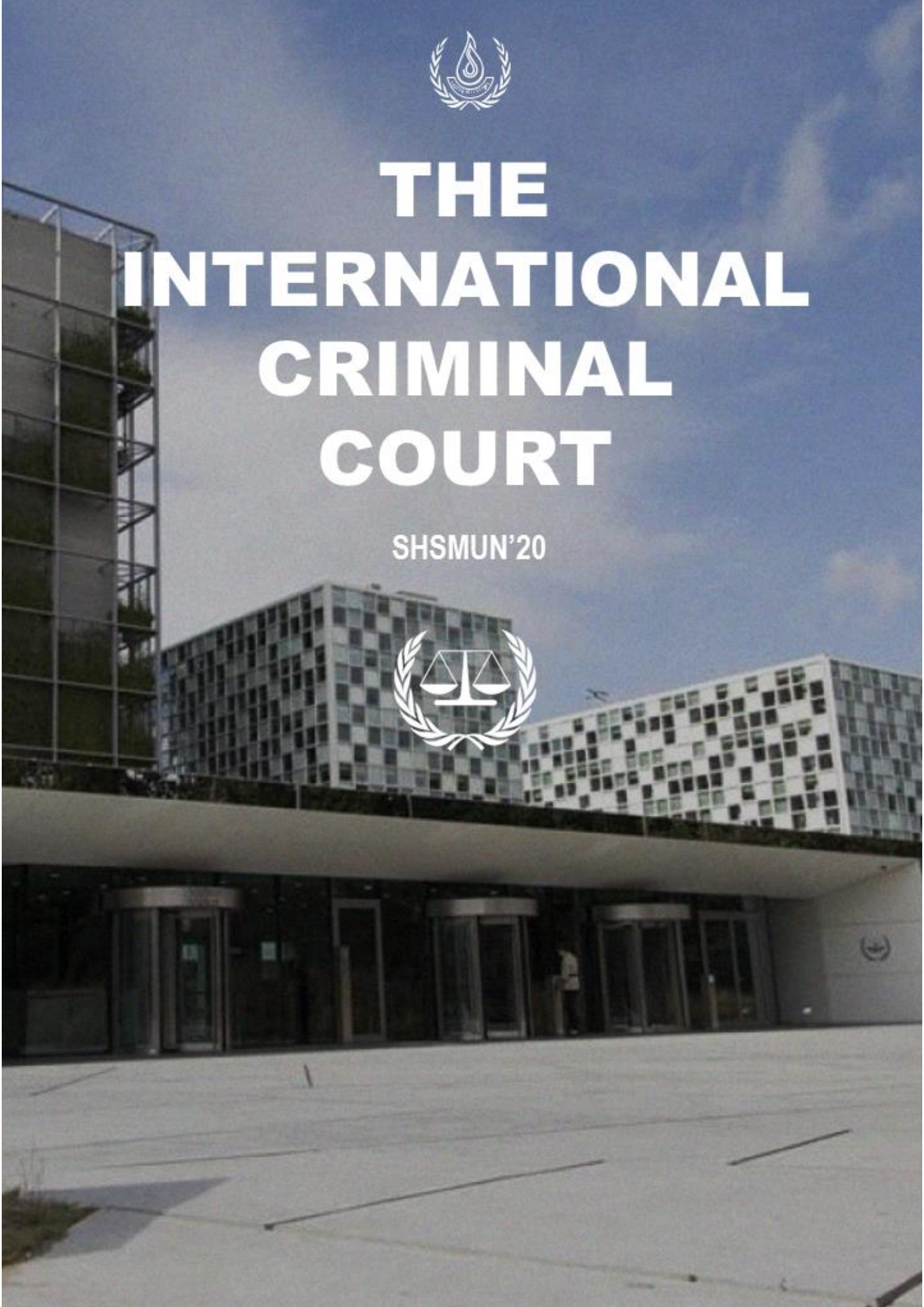




# THE INTERNATIONAL CRIMINAL COURT

SHSMUN'20





## **Table of Contents**

Introduction .....	3
History of the Topic .....	3
Perspectives .....	6
Georgian perspective .....	6
Russian perspective .....	7
Conclusion .....	10
<b>International Criminal Court Procedure .....</b>	<b>11</b>
Table .....	12
The Terms Used .....	13
Ways to Address .....	13
The Memoriam .....	13
Counter-Memoriam .....	13
Presenting (the Oral Part) .....	14
The Procedure .....	14
The Initiation Ritual and Stand .....	14
Opening Statements.....	14
The Presenting of the case .....	15
Rebuttal .....	16
Closing Statement .....	16
Final Deliberation .....	16
The Verdict .....	17



## **Introduction:**

The International Criminal Court (ICC) was established by the Rome Statute of the International Criminal Court in 1998, and it began sittings on July 1, 2002, after 60 countries had ratified the Rome Statute. To date, some 120 countries have ratified it. It was made as a court of last resort that was created to investigate and prosecute individuals accused of genocide, war crimes, crimes against humanity, and crimes of aggression. Mikhail Saakashvili is a Georgian and Ukrainian politician. He was the third President of Georgia for two consecutive terms from 25 January 2004 to 17 November 2013. From May 2015 until November 2016, Saakashvili was the Governor of Ukraine's Odessa Oblast. It was during his term that the Russo-Georgian War happened which was a war between Georgia, Russia and the Russian-backed self-proclaimed republics of South Ossetia and Abkhazia. The war took place in August 2008 following a period of worsening relations between Russia and Georgia, both formerly constituent republics of the Soviet Union. The investigation on Saakashvili is about crimes that the Georgian army had allegedly committed to the South Ossetian people during the war.

## **History of the topic:**

For many centuries the Caucasus has been a very sensitive and strategical area for Russia. That's why through out the history of Russia the Caucasus has been annexed by them, the first time the Caucasus has been under the control of Russia was during the 19<sup>th</sup> century when the Russian empire existed. Later, the countries in the Caucasus such as Armenia, Azerbaijan, and Georgia took independence when the Russian civil war occurred. In 1921 the red army of the Soviet Union invaded the Caucasus and annexed it. Later, in 1922, they formed the Transcaucasian Socialist Federative Soviet Republic. When the Transcaucasian Socialist



Federative Soviet Republic dissolved in 1936 many new states emerged. These states were the Georgian SSR, Armenian SSR, and Azerbaijan SSR.



*Map of Georgia*

The Georgian SSR was divided into 4 areas. South Ossetia, Abkhazia, and Adjara were autonomous states owned by Georgia. After the collapse of the Soviet Union, Georgia declared independence, in April 9, 1991 and after a while the Abkhazians and Ossetins declared independence which was denied by Georgia. This led to hostilities between the nations which lead to a war first between Georgia and south Ossetia from 1991 to 1992 and later was another war between Georgia and Abkhazia from 1992 to 1993. Both wars lead to Georgian defeat.



Tensions remained high between the nations and Georgia. In January 2004 Mikheil Saakashvili was elected the Georgian president after leading protests against the former president.



*Picture of Mikheil Saakashvili*

During his presidency tensions escalated between 2 nations and Georgia, because of his rhetoric and his desire to unite Georgia one way or another. This led to the Russo-Georgian war of 2008.



## **Perspectives:**

### **Georgian perspective (during the UN meeting in august 8):**

Irakli Alasania (Georgian representative's, first speech) recalled that he had stated in the Security Council Chamber only 12 hours before that there were disturbing signs that Georgia was facing a well-calculated provocation to escalate the situation to justify premeditated military intervention by the Russian Federation. That evaluation had transformed into brutal reality. This morning, the Russian Federation had started a full-scale military invasion of Georgia. Outlining the day's events, including several bombings by Russian aviation, he said it had become known to the Government that today, large amounts of heavy equipment and personnel belonging to the Russian Federation had illegally entered Georgian territory through the Roki Tunnel. The Russian side had openly declared that the task of those military units was to support the criminal regime of Tskhinvali in the fight against the Government of Georgia. In order to justify its actions, the Russian Federation was speculating that the Georgian authorities were targeting the posts of Russian peacekeepers. Nothing could be further from the truth; Georgian troops were not targeting peacekeepers. Georgia's action had been taken in self-defense, after repeated armed provocations, and with the sole goal of protecting the civilian population and saving the lives of residents from various ethnic backgrounds, he stressed. The world was witnessing a blunt and open violation of the universally recognized norms and principles of international law. The Russian Federation was openly challenging the international community and jeopardizing established international order and stability in the wider trans-Caucasus. He said the Russian military aggression was aimed at subduing Georgia and compelling it to give up its Euro-Atlantic aspirations, to subjugate Georgia and the region to Russian political influence and destroy Georgia's and the international community's democratic achievements of past years. "We demand from the



Russian Federation to immediately terminate aerial bombardments, immediately pull out all the occupying forces and, together with international actors, negotiate a ceasefire and mechanisms to ensure lasting peace and stability in this part of Georgia.” President Mikheil Saakashvili was offering direct dialogue with the Russian Federation and interested parties to search for a negotiated solution to the tragic conflict.

### **Russian perspective:**

Vitaly Chukrin (Russian Federation representative) said Georgia continued its treacherous attack on South Ossetia, despite the Russian leadership’s appeal for an immediate ceasefire, an end to the fratricidal conflict and the resumption of talks. The Russian Federation abhorred the connivance of a number of Security Council members, who last night had blocked passage of the Russian assessment of the situation. The aggression being perpetrated was in violation of the United Nations Charter on the non-use of force, the 1996 agreement signed by Georgia, the South Ossetia parties and the Organization for Security and Cooperation in Europe (OSCE), and the 1992 basic agreement between the Russian Federation and Georgia on the principles for settlement of the Georgian-Ossetian conflict. That agreement obliged the belligerents to undertake measures to halt military confrontation, to cease fire and to withdraw armed units. A demilitarized zone had been created under the accord and the 1996 memorandum of understanding, compelling parties to the conflict to renounce the use or threat of use of force, had been signed by the High Representative of Georgia and the OSCE representative. Noting the political response of OSCE member States, he said Georgia had used heavy artillery and materiel, unleashing aggressive actions against the people of South Ossetia in a massive bombardment outside the zone of conflict. Schools and Government offices were on fire, a Russian convoy carrying humanitarian assistance had been attacked, the population was panicking, and the number of refugees was increasing. A humanitarian catastrophe was in



the offing; a scorched-earth tactic was being employed and Georgian snipers were preventing the passage of ambulances. The situation was so catastrophic that the International Committee of the Red Cross (ICRC) had requested a humanitarian corridor to evacuate the wounded. According to reports from the South Ossetia side, more than 1,300 people had died, in a gross violation of international law, primarily the protection of civilians from military operations. The most vulnerable people in the present situation — women, children, the elderly and disabled — were seriously threatened. The Russian Federation continued to take in refugees from South Ossetia, but scores of innocent civilians remained in the zone of hostilities, he said, adding that his country “will not allow to go unpunished the deaths of our compatriots”. Russian President Dmitry Medvedev had instructed the Government to take urgent measures to provide assistance to refugees and other citizens in dire need. “We have to pay attention, finally stop turning a blind eye to the massive acquisition of offensive weapons by Georgia” over the past few years. The special commandos trained by foreign instructors were now finding their use. The situation was so dire that peacekeepers from the Georgian side were shooting at Russian peacekeepers. Many of the innocent civilians dying in South Ossetia were citizens of the Russian Federation. “We cannot put up with the situation,” he warned, reiterating that firepower against peacekeepers was being aimed directly from tanks and helicopters. More than 10 peacekeepers had died and more than 30 had been wounded. Having carried out an attack on Russian peacekeepers, Georgia had demonstrated an outrageous disregard for international norms, calling into question its viability as a member of the international community. Russia particularly regretted that the Georgian President had proclaimed on television his resolve to continue what he had begun. It was to be he hoped that his European and American colleagues would begin to understand current events and draw the right conclusions. The Russian Federation was intervening as a real peacekeeper; it was present on Georgian territory on an absolutely legal basis and in line with international





agreements. Historically, the Russian Federation was and would remain the guarantor of the security of the people of the Caucasus.

For more information on Georgia's, Russia's, and other countries' stances use the link below:

<https://www.un.org/press/en/2008/sc9418.doc.htm>



## **Conclusion:**

In brief, the trial of Mikheil Saakashvili will be held by the ICC on the grounds that he allegedly committed crimes against humanity and war crimes during the 2008 Russo-Georgian war and to allow justice to be served to any and all victims of the alleged crimes. In addition, if the prosecution is willing and able to provide claims and evidence of genocide and/or crimes of aggression committed that will be considered relevant as well.

Thank you, members of the court, for reading the background guide.

Please note that the judges are to remain neutral throughout the conference.



## International Criminal Court

*The **International Criminal Court (ICC)** is an international intergovernmental tribunal in Hague in - Netherlands. The ICC has the jurisdiction to prosecute individuals for international crimes of: genocide, crimes against humanity, war crimes, and crimes of aggression. The ICC is intended to complement existing national judicial systems and it may exercise its jurisdiction only when certain conditions are met. The ICC began functioning on 1 July 2002, the date that the Rome Statute entered into force. The Rome Statute is a multilateral treaty which serves as the ICC's foundational and governing document. States which become party to the Rome Statute become member states of the ICC. As of March 2019, there are 124 ICC member states. In MUN, ICC may be one of the most interesting committees because it gives more knowledge about international law and has a different way of functioning compared to other committees.*



<b>Chief Justice</b>	Is the head of the ICC and the principle judge. He or she is in charge of the even running of the court and has equal say as the other judges present.
<b>Deputy Chief Justice</b>	He or she assists the Chief Justice and is available to weigh in on decisions of the running of the court.
<b>Judge</b>	Judges or “justices” are supposed to listen to the advocates presenting their case, deliberate on the case, and should decide the verdict of the case at the end. 8 judges will be present in the courtroom.
<b>Prosecution</b>	Is the party bringing the case to court. In other words, the moving party that has the liability of proof.
<b>Prosecuting Party</b>	Another name for the prosecution, the ones that are bringing the case to court.
<b>Defendant</b>	Is the defending party that must demonstrate that the proof against their client is not correct or strong enough to prove guilt.
<b>Defending Party</b>	Another name for the defendant; the ones defending their client.
<b>Advocate</b>	Is the lawyer hired by each respected side to represent them in front of the court. Two advocates will represent each of the two parties.
<b>Preponderance of the evidence</b>	Is the burden of proof persistent by 51%. With that the judges will decide the case. And preponderance is based on the more convincing evidence and its probable truth, and not on the amount of evidence.
<b>Equipoise</b>	Is the equal chance throughout the court between guilt and innocence, the moving party loses.



## **The Terms used:**

### **I. Ways to Address**

- The Chief Justice should be referred to as “Chief Justice (last name)” or “Your Honor,”
- The Deputy Chief Justice should be addressed as “Deputy Chief Justice (last name),” or “Your Honor”.
- The judges should be referred to as “Justice (family name)”, or “Your Honor.”
- The advocates for the prosecuting party and the defending party should be both addressed as “Counsel” or “advocate (family name)”.

**NOTE:** Defendant = Respondent/ Plaintiff = Applicant

### **II. The Memoriam (for advocates only) :**

The advocates write a “memoriam”. It should contain the following:

- **Stating facts:** outlines the problem by stating the facts as the candidate wishes to view them.
- **Legal claims:** a short explanation of the legal basis for the case and appropriate evidence to support the claims presented.
- **Judgment wished:** a clear statement of what the party expects from the court’s judgment and why.
- The candidate’s memoriam for the SHSMUN’20 conference is to be submitted to the ICC by **(February 15, 2020)**.

**NOTE:** Candidates applying for the position of advocate may cite or quote sources, but must submit their own work. In the case of plagiarism, the memoriam will be disproved and the advisor of the concerned applicant will be notified.

### **III. Counter-Memoriam:**

The respondents also present a counter-memoriam which follows the same structure of a memoriam. The purpose is for the defendant to defend his/her position against the claims made in the memoriam. It must also be submitted to the ICC president not later than **(February 15, 2020)**

*Stipulations:* are points to be written together by the advocates of both sides. The stipulations document presents the points the two parties agree on. They must be submitted in writing prior to the opening statements during the conference. *(Those stipulations will be debated between judges during the flow of the conference on the first day.)*



#### **IV. Presenting (the Oral Part) :**

##### **DUTIES:**

**Judges:** Justices are required to make some research regarding the topics at hand to know more about the case before the start of the conference, yet must not discuss the matter with *any* advocate. They also, throughout the entire session, must stay neutral towards the case and not in any ways take a clear stance or interpret biasness in their dialogues. Judges may ask questions to the advocates and witnesses (only for clarification purposes, and not to dispute the case), and can call witnesses or advocates back during debate to justify a point if not clear enough.

**Advocates:** are responsible for every point they make as they embody their opinions, point out the issues that divide them, and call for the questioning of witnesses or experts, if any at hand.

##### **THE PROCEDURE:**

#### **I. THE INITIATION RITUAL AND STAND**

“The Stand” is the opening of the ICC. All members present must abide by all the rules of procedure. The Justices and the Deputy President are to rise to welcome the President who enters. Finally, the President introduces a briefing of the case in the presence of the entire committee.

#### **II. OPENING STATEMENTS**

*(Minimum time: 15 minutes & Maximum time: 20 minutes for each side)*

- The advocate makes the opening statement. “We will prove the following...”, “We will show that...”, but no argument is to be made. It is only an introduction.
- The Responding advocate can either give the opening statement after the moving party’s opening statement, or after the moving party’s whole case has been presented.
- Do not make proclamations that will not be proven later on in the proceedings.
- Both advocates may share the podium when presenting his/her party’s opening statement
- No objections are to be made during the first 5 minutes of opening speeches.



### III. THE PRESENTING OF THE CASE

*(Minimum time: 100 minutes & Maximum time: 150 minutes for each side.)*

- The advocates for the prosecuting party presents the case using direct proof and witnesses, however referring back to *legal* claims.
- The advocates for the defending party follow with presenting their side of the case.
- Any of the statements made by the advocates are not evidence.
- Advocates should present only facts and declarations based on the law, or object to improper evidence being admitted by their opponents. They should not discuss what something is supposedly said, or infer ideas from evidence.
- The defending party has the right to confuse the issue by presenting many different angles of defense.
- The simpler the statements made the better the performance of the advocates in the committee.

#### ***DIRECT EVIDENCE:***

- Evidence should be “*marked*” before it can be referred to as evidence. The advocate states to the court during his or her presentation that he or she would like to “mark the following: \_\_\_\_\_ as evidence.”
- Both sides must see the evidence before it can be accepted by the court. Evidence can be presented during the presentation of the case, but then it will require an explanation as to the importance of it by the presenting side. Its significance will then be deliberated by the judges confidentially.
- All evidence that the advocates use must be attached in the memoriam and counter memoriam. Plus, the evidence must still be marked during the case before being accepted.
- Due to time constraints, a maximum number of 15 pieces of evidence will be limited to each side.

#### ***WITNESSES:***

- During the conference witnesses will be brought up to strengthen any of the side’s position. They will be questioned by the defendants, plaintiffs, judges and chief and deputy chief justices if necessary.
- The advocates’ questions to the witnesses should be formulated to be answered mostly by “yes “or “no.” Few long narrative questions will be posed to the witness.
- The plaintiff can use leading questions only on expert witnesses, but the defendant can use leading questions to any witness as long as they are not inappropriate.
- Advocates may not refer to someone else’s statements when asking questions.
- During the questioning of witnesses the pattern is direct, from one side to the other until both sides have no further questions. Once each side is finished the advocates must say: “*No further questions.*”



- After each witness has been questioned by the plaintiffs, defendants, and Judges, the judges will proceed to debate and deliberate in private regarding the credibility of the witness.
- To ensure a successful procedure the advocates are strongly advised to prepare their witnesses by providing them with minimal background information on the case, and prepare them for questions that may be asked by the opposing counsel or judges.
- Due to time constraints, there will be a limit of four witnesses (2 from each side). A list of witnesses (name of witness, real name of witness, background information and committee in SHSMUN'20) must be submitted to the president by **(February 15th, 2020)**

#### **IV. REBUTTAL**

*(Maximum: 60 minutes per side)*

The prosecuting party has the opportunity to give a rebuttal addressing issues brought up by the defending party during the presentation of their case. The defendants then have the opportunity to give a rebuttal to redress issues presented in the moving party's rebuttal. The rebuttals must be in the form of short statements, not speeches, and after each statement of rebuttal the opposing side will be asked if it would like to rebuttal the rebuttal. There will be only one rebuttal to each contradiction.

#### **V. CLOSING STATEMENT**

*(Minimum: 40 minutes & Maximum: 60 minutes per side,)*

- The plaintiffs give a closing statement in which a conclusion about how the evidence, witnesses, and arguments lead to the guilt of the defending party.
- The defendants make a closing statement of equal time to that of the moving party, defending their side of the case.
- The demanded judgment of both sides must be re-stated during the closing statement of each.
- The closing statement is the advocates' *last* chance to link their cases together, argue their evidence, and to persuade the judges.
- The presentation can be divided among both advocates.
- ***ONLY NOW (DURING THE CLOSING STATEMENT) MAY AN ADVOCATE ANALYSE EVIDENCE, OR ARGUE THE FACTS, THE LAWS, OR THE CASE.***

#### **VI. FINAL DELIBERATION**

1. Advocates will leave the room.
2. All things that happen in the chamber are to stay secret, and are not to be revealed.
3. A first vote is taken and brief reasons given for the initial decision. This is not obligatory, but every judge must at least make one statement.





4. Each judge brings up subjects that he/she believes are important.
5. Discussion of issues listed should be relevant to international law and evidence presented.
6. A second vote is taken with NO JUDGE abstaining.
7. The wording of the verdict is written by the group.
8. A final vote is taken.

**Important points to consider during the discussion of the verdict:**

- The legitimacy of the evidence presented by each side.
- Worth of the evidence – and their relevance during the conference. Are the statements in the evidence accurate, relevant, and reliable?

**VII. THE VERDICT**

The verdict is read out on the last day of the conference during the Closing Ceremony by the President of the ICC. The verdict is submitted to the head of the conference in writing at the end of the conference, as well as published.