



MOI UNIVERSITY

OFFICE OF THE DEPUTY VICE CHANCELLOR
(ACADEMICS, RESEARCH & EXTENSION)

UNIVERSITY EXAMINATIONS

2020/2021 ACADEMIC YEAR

FOURTH YEAR SUPPLEMENTARY/SPECIAL EXAMINATION

FOR THE DEGREE OF

BACHELOR OF LAWS

COURSE CODE: FLB 406

COURSE TITLE: INTERNATIONAL CRIMINAL LAW

DATE: 7TH MARCH, 2022 **TIME:** 9.00 A.M. – 12.00 NOON.

INSTRUCTION TO CANDIDATES

- ANSWER QUESTION ONE (1) AND ANY THREE (3) OTHERS.
- ILLUSTRATE YOUR ANSWER WITH RELEVANT DECIDED CASES AND STATUTORY PROVISIONS.

THIS PAPER CONSISTS OF (6) PRINTED PAGES

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QUESTION ONE

The country Namonia was governed by an oppressive regime led by President Sastre. In the beginning of January 2016, students at the capital's university began to engage in peaceful demonstrations against the regime. The demonstrations soon prompted others, and within two weeks peaceful demonstrations had spread across the country. On 10 February, in an attempt to retain control over the situation, the president placed security forces in the streets of all major cities, but with no success. Sastre then ordered the use of military force including bombs directed against civilians, as well as other measures such as censorship and blocking of communications. After four weeks, more than 20,000 civilians had been killed.

The international community implemented several political measures to stop the horrors in Namonia, but they all proved unsuccessful. On 15 May 2016, the UN Security Council adopted a resolution under Chapter VII of the UN Charter authorizing states to use "all necessary means" short of foreign occupation to protect civilians in Namonia. Also, the resolution referred the situation in Namonia to the International Criminal Court (ICC), according to Article 13 (b) of the Rome Statute which Namonia had not ratified, covering crimes committed in Namonia from 1 January 2016.

An international coalition soon established an allied air force which targeted Namonia ground units in order to prevent attacks against civilians. During one of the missions a fighter jet from the country Sylvania bombed a military barrack, which was part of a base from where the attacks against civilians were launched. Later it turned out that there had been more than fifty child soldiers in the barrack, and that they had all been killed in the bombing. The children had been forcibly recruited by General Alcala, who had drugged them in order to make them fight. He had done this on orders from President Sastre.

By the end of May 2016, the allied forces had defeated President Sastre's forces and gained control over the territory. The question now arose as to whether any of the following three could be held criminally responsible: President Sastre for having conducted a violent campaign against civilians;

General Alcala for recruiting the children and for placing them in the barrack; and the pilot for having bombed the barrack.

Sastre's lawyers argued that the President could not be held responsible before the ICC because he was immune. Alternatively, if he was not considered immune, he had not committed any crime under the ICC's jurisdiction.

Alcala's lawyers argued that the general could not be held responsible for any crimes because he had carried out everything on the explicit orders from President Sastre, and if he had not obeyed the orders, he honestly believed he would have been killed. Further, Alcala could not be punished because he had recruited the children in order to save their lives, they claimed. The village where the children previously lived had been bombed by government forces the last days before the children were recruited, and the day after the recruitment bombs had killed all the remaining inhabitants.

Thus, the children would have been killed by governmental bombs had he not recruited them, and they would still have been alive had the Sylvania fighter jet not bombed the barrack. This, it was argued, had to be viewed as a form of "necessity" freeing General Alcala from criminal responsibility.

The pilot's lawyers argued that he could not be held responsible because he did not know that there were children in the barrack. The pilot's home state, Sylvania, had ratified the Rome Statute in 2005.

You are a legal advisor to the ICC Prosecutor. She has asked you to discuss to analyses the extent of the criminal liability of the following.

- | | |
|---------------------|------------|
| 1. The pilot | (7 marks) |
| 2. General Alcala | (8 marks) |
| 3. President Sastre | (10 marks) |

QUESTION TWO

The state Begonia was inhabited by two ethnic groups, the Majorians who constituted 90 % of the total population, and the Minorians, who constituted 10 % of the total population. For centuries there had been tensions between the two groups, but over the last 20 years the Majorians and the Minorians had managed to live peacefully side by side.

On May 1st 2016, the right-wing politician Eric Grotius won the election. There were rumors that he had won by manipulating the election, but this was never investigated by the police or any other instance. On his first day in office, President Grotius notified the United Nations Secretary-General that Begonia withdrew from the Rome Statute of the International Criminal Court (ICC), which it had ratified on January 1st 2005.

During his election campaign, Grotius had made hateful speeches against the Minorians. On April 15th 2016, Grotius gathered the top ten generals of the state and involved them in his plans to exterminate the Minorians once and for all. Eight generals said they would join in Grotius' genocidal plan, while two generals of Minorian ethnicity, said they could not go against their own people. The two generals were immediately shot by the President.

The day after, Grotius and his eight loyal generals embarked on a massive campaign against the Minorians, by the end of which close to 20.000 Minorians would be killed. The situation was quickly put on the agenda of the Security Council, and on May 15th, the Council adopted a resolution authorizing states to "stop the genocidal acts in Begonia by the use of all necessary means". As Begonia was no longer a party to the Rome Statute of the ICC, the resolution also instructed Begonia to "cooperate fully" with the ICC, referring to article 13 (b) of the Rome Statute..

One week later, UN troops entered Begonia and marched toward the capital, Georgina. On May 25th, the troops had gained control over Georgina and arrested President Grotius and his eight generals. Grotius and the generals were subsequently handed over to the ICC in The Hague, as the ICC Prosecutor had issued an arrest warrant for them.

Aided by case law and legal provisions discuss the possible ICC outcome (15 Marks)

QUESTION THREE

"The international criminal court was established as a response of the human family to gross human rights violations of such magnitude and barbarity as to shock human conscience and to warrant the response of the international community as a whole. The ICC symbolises the principle of individual criminal liability for those responsible for the most serious human rights violations and was established as a permanent institution to ensure the punishment of such individuals and was established as a permanent institution to ensure the punishment of such individuals." Anonymous

Discuss the accuracy and relevance of this statement in relation to state cooperation with the International Criminal Court

(15 Marks)

QUESTION FOUR

"Given the evidence and the crimes that the ICTR is tasked with prosecuting, virtually every defendant coming before this international court should be charged and convicted, where appropriate, for his role in perpetrating these acts, or for command responsibility in not preventing the acts of subordinates."

An Excerpt from the article *"Your Justice is Too Slow": Will the ICTR Fail Rwanda's Rape Victims?* Binaifer Nowrojee

Against this background, discuss the success (if any) of the International Criminal Tribunal for Rwanda (ICTR).

QUESTION FIVE

The Trial Chamber in the *Muthaura and Kenyatta* case developed a different approach trying to overhaul the problems of the established practice on victims. (*The Prosecutor v. Francis Kirimi Muthaura and Uhuru Muigai Kenyatta* (ICC-01/09-02/11-498), Decision on victims' representation and participation, Trial Chamber V, 3 October 2012.) The judges appropriately underlined the importance of a "meaningful participation" of victims to avoid a merely "symbolical" contribution.

Critically analyse the importance of *meaningful participation*

(15 Marks)

QUESTION SIX

Explain any three of the following principles.

- | | |
|------------------------------|-----------|
| (i) <i>Ne bis in idem</i> | (5 Marks) |
| (ii) Immunity | (5 Marks) |
| (iii) Universal jurisdiction | (5 Marks) |
| (iv) Statutory limitations | (5 Marks) |



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(ACADEMICS, RESEARCH & EXTENSION)

UNIVERSITY EXAMINATIONS 2020/2021 ACADEMIC YEAR FOURTH YEAR FIRST SEMESTER EXAMINATION

FOR THE DEGREE OF BACHELOR OF LAWS

COURSE CODE: FLB 406

COURSE TITLE: INTERNATIONAL CRIMINAL LAW

DATE: 16TH AUGUST, 2021 **TIME:** 9.00 A.M. – 12.00 NOON.

INSTRUCTION TO CANDIDATES

- ANSWER QUESTION ONE (1) AND ANY THREE (3) OTHERS.
- ILLUSTRATE YOUR ANSWER WITH RELEVANT DECIDED CASES AND STATUTORY PROVISIONS.

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QUESTION ONE

The state Tegonia was inhabited by two ethnic groups, the Majorians who constituted 90 % of the total population, and the Minorians, who constituted 10 % of the total population. For centuries there had been tensions between the two groups, but over the last 20 years the Majorians and the Minorians had managed to live peacefully side by side.

On May 1st 2016, the right-wing politician Eric Grotius won the election. There were rumors that he had won by manipulating the election, but this was never investigated by the police or any other instance. On his first day in office, President Grotius notified the United Nations Secretary-General that Tegonia withdrew from the Rome Statute of the International Criminal Court (ICC), which it had ratified on January 1st 2005.

During his election campaign, Grotius had made hateful speeches against the Minorians. On April 15th 2016, Grotius gathered the top ten generals of the state and involved them in his plans to exterminate the Minorians once and for all. He argued that the Minorians were of an inferior blood and deserved to be wiped out of Tegonian soil. The Eight generals said they would join in Grotius' plan, while two generals of Minorian ethnicity, said they could not go against their own people. The two generals were immediately shot by the President.

The day after, Grotius and his eight loyal generals embarked on a massive campaign against the Minorians, by the end of which close to 20.000 Minorians would be killed and over 57 women and children raped. The situation was quickly put on the agenda of the Security Council, and on May 15th, the Council adopted a resolution authorizing states to "stop the genocidal acts in Tegonia by the use of all necessary means". As Tegonia was no longer a party to the Rome Statute of the ICC, the resolution also instructed Tegonia to "cooperate fully" with the ICC, referring to article 13 (b) of the Rome Statute.

One week later, UN troops entered Tegonia and marched toward the capital, Georgina. On May 25th, the troops had gained control over Georgina and arrested President Grotius and his eight generals. Grotius and the generals were subsequently handed over to the ICC in The Hague, as the ICC Prosecutor had issued an arrest warrant for them.

Aided by case law and legal provisions discuss the possible ICC outcome

(25 Marks)

QUESTION TWO

The Trial Chamber in the *Muthaura and Kenyatta* case developed a different approach trying to overhaul the problems of the established practice on victims. (*The Prosecutor v. Francis Kirimi Muthaura and Uhuru Muigai Kenyatta* (ICC-01/09-02/11-498), Decision on victims' representation and participation, Trial Chamber V, 3 October 2012.) The judges appropriately underlined the importance of a "meaningful participation" of victims to avoid a merely "symbolical" contribution.

Critically analyse the importance of *meaningful participation*

(15 Marks)

QUESTION THREE

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Discuss the extent of international criminal liability of

(i) President Sastre

(8 Marks)

(ii) General Alcalá and the Pilot

(7 Marks)

QUESTION FOUR

"The international criminal court was established as a response of the human family to gross human rights violations of such magnitude and barbarity as to shock human conscience and to warrant the response of the international community as a whole. The ICC symbolizes the principle of individual criminal liability for those responsible for the most serious human rights violations and was established as a permanent institution to ensure the punishment of such individuals and was established as a permanent institution to ensure the punishment of such individuals." Anonymous

Critique the extent of state cooperation in reference to the International Criminal Court

(15 Marks)

QUESTION FIVE

"The ICTY was a tribunal that was surrounded by politics and immense pressure was exerted to ensure Milosevic was indicted during the NATO bombing campaign over Kosovo in 1999."

Hazan, Pierre. *Justice in a Time of War: The True Story behind the International Criminal Tribunal for the Former Yugoslavia*. College Station: Texas A&M University Press, 2004.

Against this background, discuss the success (if any) of the International Criminal Tribunal for the Former Yugoslavia. (ICTY)

(15 Marks)

QUESTION SIX

Explain the following international crimes.

- (i) Genocide;
- (ii) War Crimes
- (iii) Crimes of Aggression;

(5 Marks)

(5 Marks)

(5 Marks)