

## **PROCEDURE OF THE INTERNATIONAL CRIMINAL COURT**

On 17 July 1998, the international community reached an historic milestone when 120 States adopted the Rome Statute, the legal basis for establishing the permanent International Criminal Court.

The Rome Statute entered into force on 1 July 2002 after ratification by 60 countries.

Based in The Hague, The Netherlands, the International Criminal Court is the first ever permanent international institution, with jurisdiction to prosecute individuals responsible for the most serious crimes of international concern: genocide, crimes against humanity, aggression and war crimes. The Court shall exercise jurisdiction over the crime of aggression once a provision is adopted defining the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to it.

The jurisdiction of the ICC will be complementary to national courts, which means that the Court will only act when countries themselves are unable or unwilling to investigate or prosecute.

The jurisdiction and functioning of the court is governed by the provisions of the Rome Statute. The ICC also has strong protections for due process, procedural safeguards to protect it from abuse, and furthers victims' rights and gender justice under international law.

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### **1. Composition of the International Criminal Court**

#### **a. Prosecutors (2)**

The prosecutors are the representatives of the Court and the international criminal jurisdiction. Their labor consists in submitting evidence and proving that the subject being trialed is guilty of the charges he is accused of.

#### **b. Defense attorneys (2)**

The defense attorneys are the representatives of the subject being trialed. Their job primarily consists in lessening the value, or the strength of the merit of the evidence alleged by the prosecutors to show that the person they represent is otherwise innocent. They can also provide evidence for the same purpose.

#### **c. Judges (15)**

The judges are in charge of impartially evaluating the evidence provided by both the prosecutors and the defense attorneys. They can also intervene in the debate and question the parts with the objective of clarifying their doubts about the evidence or their interventions. Their final task is to emit a verdict concerning the responsibility or lack of responsibility of the trialed subject.

#### **d. Supreme Judges (2)**

The supreme judges preside the Court, they are the moderators of the debate but they can also interfere in the deliberation process as the other 15 judges that compose the court. They determine how the hearing is to be conducted and, in particular, may establish the order and the conditions under which he or she intends the evidence contained in the record of the proceedings to be presented. The supreme judges will also be the ultimate opinion and will unify concepts when various judgments, or interpretations are ambiguous, vague or have multiple significations

#### **e. The Registry**

The Registry shall create and maintain a full and accurate record of all proceedings, including all documents transmitted to the Chamber. She or he must synthesize the questioning of the Judges towards the Prosecutors or defense attorneys and literally take note of the argument or phrases used by the when the "Point of adding to the registry" is used.

The purpose of this record is to create a "memory" of the process to ease the labor of the Prosecutors, attorneys, judges or Supreme judges regarding the development of the case.

### **2. Procedure of the Trial Chamber**

The basic procedure that will be used in the Trial Chamber, each of them explained after the list. The procedure is the following:

- a) Verification of quorum
- b) Opening the agenda
- c) Opening speeches by the judges
- d) Solemn undertaking of the judges, Prosecutors, and Registrar.
- e) Introduction of the theory of the case by the Prosecutors
- f) Introduction of the theory of the case by the defense attorneys
- g) Presentation of evidence by the Prosecutors and Defense before the Chamber
- h) Discussion of the evidence alleged by the Prosecutors and Defense.  
(Steps *g, h, i* and *j* will be repeated for each evidences provided)
- i) Concluding pleas by the Prosecutors.
- j) Concluding pleas by the defense attorneys.
- k) Discussion of the evidence by the judges
- l) Voting of the evidence
- m) Discussion of the decision
- n) Writing of the decision
- o) Delivery of the decision

### **a) Verification of the quorum**

Due to the fact that the court is composed by 15 judges, 2 prosecutors, 2 defense attorneys and 2 Supreme judges, the quorum will be satisfied with the presence of all 4 prosecutors and defense attorneys, 1 supreme judge and 10 judges (2/3 of the total). Once the quorum is verified, the Prosecutors and defense attorneys must leave the premises of the Chamber and can only return once the opening speeches by the judges have been held and the judges have performed the solemn undertaking. The Prosecutors will be required to perform the solemn undertaking as well once they return to the Chamber.

### **b) Opening the agenda**

As in the other committees, it is necessary that the opening of the agenda is proposed by one of the judges indicating the case to be initiated with. The motion must be voted by the judges and requires a simple majority to pass.

### **c) Opening speeches by the judges**

The opening speeches must last 1 minute or less. Unlike the opening speeches of the other committees, regarding their country's position towards a certain situation, these speeches must refer to the importance of justices and impartiality concerning the trial of an individual. The reason of the content of the opening speeches is to avoid partiality by the judges in relation to the case.

### **d) Solemn undertaking**

#### **1- The Judges**

After the reading of the opening speeches, all judges must, according to the 5<sup>th</sup> rule of the rules of procedure and evidence of the International Criminal Court, perform the following undertaking:

"I solemnly undertake that I will perform my duties and exercise my powers as a judge of the International Criminal Court honourably, faithfully, impartially and conscientiously, and that I will respect the confidentiality of investigations and prosecutions and the secrecy of deliberations."

#### **2- The Prosecutors**

Once the judges have performed the solemn undertaking, the defense attorneys and Prosecutors will be required to re-enter the chamber. Before they present their theory of the case, the Prosecutors must perform the following undertaking:

I solemnly undertake that I will perform my duties and exercise my powers as Prosecutor of the International Criminal Court honourably, faithfully, impartially and conscientiously, and that I will respect the confidentiality of investigations and prosecutions.

### **3- The Registrar**

According to the same rule, the Registrar must also perform the following undertaking:

I solemnly undertake that I will perform my duties and exercise my powers as Registrar of the International Criminal Court honourably, faithfully, impartially and conscientiously, and that I will respect the confidentiality of investigations and prosecutions.

#### **e) Introduction of the theory of the case by the Prosecutors**

The Prosecutors must introduce their Theory of the Case in which they will explain why they consider the charges against the trialed. The introduction must be based on the memorial sent by the prosecution on the date assigned by the ICC

#### **f) Introduction of the theory of the case by the defense attorneys**

The defense attorneys must introduce their Theory of the Case in which they will explain why they consider the charges against the trialed to be false. The introduction must be based on the counter memorial sent by the defense on the date assigned by the ICC

#### **g) Presentation of the evidence by the Prosecutors**

The Prosecutors must present to all the Court evidence that proves the charges of which the trialed is being accused of. The evidence provided can be of diverse types: videos, radio programs, magazine articles, internet documents etc. This Court will not accept witnesses as evidence due to the complications of their preparation.

If the evidence provided is a document, a copy of the same must be submitted to every person in the Chamber, if it is video or audio-related evidence it must be understandable by all as well.

#### **h) Discussion of the evidence alleged**

Once the evidence is presented and explained by the Prosecutors, the defense attorneys may question the validity or relevance of the same, or what they consider pertinent to prove that the evidence is not conclusive to attribute responsibility of the trialed. To these means they may also provide evidence and if so the evidence provided by the defense attorneys shall also be discussed.

In this moment the judges may ask either part questions related to the evidence to analyze if it is pertinent to consider it at the moment of the deliberation. It is relevant that the judges allow the

Prosecutors and defense attorneys to discuss with each other first since later on there will be a moment for the judges to ask questions.

This process and the one mentioned in literal g will repeat itself until the Prosecutors have no more evidence to provide to the Chamber. The defense also has the chance to present its own evidence, which will intend to deny the claim stated by the prosecution. The evidence presented will follow the procedure explained above

**i) Concluding pleas by the Prosecutors**

The Prosecutors must conclude the case and convince the judges of the reasons of why they find the trialed subject to be guilty of the charges.

**j) Concluding pleas by the defense attorneys**

The defense attorneys must conclude the case and convince the judges of the reasons of why they consider the trialed subject otherwise guilty.

Once both concluding pleas have been performed, the Prosecutors and defense attorneys must leave the Chamber.

**k) Discussion of the evidence by the judges**

In this procedural moment the judges must discuss the validity, pertinence, and authenticity of each of the evidences provided by both the Prosecutors and the defense attorneys.

**l) Voting of the evidence**

The judges must vote to decide which evidences will be taken into account at the moment of the delivery of the decision. For an evidence to be considered in the decision, it must be approved by a simple majority.

**m) Discussion of the decision**

Once the decisions regarding the evidence, the judges must discuss if the decision will be to convict or absolve the trialed, the decision will be made with at least 9 votes either way. Once they arrive to a consensus, the Chamber will proceed to the writing of the decision.

**n) Writing of the decision**

The decision shall be in writing and shall contain a full and reasoned statement of the Trial Chamber's findings on the evidence and conclusions. The Trial Chamber shall issue one decision.

When there is no unanimity, the Trial Chamber's decision shall contain the views of the majority and the minority. The decision or a summary thereof shall be delivered in open court.

When a judge supports the decision with reasons or motifs different from the ones that are basis of the decision, he has the right of emitting a clarification of the vote; this shall be a written document in which the judge will explain the other reasons he or she has for supporting the decision.

The judge who opposes the decision has the right to emit his own dissenting opinion. The dissenting opinion is a written document in which the judge can explain the reasons for his opposition. The dissenting opinion will be included at the end of the decision.

#### **o) Delivery of the decision**

A previously designated judge or judges will be in charge of reading the decision. All the members of this committee (Supreme judges, judges, Prosecutors, defense attorney and Registrar) must be present.

In the event of a conviction, the Trial Chamber shall consider the appropriate sentence to be imposed and shall take into account the evidence presented and submissions made during the trial that are relevant to the sentence.

Subject to article 110 of the Rome Statute, the Court may impose one of the following penalties on a person convicted of a crime referred to in article 5 of this Statute:

(a) Imprisonment for a specified number of years, which may not exceed a maximum of 30 years; or

(b) A term of life imprisonment when justified by the extreme gravity of the crime and the individual circumstances of the convicted person.

2. In addition to imprisonment, the Court may order:

(a) A fine under the criteria provided for in the Rules of Procedure and Evidence;

(b) A forfeiture of proceeds, property and assets derived directly or indirectly from that crime, without prejudice to the rights of bona fide third parties.

### **3. Differences between the ICC and the rest of the committees of the Model of United Nations and special terms.**

#### **a. Motions**

The motions used in the majority of the debates will not be entertained in the ICC. Once the agenda is open the procedure established for this committee will be rigorously followed. The only motions that will be entertained are the ones regarding the comfort of the members and those concerning opening, suspending, closing the agenda.

NOTE: Motions challenging admissibility or jurisdiction of the court will be entertained after the solemn undertaking of the members required to do so.

**b. Position papers**

Prosecutors, judges and defense attorneys are not required to submit a position paper.

**c. Working papers/resolutions**

The equivalent to a resolution in this committee is the decision.

**d. Points of information/order/personal privilege**

These points are also relevant in this committee and their application is bound to the same rules.

**e. Parliamentary language**

Judges, Prosecutors and defense attorneys are bound to the use of parliamentary language at all time. They can talk in first person.

**f. Debate moderation**

Supreme judges, as mentioned before, are in charge of moderating the debate. They decide to recognize the Prosecutor, judge or defense attorney. Prosecutors and defense attorneys must stand while they develop their intervention but judges may ask their questions while sitting down.

**g) Objection**

Objection is a word that can be used by both Prosecutors and defense attorneys (not judges) in the moment where either part is exposing an argument because they consider it to be base on speculation, find it irrelevant or when there's a direct attack to them by one of the judges. It is the duty of the Supreme judges to recognize the person that calls an objection, person that must explain the reasons for it. The Supreme judges will then decide to accept or overrule the objection.