of Security, Risk and Intelligence, pp. 99-115, available at <https://www.researchgate.net/publication/318249920_Proxy_Wars_and_the_Contemporary_Security_Environment>

13 Bertil Duner. (1981). “Proxy Intervention in Civil Wars.” In Journal of Peace Research. Vol. 18. No. 4. pp. 353-361. p. 359.

14 Ibid.

15 *Jus ad bellum* refers to the conditions under which States may resort to war or to the use of armed force in general.

16 Anthony Pfaff, ‘Proxy War Ethics,’ (9) Journal of National Security Law and Policy 305, available at <http://jnslp.com/wp-content/uploads/2018/01/Proxy_War_Ethics_2.pdf>

17 UN Charter, Article 7

18 Michael Walzer, Just and Unjust Wars, (the 2d ed. 1992), p. 52-54, available at <<http://philosophyfaculty.ucsd.edu/faculty/rarneson/Courses/Walzerchapter4.pdf>>

of hostilities.

The proxy meets all elements of jus ad bellum but does not initiate conflict without benefactor support.

The proxy cannot meet all elements of jus ad bellum without benefactor support (like proportionality and reasonable chance of success); benefactor support is causally related to hostilities.

5. Attributability of Crimes committed during UN Peace-Enforcement Missions

The use of force by a UN peace operation is governed in the broadest sense by the mandate given to the operation by the Security Council. All UN missions must fulfil their mandates impartially while at the same time upholding the principles of the UN Charter and international law.¹⁹

International jurisprudence recognises the ‘effective control test’ to attribute the conduct of UN peace enforcement missions.²⁰ The test looks into factors such as the command structure of the operation, where the operation was being conducted under UN-delegated command or the direct command of a Troop Contributing Nation (TCN), whether the impugned action fell within the mission’s mandate, etc.²¹ These, along with

a host of other factors are thus to be taken into consideration before adjudicating which party is responsible for a crime committed during such peace-enforcement mission - the brigade commander, the TCN or the United Nations itself?

19 Trevor Findlay, *The Use of Force in UN Peace Operations*, (Stockholm International Peace Research Institute, Oxford University Press 2002).

20 Article 5, Draft Articles on the Responsibility of States for Internationally Wrongful Acts, International Law Commission, November 2001, Supplement No. 10 (A/56/10), chp.IV.E.1., available at <http://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf>

21 Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro) Judgment of 26 February 2007, ICJ Reports 2007, p. 43; Case of Agim Behrami and Bekir Behrami v. France; Ruzhdi xvi Saramati (Judgment) (ECtHR, Application nos. 71412/01 and 78166/01 respectively, 2 May 2007).

V. How to Research

Know the facts

Pay close attention to the Hypothetical Case, and read it several times. Counsels are highly encouraged to read the case everytime they sit down to work on the case. The case may include certain vague areas, incomplete situations and facts that can be interpreted in multiple ways. It is for the counsels to identify these facts, and use them to their advantage. Counsels are allowed to draw reasonable inferences from the provided facts, and must be able to prove how their inference is more probable than the opposing party's version of events.

Study the Law

When studying the law for this case, counsels are encouraged to begin with a thorough reading of the Rome Statute of the International Criminal Court,¹ paying close attention to the sources mentioned under Article 21 of the Statute. Compliment this knowledge by going through relevant legal commentaries and research papers on the crimes/issues in question, to get a broad understanding of the specific issue and its multiple facets. Academic articles are a helpful tool in understanding the developments and different interpretations of a single norm.

Counsels are also encouraged to go through other subsidiary sources on the issues, including relevant UN resolutions, international conventions, etc. While these may not be binding as precedent in the ICC, they are important sources that signify international custom or recent trends on a legal gray area and may be used persuasively, to prove the veracity of your arguments.



¹ UN General Assembly, *Rome Statute of the International Criminal Court (last amended 2010)*, 17 July 1998, ISBN No. 92-9227-227-6, available at www.refworld.org/docid/3ae6b3a84.html

Take inspiration from previous/ current cases

Many times, the issues in the case are inspired by previous landmark cases of the ICC, or other tribunals of a similar nature. Counsels are highly encouraged to go through the case dockets of the International Criminal Court,² and other tribunals like the International Criminal Tribunal for the former Yugoslavia,³ the International Criminal Tribunal for Rwanda,⁴ etc. to see if issues similar to yours have been the subject of a previous or an ongoing case. This can prove to be extremely beneficial, as counsels can attain an immense amount of legal insight from the case documents which include the parties' written submission, complete case judgements, etc. Previous judgments of the courts can sometimes prove extremely valuable, as they may give you an idea on how the Court has previously interpreted similar legal issues- providing a strong legal backing to your arguments.

International criminal tribunals as a matter of practice involve hundreds of witnesses and thousands of pages in evidence, and often the case registry of these tribunals is too dense to be skimmed through in a matter of days. Thus, counsels are advised to run some smart searches on the Internet to look for recent news articles, editorials or research papers that have discussed the legal issue in question. This literature will usually redirect you to the relevant case law on the matter (whether decided or pending) which you can then analyse in detail through the official court websites.

Application of law to the facts of the case

Even an encyclopedic knowledge of the law is of little use, if not applied well. After gaining an overview of the law in question, counsels are encouraged to apply their legal insight to the case at hand, and prepare their arguments accordingly. Relate the law to the facts you have established. Counsels are advised to maintain the right balance between citing the law and discussing it in relation to the facts.

Note: Counsels are requested to keep copies of the various authorities they will be citing in court, and can be asked for an electronic copy of the same at any point of time.

2 Court records and Transcripts, the International Criminal Court, available at <<https://www.icc-cpi.int/pages/crm.aspx>>

3 The Cases, *International Criminal Tribunal for the former Yugoslavia*, available at <<http://www.icty.org/en/action/cases/4>>

4 The Cases, *United Nations International Residual Mechanism for Criminal Tribunals* (Legacy website for the ICTR), available at <<http://unictr.irmct.org/>>

VI. Memorial Submission

CONTENT

As part of the preparation for the simulation, counsels are expected to make individual written submission for their allocated issue, also referred to as a memorial. The Memorial must contain the following parts, in this order-

- 1. Cover page-** see sample at the end of this section.
- 2. Table of Contents.**
- 3. Index of Authorities-** Must list all legal authorities (conventions, cases, etc.) cited in any part of the Memorial and must indicate the page number(s) of the Memorial on which the authority is cited.
- 4. Statement of Facts-** What are the facts of the case, as viewed in the light most favorable to your position? Between 1-2 pages in length, a well-formed Statement of Facts should be limited to the stipulated facts and necessary inferences from therefrom. It must not include unsupported statements, distortions of the facts provided, argumentation, or legal conclusions.
- 5. Arguments Advanced-** A detailed section, which discusses how the law and facts apply to the particular case as well as a counter-arguments to the anticipated arguments from the other side. Which precedents inform the applicable provisions and their interpretation? Application of law to the facts of the case.
- 6. Conclusion or Prayer for Relief-** Conclude your arguments in a succinct paragraph, and request the relief or remedy you seek from the court (What do you want the Court to do?). This is ideally 1 page in length.

FORMAT

There is no word limit for the written submission. However, counsels are requested to keep their memorials below 15 pages, and the memorial proper (i.e, 'Arguments Advanced') below 5 pages. Each memorial must be submitted as a single file. The main text of the written submission must follow the following format-

- Font style- Times New Roman
- Font Size- 12
- Paragraph Spacing- 1.5 lines
- Body of Text- Justified
- Page Margins- Normal

The citations (or footnotes) of the written submission must follow the following format-

- Font style- Times New Roman
- Font Size- 10
- Paragraph Spacing- Single

For citations, counsels are expected to follow the Oxford Standard for Citation of Legal Authorities (OSCOLA). The relevant links are as follows-

OSCOLA Quick Reference Guide: https://www.law.ox.ac.uk/sites/files/oxlaw/oscola_4th_edn_hart_2012quickreferenceguide.pdf

Complete OSCOLA Guide: https://www.law.ox.ac.uk/sites/files/oxlaw/oscola_4th_edn_hart_2012.pdf

OSCOLA-Citing International Law: https://www.law.ox.ac.uk/sites/files/oxlaw/oscola_2006_citing_international_law.pdf

The memorials must be submitted via E-mail to the Bench at icc@muimun.org (CC: secgen@muimun.org) by 24:00 on 22.03.2019

Münster University International Model United Nations 2019

THE INTERNATIONAL CRIMINAL COURT

The Officer of the Prosecutor

v.

[Name of accused person]

[Name of the Counsel]

[Educational Institution]

Memorial on behalf of the Prosecution/ Defence

VII. Rules of the Court

I. Role of the Parties

Role of the Bench

Rule 1

(1) Preparation of the court session

The Bench consists of the President and the Vice-President of the Court, and is in charge of preparing the case and formulating the present rules of the court on behalf of the General Secretariat. It is at the discretion of the Bench to alter these rules at any point of time in the interest of the court proceedings, including but not limited to alteration in time limits, order of speaking, etc. The Bench may be addressed as ‘Your Excellencies’ or ‘Your Honours.’

(2) Court sessions

The Bench shall be in charge of presiding over all sessions of the court. The Presiding Judge shall open and close sessions, bring motions to vote, and grant the floor to counsels and witnesses, including third parties if deemed appropriate. The Bench reserves the right to ask questions to, or clarifications from all counsels and witnesses, at any point of time.

Office of the Prosecutor

Rule 2

The prosecution brings forward the charges against the defendant(s), presents evidence, examines the prosecution witnesses, cross-ex-

amines the defence witnesses, and brings motions if necessary. The Prosecution’s goal is to demonstrate the defendant’s guilt ‘beyond reasonable doubt’ meaning that there can be no other possible explanation or reason which the defence may use to prove the accused person(s) ‘not guilty’. Their task also includes the preparation of a joint opening and closing statement of fifteen to twenty minutes (15-20) minutes each.

Counsels on behalf of the Defence

Rule 3

The defence is guaranteed the same rights as the prosecution. They may present evidence, examine and cross-examine witnesses and bring motions as they consider necessary. As they are allowed to introduce and present evidence on their own, they do not have to rely on the material presented by the prosecution. Like the Office of the Prosecutor, the defence must also present a joint opening and closing statement of fifteen to twenty minutes (15-20) minutes each. As a matter of principle, the counsels present their defence after the prosecution has presented their case.

II. Applicable Law

Proceedings and legal merits

Rule 4

All proceedings of the court shall be governed by these Rules of Procedure and Evidence. All legal

merits shall be governed by the Rome Statute for the International Criminal Court.

III. The Session

Presence

Rule 6

At least the following parties have to be present during the court's proceedings at all times:

- a) The president judge
- b) One member of the prosecution
- c) One defence counsel

Opening Statements

Rule 6

- (1) Before the commencement of the trial, counsels will be given time to consult each other, and brief members of their team regarding the arguments in their allocated issues. Following this, both the Prosecution and Defence teams shall be granted the floor for their Opening Statements, the time limit for which shall not exceed twenty (20) minutes. During the aforementioned consultations, teams must decide which counsels will present the Opening Statements on behalf of the team. Each team may be represented by no more than two counsels.
- (2) In the opening statement, parties are expected to outline their case before the court. The statements should be of a rather general nature. They must begin with an overview of the team's stance, summarise the submissions of each issue, and conclude with the relief requested from the court. Parties may also highlight specific aspects of the case and

state their intent and reason to call specific witnesses or present other evidence.

- (3) A good opening statement is succinct and well-structured. It is able to identify and summarise the essence of each distinct issue, thus underlining the importance of coordination and information-sharing between team members.

- (4) The Prosecution presents their Opening Statement first, followed by the Defence.

Rebuttal and surrebuttal to Opening Statements

Rule 7

- (1) After an Opening Statement, all counsels of the opposing party are invited to put forth a rebuttal, which shall not exceed two minutes per speaker. The scope of the rebuttal is limited to the content of the Opening Statement. Rebuttals will be followed by surrebuttals, which may be delivered by any counsel from the previous team. A surrebuttal shall not exceed one minute, and its scope is limited to the content of the rebuttal.
- (2) Counsels may indicate their willingness to make a rebuttal/surrebuttal as applicable by a show of placards. The Bench may allow more than one round of rebuttal and surrebuttal in the interest of the court proceedings.

Presentation of issues

Rule 8

- (1) An issue refers to a factual or legal contention that is the subject of a dispute between the parties. It may be a factual contention, required to be proven by interpreting the facts

of the case, presenting evidence/witness, or through logical deduction. A legal contention on the other hand is required to be settled using the relevant international law, precedent in the form of cases, etc.

(2) As mentioned before, the case will contain several distinct issues that will be allocated to counsels. At this stage, the Prosecution begins its presentation of issues. Counsels will be invited to take the floor and present arguments on their allocated issue, for a time not exceeding ten minutes.

(3) A good presentation-

- a. Begins with an introduction of the counsel and the issue being presented.
- b. Summarises the facts relevant to the issue.
- c. Depends on the nature of the issue, highlights the facts or legal position in dispute.
- d. Presents arguments in favour of their position.
- e. Presents any evidence in support of their argument.
- f. Anticipates the main arguments from the opposing counsel, and presents a preliminary defence to prove how their line of argument is sound and based in law and legal precedent.
- g. Indicates the witnesses the counsel intends to examine later, and a brief overview of what they wish to examine the witness for.
- h. Concludes with a summary, and the relief asked for.

(4) Counsels may use the projector to display any document or evidence as a part of their presentation, and are required to communicate the same to the Bench before their presentation. Counsels are encouraged to include additional sources in their presentation including written documents, reports, data files, photographs, audio and video recordings, etc.

Rebuttal and surrebuttal to a Presentation of Issues

Rule 9

(1) After the Presentation of an Issue, all counsels of the opposing party are invited to put forth a rebuttal, which shall not exceed one minute. The scope of the rebuttal is limited to the content of the presentation made. Rebuttals will be followed by surrebuttals, to be delivered by the counsel presenting the issue. However, he/she may invite another counsel from their team to present the surrebuttal. A surrebuttal shall not exceed one minute, and its scope is limited to the content of the rebuttal.

(2) Counsels may indicate their willingness to make a rebuttal as applicable by a show of placards. The Bench may allow more than one round of rebuttal and surrebuttal in the interest of the court proceedings.

Order of presentation

Rule 10

(1) The case shall include a numbered list of issues, and all presentations, witness statements and other relevant proceedings shall

take place in accordance with this order.

- (2) The Office of the Prosecutor begins with the presentation of the first issue, followed by its rebuttal and surrebuttal. After this, the counsels on behalf of the defence put forward their presentation of the first issue, followed by its rebuttal and surrebuttal. This process is repeated until all issues have been presented from both sides.

Witness Briefing

Rule 11

- (1) The case will include certain witnesses, and will contain witness briefs as annexures. A witness brief provides a short summary of the witness's personal background, and their relevance to the case.
- (2) After the presentation of issues, counsels will be introduced to their witnesses. Witnesses will have a summary understanding of the case and their position in it. Both the teams will be given forty-five minutes to brief their witnesses. Counsels may brief all witnesses together, or may divide the witnesses amongst themselves.
- (3) During the witness briefing, counsels are expected to provide their witness with a storyline, and prepare them for their examination. Counsels are free to make reasonable inferences from the facts of the case to build the storyline and add facts to make the witness's testimony more authentic, without contradicting any facts already established.
- (4) Counsels are encouraged to coordinate with their team at the end of Day 1 about their strategy

regarding the witness briefing and division of work, if any.

- (5) Often there are details that the counsel is unable to convey in the forty-five minutes provided, or details that the witness may forget. Thus, counsels are highly encouraged to prepare witness briefs in writing, so witnesses have their own copies to read and memorise from while they wait for their examination. Briefs can also contain useful tips about the witnesses' expected demeanour, facial expressions, anticipated questions during cross-examination and replies, etc.

Witness Examination

Rule 12

- (1) There are two kinds of witness examinations; Examination-in-Chief (hereinafter referred to as EIC) and Cross Examination (hereinafter referred to as the Cross). Examination of one's own witness is known as EIC, while examining the opposite party's witness is known as Cross- Examination.
- (2) Witness examination is a crucial stage to bring relevant statements and testimonies on record. For example, if the facts of the case indicate that a witness may have seen or heard something, this speculation cannot be accepted by the court until the witness testifies in open court that he/she did indeed see/hear the event in question. Similarly, the opposite party may use facts or reasonable inference to prove, for instance, that it was impossible for the witness to be present at the scene to see/hear the event, or any other circumstances that question the witness's

credibility or create reasonable doubt.

- (3) Counsels are encouraged to formulate a strategy within their teams beforehand, to decide who will be conducting the EIC and Cross for each witness, as applicable. E.g., the Office of the Prosecutor must conduct the EIC for all Prosecution Witnesses and may also conduct the Cross for all defence witnesses, and thus divide their work accordingly. Please note that while conducting the EIC for your own witnesses is mandatory, parties may waive their right to conduct a cross for the opposing party's witness if they deem it fit. The Bench reserves the right to question a witness at any stage.
- (4) Counsels will be provided with further training in witness examination by the Bench, either online, on-site or both.
- (5) Before the witness called by either side testifies, he/she is required to make the following solemn undertaking:
"I solemnly declare that I will speak the truth, the whole truth and nothing but the truth."

Order of Witness Examination

Rule 13

- (1) The case shall include a numbered list of witnesses, ideally alternating between a Prosecution Witness (PW) and a Defence Witness (DW). The order of examination will follow the following pattern-
 - a. PW₁, Examination-in-Chief.
 - b. PW₁, Cross Examination.
 - c. DW₁- Examination-in-Chief.

d. DW₁- Cross Examination.

e. PW₂- Examination-in-Chief, and so on.

- (2) As soon as the party who called the witness indicates that it has no further questions to the witness (e.g. by stating "Your witness.", or "No further questions.") the opposing party has the right to cross-examine the witness, in the order indicated above. Thereafter the judges may raise questions to both the witness and also the party that called the witness.

Objections

Rule 14

- (1) The parties shall exercise their right to examine the witness by asking questions. Any objection against the admissibility of a question shall be raised immediately by stating, "*Objection!*"
- (2) The objecting party is then required to state the reason for their objection. Please refer to Rule 19 for a list of objections. The Bench will decide on the objection raised. This decision is final.
- (3) Both parties may also introduce evidence while examining a witness for the purpose of showing the item to the witness and/or questioning him/her about it.
- (4) Any objection to the admissibility of evidence shall be raised immediately in the manner as described above.

Comments and recalls

Rule 15

- (1) After the examination of all witnesses has en-

ded, both parties have the right to comment on the witnesses' statement, for a time not exceeding five minutes. These comments can be in regard to a particular witness, or a collective statement regarding multiple witnesses.

- (2) At this stage, counsels are encouraged to analyse the outcome of the witnesses' examination in their comments, and reflect upon how a testimony strengthens their case, or weakens the opposite party's arguments.
- (3) Counsels may indicate their willingness to make a comment by a show of placards. In absence of a speaking order, the proceedings will ideally alternate between parties with one comment from either side. The Bench may allow multiple rounds of comments in the interest of the court proceedings. Counsels are encouraged to treat this stage like a debate and reflect on, reply to, and show the strength or weakness of previous comments in their speeches.
- (4) Parties may also ask to recall witnesses if they require further clarification on a specific matter before the beginning of closing statements. The Bench shall decide on such requests.

Other evidence

1. The parties may submit other evidence to be introduced at the presidency's discretion. This includes written documents, data files, photographs, audio and video recordings.
2. Abovementioned items may be introduced by submitting them to the president and asking them to be numbered and formally accepted

as evidence. The president will then inform both parties and all members of the court of the content and the naming convention in an appropriate manner.

3. Both parties have the right to comment on evidence as soon as they are formally introduced.
4. Both parties may also introduce evidence while examining a witness for the purpose of showing the item to the witness and/or question him/her about it.
5. Any objection to the admissibility of evidence shall be raised immediately in the manner as described above.

Thematic debates

Rule 16

- (1) The case, including and especially the annexures, is deliberately designed to leave scope for ambiguity and multiple interpretations of both fact and law. Counsels are advised to pay close attention to every word of the case and its annexures to look for 'clues' that may support their case, and help them defeat the other party's line of argumentation. Successfully finding these 'gray areas' is the first step towards a successful argument in court. Most of these areas will have legal support from both sides, thus testing the interpretation and argumentation skills of the counsel.
- (2) At any point of time during the proceedings, the Bench may, either upon the request of a party or by its discretion, bring a motion for a thematic debate to vote. Such debates will allow counsels to present their research and

argue on the main areas of dispute in a more relaxed format.

- (3) The total time period, as well as individual speaking time for such a debate will be decided by the Bench on an ad-hoc basis.

Questioning

Rule 17

1. This segment of proceedings is aimed at clarifying factual or legal issues regarding the case. When both parties rested their case, the presidency will call a recess of approximately one and a half hours. During this time judges will convene in closed session to prepare questions for either prosecution, defence or both. Such questions may refer to any factual or legal matter regarding the case.
2. Thirty minutes before the time of the recess ends, prosecution and defence will be provided with a list of the questions for their side, in order to prepare for answering them in court.
3. Upon the request of either party, the presidency may extend the recess at its discretion.
4. When reconvening, the court will address the questions and hear answers from both parties. The parties also have the right to comment on their opponent's answers or give their own declarations on disputed points.

Closing Statements

Rule 17

- (1) If no further questions are raised and no motions are brought in, the Bench will ask the parties for their closing statements, the time

limit for which shall not exceed 20 minutes. At this stage, counsels will be given time to consult each other, and brief their co-counsels regarding the closing remarks of their allocated issues. During this time, parties must also decide which two counsels will present the Closing Statements on behalf of their team.

- (2) The Office of the Prosecutor present its Closing Statements first, followed by the Counsels on behalf of the Defence.
- (3) During the closing statement, parties should summarise their entire case. The Closing Statement are quite different from the Opening Statements, as they must refer to relevant developments including the presentation of issues, any additional evidence, outcomes of thematic debates, interpretation of witness testimonies, underlining the weakness of the opposite party's arguments, etc. This is a party's last chance to convince the Bench to rule in their favour. Closing statements should end with a specific recommendation for the judgment, indicating how the relief asked for by the party is the most suitable outcome for the case.

Reading of the Verdict

Rule 15

- (1) After the closing arguments, the Presidency shall read out the verdict in open court, following a short recess. The court shall state its reasons (both factual and legal) for its decision.
- (2) When the decision and sentence are read the accused is required to rise.

- (3) No interruptions of the reading are allowed.
- (4) While the verdict forms an integral part of the court proceeding, it does not have any bearing on the awards. Thus, a counsel may lose an argument, but still win an award.
4. **Assumes facts, which are not part of evidence:** Parties may not assume as true if no evidence was provided for that purpose.

Motions

Rule 18

- (1) Both parties may call for a recess of the court at any time, usually requested by counsels to refresh their research or read about a legal development. They shall propose a specific time for the length of the recess or a specific point in time for the reconvening. The Bench may decide if a recess is appropriate at the time, and specify stages where a motion for recess is not maintainable. For scheduled breaks, the Bench will propose a recess on its own motion.
- (2) Both parties may bring any other motion not specifically mentioned in these Rules, if they consider necessary. The Bench will rule on the applicability of any such motion.
5. **Badgering:** Parties may not try to intimidate witnesses by improper behaviour, including asking multiple questions without giving the witness time to answer.
6. **Calls for a conclusion:** Parties may ask only for the witness's observations, not for any conclusion. They may, however, ask, for example, how they felt, whether they were afraid etc.
7. **Calls for speculation:** Parties may not ask witnesses to speculate on certain points.
8. **Compound question:** Parties should ask one question at a time and refrain from combining multiple questions.
9. **Hearsay:** Parties may ask only for the witness's observations, not for any information they received from third parties or another source.

Grounds for Objections

Rule 19

1. **Ambiguous** (or vague, confusing, misleading): All questions must be precise enough to allow the witness to answer properly.
2. **Argumentative:** Parties may not give a statement during examination or cross-examination instead of asking questions.
3. **Asked and answered:** Parties may not ask a question again to which they already received a clear answer by the same witness.
10. **Incompetent:** Parties may not ask a witness a question, which they are not able to answer in their (professional) capacity.
11. **Privilege:** Parties may not ask witnesses a question if the witness is protected by law from answering the question.
12. **Irrelevant:** Parties may not ask questions which are not relevant to the case.
13. **Lack of foundation:** Parties may not introduce evidence if its authenticity is not proven.

VIII. Key Terms

1. Aggression

The use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations.¹

2. Bench

A judge's seat in a law court, often used to collectively refer to all the judges hearing a case.

3. Counsel

A lawyer, attorney, attorney-at-law, counsellor, solicitor, barrister, advocate, or other individual licensed to practice law.

4. Defendant

A person against whom the court proceedings are brought.

5. Hearing

Any part of a trial or other court proceedings that takes place inside a courtroom.

6. Indictment

A formal charge or accusation of a crime.

7. Prosecute

to proceed and to maintain a legal action, such as a prosecuting attorney who tries in court to prove an accused person to be guilty; to attempt to enforce by legal action for the purpose of securing the conviction and punishment of one accused of crime.

¹ Resolution 3314 (XXIX), adopted by the General Assembly. Definition of Aggression, available at <http://www.un-documents.net/a29r3314.htm>

8. Jurisdiction

Authority of the court to consider the particular issues of a case. Jurisdiction may be territorial (a lower court's jurisdiction over a province, or a Supreme Court's jurisdiction over the entire nation), pecuniary (based on the amount of fine it may levy on a person), personal (power to hear cases concerning individuals like the ICC, or nations as in the case of the ICJ) or subject-matter jurisdiction (power to hear criminal cases, matrimonial disputes, etc.).

9. Burden of proof

The obligation of proving one's assertion, for example when you have accused someone of a crime.

10. Beyond reasonable doubt

The highest standard of proof that must be met by the Prosecution in a criminal trial. It refers to a situation where no other logical explanation can be derived from the facts except that the defendant committed the crime. In other words, there is no possible explanation that is consistent with the innocence of the accused, thereby overcoming the presumption that a person is innocent until proven guilty. It does not mean that no doubt may arise as to the accused's guilt, but only that no reasonable doubt is possible from the evidence presented. Proof beyond a reasonable doubt, therefore, must be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it.

11. Concept of 'preponderance of probabilities'

As distinguished from the principle of 'beyond reasonable doubt,' this standard of proof requires that the party must prove based on all reasonable evidence, there is a greater than 50% chance of their assertion being true. While the prosecution is required to prove their case 'beyond reasonable doubt,' the defence need only prove their cases on the basis of preponderance of probabilities; proving that their version of events is more probable than the other party's.

12. Precedent

A judgment or decision of a court that is cited in a subsequent dispute as an example or analogy to justify deciding a similar case or point of law in the same manner.