



**ICC MOOT COURT  
COMPETITION**  
*IN PARTNERSHIP WITH THE IBA*

# PREPARATION GUIDE

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Questions?  
Sent them to us before 31 January 2021:  
<https://forms.gle/fqpgFUQWb1Vqf33T8>



## Research

International Criminal Law works with case law. Arguments should be supported, first and foremost, by precedents from international criminal courts. If it is not possible, or the issue is too specific, precedents from domestic courts are also accepted. Doctrinal works, such as papers, book chapter or books, should be relied on secondarily – that is, to explain a point or to show knowledge. They should never be your main source for an argument.

However, they provide a good starting point for research. A good research then starts with reading the academic works on the topic and then moving to reading the cases that are cited there. Good works to go through are commentaries of the Rome Statute or textbooks that are thorough in discussing the subject. After this, going through the cases that are cited in the footnotes of judgements and decisions also provide good material for achieving a complete research product.

Books that we recommend reading as a beginning for research to the ICCMCC are:

- Carsten Stahn, *A Critical Introduction to International Criminal Law* (CUP 2019);
- Otto Triffterer and Kai Ambos (eds), *The Rome Statute of the International Criminal Court: A Commentary* (3rd edn., C.H. Beck, Hart, Nomos, 2016);
- Kai Ambos, *Treatise on International Criminal Law*, Vols. 1, 2, 3 (OUP 2013)
- William A Schabas, *The International Criminal Court: A Commentary to the Rome Statute* (OUP 2016)

Regarding primary sources, Google is an excellent tool to start and throughout the research – use the right keywords and good results may appear. However, specialized tools exist and should be used:

- [ICC Legal Tools \(legal-tools.org\)](http://legal-tools.org) – This is the ICC Database. It encompasses cases and also preparatory documents from the ICC and other international tribunals. It is a good resource but be aware of the filters on the bottom left corner, as they are instrumental for getting good results.
- <https://jrad.irmct.org> or [Unified Court Records Database \(irmct.org\)](http://Unified Court Records Database (irmct.org)) – This is the Judicial Records and Archives Database for the United Nations International Residual Mechanism for Criminal Tribunals. Here you will find precedents for the ICTY, ICTR and IRMCT.
- [Notions list » ICTR/ICTY/IRMCT Case Law Database](#) – You should also check the Notions List, wherever you can find ICTY, ICTR and IRMCT judgements separated by “notions”. This is a good resource when you already know the issue that you are dealing with.

There is no single research methodology. What works for one person might not work for another. A good tip, in case you are not sure where to start is to:

- Select the legal questions in the problem that you are given.
- Separate the legal concepts that are relevant.
- Research these legal concepts on the secondary (doctrinal) sources and select what might be relevant for each position. You can make a table for tracking your sources, if you want. .
- Expand your research into primary sources and also separate them into columns according to what works for each position.
- Once you have all research ready organize the arguments you have and start developing the positions that will be presented by your team.

## Drafting

Good writing wins an argument. This should be in the back of your heads while drafting your memorials. Of course, the arguments and the style chosen by you may vary, considering your diverse background. However, international criminal law has seen over 25 years of litigation by now and certain “landmarks” of style are expected from counsel. Having said that, keep in mind that the way that teams develop their arguments is important, but packaging them in a way that is familiar to judges can provide an argumentative advantage. Especially in a competition where these points are being graded.

In the ICCMCC, you have the exquisite opportunity to study previous winning memorials – here [Memorials Archive | ICC Moot Court Competition](#). Before writing, it is strongly suggested studying the memorials from (at least) the last three years. Pay special attention to how these memorials formatted the page, how they ordered the content, how they used references in footnotes and how they structured and wrote their arguments.

Some points that may help you with the task of writing the memorials are:

- **Prepare your document and formatting.** Before writing, prepare the document that you are going to work with. Take a look at the Rules of Procedure of the 2021 ICCMCC and the Penalty Points to see how the page should be structured. In special, take a careful look at the font (Times New Roman), Size (12), the margins (2cm), and the spacing between lines. Also, take care with the Front Cover Requirements.
- **Structure your arguments before writing.** One key issue to avoid rambling throughout the memorial is to structure your argument. Build a matrix of the arguments being used in each issue. This should be done by building arguments around the issues presented in the 2021 ICCMCC Case. You should seek to answer the three main questions from the case and to build supporting arguments that you will develop throughout your memorials. You can do this by creating bullet points, mind maps or whatever way you want to. The point is to have the beginning and ending of your argument laid out before you actually start writing the memorials.
- **Argumentative Headings.** Once you have the answers to the main questions of the case, you should lead your arguments using argumentative headings. This is a stylistic tool used in motion practice that helps judges and reviewers to easily identify counsel’s arguments. Instead of using a neutral heading (“Right to be present at the Confirmation Hearing”), counsel should aim to give her position at the very top (“Dragone Goodrider was unlawfully deprived of his right to be present at the Confirmation Hearing”).
- **Develop your arguments with cohesion and clarity.** Building your arguments is like playing with Legos. Although you can build it in any way you like, people expect that you plug one argument with the other in a very neat and clear way. In case you have multiple-supporting arguments, try to build a narrative around them, instead of presenting several points without any links between them. Competitors must strive to present arguments that are cohesive and clear between them, while building up an overall argument that leads the reader.

- **Preview and counter the opposing party’s arguments.** Previewing and countering the opposing party’s arguments are as important as building your arguments with cohesion and clarity. Try to build your argument by using your opponent’s arguments, showing why they should be dismissed by a judge. However, do not be aggressive to your opponent or dismissive of their arguments, as this is not a good stylistic choice. Treat your opponent’s arguments politely, using phrases such as “The Prosecution/Defense could argue [Argument X]. Even if this is true, [Counter-argument Y]”. While concessions to the opposing party can be made, this should be done in an argumentative way.
- **Peer review your memorials.** After writing your first draft, competitors should aim in peer reviewing the memorials in their own team. Put your “judge” hat and evaluate your team’s memorials using the criteria laid out by the 2021 ICCMCC. Pay special care to how the arguments were built and if they are clear to an outside reader. Counsel and academics tend to write thinking about themselves as the reader but, ultimately, what matters is how other people will read it. This is an exercise that greatly increases the quality of any motion or memorial, as it gives time to counsel to analyze their writing. Try to spot any structural weaknesses in how arguments were built and how the other side of the exercise (i.e., Prosecution x Defense) could rebuke your argument. Review it accordingly!
- **Proofread at least twice.** A typo is not a problem. A motion filled with typos loses credibility. A motion filled with typos and with a bad formatting will likely not be read by judges with the same eagerness as other ones. In this sense, save a considerable amount of time in your preparation to proofread your final memorials at least twice. Pay attention to typographical errors, formatting issues, footnotes, double spacing, and everything that could be penalized under the Rules of Procedure of the 2021 ICCMCC. Do not rely on the automatic Microsoft Word grammar, as it does not save you from making mistakes! Carefully check word by word, line by line, heading by heading, to see if there is anything that tired eyes did not get at a first read.

# Roles of Actors

## **Prosecution**

The ICC Prosecution builds cases around the commission of crimes under the jurisdiction of the ICC. In the Confirmation of Charges phase, the Prosecution seeks to prove that there are substantial grounds to believe that a person committed a crime. In the 2021 Case, the Prosecution should seek to provide legal arguments supporting the confirmation of charges of Mr. Dragone Goodrider. In this regard, counsel for Prosecution should aim to build arguments around proving that there are reasonable grounds to believe that Mr. Goodrider committed crimes under the ICC jurisdiction. However this being the main point, it is important for competitors to answer the questions posed in the Established Agenda for the Appeal of the Pre-Trial Chamber's Decision. Prosecution should try to anticipate and counter the arguments used by the Defense, increasing the quality of their motion.

## **Defense**

Defense Counsel is tasked with the job of disproving the Prosecution's case theory. In the Confirmation of Charges phase, this means "poking holes" to the Prosecution's case that there are reasonable grounds to believe that the accused committed a crime. In the 2021 ICCCMC Case, Defense should build its answers to the Established Agenda for the Appeal of the Pre-Trial Chamber's Decision having in mind that their job is to prove that their client is innocent – and hence that there are no reasonable grounds to believe that Mr. Goodrider committed crimes under the ICC jurisdiction. The notion that you are fighting for the innocence of your client – and this can be done through arguments that the ICC does not have jurisdiction over the accused or that there is no evidence against your client – should be borne with competitors at all time while drafting Defense memorials.

## **Government Counsel**

In the phase of Article 19(2)(c) of the Rome Statute, the Court is hearing arguments about challenges to the jurisdiction of the Court or admissibility of a case. Since Wessos did not sign the Rome Statute, jurisdiction can only be exercised based on an acceptance by the State under Article 12 of the Statute. This is why Counsel for Wessos has standing in the Appeal of the Pre-Trial Chamber's Decision. The role of Government Counsel should be to protect the interests of the State in discussing the issues in the Established Agenda for the Appeal of the Pre-Trial Chamber's Decision. Albeit more "neutral" in terms of adjudicating the guilty of the defendant, Government Counsel participates in the proceedings to discuss a key point of the case: jurisdiction and admissibility.

In this regard, submissions should be made addressing the questions posed by the Appeals Chamber, having in mind the political and legal stance of Wessos about the ICC. However, the special position of a State in ICC proceedings gives space to broader arguments presented by the Prosecution or Defense. Moreover, depending on the competitors' evaluations on the issue at hand, Government Counsel can side with the Prosecution's or Defense's arguments, following an argumentative path based on their positions.