

**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**

Course: **International Criminal Law**
Semester- X (Batch: 2018-23)

End Semester Examination: May 2023

Date: 03rd May, 2023

Duration: 3 hours

Max. Marks: 50

Instructions:

- Read the questions properly and write the answers in the given answer book.
- Do not write anything on the question paper.
- The respective marks for each question are indicated in-line.
- Indicate correct question numbers in front of the answer.
- No questions or clarification can be sought during the exam period, answer as it is, giving reason, if any.
- Support your answers with relevant cases and legal provisions, wherever required.
- The facts of the questions are with fictitious names but bear a resemblance to actual cases in International Criminal Law.

Part: A

Marks

(Attempt **any two** questions)

- Q.1 The Appeals Chamber of the International Criminal Court (ICC) has unanimously decided that the prosecution of Saif Al-Islam Gaddafi, son of the former Libyan leader Muammar Gaddafi, is admissible before the Court. (5x2= 10)

Gaddafi was accused of committing murder and persecution as crimes against humanity, contrary to the Rome Statute of the ICC, 1998. The charges arise out of his alleged role in the violent suppression of civilian demonstrations during the uprising that began in Libya in February 2011. The ICC ruled in 2013 that Gaddafi must be tried before it in the Hague, as Libya is “unwilling or unable” to try him, within the meaning of the Rome Statute. He was not, however, surrendered to the Court as required, but was instead tried and convicted in Libya, and released some nine months later. Gaddafi argued that, in light of his trial in Libya, the ICC should now rule that its case against him is inadmissible, since he has already been tried and convicted by a national court for the same conduct. He argued, further, that the amnesty he received pursuant to a Libyan statute barred any further criminal proceedings against him in Libya. Rejecting Gaddafi’s argument, the Appeals Chamber confirmed the Pre-trial and convicted by a national court for the same conduct. He argued, further, that the amnesty he received pursuant to a Libyan statute barred any further criminal proceedings against him in Libya.

Rejecting Gaddafi’s argument, the Appeals Chamber confirmed the Pre-Trial Chamber’s previous finding that the judgment against him by a Libyan court was not final and that the relevant statute, Law No. 6, did not apply to him. The Appeals Chamber noted that Gaddafi had not apologized, shown repentance for the crimes he committed, or taken any steps to reconcile with victims, as required under Law No. 6. Further, no reasoned decision had been issued granting the amnesty to Gaddafi. As such, his conviction in Libya is not final, and the ICC has retained jurisdiction over the case. The decision is a significant one in ensuring the effective prosecution of international crimes.

In view of the above stated facts answer the followings:

- a) How did the WWII revealed the ghastly nature of such crimes that can degrade a person to the level of a sub-human, taking away his liberties, dignity, and all other fundamental rights.
 - b) Discuss the essential elements of crimes against humanity.
- Q.2 Aggression is a particularly grave and manifestly illegal use of force by a state. The crime of aggression criminalizes individuals for their contributions to state aggression. (10)

However, the question of who is to be held accountable for aggression remains puzzling. There is clear consensus among international lawyers that only leaders ought to be blamed for aggression. This proposition dates back to the post-Second World War trials, where the prevailing opinion was that only the policy makers could be responsible for the crime. Since then, it has been generally accepted that only high-ranking State agents can be held responsible for the crime of aggression, whereas common foot soldiers and followers ought to be excluded from criminal responsibility.

In view of this, discuss the elements of conduct, consequence and circumstance under the Crime of Aggression.

- Q.3 The Saddam Hussein regime was accused of many very serious crimes. These included systematic and widespread torture, arbitrary justice, extrajudicial killing and “disappearances.” Crimes against humanity, and possibly genocide, were committed during campaigns against the Kurds, in particular the Anfal campaign of the late 1980s, and against the Marsh Arabs, in particular in the early 1990s. War crimes were committed during the Iran-Iraq War, and during the invasion, occupation and resistance to the liberation of Kuwait. The brutality of the regime was regarded as a key factor in its survival, and reportedly this plays strongly still in the minds of Iraqis today. There are suggestions that the business of reconstruction may itself be hampered by fear among Iraqis, who have yet to see conclusive proof that the previous regime is wholly unable to return. Justice is likely to be an important issue in practical as well as moral and emotional terms. (3+3+4=10)

Hussein was captured by U.S. forces on 13 December 2003. He remained in custody by United States forces at Camp Cropper in Baghdad, along with eleven senior Ba'athist officials. Particular attention was paid during the trial to activities in violent campaigns against the Kurds in the north during the Iran–Iraq War, against the Shiites in the south in 1991 and 1999 to put down revolts, and in Dujail after a failed assassination attempt against Saddam on 8 July 1982, during the Iran–Iraq War. Saddam asserted in his defense that he had been unlawfully overthrown, and was still the President of Iraq.

The first trial began before the Iraqi Special Tribunal on 19 October 2005. At this trial Saddam and seven other defendants were tried for crimes against humanity with regard to events that took place after a failed assassination attempt in Dujail in 1982 by members of the Islamic Dawa Party. A second and separate trial began on 21 August 2006, trying Saddam and six co-defendants for genocide during the Anfal military campaign against the Kurds of northern Iraq.

On 5 November 2006, Saddam was sentenced to death by hanging. On 26 December, Saddam's appeal was rejected and the death sentence upheld. No further appeals were taken and Saddam was ordered to be executed within 30 days of that date. The date and place of the execution were secret until the sentence was carried out. Saddam Hussein was executed by hanging on 30 December 2006. With his death, all other charges were dropped.

In view of this, answer the followings:

- a) Why was Saddam Hussein not tried in the International Criminal Court since ICC was created expressly for situations like the one in Iraq to try alleged international accused and dictators like Saddam Hussein.
- b) Discuss the essential provisions of Geneva Convention (IV) relating to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949.
- c) Discuss the element of War Crime under Rome Statute, 1998.

Part: B(Attempt **any three** questions)

- Q.4 The Republic of Pretoria is an island country located in the Pacific Ocean. Presidential elections happened in this country in the year 2010 and Mr. Hatim was declared the winner in this election. Soon after President Hatim seized power, the conflict began in northern Pretoria. The Black Cross Movement, established under the leadership of Mr. Picker, was one of the most prominent rebel groups and came close to attacking Pretoria's capital. In 2015, after the leader of the Black Cross group fled to the neighbouring country Virginia, an island country located north of the Republic of Pretoria, Mr. Joseph Kony formed the Lord's Resistance Force (LRF) from the remnants of the Black Cross Movement. Under Kony's leadership, the LRF eclipsed the other rebel groups operating in the Republic of Pretoria and became one of the most brutal militia forces. The LRF used children as a vital resource, continuously abducting children to join their ranks. The boys were usually forced to fight while the girls were usually turned into sex slaves or forced to marry men in the LRF ("bush wives"). It is estimated that the LRF had abducted approximately 10,000 children and youth into its ranks. (10)

Mr. Sluter was abducted as a child soldier in the year 2016 at the early age of 16 by the LRF, as he was walking to his school. He was sent to the LRF's main military bases where he was trained and subsequently indoctrinated as an LRF fighter. He gradually rose within the ranks and occupied a position of leadership as commander once he turned 18. Continuous violence happened in the north of Pretoria between July 2019 to December 2020. After the Republic of Pretoria self-referred the matter to the International Criminal Court (ICC), the prosecution was initiated. It was found in the investigation that Sluter was involved in crimes such as murder, cruel treatment of civilians, enslavement and pillaging. The crimes were committed on May 10, 2020, at the LRF camp in the Gulu District of Pretoria. It was also found that pharmacies were looted and amphetamines and other drugs were used by the forces for stimulation, reward or relaxation. He was charged with war crimes and crimes against humanity committed after the age of eighteen. The defence claims that the abduction and structures inside the LRF exposed Sluter to a kind of institutionalized duress since he had been brainwashed and forced to live under duress since the age of 16. The matter is now before the Pre-Trial Chamber (PTC) of the ICC and consider yourself as one of the judges of the PTC. The PTC has held that Sluter is liable for the atrocious crimes he has committed and is required to decide his sentencing.

As per your understanding of the given facts, whether Mr. Sluter should be given a strict punishment or can his sentencing be reduced keeping in mind the grounds of excluding criminal responsibility? Support your answer with relevant provisions and case laws.

- Q.5 Indica is a country located in the South-Asian subcontinent. It is surrounded by two seas, namely the Amon Sea from the southeast and the Anduin Sea from the southwest, and by the Indican Ocean at its extreme south. Harad is a city located on the western coast of Indica and it is known as the economic capital of the State. The Stansa, an Indican-flag cruise ship, left the port of Harad on April 20, 2023, for the 15-day cruise of the Anduin Sea. Aboard were 600 passengers and several hundred crews. On April 25, the ship docked at United Eriador Emirates (UEE), a country located west of Anduin Sea, and 520 passengers disembarked to tour the Warner Bros World, Ferrari World and Eriador Desert, intending to reconnect with the ship at Port Delma (Eriador) that night. (5x2= 10)

After the sightseers had gone ashore, four men – who had been posing as passengers - brandishing AK-47 machine guns captured the crew and the remaining passengers and forced the captain to leave the port. They allowed the crew members to continue with their duties. These men were nationals of Rhun, a neighbouring State to Eriador, and were members of a Rhun Liberation Front (RLF) faction headed by Zakir Suliman. After taking the control of the vessel, they demanded that Eriador must release 25 Rhun prisoners. Eriador did not respond and the vessel headed to Dominic, an island nation located on the Anduin Sea. Dominic authorities, at the request of the Indic and Eriador governments, refused to allow the vessel to dock when it arrived the next day.

During that afternoon, the militants shot a passenger, an elderly man confined to a wheelchair, and threw his body overboard. Then they steered the ship to another country, where they were also denied port. Stymied, the militants directed the ship back to Port Delma. They established radio contact with the Eriador authorities and began negotiations. In exchange for releasing the passengers and crew members, they demanded the release of those prisoners, safe passage and immunity from prosecution for themselves. Seeing the urgency of the situation, the Indican government conducted a military operation and successfully rescued all the passengers and crew members from the vessel. Eventually, they were also successful in arresting all the militants alive.

The matter went before the National Court of Indica and the Court, by exercising universal jurisdiction over this situation, held all four men liable for the act of maritime piracy and sentenced each one of them an imprisonment of 6 years. In light of the given situation:

- a) Decide whether the National Court of Indica was right in its decision, and
- b) Discuss the enforcement measures as well as the liability and compensation provisions related to maritime piracy given under UNCLOS.

- Q.6 'Individualization and collective responsibility are not mutually exclusive but interrelated. The focus shifts, depending on the orientation of the response.' Discuss. (10)
- Q.7 Discuss the Stages of Admissibility under the Rome Statute of the International Criminal Court, 1998. (10)
