

SRMUN Charlotte 2015
*Preserving Fundamental Human Rights:
Our Responsibility to Protect*
April 9-11, 2015
icc_charlotte@srmun.org

**International Criminal Court
Rules of Procedure and Evidence**

Explanatory Remark

For the purposes of providing an experience parallel to that which takes place within the International Criminal Court, SRMUN has relied upon the Rules of Procedure and Evidence of the ICC, however, the rules have not been *exactly* duplicated. Rather, any relevant rules for the purposes of this SRMUN simulation are highlighted below and translated to conform to the needs of this conference. Please note that the Rules of Procedure and Evidence derive from the Rome Statute of the International Criminal Court. Both documents shall be referred to throughout the duration of the conference. Interpretation of these rules will be left to the discretion of the Presiding Judge of the ICC (the Director of the Committee). Any rules of decorum not specified by the *SRMUN ICC Rules of Procedure and Evidence* will fall under the auspices of the general *SRMUN Rules of Procedure*; however, the *SRMUN ICC Rules of Procedure and Evidence* shall take precedence for the duration of the simulation.

International Criminal Court Rules of Procedure and Evidence

Chapter 1 General Provisions

**Rule 1
Use of Terminology**

In this document:

- (a) “article(s)” refers to article(s) of the Rome Statute;
- (b) “Accused” refers to the plaintiff(s) or the person(s) who has received a formal criminal charge which alleges that they are the perpetrator of said offense, resulting in being brought forth by the Court to guarantee a fair trial;
- (c) “counsel” refers to either the Prosecutor(s) or the Defense Counsel(s);
- (d) “Court” refers to the International Criminal Court;
- (e) “investigation” refers to the Prosecutor’s examination, analysis and collection of evidence through preliminary discovery or the post indictment phase, used to indicate the extent of guilt and the veracity of said allegations;
- (f) “Presiding Judge” refers to the Presiding Judge of the Court (your Director);
- (g) “the Rules” refers to the Rules of Procedure and Evidence;
- (h) “Trial Chamber” refers to all Judges (beside the Presiding Judge) ensured with the responsibility of overseeing each trial;
- (i) “Victim” refers to any person or group of persons who individually or collectively, directly or indirectly, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights as a result of crimes within the jurisdiction of the Court.

Chapter 2 Courtroom Decorum

Rule 2

Formalities

1. All Judges should be addressed as “Your Honour” throughout the duration of Court session.
2. Active participants in Court proceedings must only address the Court when they are awarded the right to speak by the Presiding Judge and must refrain from speaking out of turn while Court is in session.

Rule 3

Misconduct and Disciplinary Measures

If misconduct occurs in the course of official duties, is incompatible with official functions, and causes or is likely to cause serious harm to the proper administration of justice before the Court or the proper internal functioning of the Court, the following disciplinary measures can take place, dependent upon the degree of the breach:

- a. Verbal reprimand, to be memorialized in writing;
- b. Suspension from duty;
- c. Removal from Court to take effect immediately.

Chapter 3 Jurisdiction and Applicability of Case

Rule 4

Jurisdiction of the Court

1. Jurisdiction of the Court must be established prior to session.
2. The Court does not have universal jurisdiction.
3. The Court may only exercise jurisdiction if the following conditions are fulfilled:
 - a. The accused is a national of a State Party or a State otherwise accepting the jurisdiction of the Court;
 - b. The crime took place on the territory of a State Party or a State otherwise accepting the jurisdiction of the Court; or
 - c. The United Nations Security Council has referred the situation to the Prosecutor, irrespective of the nationality of the accused or the location of the crime.
4. The Court’s jurisdiction is further limited to events taking place since 1 July 2001.
5. If a Member State joins the Court after 1 July 2002, the Court only has jurisdiction after the Statute entered into force for that Member State.
 - a. It is up to the discretion of that Member State to accept or decline the jurisdiction of the Court for the period before the Statute’s entry into force.
 - b. In no case can the Court exercise jurisdiction over events before 1 July 2002.
6. **For the purposes of the ICC simulation at SRMUN, it is assumed that a Pre-Trial Chamber has confirmed charges in both cases at hand thereby confirming jurisdiction; thus, this simulation will be conducted within the Trial Chambers.**

Chapter 4 Composition and Administration of the Court

Rule 5

Language

1. English shall be the official and working language of the International Criminal Court.
2. Any representative wishing to address the International Criminal Court or submit a document in a language other than English shall provide simultaneous translation into English.

Rule 6

Presence

1. The following persons must be present during the Court's proceedings throughout the duration of the trial:
 - (a) the Presiding Judge (Director);
 - (b) the Registrar (Assistant Director);
 - (c) at least three Judges;
 - (d) one Prosecutor;
 - (e) one Defense Counsel;
 - (f) one Victims' Advocate;
 - (g) the Accused.
2. In the event the Accused is absent from Court proceedings, the Court may continue its session if the indictment was read to the Accused previously before the Court and in his/her presence.
3. The Court may also continue its proceedings in the event the Accused is absent if the Accused had an opportunity to enter a guilty or not-guilty plea.
4. **For the purposes of this simulation at SRMUN, the Accused has been made aware of their indictment and has entered a NOT GUILTY PLEA. The Accused will NOT be present before the Court.**

Rule 7

Functions of the Presiding Judge

1. The Presiding Judge will be represented by the Director of the committee that is to be selected by the Director(s) General prior to the conference.
2. The Presiding Judge will preside over all meetings of the Court and will act as the facilitator of the flow of the Court in accordance with the functions authorized by the Rome Statute.
3. The Presiding Judge shall relinquish all judicial functions unless deemed necessary by the majority of the Court.
4. The Presiding Judge shall ensure that the Judges, Prosecutors, Defense Counsel, and Victims' Advocates act in a manner that is in accordance with the right's of the accused to a fair, impartial, and expeditious trial; including regulating the relevance and admissibility of appropriate evidence.
5. The Presiding Judge shall, in addition to facilitating Court proceedings:
 - a. Ensure members of the Court adhere to the time limits set forth for each session of the Court;
 - b. Provide all necessary evidence submitted to the Court during deliberations;
 - c. Print the necessary judgments, opinions, and/or reparations drafted by the Court; and
 - d. Sign all judgments and/or additional orders of the Court.
6. The Presiding Judge has the authority to provide rulings on any procedural or substantive matter presented before the Court as well as the ability to amend these Rules of Procedures in order to maintain order of the Court.

Rule 8

Solemn Undertaking by Presiding Judge

1. As provided in article 45, before exercising their functions under the Statute, the following solemn undertakings shall be made aloud:

Presiding Judge:

“I solemnly undertake that I will perform my duties and exercise my powers as the Presiding Judge of the International Criminal Court honorably, faithfully, impartially and conscientiously, and that I will respect the confidentiality of investigators and prosecutions and the secrecy of deliberations. I will rely upon the Rome Statute of the International Criminal Court throughout proceedings as they provide the foundational framework of the International Criminal Court.”

2. This solemn shall be made at the first session at which the Presiding Judge is present.
3. The text of the sworn solemn will be signed by the sworn-in Presiding Judge and witnessed by the Director-General or his/her chosen designate.
4. A record of this verbal oath will be kept in the records of the Court.

Rule 9

Functions of the Registrar

1. The Registrar will be represented by the Assistant Director of the committee that is to be selected by the Director(s) General prior to the conference.
2. The Registrar will assist the role of the Presiding Judge and will exercise all procedural roles of the Presiding Judge in the absence of the Presiding Judge from Chambers.
3. It is the responsibility of the Registrar to:
 - a. Note the attendance of the members of the Court;
 - b. Monitor the established time frames of the docket;
 - c. Ensure the appropriate members of the Court are present in order to decide judgments;
 - d. Assist the Presiding Judge in all duties.
4. The Registrar shall relinquish all judicial functions unless deemed necessary by the majority of the Court.

Rule 10

Functions of the Judge(s)

1. A Judge shall be subject to all functions of his/her role in accordance with the Rome Statute, these rules of procedure and any other document adopted by the Court that may be relevant to his/her duties before the Court.
2. A Judge shall interpret all arguments and evidence presented before the Court without bias or prejudice.
3. A Judge shall represent his/her individual opinion rather than that of any state government when deliberating the cases before the Court.
4. A Judge shall deliberate on all evidence presented before the Court in order to establish consensus on the Accused without reasonable doubt. If consensus is not reached, a Judge is warranted to draft opinions based on his/her position on judgments.

Rule 11

Solemn Undertaking by Judge(s)

1. As provided in article 45, before exercising their functions under the Statute, the following solemn undertakings shall be made:

The Judge(s):

“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 investigators and prosecutions and the secrecy of deliberations.”

2. This solemn shall be made at the first session at which the Judge(s) is (are) present.
3. The text of the sworn solemn will be signed by the sworn-in Judge and witnessed by the Director-General or his/her chosen designate.
4. A record of this verbal oath will be kept in the records of the Court.

Rule 12

Rank of Judges

The Judges, in the exercise of their functions and opinions, are of equal status.

Rule 13

Attendance of Judges of the Court

1. If a Judge is unable to attend or continue sitting in a trial for a period which is likely to be of a short duration due to illness or other urgent personal reasons, the Presiding Judge may order that the hearing of the case continue in the absence of that Judge for a period of no more than one committee session.
2. If a Judge is unable to attend or continue sitting in a trial for a period which is likely to be of a long duration due to illness or other urgent personal reasons, the Presiding Judge may request that the Judge rescind his/her application to sit in a trial. The Presiding Judge may re-appoint the position should they deem necessary or continue on with the current panel of remaining Judges.
3. During all proceedings before the Court, a minimum of three Judges must be present at all times. For the purposes of this simulation, a maximum of six Judges will deliberate the cases before the Court.

Rule 14

Functions of the Prosecutor

1. The Prosecutor shall be subject to all functions of the Prosecution in accordance with the Rome Statute, these rules of procedure and any other document adopted by the Court that may be relevant to his/her duties before the Court.
2. The Prosecutor shall attempt to prove, without reasonable doubt, the guilt of the accused by presenting facts of the case relevant to the alleged criminal actions of the accused in accordance with the Rome Statute and the ICC Elements of Crimes.
3. The Prosecutor is permitted to conduct investigations by collecting and assessing evidence including books, articles, documents, testimonies, photographs, excerpts of the Rome Statute and/or the Elements of Crime, and/or any other materials that adhere to the guidelines for evidence outlined in these rules of procedure.
4. The Prosecutor shall submit all elements of evidence to be presented before the Court with the Indictment (position paper) that is submitted prior to the conference. Any article of evidence not included with the submission of the Indictment will not be admissible before the Court.

5. All evidence to be presented by the Prosecution must be submitted in accordance with Rule 14-4 in order to be *mutatis mutandis* to the Defense Counsel and Victims' Advocate prior to the conference.

Rule 15

Functions of the Defense Counsel

1. The Defense Counsel shall be subject to the Rome Statute, the Code of Professional Conduct for Counsel, these rules of procedures and any other document adopted by the Court that may be relevant to his/her duties before the Court.
2. The Defense Counsel shall act in the interests of the accused, to finality, according to the assignments provided by the Director(s) General in attempt to prove innocence beyond reasonable doubt by presenting facts of the case in accordance with the Rome Statute and the ICC Elements of Crimes.
3. The Defense Counsel is permitted to conduct investigations by collecting and assessing evidence including books, articles, documents, testimonies, photographs, excerpts of the Rome Statute and/or the Elements of Crime, and/or any other materials that adhere to the guidelines for evidence outlined in these rules of procedure.
4. The Defense Counsel shall submit all elements of evidence to be presented before the Court with the Legal Brief (position paper) that is submitted prior to the conference. Any article of evidence not included with the submission of the Legal Brief will not be admissible before the Court.
5. All evidence to be presented by the Defense Counsel must be submitted in accordance with Rule 15-4 in order to be *mutatis mutandis* to the Prosecutor and Victims' Advocate prior to the conference.

Rule 16

Functions of the Victim's Advocate

1. The Victim's Advocate shall be subject to all functions the Rome Statute, these rules of procedure and any other document adopted by the Court that may be relevant to his/her duties before the Court.
2. The Victim's Advocate shall act in the best interests of a singular entity or a collective group of those that have succumbed to abuse, damages, or loss due to the alleged actions of the accused.
3. The Victim's Advocate is permitted to conduct investigations by collecting and assessing evidence including books, articles, documents, testimonies, photographs, excerpts of the Rome Statute and/or the Elements of Crime, and/or any other materials that adhere to the guidelines for evidence outlined in these rules of procedure.
4. The Victims' Advocate shall submit all elements of evidence to be presented before the Court with the Legal Brief (position paper) that is submitted prior to the conference. Any article of evidence not included with the submission of the Legal Brief will not be admissible before the Court.
5. All evidence to be presented by the Victims' Advocate must be submitted in accordance with Rule 16-4 in order to be *mutatis mutandis* to the Prosecutor and Defense Counsel prior to the conference.
6. Arguments presented by the Victims' Advocate shall be conducted without prejudice and shall not impede upon the rights of the accused to a fair and impartial trial.

Rule 17

Solemn Undertaking by Members of the Court

1. As provided in article 45, before exercising their functions under the Statute, the following solemn undertakings shall be made:

Staff of the Office of the Prosecutor, Defense Counsel, and Victim's Advocate, including Translators and Interpreters:

“I solemnly undertake that I will perform my duties and exercise my powers as (Specific Title) of the International Criminal Court honorably, faithfully, impartially and conscientiously, and that I will respect the confidentiality of investigators and prosecutions.”

2. This solemn shall be made at the first session at which the person(s) under oath is (are) present.
3. The text of the sworn solemn will be signed by the sworn-in person(s) and witnessed by the Director-General or his/her chosen designate.
4. A record of this verbal oath will be kept in the records of the Court.

Rule 18

Establishment of the Docket

1. The Court will be considered in formal session by the Presiding Judge.
2. The Registrar will call the first case on the docket (the agenda) and note the presence of representatives for the Prosecution, Defense Counsel, and Victim’s Advocate for the record.
3. The Registrar shall read aloud the indictment to the body and shall announce the plea of the Accused (Not Guilty).
4. The Presiding Judge will outline the pre-established timeframe of each portion of debate for the parties involved outlined in Chapter 5.

Chapter 5 Proceedings before the Court

Rule 19

Collection of Evidence

1. For the purposes of this simulation, the Prosecution, Defense Counsel, and Victims’ Advocates shall be provided with a list of potential witnesses by the Secretariat prior to the Conference.
2. The Prosecution, Defense Counsel, and Victims’ Advocate are permitted to entertain evidence not provided by the Secretariat by submitting a request for admission from the Presiding Judge and Director(s) General *prior* to the Conference.
 - a. All evidence intended to be presented before the Court shall be included with the submission of the position papers. Submissions shall be emailed to icc_charlotte@srmun.org by the established deadline.
 - b. Rulings on requests for admission are based on its relevancy and admissibility to the Court.
 - c. The Presiding Judge and the Director(s) General shall have the authority to deny or accept the request for admission based on the above pre-requisites.
3. Members of the Court shall have all articles of evidence physically printed and available to the Court prior to opening statements.

Rule 20

Disclosure of Evidence

1. Prior to the proceedings, the Secretariat will provide the Prosecution with a list of witnesses which they can call to testify.
2. The Prosecution will be allotted a total of three witnesses.
3. The Prosecutor shall provide the Presiding Judge with the names of witnesses whom they intend to call to testify within the timeframe determined by the Director(s) General.

4. The Prosecutor shall provide the Presiding Judge with a memorandum detailing the questions they intend on asking witnesses within the timeframe determined by the Director(s) General.
5. The Prosecutor shall provide the order in which they intend to call the witnesses for the Presiding Judge.
6. After providing this information and before the next session of Court, the Prosecutor will be given the opportunity to prepare his/her witnesses for testimony. Preparation may only take place for those witnesses included on the list submitted to the Presiding Judge.
7. The Presiding Judge and the Director(s) General will supply all witness lists and memorandums to all members of the Court, excluding Judges, prior to opening statements.
8. Prior to taking the stand, witnesses are required to make the following solemn:

“I solemnly declare that I will speak the truth, the whole truth, and nothing but the truth.”
9. Once the Prosecutor indicates that he/she has no further questions for the witness, the alternate parties may cross examine the witness following a list of questions provided to the Presiding Judge and the Director(s) General.
10. Rules 1 – 9 of this clause shall apply *mutatis mutandis* for the Defense Counsel and Victims’ Advocate.
11. All additional articles of evidence submitted to the Presiding Judge and Director(s) General will be made available to all parties prior to the conference.

**Rule 21
Contempt**

Failure to comply with Disclosure of Evidence Rules (detailed above) can result in Contempt of the Court.

**Rule 22
Opening Statements**

1. Each member of the Court will be allotted a maximum time of 20 minutes to present opening statements prior to the presentation of arguments.
2. No extension for opening statements will be entertained before the Court.
3. The Prosecutor shall deliver the first opening statements followed by the Victim’s Advocate and the Defense Counsel.
4. During opening statements, members of the Court shall present the facts of the case and an overview of the evidence to be expanded upon during the presentation of the case. Delegates should include the application of relevant law and incorporate the Rome Statute and the Elements of Crimes.
5. No motions will be entertained during any formal presentation of opening statements.

**Rule 23
Presentation of Arguments**

1. Each member of the Court will be allotted a maximum time of 45 minutes to deliver their arguments and present all evidence before the Court.
2. Each member of the Court’s presentation of arguments may be extended by a maximum of 15 minutes at the request of a member of the Court.

3. The Prosecutor will present the first arguments followed by the Victims' Advocate and the Defense Counsel.
4. All members of the Court shall present conclusions drawn from international legal documents and relevant **evidence that has been previously approved by the Presiding Judge and Director(s) General.**
5. All members of the Court shall call their pre-approved witnesses for questioning during the Presentation of Arguments.
6. The sole motion that the Presiding Judge shall entertain during the presentation of arguments will be a motion for an extension of the presentation of arguments.

Rule 24 Questioning of Arguments

1. The questioning of arguments will take place following the first phase of deliberations after the conclusion of the presentation of arguments.
2. For a timeframe not to exceed 60 minutes, Judges are permitted to ask questions of the Prosecutor, Defense Counsel, and Victims' Advocate.
3. The 60 minute timeframe shall be equally divided amongst the deliberating Judges.
4. Judges shall make inquiries regarding any aspect of the arguments and/or evidence presented before the Court in order to clarify any facts of the case or rules of law.
5. Judges shall direct their question(s) individually to the Prosecutor, Defense Counsel, or Victims' Advocate, who will then answer the question immediately before the Court proceeds to the next question.

Rule 25 Declaration of Closure

The Presiding Judge shall declare when the submission of evidence is closed.

Rule 26 Closing Arguments

1. The Presiding Judge shall invite the Prosecutor, the Defense and Victims' Advocate to make their closing statements. The Defense shall always have the opportunity to speak last.
2. Each member of the Court will be permitted a maximum of 30 minutes to present their closing arguments with the possibility of a 10 minute extension at the request of a member of the Court.
3. Closing arguments require the Prosecutor, Defense Counsel, and Victims' Advocate to address matters of sentencing and recommendations of penalties/punishments (if applicable).
4. During Closing Statements, the Victims' Advocate must make his/her final request for reparations to the Court.

Chapter 6 Deliberations

Rule 27 Recess

1. The Presiding Judge will call for an indefinite recess after the conclusion of closing statements
2. The recess shall occur for the purpose of final deliberations.

3. Judges, assisted by the Registrar, will convene in a closed session to discuss the case in its entirety.
4. The Judges shall attempt to achieve consensus in their decision. Failure to do so will result in a majority vote amongst the Judges.
 - a. Judges that voted in the minority will have the opportunity to submit an individual opinion to the final Judgment;
 - b. Each Judges' decision must be recorded for future use;
 - c. In the case that there is a tied vote, the Presiding Judge will offer the deciding vote.
5. Both counsels must be made available for the Registrar should the Court decide to;
 - a. Ask questions or clarification on matters;
 - b. Reconvene.

Rule 28
Determination

1. Judges must determine whether the accused is guilty of the terms of the indictment. This decision must be based on the fulfillment of reasonable doubt (or lack of).
2. When there is more than one charge, the Trial Chamber shall decide separately on each charge.
3. When there is more than one accused, the Trial Chamber shall decide separately on the charges pending against each accused.
4. If the Court finds the accused guilty in one or more of the counts contained in the indictment, it shall determine the penalty to be imposed in respect to each of the counts.

Chapter 7 **Possible Penalties and/or Punishments**

Rule 29
Sentencing

1. The Court shall bear in mind that the totality of any sentence of imprisonment and fine must reflect the culpability of the convicted person(s);
2. The Court must give consideration to the extent of the damage caused, in particular the harm caused to the victim(s) and their families; the nature of the unlawful behavior and the means employed to execute the crime; the degree of participation of the convicted person; the degree of intent; the circumstances of manner, time, location; and the age, education, social and economic condition of the convicted person.
3. In addition, the Court shall take into account:
 - a. Mitigating circumstances such as:
 - i. Any potential of diminished mental capacity of duress;
 - ii. The convicted person's conduct after the act, including any efforts to compensate the victim(s) and any cooperation with the Court;
 - b. Aggravating circumstances such as:
 - i. Any relevant prior criminal convictions for similar crimes;
 - ii. Abuse of power or official capacity;
 - iii. The use of particular cruelty;
 - iv. The number of victims affected.

Rule 30
Penalties/Punishment

1. Life imprisonment.
2. Imprisonment for a specific number of years.
3. Imposing of a fine with a specific monetary value.
4. Reparations with a specific monetary value and the identity of the victim(s) to whom reparations have been granted.

Chapter 8 **Judgments**

Rule 31
Structural Content

1. The Judgment shall contain the following:
 - a. The date on which it is read;
 - b. The name(s) of the Judges that participated in proceedings;
 - c. The name(s) of the Accused(s);
 - d. The name(s) of the Prosecutor(s), Defense Counsel, and Victims' Advocate(s);
 - e. A summary of the proceedings;
 - f. The submissions by counsel;
 - g. A statement of the facts relevant to sentencing;
 - h. Case law supporting Judges' reasoning;
 - i. The operative provisions of the judgment, including a decision on reparation;
 - j. The number and names of the judges constituting majority;
 - k. A statement as to the penalties/punishments associated with the Accused should they be found guilty.

Rule 32
Explanation

Any Judge of the Court may, if they desire to, attach their individual opinion to the Judgment, whether they dissent from the majority or not.

Rule 33
Reading of the Verdict

1. Upon reconvening the Court, the decision by the Court will be read aloud by the Presiding Judge.
2. When the decision and sentence are read, all shall rise.
3. No interruptions will be allowed.
4. Decisions of the Trial Chamber shall be pronounced in public, and wherever possible, in the presence of the Accused, the Prosecutor, the Defense and the Victims' Advocate that have participated in proceedings.
5. At the end of the reading, the Presiding Judge shall inform the Accused of their rights concerning appeals against the verdict should the accused be found guilty.
6. Copies of above mentioned decisions shall be provided in:
 - a. A timely fashion;
 - b. The official language of the Court.

Rule 34
Officiating the Judgment

1. One copy of the Judgment must contain original signatures of all participants.
2. The official copy must be sealed.
3. The official copy must be place in the archives of the Court.
4. Copies of the official copy shall be dispersed to each participant.
5. The Presiding Judge shall send copies to the Secretary General and Director General of SRMUN.
6. The Judgment is legally binding after it has been publicly read.