

INTERNATIONAL CRIMINAL LAW MOCK TRIAL ROLE PREPARATION

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For each International Criminal Law Mock Trial, there are three packages:

- » **International Criminal Law Mock Trial Scenario**
- » **International Criminal Law Mock Trial Role Preparation Package**
- » **International Criminal Law Mock Trial Justice Sector Volunteer Package**

Students/youth need the scenario and role preparation packages.

Justice sector volunteers/teachers/organizers need all three packages.



GENERAL INFORMATION ABOUT INTERNATIONAL CRIMINAL COURT TRIALS

This mock trial is designed to help you learn more about international criminal law, the Convention on the Rights of the Child and the International Criminal Court (ICC).

WHAT IS THE INTERNATIONAL CRIMINAL COURT?

The ICC is the first permanent treaty-based court established to help end impunity for those who commit the most serious crimes of concern to the international community. The court focuses on crimes such as **genocide, war crimes** and **crimes against humanity**.

The ICC was created and is governed by an international treaty called the **Rome Statute**. It entered into force on July 1, 2002 when at least 60 states signed and ratified the treaty. Countries that recognize the ICC by signing the treaty accept its jurisdiction over its territory and its citizens.

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The ICC has jurisdiction over individuals accused of committing the most serious crimes such as genocide, war crimes, crimes against humanity and aggression. This includes those directly responsible for committing the crimes, as well as others who are responsible for the crimes by aiding and abetting or otherwise assisting in the commission of a crime. The latter group includes military commanders or other superiors whose responsibility is defined in the Rome Statute. For example, a military commander who ordered his troops to kill all prisoners of war in their control could be tried for war crimes.

The **Rome Statute** is the treaty that establishes the International Criminal Court. Entered into force on 1 July 2002, the Statute establishes, among other things, the Court's functions, jurisdiction, and structure. As of 1 August 2011, 115 states are parties to it.

The ICC does not have a universal jurisdiction. It may only exercise jurisdiction if:

- The accused is a national of a state party to the Rome Statute or a state otherwise accepting the jurisdiction of the ICC;
- The crime took place on the territory of a state party to the statute or a state otherwise accepting the jurisdiction of the ICC; or
- The United Nations Security Council has referred the situation to the ICC's Prosecutor, irrespective of the nationality of the accused or the location of the crime. (An example of this is the situation in Sudan, which was referred to the Prosecutor and resulted in an arrest warrant being issued for the President of Sudan, Omar Al-Bashir.)

The ICC's jurisdiction is limited to events taking place after July 1, 2002.

Genocide is the deliberate killing of a large group of people, especially those of a particular ethnic group or nation.

HOW DOES THE ICC WORK?

States which are a party to the Rome Statute or the United Nations Security Council may refer situations of crimes which occurred within the ICC's jurisdiction to the Court's Prosecutor. The Prosecutor evaluates the available information and commences an investigation if it is determined there is a reasonable basis to do so.

The Prosecutor also has the power to begin an investigation on his/her own initiative. In doing so, the Prosecutor receives and analyzes information submitted

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by a variety of reliable sources. If the Prosecutor concludes that there is a reasonable basis to proceed with an investigation, he/she will ask the Court's Pre-Trial Chamber to authorize the investigation.

The Prosecutor's investigations cover all facts and evidence relevant to the assessment of criminal responsibility. The Prosecutor investigates incriminating and exonerating circumstances equally, and fully respects the rights of the accused.

The ICC's Pre-Trial Chamber is responsible for the judicial aspects of the proceedings. Among its functions, the Pre-Trial Chamber, on the request of the Prosecutor, may issue a warrant of arrest or a summons to appear before the ICC if there are reasonable grounds to believe an individual has committed a crime within the jurisdiction of the Court. Once a wanted person has been arrested and surrendered to, or voluntarily appears before the ICC, the Pre-Trial Chamber holds a hearing to confirm the charges which will be the basis of the trial.

Following these steps, the case is assigned to a Trial Chamber composed of three judges. The Trial Chamber is where the accused's trial will occur. The Trial Chamber is responsible for conducting fair and speedy proceedings while fully respecting all of the accused's rights. The accused is presumed innocent until proven guilty by the Prosecutor beyond a reasonable doubt. The accused has a right to defend himself, or to be represented by a counsel of his choice.

Unlike a Canadian criminal proceeding, victims are allowed to participate in ICC proceedings directly or through their lawyers. The ICC gives victims the right to participate and the right to request reparations. This means that the victims may be witnesses but may also present their own views and concerns at all stages of the trial. Victims who appear as witnesses before the ICC will receive support and protection.

When the trial is completed, the three judges of the Trial Chamber will give their decision, acquitting or convicting the accused. There are no juries at the ICC. If the accused is convicted (found guilty), the three judges of the Trial Chamber will

A **war crime** is an action carried out during an act of war that violates accepted international rules of war.

Crimes against humanity are particularly serious offenses that constitute an attack on human dignity or a grave humiliation or degradation of one or more human beings. Crimes against humanity are not isolated or sporadic events but are either part of a government policy or are a wide practice of atrocities condoned or tolerated by government or another similar authority.

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issue a sentence of up to 30 years or, when justified by the extreme gravity of the crime, life imprisonment. The judges can also order reparations for the victims.

The ICC also has an Appeals Chamber composed of five judges. The Appeals Chamber hears all appeals from the Prosecutor, the accused or the victim's counsel. The rules pertaining to appeals are specified in the Rome Statute.

All proceedings at the ICC are filmed and can be watched on their website, <http://www.icc-cpi.int>

TIME CHART FOR MOCK TRIAL

1. Registrar calls to order, calls case and counsel introduces themselves	1 min
2. Prosecutor's opening statement	2 mins
3. Defense's opening statement	2 mins
4. Victim's Counsel's opening statement	2 mins
Prosecutor's Case	
5. Prosecutor's direct examination of Prosecutor's first witness	3 mins
6. Defense's cross-examination of Prosecutor's first witness	3 mins
7. Victim's Counsel's cross-examination of Prosecutor's first witness	1.5 mins
8. Prosecutor's direct examination of Prosecutor's second witness	3 mins
9. Defense's cross-examination of Prosecutor's second witness	3 mins
10. Victim's Counsel's cross-examination of Prosecutor's second witness	1.5 mins
Defense's Case	
11. Defense's direct examination of accused	3 mins
12. Prosecutor's cross-examination of accused	3 mins
13. Victim's Counsel's cross-examination of accused	1.5 mins
14. Defense's direct examination of witness for the accused	3 mins
15. Prosecutor's cross-examination of witness for the accused	3 mins
16. Victim's Counsel's cross-examination of witness for the accused	1.5 mins
Victim's Counsel's Case	
17. Victim's Counsel's direct examination of Victim's Counsel's witness	3 mins
18. Prosecutor's cross-examination of witness	3 mins
19. Defense's cross-examination of witness	3 mins
Closing Arguments	
20. Prosecutor's closing arguments	2 mins
21. Defense's closing arguments	2 mins
22. Victim's Counsel's closing arguments	2 mins
23. Judges deliberate and render verdict	2-10 mins
24. Presiding judge gives feedback and discusses International Criminal Trial process, etc.	

TIME CHART

COURTROOM ETIQUETTE AND PROTOCOL

The courtroom is a formal setting, and there are some specific etiquette rules to follow that may not be familiar to you. Here are some pointers:

- You must show respect for the judges and the other people in the room.
- When the judges enter, all counsel, and everyone else in the courtroom must stand up. Counsel then bow to the judges. Sit down when the registrar instructs everyone to do so.
- At the beginning of the trial, the judges may tell you how s/he wants to be addressed. Usually judges are addressed as "Your honour." The presiding judge should be addressed as "Madam President" or "Mister President."
- When facing the judges, the defense usually sits at the table to the left, and the prosecutor sits at the table to the right.
- Before addressing the judges, wait until the judges seem ready to proceed. The presiding judge may nod or may say that you can proceed. If you are not sure, ask the judges if you may proceed. Make sure to introduce yourself. You should also stand every time you are addressing or being addressed by the judges.
- If it is not your turn to address the judges, pay attention to what is happening. Take notes that you can use during closing submissions.
- During the trial, if you need to talk with your co-counsels, write a note. Do not talk to each other while a witness is giving evidence, or one of the judges is speaking. Refer to your co-counsel as "my colleague" or "my co-counsel."
- Refer to the opposing counsel as "my friend" (Canadian terminology) or "my learned friend" (British terminology) or "counsel for (add position of name of the client)."
- If one of the judges asks you a question, take your time to think about it before replying. If you do not hear the question, or are confused by it, ask the judge to repeat or restate the question. If you do not know the answer, say so. Once a question has been answered, pick up from where you were before the question.
- Do not interrupt the judges, and if a judge interrupts you, stop immediately and wait until he/she is finished before replying. Never interrupt or object while one of the opposing counsels is addressing the judges. Wait until you are specifically asked by the presiding judge to respond to a point argued by the opposing counsel.

REMEMBER TO:

- » Speak clearly
- » Use an appropriate volume
- » Try not to say "um", "ah" or "okay"
- » Do not go too fast

ROLE PREPARATION FOR PROSECUTION, DEFENSE AND VICTIM'S LAWYERS

As a prosecutor, you represent the public.

As a defense lawyer, you represent the accused.

As a victim's lawyer, you represent the victims of the alleged crimes and/or their families.

Unlike trials in Canada, where there is only a prosecution and a defence, the ICC also allows for the victim to have their own lawyer. The prosecutor might ask the questions needed to prove the overall case, while the Victim's Lawyer is only focused on the factual elements relating to his or her client. These lawyers are trying to prove similar, but not identical cases. The Victim's Lawyer will listen to the questions and then only ask those additional questions which focus on the facts relating to his or her client.

The Victim's Counsel needs to show how his client was a victim and suffered harm by the conduct of the accused. Counsel is allowed to introduce evidence that the prosecutor has not introduced to the court if it will assist the judges in establishing the truth. The Victim's Counsel has to explain to the judges why his witness' testimony is important and should be heard. Counsel must show that the testimony will be an important contribution in ascertaining the truth. Victim's Counsel is not allowed to ask questions to witnesses if it will only serve to repeat what the prosecutor has already done. Unlike a prosecutor, the victim's counsel can ask the victim he represents to express his or her views and concerns. He cannot ask this question of any other witness but his own. The Victim's Counsel should be asking questions that let's the victim explain his or her loss or damage, for example, he could ask: How has the loss of your son impacted your life? How did the abduction/recruitment of both your sons affect you and your family?

During the trial, the prosecution, the defense and the victim's lawyers:

- Present opening statements
- Conduct direct examinations of their own witnesses
- Conduct cross-examinations of the other side's witnesses
- Make closing submissions

The prosecutor will make his/her opening statement and call his/her witnesses first. Each of the prosecutor's witness will be cross-examined by the defense's counsel and the victim's counsel.

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When the prosecutor is finished, the defense counsel goes next with his/her opening statement, and calls his/her witnesses. After that, the victim's counsel can call his/her witnesses.

The defense gives its closing arguments first. The prosecutor goes last.

Usually, the judges will decide at what stage the victim's lawyer can present the views and concerns of the victims, and in what manner he or she may do so.

HOW TO PREPARE FOR OPENING STATEMENTS

- Become familiar with your witnesses' fact sheets.
- Select which facts should be included in the opening statement. Include the central facts of your case that are not likely to be challenged by the other side.
- Stick to the facts! The facts are what will paint the picture for the judges.
- Check with the lawyer writing the closing submissions for your side, to make sure that both the opening and closing arguments are very similar and present the same theory of the case.
- When giving the opening statements, try to speak in short, clear sentences. Be brief and to the point.
- Have notes handy to refresh your memory.

WHAT IS A DIRECT EXAMINATION?

Direct examination is when one side puts a witness in the witness box to give evidence to support its case.

The purpose of a direct examination is to have the witness tell the judges, in a clear and logical way, what the witness observed.

HOW TO PREPARE FOR DIRECT EXAMINATION:

- Write down all the things that your side is trying to prove.
- Read the witness' testimony carefully, several times over.
- Make a list of all the facts in the witness' testimony that help your case.
- Put a star beside the most important facts that you must make sure that your witness talks about. For example an important fact for the Applicant might be that your witness saw the event at issue first-hand.
- Create questions to ask the witness that will help the witness tell a story:

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- Start with questions that will let the witness tell the judges who s/he is; for example: What is your name? What do you do? How long have you worked in that job?
- Move to the events in question; for example: What were you doing on the night in question? Where were you? When did you first hear there was a problem?
- Move to more specific questions; for example: What did you see? What did you do after that happened?
- *"Why don't you have a good relationship with your child?"*

- Remember to keep your questions short and to use simple language. It is helpful to remember that your questions should start with *who, what, where, how, why* or *when*.
- It is important not to ask leading questions. A leading question is one which suggests an answer, or puts words in the witness's mouth.
- An example of a leading question is: "Was the man six feet tall and about 25 years old?" Instead you might say: "Please describe what the man looked like." Or ask: "How old was he? And how tall?"

WHAT IS CROSS-EXAMINATION?

Cross-examination is when the counsel for the other side gets to ask your witness questions.

There are two basic approaches to cross-examinations:

1. To get favourable testimony. This involves getting the witness to agree to facts that support your case.
2. To discredit the witness. This approach is used so the judge will minimize or disregard evidence or comments that do not support your case.

HOW TO PREPARE FOR CROSS-EXAMINATION

- Make a list of all the facts in the witness's testimony that hurt your case.
- If there are a lot of facts that don't help your case, can you find a way to challenge the witness's credibility? For example, can you show that the witness made a mistake, or has a reason for not telling the truth?
- Put a star beside the facts you must make the witness talk about.

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- Write short leading questions that move towards the key points you want to make.
- Try to build toward the point you want to make by asking your short leading questions. Keep in mind that you want to paint a picture.
- Depending on what the witnesses say, you might need to come up with different questions on the spot during the trial.
- Your questions should get the witness to answer with a yes or a no. For example, if you want the witness to tell the court that it was dark outside, you would ask: "It was dark outside that night wasn't it?"

HOW TO PREPARE CLOSING SUBMISSIONS

- Write down your key arguments and summarize the important facts you want to stick in the judge's mind.
- When delivering the closing submission, try to speak in short, clear sentences. Be brief and to the point.
- Only summarize evidence that actually was given at the trial. You cannot introduce new evidence during the closing statement. This may mean you have to rewrite your closing submission on the spot during the trial.
- Where a witness for the other side admitted something important to your case, point that out.
- Check with the lawyer writing the opening statement for your side to make sure that both the opening and the closing statements are similar, and present the same theory of the case.

ROLE PREPARATION FOR UN OBSERVER

The UN Observer makes recommendation to the UN Office of the High Commissioner for Human Rights (OHCHR) about how to improve the situation for children in this country. These recommendations can be about the actions of the state and can include recommendations about future treatment of children.

As UN Observer, pay special attention to the evidence in the trial listening for facts relating to the actions of the country, or problems that might be solved by the country, now that the armed conflict is over.

These recommendations should not include the prosecution of the individual war criminal. However, if you are unsatisfied with the result of the trial at the ICC, you might make recommendations to address these acts in other ways. These

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recommendations will not rely on the Rome Statute, but can use the other pieces of legislation.

In particular, the Convention on the Rights of the Child and the International Labour Organization can be referred when making recommendations.

An example of a recommendation would be:

Establish a registry so that child soldiers can be reunited with their families.

The OHCHR publishes reports made about all of its member countries. You can see a sample of a report at: <http://www.ohchr.org>

After the trial, prepare your recommendations in a 1–2 page report that summarizes the events, identifies the relevant articles you think are most relevant and includes your specific recommendations.

ROLE PREPARATION FOR JUDGE

As ONE of the JUDGES:

- You are one of the decision-makers at the International Criminal Court.
- You will listen to the parties and may ask them questions at any time during the trial.
- You may also ask the witnesses questions at any time during the trial.
- You are a referee. The presiding judge is in charge of the trial.
- If a counsel objects to a question by another counsel, decide whether or not the witness must answer the question.
- At the end of the trial, summarize what the law and evidence is relating to the case.
- You will make a final decision with the other two judges about the application by announcing the decision at the end of the trial.

You should summarize the evidence and make factual determinations. The chart included in the scenario package will help you to organize your decision.

ROLE PREPARATION FOR THE REGISTRAR

Your role is to help the judges to make sure that the trial runs smoothly. You will:

- Open the court
- Read the charge to the accused and ask him to plead guilty or not guilty
- Swear in the witnesses
- Close the courts.

HOW TO OPEN THE COURT:

When all participants are in their places, you will bring in the judges and say:
"Order in the court. All rise please."

After the judges have entered and sat down, you say:
"Court is now in session. Please be seated."

HOW TO READ THE CHARGES:

To prepare this section, please refer to the scenario for the mock trial you are participating in. Insert the particulars of the accused and charge(s) from the information into the script below.

Stand and say:

"[Name of accused], how do you plead to this charge? Guilty or not guilty?"

If there is more than one charge, add the following for each charge:

"[Name of accused], how do you plead to this charge? Guilty or not guilty?"

HOW TO SWEAR IN WITNESSES:

Before a witness gives his/her testimony, you will swear them in by saying:

"Will you please state your name for the court? Please spell your first and last name."

"Do you solemnly affirm that the evidence you are about to give, shall be the truth, the whole truth and nothing but the truth?"

HOW TO CLOSE THE COURT:

After the judges have deliberated and given their verdict, the court is closed and you will say:

"All rise please. Court is adjourned for the day."

ROLE PREPARATION FOR THE COURT SERVICES OFFICER

Your role is to:

- Bring the accused into the courtroom
- Help the judges in keeping order in the courtroom
- Making sure the accused is not threatened during the trial.

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You can prepare for your role by reviewing the background documents and understanding what will happen during the trial.

The judges will expect you to escort anyone who becomes too loud or is not behaving out of the courtroom.

ROLE PREPARATION FOR MEMBERS OF THE PRESS

Many instances of international atrocities only receive public attention because reporters take risks to expose the war crimes and other abuses in another country. This is dangerous and difficult work. When a war crime finally results in a trial, there is often considerable media attention, both internationally, and in the country where the events took place. There will usually be opposing views and people who argue that the prosecution of one individual is unfair.

You are covering this trial for a reputable international newspaper. Consider how to report on the case in a balanced way that informs readers without being biased.

Things for you to think about reporting on:

- What is the name of the case?
- Who are the people involved?
- Why is a trial taking place?
- What crime(s) is the accused charged with?
- What are the key facts?
- What is the outcome/decision?
- Is there anything you want to ask the prosecution, defense lawyers or the victim's lawyers after the trial is completed?
- Are there any other things you want to say in general in your article about the particular types of charges?
- Did you have a position about the facts before the trial began? Has your position changed after hearing the trial? How so?
- Is there anything the public needs to know about this trial?
- Why is this trial of international importance?