

COMPARISON: THE U.S. CONSTITUTION AND THE ROME STATUTE FOR THE INTERNATIONAL CRIMINAL COURT

The following chart was prepared by Monroe Leigh, former President of the American Society of International Law and former State Department legal advisor to Henry Kissinger. Leigh stated in testimony to the House International Relations Committee (July 25, 2000) that “it cannot be denied that **the Treaty of Rome contains the most comprehensive list of due process protections which has so far been promulgated.**”

Treaty of Rome	U.S. Constitution
<p>Presumption of Innocence “Everyone shall be presumed to be innocent until proven guilty before the Court . . .” (Art. 66)</p>	<p>“The principle that there is a presumption of innocence in favor of the accused is the undoubted law, axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law.” <i>Coffin v. United States</i>, 156 U.S. 432, 453 (1895)</p>
<p>Speedy & Public Trial “. . .the accused shall be entitled to a public hearing . . .” “the accused shall be entitled . . . to be tried without undue delay; . . .” (Arts. 67(1), 67(1)(c))</p>	<p>“In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, . . .” (Amendment VI)</p>
<p>Assistance of Counsel “. . .the accused shall be entitled . . .to communicate freely with counsel of accused’s choosing . . .” “. . .the accused shall be entitled . . . to have legal assistance assigned by the Court where the interests of justice so require, and without payment if he accused lacks sufficient means to pay for it; . . .” (Arts. 67(1)(b), (d))</p>	<p>“In all criminal prosecutions, the accused shall enjoy the right . . .to have the Assistance of Counsel for his defense.” (Amendment VI)</p>
<p>Right to Remain Silent “. . .the accused shall be entitled . . .not to be compelled to testify or to confess guilt and to remain silent, without such silence being a consideration in the determination of guilt or innocence; . . .” (Art. 67(1)(g))</p>	<p>“No person . . .shall be compelled in any criminal case to be a witness against himself . . .” (Amendment V)</p>
<p>Privilege Against Self-Incrimination “. . .the accused shall be entitled . . .not to be compelled to testify or to confess guilt . . .” (Arts. 54(1)(a), 67(1)(g))</p>	<p>“No person . . .shall be compelled in any criminal case to be a witness against himself . . .” (Amendment V)</p>
<p>Right to Written Statement of Charges “. . .the person shall be provided with a copy of the . . .charges . . .” (Art. 61(3))</p>	<p>“In all criminal prosecutions, the accused shall enjoy the right . . .to be informed of the nature and cause of the accusation; . . .” (Amendment VI)</p>
<p>Right to Examine or Have Examined Adverse Witnesses “. . .the accused shall be entitled . . .to examine, or to have examined . . .the witnesses against him or her . . .”(Art. 67(1)(e))</p>	<p>“In all criminal prosecutions, the accused shall enjoy the right . . .to be confronted with the witnesses against him; . . .” (Amendment VI)</p>

<p>Right to Compulsory Process to Obtain Witnesses “...the accused shall be entitled...to obtain the attendance and examination of witnesses on his or her behalf...” (Art. 67(1)(e))</p>	<p>“In all criminal prosecutions, the accused shall enjoy the right...to have compulsory process for obtaining witnesses in his favor...” (Amendment VI)</p>
<p>Prohibition against Ex Post Facto Crimes “A person shall not be criminally responsible...unless the conduct in question constitutes, at the time it takes place, a crime within the jurisdiction of the Court.” (Art. 22)</p>	<p>“No Bill of Attainder of ex post facto law shall be passed.” (Art. I, sec. 9, cl. 3)</p>
<p>Protection against Double Jeopardy “No person who has been tried by another court...shall be tried by the Court with respect to the same conduct...” (Art. 20)</p>	<p>“...nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb;...” (Amendment V)</p>
<p>Freedom from Warrantless Arrest & Searches “...the Pre-Trial Chamber may...issue...warrants as may be required...” “...if it [the Pre-Trial Chamber] is satisfied that there are reasonable grounds to believe that the person has committed a crime...and the arrest of the person appears necessary...” (Arts. 57 bis (3),(58))</p>	<p>“[N]o Warrants shall issue, but upon probable cause...” (Amendment IV)</p>
<p>Right to be Present at Trial “The accused shall be present during the trial.” (Art. 63)</p>	<p>“one of the most basic of the rights guaranteed by the Confrontation Clause is the accused’s tight to be present in the courtroom at every stage of his trial.” <i>Illinois v. Allen</i>, 397 U.S. 337,338 (1970) (<i>Citing Lewis v. United States</i>, 146 U.S. 370 (1892))</p>
<p>Exclusion of Illegally Obtained Evidence “Evidence obtained by means of a violation of this Statute or internationally recognized human rights shall not be admissible...” (Art. 69(7))</p>	<p>When evidence is obtained in violation of the Fourth Amendment, the judicially developed exclusionary rule usually precludes its use in a criminal proceeding against the victim of the illegal search and seizure. <i>Illinois v. Krull</i>, 480 U.S. 340, 347 (1987) (<i>Citing Weeks v. United States</i>, 232 U.S. 383 (1914); <i>Mapp v. Ohio</i>, 367 U.S. 643 (1961))</p>
<p>Prohibition against Trials <i>in absentia</i> “The accused shall be present during the trial.” (Art. 63)</p>	<p>When defendant knowingly absents himself from court during trial, court may “proceed with trial in like manner and with like effect as if he were present.” <i>Diaz v. United States</i>, 223 U.S. 442, 455 (1912) The language, history, and logic of Rule 43 support a straightforward interpretation that prohibits the trial in absentia of a defendant who is not present at the beginning of trial. <i>Crosby v. United States</i>, 506 U.S. 255, 262 (1993)</p>

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