



## 2017 High School Moot International Criminal Court

### Competition Overview

The High School Moot International Criminal Court (ICC) Competition is designed to introduce high school students to the work of the ICC and how important international human rights issues are dealt with in an international criminal justice context. The competition is a closed-research process, with sources, including case law, journal articles, and factual information being completely provided to students. This is designed to encourage students to focus on a careful consideration of the human rights issues raised by the questions presented. Students will be required to prepare a four-page memorial as well as oral arguments as if they were legal counsel before the Appeals Chamber of the International Criminal Court (ICC). It is important to note that the rules of the competition do not perfectly mirror the ICC's Rules of Procedure, as they have been adjusted to reflect the unique nature of a high school moot court competition focusing on international criminal issues.

#### **Please note that students will compete in pairs, not foursomes.**

Throughout this material and the competition we will refer to the paired students as a team. Teachers are responsible for assigning students to either the *Applicant* (the accused defendant's team) or *Respondent* (the prosecution) side of the case. Schools who have registered four students must have one Applicant team and one Respondent team. Schools who have registered eight students must have two Applicant teams and two Respondent teams.

The questions presented are limited to two legal issues. One of these is a question of fairness and due process, involving whether the legal charges against a war crimes defendant can be changed in the middle of a trial in order to better fit the facts presented. The other legal issue has to do with the degree to which a government official can be held responsible for military aid that is used in war crimes committed by an insurgent force supported by that government. Both of these issues deal with very sensitive, serious, and potentially controversial matters. It is highly recommended that the teachers, coaches, and/or advisers involved in helping students prepare for the competition spend significant time with the students studying these issues as part of preparing for the moot court competition.

## **I. Preparation**

### **a. Closed-source Research**

Conducting research in a closed-source setting can be both much easier and much more difficult than an open-ended research project. On one hand, students are no longer required to pursue every potential source to uncover material that would be useful to each particular issue. This greatly increases the efficiency of the student's time spent researching, as they can focus on the provided materials, better familiarize themselves with the details of the sources, and avoid costly dead ends and rabbit trails that open-ended research provides. However, it is very difficult, especially for the type of students generally attracted to competitions such as moot courts, to let go of their natural curiosity long enough to stay within the guidelines of the competition. It is therefore very important that teachers, coaches, and/or advisers carefully explain the restrictions of the closed-source research and ensure that students limit themselves to the use of the provided materials. ***Submissions with citations to sources not provided for in the research packet will be penalized.***

It is also important in a closed-source setting that students focus not only on the information provided in the research materials, but also on the implications of that information. Many of the cases, journal articles, or statutes involved provide only the basic theory or factual information necessary. It is up to the students to draw their own conclusions about how that information applies to the questions presented to them by the court. Teachers, coaches, and/or advisers can obviously assist students in the development of these ideas and conclusions, but must be careful to not unduly influence the students towards a particular approach. The greatest benefit to the students involved will be gained from carefully evaluating the research materials provided and applying them to the specific questions presented based upon the students' own understanding of the concepts involved. This is a very difficult line to walk for teachers, coaches, and/or advisers, but one of the most important if the moot court competition is to have a meaningful impact for students.

### **b. Memorial Writing**

Memorials, or "memos" as they are often called, are the documents submitted to an appellate court on behalf of the parties involved in a dispute. In a criminal setting, this only comes after a trial court has first heard the matter. In this year's competition problem, the defense is appealing the Trial Chamber's decision on both issues in question. Each team will prepare one four-page memorial for the side that they are assigned. ***The memorial must address both issues presented by the competition problem.***

The structure of the memorial is usually quite formalistic, but, in deference to the high school focus of this competition, it has been greatly simplified. Each team will need to include a ***title***

*page, table of contents, questions presented, and the pleadings themselves.* The title page merely lays out who the participants are, which court they are before, and the title of the case. The title page will be provided with clear indications on what needs to be completed by each team. The table of contents lists the headings of the pleadings so judges can flip to the relevant section of a team's argument quickly. The questions presented page simply restates the issues raised by the competition problem in the team's own language (*this is often a helpful starting point to make sure the students understand what they are arguing for or against*). The title, table of contents, and questions presented pages **do not count** to the four page limit of the memorials and should be numbered with small roman numerals, rather than Arabic numbers. The "pleadings" are the actual arguments of the team itself to the issues raised by the competition problem. This is where the majority of the score of the writing portion of the competition will be determined.

***Students will need to use citations to support their arguments.*** Again, given the high school focus of the competition, it is not expected that students will be as prolific at citation as the articles they read. However, since this is a closed-source competition, there is a greater expectation that students will refer to the research materials provided. The research materials include the citation format for each source and teachers, coaches, and/or advisers need only focus on making sure students do not run the risk of plagiarism in their memorials – especially since, with a closed-source competition, all of the memorial graders will be very familiar with the research materials.

***Memorials should be designed by the students so that each element of their argument (called the "Pleading") goes to support the overall assertion that the Trial Chamber decision was either legally correct or incorrect, depending on their position on that issue.*** Pleading sections of memorials usually include "headings," which are most easily thought of as a Roman numeral outline of for the arguments in the pleadings. In this competition, two issues are presented, which usually fill the role of Roman numerals I and II. Students must then come up with their own A, B, C's, etc, to round out the details of their arguments. A clear outline is incredibly helpful to ensuring that students prepare a strong memorial. Each A and B should directly relate to the Roman numeral above it and should be an argument as to why the student's side should win the argument. It is important to remember that the memorials are a form of advocacy, just like the oral sessions are. Students are not writing a paper about the topic, but instead are arguing in support of a specific premise that must be defended or asserted. Strong memorials will keep this in mind throughout the writing process.

***Memorials will be graded on their use of the research materials provided, the clarity and organization of their arguments, and their grammar and style. Minor penalties will be assessed for failure to conform to the memorial guidelines on font, spacing, and other general formatting instructions.***

**Memorials are due no later than midnight on April 7, 2017.**

## **II. Legal Issues**

Both the prosecution and the defense are permitted to appeal an acquittal or conviction if it alleges procedural error, error of fact, error of law, or “any other ground that affects the fairness or reliability of the proceedings or decision.” In the competition problem, a conviction has been handed down by the Trial Chamber of the ICC for the defendant. The defense has appealed the conviction on the grounds that the Trial Chamber incorrectly introduced new charges during the course of the trial, thereby denying the defendant the due process protections he enjoys under the Rome Statute. This issue is thus a procedural error. The defense has also argued that the defendant’s conviction and sentence were improper because the prosecution did not prove that defendant intended to cause the crime in question. This issue is thus one of an error of law, an allegation that the Trial Court incorrectly interpreted the provisions of the Rome Statute that describe the evidence required to convict a defendant who contributes to the contribution of a crime by others.

### **a. Recharacterization under Regulation 55**

The procedural issue in this year’s problem is one that may seem particularly foreign to a US student for who this is their first exposure to legal systems other than their own. In the US criminal justice system, we are accustomed to having early decisions as to what charges a defendant will face, which the prosecution generally must live with as a matter moves to trial. We also expect judges to take a relatively passive role in this regard – they may decide in a non-jury trial on whether the facts fit the charges which came to trial, but generally do not decide themselves what the charges should be.

As an international court, the ICC has adopted rules of procedure that reflect the powerful input of judges from civil law countries (the legal tradition prevailing in most countries other than the United Kingdom, the US and other former English colonies who have retain the common law system with which US students are most familiar). The civil law tradition includes a far more active role for judges in shaping trials than is the case in US courts.

This is reflected in Regulation 55, a rule of the ICC that was adopted by its judges under Article 52 of the Rome Statute. Regulation 55 permits the trial court to “recharacterize” a case by adding or substituting new charges. Regulation 55 has been very controversial, a controversy that reflects to some degree a clash of cultures between judges from the US / UK common law tradition and those from the civil law tradition prevalent in the rest of Europe and elsewhere.

In our source materials, you will see arguments made, or alluded to, that claim that Regulation 55 is inconsistent with the due process protections of the Rome Statute itself, and therefore invalid. While worthy of discussion among you and your students, you should discourage your students from making this invalidity argument in their submissions. Rather, students should assume that Regulation 55 is valid and should instead present an argument that it was either correctly or incorrectly applied given the facts presented in the problem. (In other words, if this was a US law, we would want you to argue whether the given facts violate the law as written and not whether the law itself is unconstitutional.)

Issues that teams may want to consider include:

- In recharacterizing the case, did the Trial Court observe the due process protections that Regulation 55 itself provides for as well as those otherwise provided for in the Rome Statute?
- Was the defendant's ability to defend himself harmed by the recharacterization? For example, were there any facts needed to prove the charge of contribution to murder that did not have to be proven in order to convict on the original charges of ordering [an act of terror]?

We note in conclusion that the closed research sources provide arguments for and against the use of recharacterization. Students should not conclude from the generally critical nature of the secondary source(s) that recharacterization was inappropriate in the current case. The facts of the problem, as presented, could support arguments for either side.

### **b. Aiding & Abetting**

The substantive issue in this year's problem concerns the evidence required to convict for the crime of murder a person who did not actually commit the killing in question. Article 25 of the Rome Statute describes six modes of participation in a crime, of which two were at issue at different stages of the fictional case in this year's problem. One of these is simply that you commit the crime yourself, or together with others. In this year's fact pattern, this would be what our gunners on the mountain might have been charged with. As noted in the final paragraph of this year's problem, both of the parties and the court have accepted as a given that the gunners on the mountain were responsible for the killings in the town square.

Another part of Article 25 covers those who order the commission of a crime. In our problem, the ICC first charges the accused with having ordered the shelling, but then decides that the facts (at least in the view of prosecution and Trial Chamber) do not support an ordering charge, and instead support the charge of aiding and abetting a war crime.

Article 25(3)(c) of the Rome Statute describes both (a) the material actions (which you will see referred to in the source materials as the *actus reus*) that the Accused must be found to have done in order to commit aiding and abetting, and (b) the mental state (*mens rea*) that the Accused must have possessed at the time of his actions. Both of these need to be present in order to convict the Accused. You should encourage your students to read the text of Article 25(3)(c) very closely, and to think carefully about the meaning of words and phrases such as "purpose," "intentional," "knowledge" and "intention." The Rome Statute itself provides some guidance as to meaning of some of these terms in Article 30, included in the closed source materials. However, your students will need to look to the cases and article in the closed source materials to help them grapple with the question of whether the Accused had the necessary "purpose" to show that he aided & abetting the killings in the town square. There is no scholarly or legal consensus on the meaning of "purpose" under this section of the Rome Statute.

Our closed research sources provide an overview of criminal complicity under Article 25 of the

Rome Statute, and should provide fuel for arguments both for and against our defendant's conviction for aiding & abetting under Article 25(3)(c). The facts of the problem, as presented, could support arguments for either side.

### **III. Presentation**

#### **a. Structure**

*The oral argument section of the moot competition will involve two teams competing against each other in a courtroom context.* The applicant, in this case the prosecution, will present their arguments before the Court. The ICC is not required to hold a hearing for an appeal, but, for obvious reasons, has chosen to do so in our fictitious case. Each team will have **20 minutes** to present their arguments. Two members of each team must present an issue before the judges during that time. *Each member must speak for at least eight minutes.* This is designed to allow teams to grant some extra time to one oralist if they feel that one issue needs more detailed explanation than another. At the end of the applicant's argument, the respondent (the prosecution in this case) will present their response. The applicant will have two minutes to rebut the argument of the respondent. There will be no rebuttal for the respondent. Students will be graded on their knowledge of issue (including relevant law and its application); their ability to answer questions from the judges, their public speaking skills, and their time management skills.

#### **b. Public Speaking**

Speaking in a courtroom context is different from speaking before a crowd. The speaker must always remember to show respect to the judges, called the bench, and must be prepared to answer questions from the judges on the issue he or she is addressing. Judges can be very active (called a "hot" court) or passive (a "cold" court). Either extreme holds its own challenges and we strongly encourage you to arrange for other teachers or friends of your high school to serve as mock judges for practice oral arguments for your team. The Jessup International Moot Court Competition is a very well known and well-respected moot competition and it routinely has videos (<http://www.ilsa.org/>) of its arguments online that can be viewed for free. While the high school focus of this competition means that we will encourage our judges to be much more lenient with the team members, the Jessup videos are still a wonderful way to get an idea of the pacing and tone of moot court competitions, especially international appellate competitions.

#### **c. The Bench**

The bench will be comprised of a mix of volunteers from the local legal community and Pitt Law students. It is our intent to have several Pitt Law faculty members serve as the judges for the final round. The bench will have been give an officially prepared response to the competition problem, called a “bench brief” that will serve to educate them on the basic issue and arguments of the problem. They will also have access to the team’s memorials ahead of time so that they will have had the chance to at least potentially familiarize themselves with the team’s arguments.

For any questions or clarifications regarding the 2017 Moot ICC Competition, please contact Veronica Dristas at [dristas@pitt.edu](mailto:dristas@pitt.edu).