

Rules of Procedure of the International Criminal Tribunal for the Former Yugoslavia

Members of the Court

Article 1

Court is consisted of the President judge, the vice-president judge, judges, and advocates.

Quorum

Article 2

In order for the sessions of the Court to begin, simple majority of the judges, president judge or vice-president judge or their deputy/deputies and one representative from each party has to be present.

Every session must begin with a roll call to determine whether the quorum is met.

Presidency

Article 3

The Presidency is responsible for conducting the proceedings of the Court, implementation of the rules of procedure and has to be impartial.

All articles of the rules of procedure binding for judges are also binding for the presidency unless stated otherwise, however, the presidency reserves the right to alter the rules of procedure.

If the presidency decides to alter or suspend a certain part of the rules of procedure, it shall be declared to the court and shall be noted by the vice-president or the president judge.

Article 4

The Presidency of the Court is consisted of two people maximum. The president and the vice-president may leave their seats to their deputies.

If the president and/or the vice president leave their seats to deputies, they have to deliver a written message to the Court.

Article 5

The President and the vice president have equal authority, however, they may not use their powers simultaneously.

Article 6

The President and the vice president may involve in discussions, questioning and have a right to cast one vote collectively.

Judges

Article 7

Judges have to be impartial towards the parties and the case before the Court, if any judge violate this principle, a warning from the presidency is in order.

Each judge has to cast one equal vote in all procedural and substantive matters.

Judges are not allowed to stand up and leave their seats except during unmoderated caucuses.

Article 8

Judges are responsible from concluding the case in accordance with international law and legal sources specific to the case.

Article 9

Judges may question advocates of parties and witnesses in accordance with the rules of procedure. Judges may also question envoys sent by outside parties on the presidency's discretion.

Article 10

Judges are responsible from the preparation of the judgement document.

Advocates

Article 11

Advocates represent parties to the case and are obliged to act for the best interest of their client.

Article 12

The prosecutor and the defendant party shall submit their memorial and counter-memorial on a deadline that would be determined and announced by the secretariat. The secretariat shall deliver the memorial and the counter-memorial to the judges before the commencement of the trials.

Article 13

Parties are required to submit the stipulations they agreed upon before the evidence presentation. If the parties did not agree upon any stipulation, they have to state this to the Court as well.

Article 14

Advocates may not participate in voting procedures in the Court.

Article 15

Advocates give their statements standing before the Court.

Oaths

Article 16

Before the commencement of the trial, all judges, including the presidency, and representatives of all parties have to make the following oath specified for their role.

Presidency:

“I solemnly undertake that I will perform my duties and exercise my powers as the President Judge honorably, faithfully, impartially and conscientiously, and that I will respect the confidentiality of the submissions and the secrecy of Deliberations”

Judges

“I solemnly undertake that I will perform my duties and exercise my powers as a Judge honorably, faithfully, impartially and conscientiously, and that I will respect the confidentiality of the submissions and the secrecy of Deliberations.”

Advocates:

“I solemnly declare upon my conscious and honor that I will speak the truth, the whole truth and nothing but the truth.”

Burden of Proof

Article 17

The burden of proof is a prerequisite of the evidence and, as the duty of proving a claim, shall primarily rest on the prosecutor.

Fulfilling the burden of proof by proving an incident, the prosecutor shall carry the benefit of the doubt and the burden of proof shall shift to the defendant.

Burden of proof may also be shifted if the defendant has extraordinary claims such as trying to disprove an acknowledged fact.

Where the burden of proof is shifted, the defendant bears a burden to present evidence to refute the presumption or to prove their extraordinary claims.

Opening Statements

Article 18

Following the roll call and oaths, the president judge announces the commencement of trials and calls parties for opening statements, beginning with the prosecutor. Parties shall present their arguments and the way they will pursue during the trials briefly.

Article 19

Both parties shall have equal time to deliver their opening speeches. Allocated time shall be determined by the president judge.

Article 20

Immediately after the announcement of the allocated time, advocates may raise a motion to alter the time for opening speeches. This motion passes with a simple majority.

Stipulations

Article 21

Stipulations is a document which contains predetermined facts that would not be challenged by both parties. It should be in a form of list which defines events and facts on which both parties agree.

Stipulations has to be signed by all advocates.

Article 22

Stipulations shall be prepared after both parties delivered their opening speeches and before the evidence presentation while the court is in deliberation.

Evidence presentation

Article 23

Beginning with the prosecutor, parties present their evidence to the Court. Parties may present any evidence such as international treaties, legal reports, written statements of experts or anything that supports the case.

Article 24

Any piece of evidence must be submitted to the Court before its presentation.

Article 25

Time allocated for evidence presentation shall be determined by the presidency.

Article 26

If there is an issue on a piece of evidence regarding its authenticity, opposing party may raise an “Objection immaterial”. If the piece of evidence ruled as immaterial, it shall not be included in the judgement.

Article 27

After the presentation of each piece of evidence, judges may raise questions to the advocates regarding the evidence they presented. Judges may not interrupt advocates while they are presenting a piece of evidence to the Court.

Article 28

Advocates shall begin their presentations with saying “May it please the Court.”

Questioning of the Advocates

Article 29

Unless specifically stated otherwise, judges may interrupt the advocates in order to ask questions.

Each judge may ask one question at a time, however, they may ask the presidency for permission to ask follow-up questions.

The Presidency reserves the right to overrule questions asked by judges or suspend the questioning until further notice.

Advocates may not interrupt each other while answering.

Time spent during the questioning shall not be included in the time allocated for advocates.

Statements of Experts and Witnesses

Article 30

The Presidency is entitled to summon experts and witnesses to testify before the Court.

Experts and witnesses who are to testify before the court shall take the following oath:

“I solemnly declare, upon my honour and conscious that I shall speak the truth, the whole truth and nothing but the truth.”

Article 31

Experts and witnesses before the Court shall state their professional opinion or experience regarding the case.

Article 32

Upon the discretion of the presidency, advocates may also question the experts and witnesses before the Court. Questioning of the experts and witnesses by advocates shall begin with the questioning of the prosecutor.

Presidency reserves the right to terminate the questioning of advocates or allocate a definite time. Unless presidency declares otherwise, advocates may direct questions to witnesses and experts until they state that they have no further questions.

Article 33

Experts and witnesses before the Court shall be questioned by the judges.

If advocates are also allowed for questioning, questioning of the judges shall take place following the questioning of the advocates.

Article 34

Presidency reserves the right to terminate questioning.

Rebuttal and Surrebuttal

Article 35

In rebuttal, the prosecutor shall respond to the claims and presented evidence of the defendant party which they made in previous procedures and questions previously raised by judges. However, the prosecutor may not present a new argument to the Court.

Article 36

In surrebuttal, the defendant party shall respond to the rebuttal. The content of the surrebuttal shall be limited to the rebuttal.

Article 37

Each party shall have equal allocated time for rebuttal and surrebuttal. Judges may not interrupt advocates while giving rebuttal and surrebuttal speeches, however, upon the discretion of the presidency, they may direct questions after each speech.

Closing speeches

Article 38

Parties shall summarise what they have proven during the trials in their closing speeches. The speech should also include a suggestion on the judgement that judges shall reach. During closing speeches, judges may not interrupt advocates and may not direct questions after the speeches.

Article 39

Each party shall have equal time for closing speeches, which will be determined by the presidency.

Deliberation

Article 40

Deliberation is the act of discussing and considering issues and options before making a decision. Following procedures of opening speeches, evidence presentations, expert and witness statements, rebuttal-surrebuttal and closing speeches, judges shall move to deliberations.

Article 41

Judges shall prepare the judgement during the final deliberation.

Article 42

The Presidency reserves the right to initiate and terminate deliberations.

Article 43

Upon a motion to summon the advocates or the discretion of the presidency, advocates may be summoned to the Court for questioning. Such motion passes with a two thirds majority. No voting on this matter shall take place if advocates are to be summoned with the discretion of the presidency.

If advocates are summoned, judges may direct questions with the permission of the presidency.

Article 44

By default, the Court will be in an open discussion during deliberations.

Judges may raise their placards to ask permission to speak, however, the presidency reserves the right to allow any judge to speak.

The presidency may set a time limit for speeches during an open discussion.

Judges may yield their remaining time to another judge or for points of information if there is a set time limit.

Article 46

If the presidency decides to initiate a tour de table, all judges shall state their opinion on the matter of discussion for a definite time which will be determined by the presidency.

Article 47

Judges may propose a motion for an unmoderated caucus only during deliberations.

Article 48

Judges shall prepare the judgement during the final deliberation in accordance with the sample provided by the secretariat.

Updates and involvement of outside parties

Article 49

As investigations and prosecutions continue in different countries on relevant cases, the Court may receive updates from national judiciary or law enforcement agencies containing information relevant to the case.

Article 50

If an update reaches the Court, advocates shall have ten minutes each to give their statements on the update. Following the statements of the advocates, judges may direct questions to the advocates, move into deliberation or vote on whether the update shall be included in the judgement.

Article 51

If the national agency sent an expert or a witness along with the update, judges shall also vote on whether the expert or witness would be allowed to give a statement before the Court. If the expert or the witness is allowed to testify before the court, his/her statement shall be considered along with the expert and witness statements mentioned in articles 30-34, however, shall be listed under the “Submissions of outside parties” section in the judgement.

Voting Procedures

Article 52

Open voting refers to voting procedures during which individuals present may see the votes given by judges. Closed voting refers to voting procedures during which individuals present may not see votes given by judges.

Article 53

The presidency reserves the right to conduct any kind of voting procedure for substantive or procedural votes. However, no open voting procedure on substantive matters shall be conducted with advocates present.

Motions

Article 54

Judges and advocates may raise following motions:

- a. Motion for suspension of the deliberations/court
- b. Motion for adjournment of the deliberations/court
- c. Motion for the closure of the deliberations
- d. Motion to summon advocates
- e. Motion for an unmoderated caucus

Objections

Article 55

If a party's actions or statements falls under the scope of an objection, the opposing party may raise an objection. Decision on the objection shall be made by the presidency.

Judges may only raise "objection prejudicial."

The party or the judge who raised the objection has to state the correct ground of objection.

If an objection is approved by the presidency, it shall be declared as "granted," and shall be removed from the Court's proceedings.

Article 56

There are three grounds of objections that could be raised in the Court:

a. Immaterial:

Parties may raise this objection if the authenticity of a material which is presented to the Court is not proven.

b. Irrelevant:

All material presented to the Court has to be relevant to the case. If a material presented by a party is not relevant to the case, opposing party may raise this objection.

c. Prejudicial:

Prejudice is a preconceived judgment formed without a factual basis, a strong bias. All assertions of law and facts shall respect the personal integrity of the participants of the Court. If a statement of a party harms the personal integrity of any other participant of the Court, they may raise this objection.

Fields not regulated by the Rules of Procedure of the International Criminal Tribunal for the Former Yugoslavia

Article 57

For every field and aspect of the court proceedings that is not regulated by the Rules of Procedure of the International Criminal Tribunal for the Former Yugoslavia, rules of procedure of BESTMUN23 Conference shall be applicable.

Application of the Rules of Procedure of BESTMUN23 Conference is also subject to the provisions of Article 3.

