



Boğaziçi
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The
International
Criminal
Court

Study Guide

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I. Letter From Secretary-General

Most Esteemed Participants,

On behalf of the Academic and Organization teams of Boğaziçi Model United Nations 2023 Conference and the Model United Nations Subcommittee of the Boğaziçi University Debate Society, it is my utmost honor and pleasure to welcome you all as the Secretary-General of the 5th edition of one of the most prestigious conferences in Turkey, Boğaziçi MUN 2023.

My name is Şebnem Yaren. Currently, I am a 4th year Management student with a minor in Political Science & International Relations at Boğaziçi University. I have been a part of Boğaziçi MUN since the beginning of my university life, and I gladly took part in all the endeavors that we set off to. Hence, it is my greatest honor to be welcoming you to our International Criminal Court (ICC) committee as the Secretary-General of our esteemed conference.

We have created six marvelous committees that serve the concept that we wanted to cover in this edition, bridging the gap. One of them is one that I'm very passionate about, ICC. I have wanted to simulate a court for years now, and I'm delighted that the delegates of this year will get to experience it. The Jean-Pierre Bemba Gombo v. ICC case is one of the most important and memorable cases of all for ICC and Congo, and with the extraordinary efforts of Ms. Koç, Mr. Ünder and Ms. Gül; I have no doubt that all our participants in this committee will have the best time dissecting this case and making the just decision. Of course, I owe my Deputy-Secretaries General Mr. Kaan Ertan and Mr. Zühtü Anıl Tutar enormous gratitude for their assistance and cooperation in every aspect of preparing this committee.

We hope that you are as excited as we are to have one of the best four days in this committee,
together!

With sincere appreciation,

Şebnem Yaren

Secretary-General of Boğaziçi MUN 2023

II. Letter From Under Secretary-Generals

Most Esteemed Participants,

It is our utmost pleasure to welcome all of you to the Boğaziçi Model United Nations 2023.

We are Ece Koç and Kaan Ünder, and both of us are junior law students at Kadir Has University. This year, we have the privilege of serving you as the Under-Secretary-Generals responsible for the International Criminal Court.

In this year's edition, we are dealing with the case of Jean Pierre Bemba who is on trial for war crimes and crimes against humanity.

Before concluding our words, we would like to express our gratitude to our Secretary-General Şebnem Yaren for being so incredibly supportive and patient to us and for making us a part of the Academic Team.

In addition, we would like to thank our lovely Academic Assistant Irmak Gül for her great effort and dedication. Last but not least, we would like to express our appreciation to our whole organization team, for all their hard work to bring this conference and us together.

We are looking forward to meeting you at the conference.

If you have any questions, please do not hesitate to contact us.

Best Regards,

Ece Koç and Kaan Ünder

Under Secretary Generals Responsible for International Criminal Court

III. Introduction to International Criminal Court

The International Legal Community is looking forward to the inauguration of the International Criminal Court in late 1988. Unlike the International Court of Justice which exists to decide disputes between countries, the ICC would hold individuals criminally liable for certain crimes that were not punished in national courts. A permanent court that would hear cases of international criminal law has been widely discussed by scholars over a century, and seriously debated among nation-states since the conclusion of World War One.

The United Nations (UN) was convened on 4.12.1989 prior to the events that led to the establishment of the International Criminal Tribunal for the Former Yugoslavia, and A/Res. Decision No. 44/39 requested the International Law Commission to consider the question of such a tribunal in the context of crimes against the security of humanity and peace.

The first final draft for the establishment of the International Criminal Court was completed less than a year after the adoption by the Security Council of the Statute of the Criminal Court of the Former Yugoslavia by the Security Council due to the recent inhumane events, and the draft of the International Criminal Court was submitted to the International Law Commission for the information of the member states. Finally, between June 15 and July 17 1998 in Rome, duly authorized representatives gathered at the Diplomatic Conference UN and discussed proposals for draft amendments. The Statute of the International Criminal Court contained 120 state approvals, disapprovals, and abstentions. The Statute was adopted in July 1998 by a vote of 7 to 18 by 21 states and was opened for signature by all states.

Following ratification by 66 states of the Statute, which is scheduled to enter into force 60 days after the delivery of the sixtieth instrument of ratification to the Secretary General of the UN, the Court began operations on July 11, 2002.

Unlike the aforementioned courts and this court, fill in the gaps and remove the relevant provisions established by an international agreement, the Competent Authority of the member states, and countries that are parties to this Agreement of the Assembly.

The Rome Convention, which contains the Status of the International Criminal Court, which will have the status of an ordinary court as a permanent court, consists of 128 articles, which contain 13 chapters with a preamble.

According to the agreement, the International Criminal Court is a permanent court with the task of prosecuting persons accused of the most serious crimes of an international character and is a complementary court to national courts. Article 1 of the Statute enshrines that the Court follows the principle of complementarity.

Crimes against humanity, crimes against peace, and war crimes are crimes that fall within the scope of international criminal law in legal terms. These crimes were included in the scope of the International Criminal Court's mandate, and the principle of prosecution of these crimes by the International Criminal Court was adopted as part of the division of responsibilities with national courts.

The most important feature of the Rome Statute is that it regulates crimes that constitute serious violations of international law within a specific system and subjects them to

systematic prosecution.

In this context, the crimes for which the International Criminal Court has jurisdiction are genocide, crimes against humanity, war crimes, and the crime of aggression.

The ICC has four principal organs: The Presidency, the Judicial Divisions, the Office of the Prosecutor, and the Registry.

Presidency

It is responsible for the organization of the committee, supervises the work of the Court during the proceedings, and provides guidance for the members of the committee both before and during the committee work. The Presidency might also serve as the Judges, that is to ask questions, vote on the motions, etc. yet it shall use this privilege only when necessary to allow Judges greater participation.

Judges

The Judges shall hear the case, evaluate each piece of evidence (including the testimony of the Witnesses), ask questions regarding the evidence and speeches of the Counsels and once the Parties have been heard, they shall reach a decision regarding the case (they shall write the verdict). It is necessary for the Judges to be familiar with the Rome Statute (especially at the judgement writing stage, where Judges must refer to the specific articles of the RS in their arguments)

Prosecution

The Prosecution's task is to persuade the judges that the accused is guilty of the alleged crimes and should be punished (the Prosecution might suggest the punishment e.g. X years of imprisonment). The Prosecution shall deliver the opening speech at the beginning of the proceedings, present the evidence, prepare and examine the Witnesses, and deliver the closing statement at the end. It is crucial for the Prosecution to prepare the arguments, evidence, and Witnesses prior to the session and to cooperate with their fellow Counsels.

Defence Counsels

Whereas Prosecution's task is to prove the accused guilty of the crimes, the Defence Counsels must do everything to prove otherwise. The burden of proof rests on the Prosecution, yet the members of the Defence must come up with arguments against the guilt of the accused, supported of course with appropriate evidence and witnesses. The Defence Counsels shall deliver the opening speech at the beginning of the proceedings, present the evidence, prepare and examine the witnesses, and deliver the closing statement. It is crucial for the Defence Counsels to prepare the arguments, evidence, and witnesses prior to the session and to cooperate with their fellow Counsels.

IV. Prosecution V. Bemba

a. Factual Background

The lawsuit of Jean-Pierre Bemba Gombo, a politician, businessman, and former militia

leader named *Mouvement de libération du Congo* (Movement for the Liberation of Congo) (MLC) in the Democratic Republic of the Congo, was about the crimes that have been committed under the name of the militia. The case started on November 22, 2010.

Bemba was charged with two counts of crimes against humanity which are rape and murder; three counts of war crimes which are rape, murder, and pillaging allegedly committed by the MLC troops during the conflict in the Central African Republic (CAR). **i.**

Bemba and MLC

In the year 1998, when the Democratic Republic of Congo (DRC) was extremely close to going to war, Jean-Pierre Bemba Gombo was already establishing the Movement for the Liberation of Congo (MLC). In the beginning, the purpose of MLC was to help people in need, protecting them and their homes during the First Congo War. People were delighted that they have people who they can trust. After getting the trust of people, it was noticed that MLC's attitudes toward Congolese people changed. Congolese people could not help but act distantly when they realized how different MLC is from the beginning. As a consequence of that, MLC started to act violently, pillaging the houses they were supposed to protect and raping people they were protecting once. This series of events made MLC's power get weak and weak every day. People started to protest and question the authority they have. The protests were getting serious. In order to silence people, Bemba ordered MLC to kill lead protestants.

ii. MLC and CAR

The Situation in the Central African Republic I (CAR I) focuses on alleged atrocity crimes committed during an armed conflict involving the *Mouvement de Libération du*

Congo, rebel forces led by General Francois Bozize, and government forces in the Central African Republic under President Ange-Felix Patasse (MLC). From October 26, 2002, until March 15, 2003, there was a war.

The CAR became independent of France in 1960. CAR presidents exercised dictatorial power from the 1960s through the 1990s until being overthrown by military coups. President Patasse was chosen in 1993 at the first multi-party democratic elections held in the CAR. Although there was immediate jubilation over the CAR's first peaceful transfer of power, President Patasse was the target of military coup attempts in 1996 and 1997.

After another military coup attempt in October 2001, President Patasse sought to arrest General Bozize, Chief of Staff of the Armed Forces, on suspicion of complicity in the coup. The government forces of President Patasse battled with the rebel forces of General Bozize.

On October 25, 2002, General Bozize's rebel troops battled once more with President Patasse's government forces in the Central African Republic, who were backed by Libyan and MLC soldiers. The MLC was a rebel military organization founded by Jean-Pierre Bemba Gombo to overthrow the DRC government (DRC). Mr. Bemba and President Patasse agreed that MLC forces would back up CAR forces in exchange for the CAR government not backing up the DRC government. The MLC assaulted General Bozize's rebel soldiers as well as civilians, pillaged communities, and raped and sexually abused men, women, and children. On March 15, 2003, rebel troops commanded by General Bozize marched into Bangui, blocking President Patasse's return. General Bozize took the oath of presidency. President Bozize was elected in 2005 and re-elected in 2011, following various delays.

In 2015, the Central African Republic (CAR) established (through Organic Law 15/003 (English summary)) a hybrid tribunal, the Special Criminal Court (SCC), which is

incorporated within the CAR national judicial system but operates under a combination of CAR and international law. The SCC "has the authority to investigate, prosecute, and trial significant breaches of human rights and international humanitarian law... "in particular, genocide, crimes against humanity, and war crimes" beginning January 1, 2003. Following the passage of the Rules, it commenced active work in 2018. The Central African Republic (CAR) is a State Party to the International Criminal Court (ICC), having adopted the Rome Statute on October 3, 2001. The ICC Office of the Prosecutor (OTP) launched a preliminary investigation on December 22, 2004, following receiving a referral (dated December 22, 2004) from the government of the Central African Republic of suspected atrocity crimes perpetrated on its territory. The OTP launched an official inquiry on May 22, 2007. The following cases are included in the Situation in CAR I: The Prosecutor v. Jean Pierre Bemba Gombo and The Prosecutor v. Bemba et al.

iii. Detention

1. Pre-trial Chamber III ("the Chamber") of the International Criminal Court ("the Court") was seized of the situation in the Central African Republic by a decision of the Presidency dated 19 January 2005, pursuant to regulation 46 of the Regulations of the Court.

2. On 2 May 2008, the Prosecutor filed a "Notification to Pre-Trial Chamber III and Request for Extension of Page Limit and Expedited Consideration" in which he requested, inter alia, an extension of the authorized page limit for a subsequent application of the Prosecutor.

3. On 8 May 2008, the Chamber issued a Decision on the Prosecutor's 'Notification

to Pre-Trial Chamber III and Request for Extension of Page Limit and Expedited Consideration' in which it granted the Prosecutor's request by authorizing an extension of the authorized page limit.

4. On 9 May 2008, the Prosecutor filed an "Application for Warrant of Arrest under Article 51" with annexes ("Prosecutor's Application") for the issuance of a warrant of arrest for Mr. Jean-Pierre Bemba Gombo ("Mr. Jean-Pierre Bemba").

5. On 21 May 2008, the Chamber issued a Decision Requesting Additional Information in Respect of the Prosecutor's Application for a Warrant of Arrest under Article 58, which, on the one hand, granted the Prosecutor's request that proceedings in respect of the Prosecutor's

Application be kept under seal and conducted ex parte and that, if need be, the hearings in connection therewith be held in camera, and, on the other hand, requested the Prosecutor to submit additional supporting material.

6. On 23 May 2008, the Prosecutor filed an "Application for Request for Provisional Arrest under Article 92", in which he requested the holding of a hearing in order to submit new material to the Chamber in respect of the record of the situation in the Central African Republic, a hearing that was held on the same day. ICC-01/05-01/08-1-tENG 09-06-2008 3/8 VW PT No. ICC-01/05-01/08 4/8 23 May 2008 Official Court Translation The Prosecutor highlighted the urgency for the Chamber to consider his application in view of the risk that Mr. Jean-Pierre Bemba could flee.

7. The Chamber notes articles 19(1) and 58(1) of the Rome Statute ("the Statute") and observes that the analysis of the evidence and other information submitted by the Prosecutor will be set out in a decision to be issued later.

8. The Chamber considers that, on the basis of the evidence and information submitted by the Prosecutor, and without prejudice to the filing of a challenge to the admissibility of the case under articles 19(2)(a) and (b) of the Statute and to any subsequent decision in connection therewith, the case against Mr. Jean-Pierre Bemba falls within the jurisdiction of the Court and is admissible.

9. The Chamber is of the opinion that there are reasonable grounds to believe that from 25 October 2002 to 15 March 2003 there was an armed conflict in the Central African Republic and that a segment of the national armed forces of Mr. Ange-Félix Patassé, President of the Central African Republic at the time, fought a rebel movement led by Mr. François Bozizé, former Chief of Staff of the armed forces of the Central African Republic. The Chamber considers that there are reasonable grounds to believe this conflict was a protracted confrontation between armed groups based on this territory and having a hierarchical organization and the ability to plan and carry out sustained military operations. The Chamber considers that the opposing forces were essential, on the one hand, a segment of the armed forces of the Central African Republic which remained loyal to Mr. Ange-Félix Patassé and allied with the combatants of the Mouvement de Libération du Congo (“MLC”) led by Mr. Jean-Pierre Bemba commonly referred to as the “Banyamulengue”, and, on the other hand, the forces of Mr. François Bozizé.

10. The Chamber also considers that there are reasonable grounds to believe that other foreign armed forces were allegedly involved in the conflict, in particular, ICC-01/05-01/08-1-tENG 09-06-2008 4/8 VW PT No. ICC-01/05-01/08 5/8 23 May 2008 Official Court Translation combatants referred to as Bataillon de sécurité frontalière or Brigade anti-Zaraguina, led by Mr Abdoulaye Miskine and composed, inter alia, of

Chadian mercenaries.

11. The Chamber is of the opinion that there are reasonable grounds to believe that a protracted armed conflict existed in the Central African Republic at least from 25 October 2002 to 15 March 2003 and that this conflict can be described as a conflict of a non-international character or, alternatively, as a conflict of an international character.

12. The Chamber considers that there are reasonable grounds to believe that in the context of this armed conflict, MLC forces composed mainly of Banyamulenge and led by Mr. Jean-Pierre Bemba, responding to the call of Mr. Ange Félix Patassé to support part of the national army of the Central African Republic and acting with a common purpose, committed, from 25 October 2002 to 15 March 2003: (i) rape, in, but not limited to, a localité known as PK 12 and in the town of Mongouba; (ii) torture, in, but not limited to, a localité known as PK 12; (iii) outrages upon human dignity, in particular, humiliating and degrading treatment, including in a localité known as PK 12; (iv) pillaging, especially the towns of Bossangoa, Mongoumba and in a localité known as PK 12.

13. Accordingly, the Chamber considers that there are reasonable grounds to believe that throughout the period of the presence of the MLC combatants in the Central African Republic, war crimes falling within the jurisdiction of the Court under articles 8(2)(c)(i), 8(2)(c)(ii), 8(2)(e)(v), 8(2)(e)(vi) of the Statute, as described in the Prosecutor's Application, was committed.

14. Furthermore, the Chamber is of the opinion that there are reasonable grounds to believe that between 25 October 2002 and 15 March 2003, the MLC combatants attacked the civilian population, committed criminal acts constituting torture and rape and that these crimes were committed on a systematic or widespread scale. ICC-01/05-01/08-1-tENG

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15. Accordingly, the Chamber considers that there are reasonable grounds to believe that between 25 October 2002 and 15 March 2003, the MLC combatants committed crimes against humanity falling within the jurisdiction of the Court under articles 7(1)(f) and 7(1)(g), as described in the Prosecutor's Application.

16. The Chamber considers that there are reasonable grounds to believe that Mr. Jean-Pierre Bemba was the President and Commander-in-Chief of the MLC and that he was vested with de jure and de facto authority by members of the movement to take all political and military decisions.

17. The Chamber is of the opinion that there are reasonable grounds to believe that there was a common plan between Mr. Jean-Pierre Bemba and Mr. Ange-Félix Patassé and that this plan was based on mutual understanding for Mr. Ange-Félix Patassé to receive military assistance from Mr. Jean-Paul Bemba in order to maintain himself in power and for Mr. Jean-Paul Bemba to receive, inter alia, strategic and logistical support from Mr. Ange-Félix Patassé and prevent the Central African Republic from forming an alliance with the incumbent Government in Kinshasa.

18. The Chamber also considers that there are reasonable grounds to believe that, in his capacity as Commander-in-Chief of the MLC, Mr. Jean-Pierre Bemba's contribution was essential to the implementation of the common plan, mainly by deciding to send MLC combatants to and maintain them in the Central African Republic.

19. The Chamber considers that there are reasonable grounds to believe that Mr. Jean-Pierre Bemba knew that the implementation of this plan would, in the normal course of events, lead to the commission of crimes and that he accepted this risk through his decision to send MLC combatants to the Central African Republic and to maintain them there despite the fact that

he was informed of the perpetration of criminal acts. ICC-01/05-01/08-1-tENG 09-06-2008
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20. The Chamber considers that there are reasonable grounds to believe that when Mr. Jean-Pierre Bemba implemented his decision to withdraw the MLC troops, the withdrawal marked the end of the criminal acts perpetrated against civilians by MLC troops and the end of Mr. Patassé stay in power.

21. For the foregoing reasons, the Chamber considers that there are reasonable grounds to believe that Mr. Jean-Pierre Bemba is criminally responsible, jointly with another person or through other persons under article 25(3) of the Statute, for (i) rape as a crime against humanity, punishable under article 7(1)(g) of the Statute; (ii) rape as a war crime, punishable under article 8(2)(e)(vi) of the Statute; (iii) torture as a crime against humanity, punishable under article 7(1)(f) of the Statute; (iv) torture as a war crime, punishable under article 8(2)(c)(i) of the Statute; (v) committing outrages upon personal dignity, in particular humiliating and degrading treatment, as a war crime, punishable under article 8(2)(c)(ii) of the Statute; (vi) pillaging a town or place as a war crime, punishable under article 8(2)(e)(v) of the Statute.

22. The Chamber considers that there are reasonable grounds to believe that the arrest of Mr. Jean-Pierre Bemba appears necessary at this stage to ensure his appearance before the Court and that he does not obstruct the investigation or court proceedings within the meaning of articles 59(1)(b)(i) and (ii) of the Statute. ICC-01/05-01/08-1-tENG 09-06-2008 7/8 VW PT No. ICC-01/05-01/08 8/8 23 May 2008 Official Court Translation FOR THESE REASONS, THE CHAMBER issues a warrant of arrest for Jean-Pierre BEMBA GOMBO, whose photograph is attached; who is believed to be a national of the Democratic Republic of the Congo, born on 4 November 1962 in Bokada, Équateur Province, in the Democratic

Republic of the Congo; who is believed to be of Ngwaka ethnicity, son of Jeannot Bemba Saolana, married to Lilia Teixeira, daughter of Antonio Teixeira. Done in both English and French, the French version being authoritative.

b. Applicable Law

The Rome Statute states a hierarchy of applicable law in Article 21, complementing Article 38 of the Statute of the International Court of Justice, in regard to the proceedings within the International Criminal Court:

'The Court shall apply:

(a) In the first place, this Statute, Elements of Crimes and its Rules of Procedure and Evidence;

(b) In the second place, where appropriate, applicable treaties and the principles and rules of international law, including the established principles of the international law of armed conflict;

(c) Failing that, general principles of law derived by the Court from national laws of legal systems of the world including, as appropriate, the national laws of States that would normally exercise jurisdiction over the crime, provided that those principles are not inconsistent with this Statute and with international law and internationally recognized norms and standards.'

i. Crimes Against Humanity

Article 7

Crimes against humanity

1. For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

(a) Murder;

(b) Extermination;

(c) Enslavement;

(d) Deportation or forcible transfer of population;

(e) Imprisonment or other severe deprivation of physical liberty in violation of

fundamental rules of international law;

(f) Torture;

(g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced

sterilization, or any other form of sexual violence of comparable gravity; (h)

Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;

(i) Enforced disappearance of persons;

(j) The crime of apartheid;

(k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to the body or to mental or physical health.

2. For the purpose of paragraph 1:

(a) "Attack directed against any civilian population" means a course of conduct involving the multiple commission of acts referred to in paragraph

1

against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;

(b) "Extermination" includes the intentional infliction of conditions of life, *inter alia* the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;

(c) "Enslavement" means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;

(d) "Deportation or forcible transfer of population" means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;

(e) "Torture" means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;

(f) "Forced pregnancy" means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws

relating to pregnancy;

(g) "Persecution" means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;

(h) "The crime of apartheid" means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;

(i) "Enforced disappearance of persons" means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

3. For the purpose of this Statute, it is understood that the term "gender" refers to the two sexes, male and female, within the context of society. The term "gender" does not indicate any meaning different from the above.

ii. War Crimes

Article 8

War crimes

1. The Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes.

2. For the purpose of this Statute, "war crimes" means:

(a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

(i) Wilful killing;

(ii) Torture or inhuman treatment, including biological experiments;

(iii) Wilfully causing great suffering, or serious injury to body or health;

(iv) Extensive destruction and appropriation of property, not justified by military

necessity and carried out unlawfully and wantonly;

(v) Compelling a prisoner of war or other protected person to serve in the forces of a

hostile Power;

(vi) Wilfully depriving a prisoner of war or other protected person of the rights of fair

and regular trial;

(vii) Unlawful deportation or transfer or unlawful confinement;

(viii) Taking of hostages.

(b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:

(i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;

(ii) Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;

(iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict; (iv) Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be

clearly excessive in relation to the concrete and direct overall military advantage anticipated;

(v) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives; (vi) Killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion;

(vii) Making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury;

(viii) The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory; (ix)

Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives; (x) Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;

(xi) Killing or wounding treacherously individuals belonging to the hostile nation or army;

(xii) Declaring that no quarter will be given;

- (xiii) Destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war;
- (xiv) Declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;
- (xv) Compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;
- (xvi) Pillaging a town or place, even when taken by assault;
- (xvii) Employing poison or poisoned weapons;
- (xviii) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;
- (xix) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions;
- (xx) Employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition and are included in an annex to this Statute, by an amendment in accordance with the relevant provisions set forth in articles 121 and 123;
- (xxi) Committing outrages upon personal dignity, in particular humiliating and

degrading treatment;

(xxii) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions;

(xxiii) Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;

(xxiv) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;

(xxv) Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions;

(xxvi) Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.

(c) In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause:

(i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

(ii) Committing outrages upon personal dignity, in particular humiliating and

degrading treatment;

(iii) Taking of hostages;

(iv) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.

(d) Paragraph 2 (c) applies to armed conflicts not of an international character and

thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.

(e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:

(i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;

(ii) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;

(iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;

(iv) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;

(v) Pillaging a town or place, even when taken by assault;

(vi) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions;

(vii) Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities;

(viii) Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;

(ix) Killing or wounding treacherously a combatant adversary;

(x) Declaring that no quarter will be given;

(xi) Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;

(xii) Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict;

(xiii) Employing poison or poisoned weapons;

(xiv) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;

(xv) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions.

(f) Paragraph 2 (e) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups.

3. Nothing in paragraph 2 (c) and (e) shall affect the responsibility of a Government to maintain or re-establish law and order in the State or to defend the unity and territorial integrity of the State, by all legitimate means.

iii. ICC Rome Statute

Rome Statute of the International Criminal Court PART 1.

ESTABLISHMENT OF THE COURT

Article 1 The Court

An International Criminal Court ("the Court") is hereby established. It shall be a permanent institution and shall have the power to exercise its jurisdiction over persons for the most serious crimes of international concern, as referred to in this Statute, and shall be complementary to national criminal jurisdictions. The jurisdiction and functioning of the Court shall be governed by the provisions of this Statute.

Article 2

Relationship of the Court with the United Nations

The Court shall be brought into relationship with the United Nations through an agreement to be approved by the Assembly of States Parties to this Statute and thereafter concluded by the President of the Court on its behalf.

Article 3

Seat of the Court

1. The seat of the Court shall be established at The Hague in the

Netherlands ("the host State").

2. The Court shall enter into a headquarters agreement with the host State, to be approved by the Assembly of States Parties and thereafter concluded by the President of the Court on its behalf.
3. The Court may sit elsewhere, whenever it considers it desirable, as provided in this Statute.

Article 4

Legal status and powers of the Court

1. The Court shall have international legal personality. It shall also have such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes.
2. The Court may exercise its functions and powers, as provided in this Statute, on the territory of any State Party and, by special agreement, on the territory of any other State.

Rome Statute of the International Criminal Court

PART 2.

JURISDICTION, ADMISSIBILITY AND APPLICABLE LAW

Article 5

Crimes within the jurisdiction of the Court

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.

Article 7

Crimes against humanity

1. For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- (a) Murder;
- (b) Extermination;

- (c) Enslavement;
- (d) Deportation or forcible transfer of population;
- (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- (f) Torture;
- (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
- (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
- (i) Enforced disappearance of persons;
- (j) The crime of apartheid;
- (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

2. For the purpose of paragraph 1:

- (a) "Attack directed against any civilian population" means a course of conduct involving the multiple commission of acts referred to in paragraph 1

against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;

(b) "Extermination" includes the intentional infliction of

conditions of life, *inter alia* the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;

(c) "Enslavement" means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;

(d) "Deportation or forcible transfer of population" means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;

(e) "Torture" means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;

(f) "Forced pregnancy" means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy; (g) "Persecution" means the intentional and severe deprivation of fundamental rights contrary to international law by reason of

the identity of the group or collectivity;

(h) "The crime of apartheid" means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;

(i) "Enforced disappearance of persons" means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

3. For the purpose of this Statute, it is understood that the term "gender" refers to the two sexes, male and female, within the context of society. The term "gender" does not indicate any meaning different from the above.

Article 8

War crimes

1. 2.

The Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes.

For the purpose of this Statute, "war crimes" means:

(a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

(i) Wilful killing;

(ii) Torture or inhuman treatment, including biological experiments; (iii) Wilfully causing great suffering, or serious injury to body or health; (iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;

(v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;

(vi) Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;

Rome Statute of the International Criminal Court

(vii) Unlawful deportation or transfer or unlawful confinement; (viii)

Taking of hostages.

(b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:

(i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities; (ii) Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;

(iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict; (iv) Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated; (v) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;

(vi) Killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion; (vii) Making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury;

(viii) The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;

(ix) Intentionally directing attacks against buildings dedicated to religion, education,

art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;

(x) Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;

(xi) Killing or wounding treacherously individuals belonging to the hostile nation or army;

(xii) Declaring that no quarter will be given;

(xiii) Destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war;

(xiv) Declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;

(xv) Compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;

(xvi) Pillaging a town or place, even when taken by assault;

(xvii) Employing poison or poisoned weapons;

(xviii) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;

(xix) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions;

(xx) Employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition and are included in an annex to this Statute, by an amendment in accordance with the relevant provisions set forth in articles 121 and 123;

(xxi) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;

(xxii) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions;

(xxiii) Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;

(xxiv) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;

(xxv) Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully

impeding relief supplies as provided for under the Geneva Conventions;

(xxvi) Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.

(c) In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause:

(i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

(ii) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;

(iii) Taking of hostages;

(iv) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.

(d) Paragraph 2 (c) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.

(e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:

- (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
- (ii) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
- (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
- (iv) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
- (v) Pillaging a town or place, even when taken by assault;
- (vi) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions;
- (vii) Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities;
- (viii) Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;

(ix) Killing or wounding treacherously a combatant adversary; (x)

Declaring that no quarter will be given;

(xi) Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific

experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously

endanger the health of such person or persons;

(xii) Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict;

(xiii) Employing poison or poisoned weapons;

(xiv) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;

(xv) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions.

(f) Paragraph 2 (e) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed

groups or between such groups.

3. Nothing in paragraph 2 (c) and (e) shall affect the responsibility of a Government to maintain or re-establish law and order in the State or to defend the unity and territorial integrity of the State, by all legitimate means.

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