

# Special Court for Sierra Leone

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# MÜNEX.T

Modelo de Naciones Unidas de la Universidad Externado de Colombia

# Greetings from the Academic Director

Dear Delegates,  
I extend a warm welcome, from the General Secretariat, to MUNEXT 2020. My name is Johann Sebastian Botello Rincón, graduated from the law school of the University Externado de Colombia; great lover of literature, history, videogames, and in general art in all its forms; I have also dedicated my passion in the last 5 years to the United Nations models, in which I have found the ideal spaces to materialize the academy and the knowledge acquired, but also to improve in personal aspects. For me, they have been the spaces that have allowed me to help understand me and the society in which I live, and in my role as Academic Director I aspire to grant all those attending the Third Version of the United Nations Model of the University Externado de Colombia, that same experience.

In this sense, and with the help of my great team of undersecretaries, we have put forth our greatest efforts to build a challenging academic event, demanding in Competition and rewarding personally. Without further ado, I leave you to enter the dynamics of the international system, meddle in the negotiations at the regional level, debate the national reality, lucubrate over the legal disputes, enter the battlefields of the past, and live first Hand the dynamization that awaits you. With the greatest joy in the world, welcome to MUNEXT 2020!

Cordially,

Johann Sebastian Botello Rincon  
Academic director.



# Greetings from the Undersecretary

Respected Delegates,

It is a pleasure for me to welcome you all to MUNEXT 2020's Juridical Committees Undersecretariat. My name is Santiago Andrés Contreras Delgado and currently, I am on graduation process and about to be a Lawyer from Externado University of Colombia.

Since I conceived the Undersecretariat, I decided the committees I was to propose to the delegates must have had the perfect balance between academic rigor and interest topics. I offer to you 3 committees that surely will be the epicenter of very much discussions and intense debates, framed within the standards of reason and respect. You are the true Undersecretary's protagonists. Remember you have at your disposal my elite academic staff, working first-handedly to build this massive dream. So, I present the result of a hard work, thinking exclusively on each one of you, as the ones to be living the MUNEXT experience.

Being a lawyer does not just simply mean an infinite memorization of laws but goes beyond all of that; it implies being the guardian of Justice's social value, the value that praises the profession. I am convinced on the fixing ability that surrounds the Jurist labor. I believe, as Gandhi,

that “peace is justice’s daughter”, and that each one of you holds the potential of being change agents. Feel free to discover and express it, because MUNEXT expects to be a space of growing and mutual ideas sharing. Thus, being part of the Juridical Committees, I want to exhort you to have the capacity of discernment, relinquish all dogmas, respecting all opinions and strengthening your arguments but, above all, to be fair.

You cannot imagine how much I have learned during the Undersecretary’s development. I extend my hand to all of you so you would have the same opportunity to grow intellectually, academically and humanely, hoping that you will be Spread by MUNEXT.

With no more to say, I wish you the best experience, you have already a friend in me, disposed to accompany you and at your entire disposal. Externado has, and always will have, its doors wide open to you.

Sincerely yours

**Santiago Andrés Contreras**

Undersecretary for Juridical Committees

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# Greetings from the Supreme Judges

Dear accusator, defendant and judges,

It is a pleasure for us to welcome you to the third edition of the Modelo de Naciones Unidas de la Universidad Externado de Colombia (MUNEXT 2020), to the Undersecretariat for Juridical Committees, and to the Special Court for Sierra Leone, your committee. We will introduce ourselves.

My name is Jordi Enrique Buitrago Soetendal. I am 21 years old and I am an eighth semester Law major and International Studies minor student at the Universidad de los Andes' Law School. I have been participating in MUN conferences since 2013 as delegate, chair, sponsor, head delegate, Under Secretary-General, Academic Director and Secretary-General. I am passionate for Criminal Law, so I am very excited about this committee. I am also excited about it since it is going to be my last MUN committee as chair, which is the role I have performed and enjoyed the most.

My name is Juan Pablo Coy Jaramillo and I am an sixth semester Law and International Relations student at Universidad del Rosario. It has been ten years since my first MUN conference and I still love what I do and what I learn in each of them. I have participated as Delegate, Chair,

Head Delegate, Sponsor, Under Secretary General and others. My academic passions are Criminal Law, International Criminal Law, Public International Law, Foreign Policy analysis. I am looking forward to meet you all in MUNEXT and hope the committee fulfills what I am waiting of the committee.

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# Introduction to the Committee

## What is International Criminal Law?

Criminal law is the branch of public law that regulates punitive function and criminal action. Having this as a starting point, we understand international criminal law as the unity of all legal norms that directly substantiate, limit or otherwise regulate criminal liability. In this sense, crimes against international law are all those that matter directly individual responsibility from international law. Some authors use the term "international criminal law" in a broader sense, which includes not only criminal aspects of international law, particularly related to crimes against international law, but also international aspects of domestic criminal law, especially as regards relating to domestic rules on jurisdiction over crimes with a foreign element.

However, regarding the sources of international criminal law, the Rome Statute, positivized some of these, mentioning the Statute itself, the International Treaties that are applicable to the case, the General Principles of Law, jurisprudence in matters as sources of law International Criminal and Compatibility with Human Rights.

## What are international crimes?

International crimes are criminal acts relevant to the international community, these have been typified throughout history and currently the main reference is found in article 5 of the Rome Statute, which has the nature of an international treaty, which reads:

## *“Article 5*

### *Crimes within the jurisdiction of the Court*

*1. The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction, in accordance with this Statute, with respect to the following crimes:*

- a) The crime of genocide;*
- b) Crimes against humanity;*
- c) War crimes;*
- d) The crime of aggression (...).”*

The definition of each of the first 3 international crimes is found in the body of the Rome Statute, and the definition of the crime of aggression was given in 2010, at the Statute Review Conference, held in Kampala, date from which the court may judge the crime of aggression.

However, for the present case, the Statute of the Special Court of Sierra Leone establishes in its first 6 articles definitions of the international crimes over which it has jurisdiction, so that the previous definition of the Rome statute is merely indicative. The official document that the delegate must take into account are the statute of the court and eventually the penal code of Sierra Leone.

### **Relationship between International Criminal Law, International Human Rights Law and International Humanitarian Law.**

International Criminal Law implies the regulation of criminal action in the international context and the prosecution of international crimes, therefore, the





question arises: what is it that protects International Criminal Law? In the answer are the terms International Human Rights Law (IHRL) and International Humanitarian Law (IHL). They correspond to the effective protection of the rights that are recognized to every person, by the simple fact of showing such quality (the case of the IHRL) and to the special norms that imply international obligations that arise for the different actors in the context of an armed conflict (scope of IHL). Many times both rights find a common point and complement each other in the protection enshrined, in other events, there is only room for the application of one or the other.

Anyhow, regardless of the applicability of one or another regulation, there is no doubt that the violation of the obligations arising from them has a huge impact on the International System, since its violation is considered to prevent the enjoyment of the condition of human being, the highest principle of the International System. It should be noted that in International Criminal Law the principle of subsidiarity arises, which preaches that it is the States where the crime is committed the first calls for investigation, prosecution and eventual conviction. Nevertheless, as already mentioned, the commission of these behaviors is such a rebuke, that in case there is no activation of the judicial apparatus of the State where the crime was committed, it enters into action of the international criminal system, in order to safeguard the rights in the head of every individual, and to avoid any act of impunity to those responsible for their commission. Therefore, we observe the close relationship that exists between these concepts.

## Principles and generalities

The Law must always follow principles, which are parameters that function as optimization mandates, that is, they must be fulfilled as much as possible, and also conceived as philosophical boundaries of the legal systems.

The Rome statute, in its part III establishes general principles of criminal law, including figures such as the principle of legality, non-retroactivity, individual responsibility, among others, additionally, article 66 establishes the principle of presumption of innocence.

For its part, the statute of the Sierra Leone tribunal established the principles of international criminal responsibility, Non bis in idem, equality, presumption of innocence, double instance, fundamentally.

## Introduction to the Special Court for Sierra Leone

### Importance of the Court of Law

The Special Court for Sierra Leone was a judiciary body established in 2002 by the government of the Republic of Sierra Leone and the United Nations Organization, through the Resolution 1314 of 14 of August of 2000 by the Security Council. Its main purpose was to “prosecute persons which bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law” (SCSL, 2019). The Court was established in order to bring justice after the atrocities that took place in the context of the Sierra Leone Civil War. It emerged from the efforts by the President of Sierra Leone Ahmad Tejan Kabbah to end the war and try those responsible



for the atrocities committed in the early 2000s. He received support by the Secretary-General of the United Nations, Kofi Annan.

These efforts resulted in Resolution 1513 of the United Nations Security Council on August 14th, 2000, which requested the UN Secretary-General to start negotiations with Sierra Leone government to create a Special Court. On January 16th, 2002, almost two years after, the UN and Sierra Leone signed an agreement establishing the Court, with the mandate cited above. During the war, approximately 50.000 (Witcher, 2019) people died and over half a million people were displaced.

The Court's working language was English, and it had offices in Freetown, New York City and The Hague. It ended its work and was dissolved on December 2nd, 2013. During its term, the Court handled 25 cases. Of those 25, 20 were completed. The five uncompleted cases are those of Foday Sankoh (died after initial appearance), Johnny Paul Koroma (whose whereabouts are still unknown), Sam Bockarie (died before trial), Sam Hinge Norman (died during the trial) and Brima Samura (acquitted) (SCSL, 2019). Indeed, the most famous case the SCSL had was Charles Taylor's. Taylor was sentenced to 50 years of imprisonment for war crimes and crimes against humanity. He is the first and thus far only former Head of State to have been trialed and sentenced by an international court since the Nuremberg Trials.

This Court is a landmark point for International Criminal Law, since it was the first successfully established hybrid tribunal. Hybrid tribunals, in International Criminal Law,



are international tribunals that can apply both International Humanitarian Law and national law from the country upon which they have jurisdiction. This type of courts emerged in the late 1990s as part of the evolution of International Criminal Law tribunals, that started with special tribunals applying only international law with very specific mandates, as the International Military Tribunal in Nuremberg or the Tokyo Trials, then moved to ad-hoc tribunals established by the UN in the 1990s (the International Tribunal for the Former Yugoslavia, for instance), and had evolved up to the establishment, in 2002, of the first permanent international criminal tribunal, the International Criminal Court, under the Rome Statute of 1998.

For the first time, an internationally established tribunal was going to apply national law to deal with severe atrocities committed in war time.

## **Jurisdiction of the Court**

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Resolution 1513 of the United Nations Security Council, and specially the Statute of the Special Court for Sierra Leone, establish the Court's jurisdiction. Thus, these two documents are perhaps the most relevant sources of information for delegates. As for its material jurisdiction, the Court has jurisdiction to prosecute persons which bore the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law.



As for its temporal jurisdiction, the Court could prosecute persons for violations that took place after November 30th 1996 and during the Sierra Leone Civil War, that went from 1991 to 2002. As for personal jurisdiction, the Court can prosecute any person who committed crimes against humanity as murder, extermination, enslavement, deportation, imprisonment, torture, rape, sexual slavery, forced prostitution, prosecution on political, racial, religious or ethnic ground, and other inhumane acts. It also had jurisdiction to try people who violated the 1949 Geneva Convention and Sierra Leone's Prevention of Cruelty to Children Act of 1926 and the Malicious Damage Act of 1861. The Court had no jurisdiction over people under the age of 15. As for previous amnesties, these would be invalid as for the Court's jurisdiction is related.

## Nature of its decisions

The Special Court for Sierra Leone could then declare someone's criminal responsibility under international humanitarian law and Sierra Leonean law, and sentence him or her to imprisonment, according to Article 19.1 of the Court's Statute. Alongside imprisonment, the Court could order the forfeiture of property and any other asset acquired by the defendant unlawfully, in order to return them to their original owners, according to Article 19.3 of the Statute. Imprisonment would be carried out in Sierra Leone, unless the specific nature of the defendant would prove that to be impossible. On these exceptional cases, the International Criminal Tribunals for the Former Yugoslavia and Rwanda offered to take in charge of the condemned defendants.

# Introduction to the case

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Foday Saybana Sankoh was born on October 17th, 1937 in British Sierra Leone. He was the founder of the Revolutionary United Front, a rebel group during the Civil War which was supported by the National Patriotic Front of Liberia, a rebel group led by Charles Taylor, who would eventually become President of Liberia and later stood trial before the SCSL, being the first former Head of State to be sentenced by an international tribunal as responsible for war crimes.

Since 1991 and up until the end of the war, Sankoh's rebel group led several attacks against civilian populations, that earned him the reputation of a war criminal. On May 17th 2000, he was arrested after his soldiers killed 10 people, including a journalist, that were protesting outside his Freetown home. Sankoh was handed to British authorities, and his arrest generated celebrations throughout the country. Under the jurisdiction of the SCSL, he was charged with 17 counts of war crimes, including the use of children as soldiers, and crimes humanity such as extermination, enslavement, rape and sexual slavery.

It is important to outline the context of the civil war. In March 1991, Sierra Leone was a country filled with corruption and inequalities. It is with the intent to react against this situation that Sankoh founded the Revolutionary United Front as a guerilla. Over that year, the grupo earned increasing support, specially from neighbouring Libya. At that moment, Libya was also a country filled with conflicts. The rebel group lead by Charles Taylor in Libya started to support the RUF. The Sierra Leonean State was unable to face the challenge of an armed group, since it has almost no money to finance



a military effort, and public officials were not properly paid. In 1992, just a year after the RUF was founded, the country's President, Joseph Momoh, was overthrown and forced into exile (Witcher, 2019)

Between 1992 and 1997, the RUF continued to take over the country. During this period, over 4.5 million people were displaced. Both government forces and the RUF were accused of barbarian acts, such as cutting off ears or arms amongst civilians. By 1997, a new armed group tried unsuccessfully to overthrow the new President, Ahmad Kabbah. The RUF controlled almost all diamond producer areas in the country. Sierra Leone's diamonds have been exported over to Europe ever since the colonial era. These "blood diamonds" were the main financial source of the RUF, and an international campaign started to stop funding the group through diamonds (Witcher, 2019).

After battles Freetown, an agreement was met in the early-2000's to end the conflict. However, this agreement fell apart and confrontations continued to take over the entire country and government. In 2002, RUF run for elections as a political party, with little support. War finally ended that year, with negotiations sponsored by the UN. The creation of the SCSL was one of the main points of these negotiations (Witcher, 2019).

## **Facts**

The facts upon which the indictment was based were not limited to one single event, but rather to Sankoh's activities during the 11-year-long civil war in Sierra Leone. Specially, the 1992-1997 period is of relevance, since it is the period during which the RUF acquired territory and power. Attacks on civilian population, specially in capital

Freetown, took place during this period. Alleged atrocities were widespread all over the country and systematic in the sense civilian population were submitted to sexual, physical and psychological violence, both by the RUF and by the military.

It is important to note, however, that Sankoh died before his trial began. The process led against him ended just after that. Because of this, the prosecution never issued any document containing the precise recollection of facts it intended to use to charge Sankoh. As has been said in this document, he is the founder of the RUF, and this organisation played an important role during the war. Attacks took place all over the country, specially in capital city Freetown. It important for delegates to take this into account, since part of this committee's challenge will be to construct a case from the ground, with almost no previous concrete facts as support.

### **Relevance of the case**

Sankoh died in 2003 of natural causes before he could stand trial before the SCSL. The relevance of this case to this committee is the fact that the trial never took place. Sankoh was the founder of the RUF, the guerilla group that initiated the war back in 1991. It was his the largest, richest group involved in the conflict. Between 1992 and 1997, it earned control over a great deal of territory and resources and has been considered responsible for the greatest atrocities during the war. In a sense, justice will never be rendered to victims of Sierra Leone, since he never stood trial. He was the superior commander of a rebel group accused of mass rape, mass murder, mass displacement, mass torture and so on, and he escaped justice just in time for impunity to overcome this conflict. In any armed conflict, transition towards democracy is





difficult, and Sierra Leone is a great example of it. Perhaps transition would have been far more easy if the man behind the beginning of the civil war could have been held responsible.

## Key words

**Actus Reus:** Criminal act that was the result of voluntary bodily movement. The criminal act itself.

**Mens Rea:** Criminal intent. Is based on the idea that one must possess a guilty state of mind and be aware of his or her misconduct.

**Ratione Temporis:** By reason of time. Because of the relevant timing or period of time pertaining to the subject under consideration.

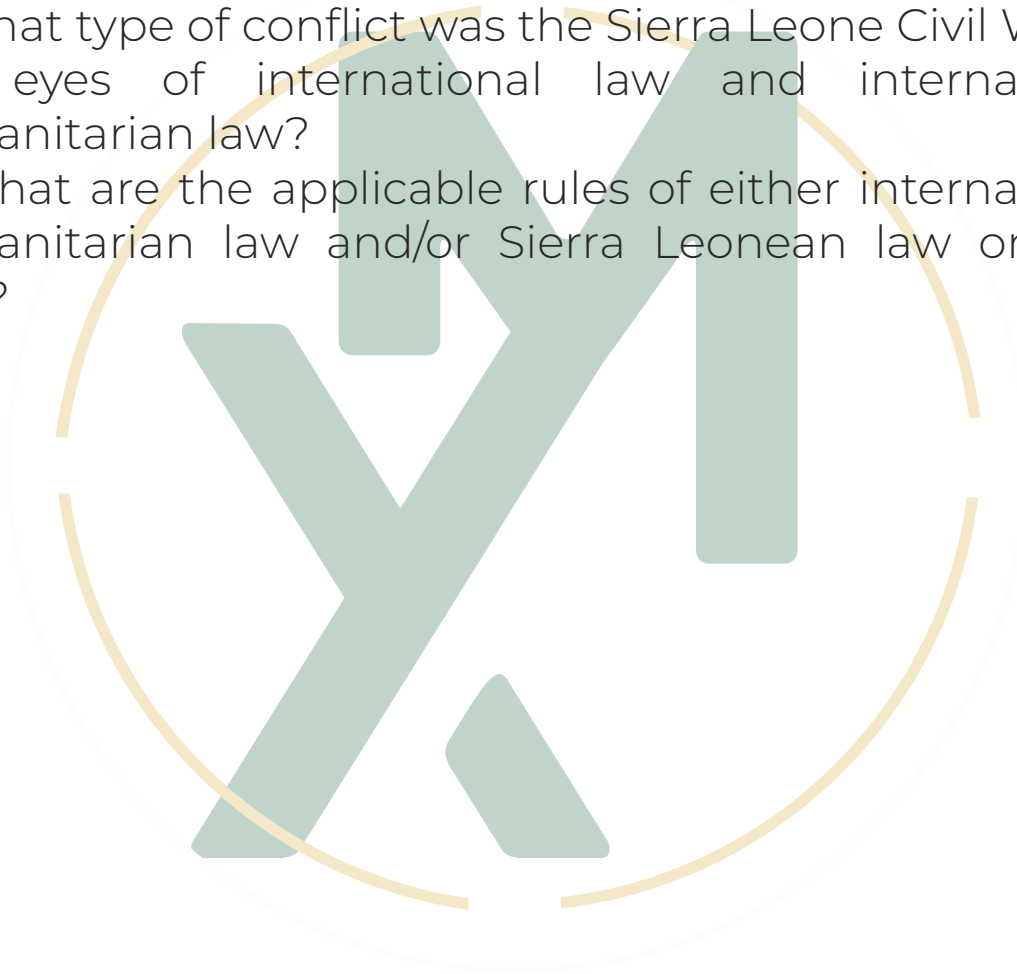
**Ratione Personae:** Expression used to characterize the competence of judges by reason of the person.

**Ratione Materiae:** Denomination given to the competence that is determined by reason of the matter or disputed things.

**General Principles of International Criminal Law:** Encompasses all the rules that should be followed as in the general part on applying International Criminal Law.

**International Humanitarian Law:** Set of rules which seek, humanitarian reasons, to limit the effects of armed conflict. It is often known as the Law of War or Law of Armed Conflict.

- 1.** What are the elements necessary for a crime to be considered a crime against humanity?
- 2.** What criteria should be met as to determine whether an attack on a civilian population was systematic and/or generalized?
- 3.** What is international humanitarian law?
- 4.** What standard of proof is required on trial to declare someone's criminal responsibility?
- 5.** What type of conflict was the Sierra Leone Civil War in the eyes of international law and international humanitarian law?
- 6.** What are the applicable rules of either international humanitarian law and/or Sierra Leonean law on this case?





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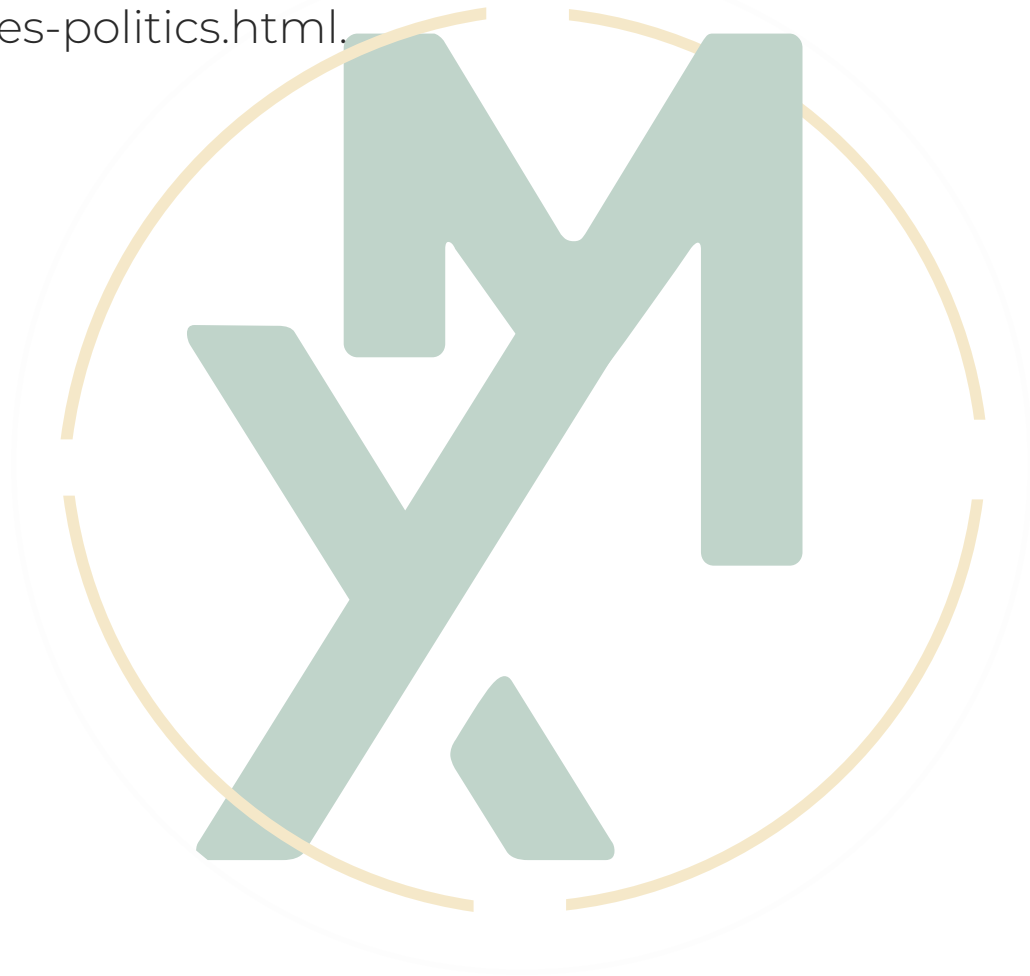
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# Handbook for the Delegate of Juridical Committees






Dear delegates, this document is a guide, aimed primarily at people who are just starting out on such committees, in order to prepare for the Undersecretariat of the Legal Committees. MUNEXT is a space for growth and learning, so we hope that the tips we transmit to them will be of the greatest use.

The goal is to make a useful yet simple document so that the first-time delegate can find a way to prepare by having a starting point




For practicality, we divide our advices into things you should do and those that you shouldn't, emphasizing 3 basic competencies of the legal committees: Argumentation, oral expression and writing.

## When Arguing

### DO'S

-  Anticipate the arguments that are contrary to the one you're thinking
-  Be clear about your position
-  Structure your argument with syllogisms
-  Read the applicable rules
-  Look for court interpretations, cases,

### DON'TS

-  Improvise, sometimes it is necessary, but it will always be desirable not to
-  Repeat norms and norms without making a real intellectual exercise to interpret and apply
-  Dedicate yourself to defend your position, without identifying the shortcomings of the

examples.

- 👉 Back up your argument with data
- 👉 Use facts (or evidence)
- 👉 Identify each moment to which stage it corresponds, to know which argument to use
- 👉 Always seek objectivity
- 👉 See the full picture
- 👉 Using common sense
- 👉 Refer only to arguments that relate to the subject, don't overdo it if it's not necessary

- 👉 opposing position
- 👉 Confusing premises and conclusions
- 👉 Dropping isolated arguments
- 👉 Be offensive
- 👉 Be irrational in defending your posture
- 👉 Defending the indefensible, sometimes it's good to give in
- 👉 Over-doctrinate
- 👉 Falling into logical fallacies
- 👉 Being impatient
- 👉 Taking things personally
- 👉 POLITIZE THE DEBATE

## When expressing yourself in public

### DO'S

- 👉 Review your personal presentation
- 👉 Express yourself safely
- 👉 Convince, sell your idea.
- 👉 Use elegant but understandable language
- 👉 Have an outline of your argument to always be clear
- 👉 Rely on the tools you are given (computer, board, maps, etc.)
- 👉 Control your time

### DON'TS

- 👉 Be aggressive
- 👉 Use the same tone of voice, you'll bore the audience
- 👉 Use slangs
- 👉 Demonstrate nerves, having them is normal but you need to learn how to control them
- 👉 Gesticulate too much, you'll divert attention
- 👉 Use a lot of technical expressions
- 👉 Appeal to feelings



- Breathe and pronounce well
- Use a good tone of voice
- CONCLUDE, you must make it easy to remember your arguments

- excessively
- Read. Avoid at all costs reading
- Looking at the floor or the ceiling
- Talking without passion
- Leaving ideas in the air
- Hide hands (in your pocket or back)

## When Drafting

### DO'S

- Use a table of contents
- Use the IRAC method
- Tell the facts objectively
- Be accurate with the facts, identify which ones are important and which are not.
- List the facts logically and chronologically, so that you can
- Cross-reference if you require it (e.g. As established in fact XXX...)
- Raise a good legal issue: a phrase or question that sums up in the special situation what needs to be resolved
- Distinguish between major and secondary legal problems
- Base ALL your

### DON'TS

- Writing without a defined structure
- Write everything you think
- Skip the storytelling of the facts
- Ramble
- Put arguments on the fact part, remember that a fact is simply a circumstance of mode, time and place, nothing more.
- Use expressions in other languages, it's not wrong to do it from time to time, but don't abuse it
- Give the same importance to all legal problems
- Throw arguments without justifying them

- arguments
- Sort your arguments from the most convincing to the most fallible
- Avoid copying huge paragraphs
- Underline important parts of the rules you quote
- Conclude accurately
- Include all claims that may be placed
- Check spelling and grammar
- Make it easy for people who will read the document, being orderly, clear and concise
- Quote, make a table of references and abbreviations
- Think of the audience who will read what you write
- Refer to procedural and substantive issues
- Respect the calendar

- Transcribe many rules
- Use confusing terms
- Abuse of adverbs and adjectives
- Leave your ideas on the air
- Skip the use of subtitles
- Be passionate about writing
- Improvise
- Use very complicated arguments: simplicity will always be better
- Write long, hard-to-read paragraphs
- Disrespect the deadlines you are given for the submission of documents
- Doing things eagerly, organize your time. You can't leave writing at the last minute

Remember that although the preparation for the committee is up to you, you can count on the academic staff, i.e., your board of directors or the undersecretary, who will be willing to collaborate if you require it or request it.





# Study Guide - Special Court for Sierra Leone

## Special Court for Sierra Leone

### Edition

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# MUNEXT

Modelo de Naciones Unidas de la Universidad Externado de Colombia