



The Hague International  
Model United Nations

# THIMUN Model International Criminal Court Handbook



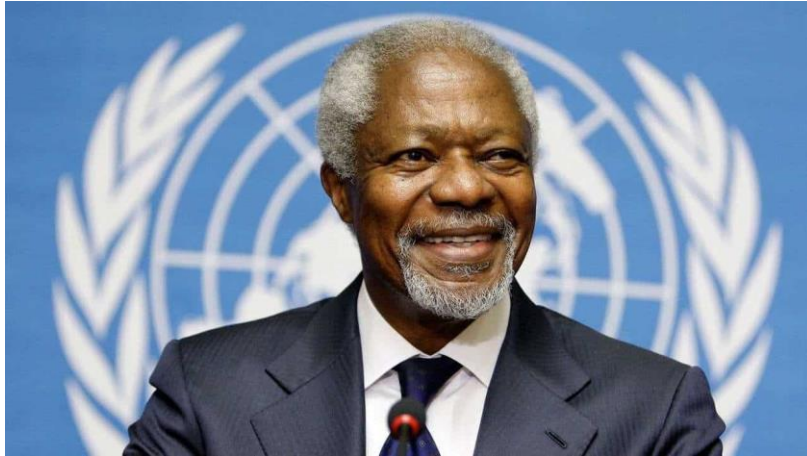
*The International Court of Justice, The Hague, the Netherlands*

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*Chamber 1 in session of the International Criminal Court © ICC*



*UN Secretary-General Kofi Annan, 1938-2018*

*"In the prospect of an international criminal court lies the promise of universal justice. That is the simple and soaring hope of this vision [...] to ensure that no ruler, no State, no junta and no army anywhere can abuse human rights with impunity. Only then will the innocents of distant wars and conflicts know that they, too, may sleep under the cover of justice; that they, too, have rights, and that those who violate those rights will be punished."*

*Kofi Annan, United Nations Secretary-General, 11 June 1997*

## **Introduction**

### **Welcome to the THIMUN International Criminal Court!**

The overarching theme of THIMUN 2024 - PEACE, LAW & JUSTICE - has an immediate urgency in our world of ethnic conflicts, war, poverty, and hideous atrocities. Fittingly, the first THIMUN International Criminal Court (TICC) will strive to show that there is no impunity for crimes against humanity and other execrable crimes.

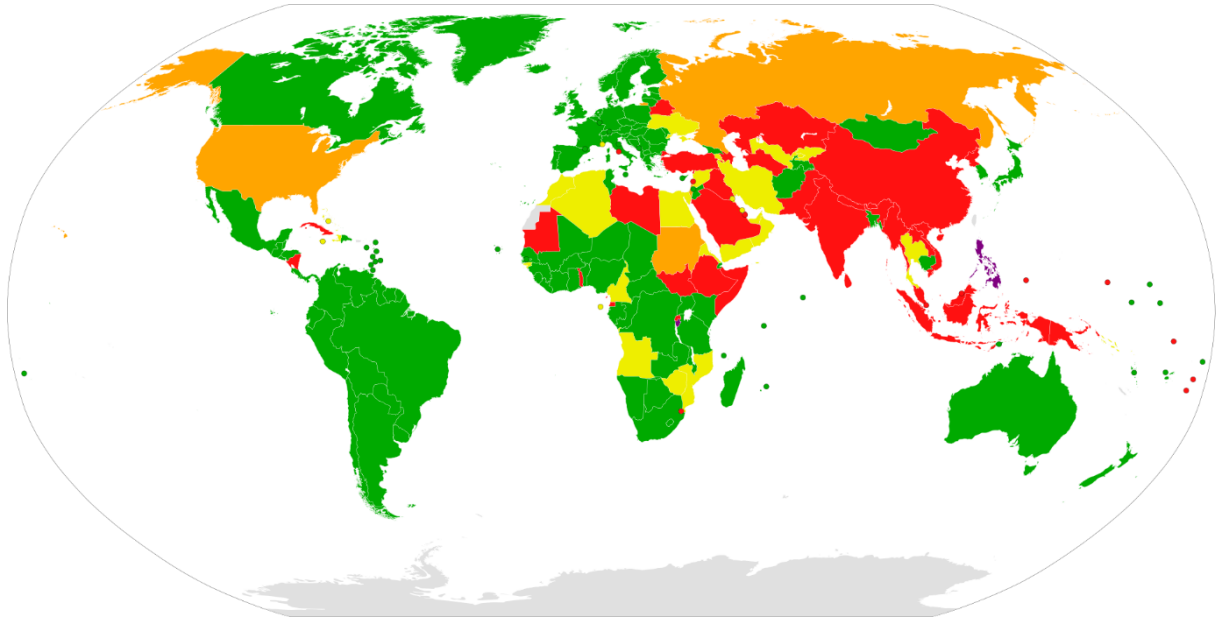
Congratulations for being part of this first TICC! Your expertise and work will shape this court, set precedence, and help make TICC a valued organ of THIMUN.

We trust that you are eager to investigate and prosecute the crimes allegedly committed by the defendants in the cases on the agenda. By reaching a just verdict, thus making this first TICC successful.

### **What is the ICC?**

Twenty-five years ago, on 17 July 1998, the General Assembly adopted the Rome Statute of the International Criminal Court (ICC) by a vote of 120 to 7, with 21 countries abstaining. China, Iraq, Israel, Libya, Qatar, U.S.A., and Yemen voted against the Treaty.

The ICC is an intergovernmental organisation and international tribunal seated in The Hague, Netherlands. Its jurisdiction aims at prosecuting individuals for genocide, crimes against humanity, war crimes and the crime of aggression.



*Parties and signatories of the Rome Statute, 2023*

[https://en.wikipedia.org/wiki/International\\_Criminal\\_Court#/media/File:ICC\\_member\\_states.svg](https://en.wikipedia.org/wiki/International_Criminal_Court#/media/File:ICC_member_states.svg)

- State party
- Signatory that has not ratified
- State party that withdrew its membership
- Signatory that withdrew its signature
- Not a state party, not a signatory

As of 2023, 123 states have ratified the Rome Statute, thus becoming members of the ICC. The jurisdiction of the ICC is limited. It can only investigate and prosecute crimes:

- if they are committed within member states, committed by nationals of member states, or in situations referred to the Court by the United Nations Security Council;
- if member states' courts are unwilling or unable to prosecute criminals.

As "court of last resort", the ICC is meant to complement existing national judicial systems, not to replace it.

### **Why the ICC? History and mandate of the ICC**

The establishment of an international tribunal to judge political leaders accused of international crimes was first proposed during the Paris Peace Conference in 1919 following the First World War. The issue was addressed again at a conference held in Geneva in 1937, which resulted in the conclusion of the first convention stipulating the establishment of a permanent international court to try acts of international terrorism. The convention was only signed by 13 states, but not ratified and never entered into force.

Following the Second World War, the allied powers established two tribunals to prosecute Axis leaders accused of war crimes. The International Military Tribunal in Nuremberg prosecuted German leaders while the International Military Tribunal for the Far East in Tokyo prosecuted Japanese leaders.

In 1948 the United Nations General Assembly first recognised the need for a permanent international court to deal with atrocities of the kind prosecuted after World War II. At the request of the General Assembly, the International Law Commission (ILC) drafted two statutes in the early 1950s, but tensions and rivalries during the Cold War era prevented reaching consensus on the establishment of an international criminal court.

In June 1989, following the easing of tensions, the Prime Minister of Trinidad and Tobago, A. N. R. Robinson, revived the idea of a permanent international criminal court by proposing the creation of a tribunal to address the illegal drug trade. In response, the General Assembly tasked the ILC with drafting a statute for a permanent court.

Atrocities unfolding in the 1990s in the Balkan Peninsular and east-central Africa drew world attention. In response to heinous crimes committed by armed forces during the Yugoslav Wars (1990-2001), the UN Security Council established the International Criminal Tribunal for the former Yugoslavia (ICTY) in 1993, and in 1994, following the Rwandan genocide, the International Criminal Tribunal for Rwanda (ICTR). With these tribunals, the need for a permanent international criminal court became even more apparent.

In 1994, the ILC presented its final draft statute for the International Criminal Court to the General Assembly and recommended a conference to negotiate a treaty that would serve as the Court's statute.

Four years later, the Preparatory Committee met and with input from non-governmental organisations (NGOs), debated stipulations of the statute. Consequently, in June 1998 the UN General Assembly convened a conference in Rome. The following month the Rome Statute of the International Criminal Court was adopted on 17 July 1998 by a vote of 120 to 7, with 21 countries abstaining.

Following 60 ratifications, the Rome Statute entered into force on 1 July 2002, and the International Criminal Court was formally established. It issued its first judgment in 2012 when it found Congolese rebel leader Thomas Lubanga Dyilo guilty of war crimes related to using child soldiers.



*Thomas Lubanga Dyilo*  
*© Michael Kooren / AFP / Getty Images*

### **What are the benefits of being a member of the court and what are its challenges?**

In the “**real world**”, the signatories of the Rome Statute affirm their commitment to the rule of international law and defence of Human Rights. They have taken a stand against those committing widespread, systematic international crimes and human rights violations with impunity. With a greater purpose in mind, they are working to ensure that the perpetrators of such crimes do not go unpunished and that future occurrences of these crimes are prevented.

Without any executive power on its own, the ICC depends on the cooperation with national governments. Since Russia, the United States, and China are not signatories, the court’s effectiveness

is limited. Nevertheless, an arrest warrant issued for a citizen of a non-member-state must be pursued in all member-states and his or her name will always be connected to that warrant. Consequently, the ICC's arrest warrant for Vladimir Putin hindered him from attending, in August 2023, a BRICS conference in South Africa because the authorities there had been obliged to arrest him.

For the victims and for the general public's understanding of justice, it is essential that those who are responsible for atrocities such as human rights violations, rape as a means of war, and genocide are held accountable. Before the establishment of the court, a person stood a better chance of being tried and judged for killing one human being than for killing 100,000 as José Ayala Lasso, former United Nations High Commissioner for Human Rights, put it.

**Being part of the TICC**, you will gain a deeper understanding of the cases which are in the mandate of the court:

- As prosecutor you must gather evidence that proves your case beyond reasonable doubt.
- As defence you must find the short comings of the prosecutor's argumentation.
- Or as judge you must meet the challenge of justly acquitting or convicting the defendant.

By working on these tasks, you will learn more about yourself and your potential. You will debate with other young people interested in well-articulated argumentation. You will gain insight into the workings of the court. And you will investigate cases to better understand how such atrocities come about and the harm inflicted on others. Most importantly, you will recognise that your greatest challenge will be to discern "the truth" according to the evidence presented and to argue accordingly.

## The Cases

At TICC 2024, two cases will be tried:

1. **The Prosecutor Versus Ahmad Al Faqi Al Mahdi.** He was found guilty of war crime (intentionally directing attacks against religious and historic buildings in Timbuktu, Mali) and sentenced to nine years imprisonment.



*Trial of Ahmad Al Faqi Al Mahdi, 22 August 2016*

2. **The Prosecutor versus Ali Muhammad Ali Abd-Al-Rahman.** He is suspected of 31 counts of war crimes and crimes against humanity. This case is still ongoing.



*Ali Muhammad Ali Abd-Al-Rahman at the opening of his trial at the ICC, 5 April 2022*

# Role of Participants

## Presidency

The **President**, the **Deputy President** and the **Registrar** work closely together and coordinate the activities of the Prosecutor and the Defence. The Presidency gathers information on both cases and supports all members of the court in their preparation. They hold online meetings with the other court members to monitor their preparations and report regularly to the TICC advisor. The President carries the burden of the coordination of the work among the Presidency and the responsibility of reporting regularly to the ICC Advisor.

During the trials, the Presidents set the agenda, ensure the court's adherence to the rules, decide on objections, facilitate goal-oriented debate, and make sure that the deliberations lead to a verdict within the allotted time. The Registrar keeps a speakers' list, yields the floor, keeps record of the main arguments and results of the sessions, swears in witnesses, and provides additional information, when necessary.

## Prosecutor

The members of the Prosecutor Office must submit sufficient evidence for conviction, i.e., collect evidence to prove the defendant's guilt beyond reasonable doubt. They bear the burden of proof by providing witness statements, testimonies, videos or other visual or written materials.

## Defence

The members of the Defence Office carefully analyse the submitted pre-trial and trial evidence. They present their perspective on the case and find exculpatory evidence / witness statements to rebut the prosecution.

## Judges

The Judges must rely on the pre-trial evidence and the memoirs submitted by both the Prosecutor and the Defence Offices in advance.

During the trial, they listen carefully, take notes, inspect the submitted pieces of evidence, and deliberate the validity of prosecution and defence with each other. After the closing arguments, they write the verdict and, in case of a conviction, decide on the sentence. Deviating opinions can be submitted.



*ICC judges, February 2023 © ICC-CPI*



# Important Terms

## The Court

### *Advocate / Defence*

An advocate is a lawyer who is authorized to represent a client in a court of law. At TICC, the advocates make up the Defence Office.

### *Prosecutor Office*

The Prosecutor Office at TICC has the task to prove that the accused person is guilty, and to enforce legal action for the purpose of securing the conviction and punishment of the accused of crime.

### *Bench*

A judge's seat in a law court, often used to collectively refer to all the judges hearing a case.

### *Counsel*

A lawyer, attorney, attorney-at-law, counsellor, solicitor, barrister, advocate, or other individual licensed to practice law. At TICC the counsels are advocates of the Defence Office or members of the Prosecutor Office.

### *Defendant*

A person against whom the court proceedings are brought.

### *Hearing*

Any part of a trial or other court proceedings that takes place inside a courtroom.

### *Precedent*

A judgment or decision of a court in a former case can be a precedent for the case at hand and can justify proceedings or decisions in a similar matter accordingly.

## The Crimes

### *Genocide*

Acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial, or religious group.

### *Crimes against humanity*

Acts or knowledge of acts committed as part of a widespread or systematic attack directed against any civilian population: murder, extermination, enslavement, deportation or forcible transfer, unlawful deprivation of liberty, torture, rape and other serious sexual violence, collective persecution, enforced disappearances, apartheid and other similar inhumane acts causing great suffering or serious injury.

### *War crimes*

"War crimes" include grave breaches of the Geneva Conventions and other serious violations of the laws and customs applicable in international armed conflict and in conflicts "not of an international character" listed in the 1998 Rome Statute, when they are committed as part of a plan or policy or on

a large scale: murder; mutilation, cruel treatment and torture; taking of hostages; intentionally directing attacks against the civilian population; intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historical monuments or hospitals; pillaging; rape, sexual slavery, forced pregnancy or any other form of sexual violence; conscripting or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities.

### *Aggression*

The use of armed force by a state against the sovereignty, territorial integrity or political independence of another state, or in any other manner inconsistent with the Charter of the United Nations.

## The Proceedings of the Trial

### *Indictment*

A formal charge or accusation of a crime. The indictment most probably contains several counts (issues).

### *Memoire*

Prior to the beginning of the trial / of meeting in The Hague, the memoire of each party is presented to the judges. This document contains information on the case, from the perspective of the specific party, e.g., historical background, political situation in which the crime took place, relevant facts, points of law / legal principles. Finally, it contains the prayer of each party.

### *Stipulations*

Before the trial begins, the counsels of both parties agree on facts that are not in dispute. These stipulations cannot be questioned during the case. From the moment they are presented to the court, no changes are possible.

### *Opening statements*

During the opening statements, the parties present to the court what they have submitted in the memoires, i.e., they refer to the historical background of the case, their policy, and the outcome that they want the trial to have (prayer).

### *Rebuttal and Surrebuttal*

The counsels of both parties can question the assertions of the opposing party by a rebuttal. In a surrebuttal, the rebuttal can be rejected / rebutted.

### *Burden of proof*

Each party has the obligation of proving its assertions; either the assertion that the defendant is guilty or not guilty. The burden of proof is met if 51 percent of the judges have been persuaded by the proof.

### *Beyond reasonable doubt*

This highest standard of proof must be met by the Prosecution in a criminal trial. To overcome the presumption that a person is innocent until proven guilty, no possible explanation for the facts presented must be consistent with the innocence of the accused. In other words, these facts must not allow any other logical explanation than that the defendant committed the crime. While doubts about

the defendant's guilt may still arise, there must be no reasonable doubt to be derived from the evidence presented.

### *Preponderance of probabilities*

In contrast to the principle of 'beyond reasonable doubt', the 'preponderance of probabilities' requires that the party's assertion is more likely to be true than false. The prosecution is bound to the principle of 'beyond reasonable doubt' which the defence can counter by proving the 'preponderance of probabilities', thus proving 'reasonable doubt'.

### *Evidence*

Evidence is used by each party to support its argumentation. There are two categories, real evidence and testimony. At TICC all material objects, such as documents, books, articles, and treatises are accepted as real evidence. The statements made by the witnesses under oath serve as testimony. A witness must be a real person, not a fictional character. Authenticity and credibility of all evidence will be scrutinised by the opposing party and the judges.

### *Presentation of evidence*

During the presentation, each party submits only real evidence to support their case. The other party has the right to object.

### *Witnesses*

Complementing their real evidence, each party may bring one witness to the court and support their case with the witness's testimony.

### *Direct Examination*

The party that has called the witness does the Direct Examination. During Direct Examinations, leading questions are not allowed unless the witness is an expert or a hostile witness (s. below).

### *Cross-Examination*

Cross-examination is executed by the opposing party and the judges. Leading questions are allowed during cross-examination. The opposing party and the judges are only allowed to ask questions regarding the examination.

### *Objections during Examinations*

Because of

- Hearsay
- Leading Question in the Direct Examination
- Irrelevance, i.e., questions in the Cross Examination do not relate to facts brought up during the Direct Examination.

### *Hearsay question*

A hearsay question asks the witness to say something what he/she heard from someone else.

### *Leading Question*

Leading questions are suggestive as they imply or contain their own answers:

- How many victims did the defendant appear to have killed?
- You watched from a small distance, didn't you?

These types of questions are only allowed in cross-examination, but not during the direct examination. However, when a witness is hostile to the party that called him or her, leading questions may be posed in the direct examination, too.

### *Examination of Evidence*

Judges are called to examine all pieces of evidence which were presented to the court. Each judge gets appointed a different piece of evidence to read, to assess based on relevance, reliability, and authenticity. Finally, the respective judge presents the outcome of the examination to the other judges.

### *Objections regarding pieces of evidence*

- Authenticity, e.g., being based on facts is questionable.
- Reliability, e.g., it is not from a credible source / cannot be traced back.
- Relevance, e.g., it is not relevant to the case.

### *Prayer*

In their prayers, the Parties explicate what they ask the judges to decide – this refers not only to the final verdict but also to the protection of witnesses and possibly reparations or compensations.

### *Closing Statements*

In their closing statements both parties outline some points of the trial, repeat some of the facts that they previously mentioned and address some questions that the court may have. The prayers are part of it.

### *Verdict*

After the taking of evidence has ended and after the closing remarks, the judges come to a verdict – either convicting (guilty) or acquitting (not guilty) the defendant.



*Current ICC Prosecutor Karim A.A. Khan*

# Rules of Procedure

1. **Opening of the session:** The president opens the session and brings forward motions to be voted on. The president is responsible to grant the floor to the counsels, judges, and witnesses.
2. **Stipulations:** Prior to the opening, the prosecutor and the defence discuss those relevant issues of fact and of law to which an agreement can be reached before the case is presented and submit ONE set of stipulations. After the prosecutor's Opening Statement, the stipulations are read to the judges. For each one, the defence is asked if they agree. If they do, the president says, "so stipulated", and that stipulation is evidence, and can be considered by the judges.
3. **Opening Statements:** The prosecution and defence counsels present their statements (in that order). These presentations should not take more than 20 minutes each.
4. **Rebuttal and Surrebuttal:** The president grants time to both parties' counsels to consult with each other before the trial commences with rebuttals and surrebuttals to the opening statements (same orders as in 2).  
The scope of the rebuttal is limited to the content of the opening statements. Rebuttals (two minutes speaking time) will be followed by surrebuttals from the previous counsel (one minute). Its scope is limited to the content of the rebuttal.  
The bench may allow more than one round of rebuttal and surrebuttal.
5. **Presentation of Evidence:** The prosecutor and defence counsels (in that order) present and explain their evidence for the counts of indictment by turns.  
A good presentation:
  - 4.1. Begins with an introduction of the counsel and the count being presented,
  - 4.2. Summarises the facts relevant to the count,
  - 4.3. Highlights the facts or legal positions in dispute,
  - 4.4. Presents arguments in favour of the party's position,
  - 4.5. Presents any evidence in support of the party's argument,
  - 4.6. Anticipates the main arguments from the opposing counsel and presents a preliminary defence to prove how their line of argument is sound and based in law and legal precedent,
  - 4.7. Indicates (if applicable) the witness the counsel intends to examine later, and a brief overview of what they wish to examine the witness for,
  - 4.8. Concludes with a summary.
6. **Rebuttal and Surrebuttal to the Presentation of Issues:** After the presentation of the count, the floor is open to all counsels of the opposing party for a rebuttal (max. one minute). Rebuttals will be followed by surrebuttals from the other party (max. one minute). The scope is limited to the content of the rebuttal provided.
7. **Witness Briefing:** Both parties choose one witness in advance to complement the evidence. They brief their witness to the effect that he/she understands the case and their position in it. Both parties provide their witness with a storyline and prepare them for their examination. Both parties are free to make reasonable inferences from the facts of the case to build the storyline and add facts to make the witness's testimony more authentic, without contradicting any facts.

8. **Witness Examination:** Before the witnesses take the stand, they are required to execute the following statement: *“I solemnly declare that I will speak the truth, the whole truth and nothing but the truth.”* After the direct examination of the witness, the opposing party may cross-examine the witness. During the examinations, the opposing party has the right to raise objections regarding the admissibility of a question. The president will decide on the objection raised.  
Evidence may be introduced or already introduced evidence may be shown to the witness during examinations.  
At any phase of the examinations, the judges are entitled to question a witness.
9. **Comments and Recalls:** After the witness examination, both parties have the right to comment on the witnesses’ statements (max. five minutes). Ideally, the president will call on both parties alternating after each comment. Parties may also ask to recall witnesses if they require further clarification on a specific matter before the beginning of the closing statements.  
Both parties are encouraged to treat this phase like a debate and reflect on, reply to, and show the strength or weakness of previous comments in their speeches. The president shall decide on such requests.
10. **Questioning:** After completing the taking of evidence, the president will call a recess of approximately 90 minutes. During this time judges will convene in closed session to prepare questions for either prosecution, defence, or both. Such questions may refer to any factual or legal matter regarding the case. 30 minutes before the time of the recess ends, prosecution and defence will be provided with a list of the questions for their side, to prepare the answers.
11. **Closing Statements:** Each party, the Prosecutor Office and the Defence Office, has 20 minutes to deliver the Closing Statement. While the Prosecutor Office will attempt to show that the defendant’s guilt has been proven beyond reasonable doubt, the Defence Office will dispute that assertion and attempt to prove at least a preponderance of probability that the defendant is not guilty.
12. **The Verdict:** The court will be adjourned for the day while the judges deliberate the verdict and formulate the reasons for their decision.



On 10 February 2023, the judges of the ICC elected Mr Osvaldo Zavala Giler as Registrar for a period of five year.

## Sources

The Rome Statute: <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>

Elements of Crimes <https://www.icc-cpi.int/sites/default/files/ElementsOfCrimesEng.pdf>

(Meant to assist the Court in the interpretation and application of articles 6, 7 and 8, consistent with the Rome Statute)

How the Court works: <https://www.icc-cpi.int/about/how-the-court-works>

### Fact Sheets

- The Court Today: <https://www.icc-cpi.int/sites/default/files/2023-07/TheCourtTodayEng.pdf>
- Defence: <https://www.icc-cpi.int/sites/default/files/Publications/DefenceENG.pdf>
- Prosecutor: <https://www.icc-cpi.int/sites/default/files/2022-12/factsheet-otp-web-v.3-eng.pdf>
- The Judges: <https://www.icc-cpi.int/sites/default/files/Publications/JudgesENG.pdf>
- Victims: <https://www.icc-cpi.int/sites/default/files/Publications/VictimsENG.pdf>

Human Rights Watch, International Criminal Court: <https://www.hrw.org/topic/international-justice/international-criminal-court>

### Case Information Sheets

- Ahmad Al Faqi Al Mahdi <https://www.icc-cpi.int/mali/al-mahdi>
- Ali Muhammad Ali Abd-Al-Rahman <https://www.icc-cpi.int/darfur/abd-al-rahman>

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Rato Bangala School, Patan, Nepal: [International Criminal Court – RBS MUN XVII](#)

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