

**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**

Course: International Criminal Law
Semester- II (Batch: 2023-24)

End Semester Examination: April 2024 (LL M)

Date: 29th April, 2024

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.
- Do not use highlighters and write in third person.
- The facts of the questions are with the fictious names but bear resemblance to actual cases in International criminal law.

Attempt **any five** questions.

Marks

- Q.1 At its inception, the Yugoslavia Tribunal (ICTY), the first International Criminal Tribunal since World War II, declared that plea bargaining was inconsistent with its unique purposes and functions. It is widely used in common law countries that employ the adversarial system; though far less common, there is a trend toward its increasing use (for less serious crimes) in a number of civil law countries also. (10)
- Write your own opinion as to the application of plea bargain at the international level for crimes as heinous as war crimes and genocide, citing suitable examples. Do you think that the process of plea bargaining violates the treaty-based duty to prosecute and issues proportionate sentences for certain international crimes?
- Q.2 Differentiate the following as per practice and International Criminal law: (10)
- a) War Crimes and CAH
 - b) Sovereignty and superior command as an excuse
- Q.3 It is one thing to condemn torture, as we all do. It is another to find a solution to the question that this case raises which occupies the moral high ground but at the same time serves the public interest and is practicable. Condemnation is easy. Finding a solution to the question is much more difficult. (10)
- Lord Hope of Craighead, British House of Lords, 2005
- Discuss aforesaid views by citing suitable case laws as applicable to include or exclude the evidence collected during the trials by means of torture.
- Do you think the Convention Against Torture, 1987 is effective enough to address all issues related to its criticism?
- Q.4 What are the different defenses accepted under International Criminal law? Cite suitable case/s to discuss each of the defenses applicable. (10)
- Q.5 Identify the crimes committed in the following facts given below. Cite suitable provisions of the International Covenants to support your answer: - (5x2=10)

- a) Australia conducted an inquiry by The Inspector-General of the Australian Defence Force (ADF). It was released in 2020. The Inspector-General is an independent statutory office holder, with powers similar to a Royal Commission. This was as a result of rumours that surfaced regarding issues by Australian Special Forces in Afghanistan, in 2016. The Afghanistan Inquiry was subsequently conducted by a judge of the NSW Supreme Court and Army Reserve Officer. The findings of this report were announced in November 2020. Australia's military involvement in Afghanistan began in September 2001 and continued until mid-June 2021, making it the longest engagement by Australia in an armed conflict. This report (i.e. The Brereton Report) states that credible information existed on 23 incidents in which one or more non-combatants were unlawfully killed by or at the direction of Australian Special Forces. There was also credible information of 2 more incidents where a non-combatant was mistreated. The report found credible information that during these alleged incidents, a total of 39 individuals were killed and 2 more individuals were treated cruelly. In total, 25 current or former ADF personnel were identified as alleged perpetrators either as principals or as accessories.
- b) 'Tabooks' are living in distant rural and urban areas of Europe, scattered over all the continent. They have a history of more than 1500 years. Mostly nomadic and dependent on the agriculture, Tabooks have faced decades of discrimination and repression under successive regimes. Effectively denied citizenship under the 1982 Citizenship Law, they are one of the largest Stateless populations in the world, at present. Their history suggests the actions by which they were forced to be a part of present European States. During the time of colonial rules, these people supported European independence and led a front against Britishers.

After many turns of events, they were attacked by the army and people were ruthlessly killed. One allegation being their involvement in increasing crimes in various European States. A small group of Tabooks men attacked several police posts in one State, and nine officers were killed. In response, the military launches a "clearance operation," killing people, raping women, and destroying Tabook villages throughout European States. The violence forces roughly 86,000 people forcing them to flee to other parts of the State/continents. More than 90,000 Tabooks are estimated to have been killed during the violence.

- Q.6 The State of Utia had ratified the Rome Statute of the International Criminal Court (ICC) in 2012. On 1 January 2022, Utia notified the UN Secretary General that it withdrew from the Rome Statute, according to Article 127. (10)

However, on 1 August 2022, the ICC Prosecutor received a letter from the Prime Minister of Utia's neighbour State, Yazen, requesting that the ICC Prosecutor initiate investigations into the said crimes in Utia. Yazen was not a State party to the Rome Statute. It noted that the large number of Utian refugees seeking asylum in Yazen caused huge problems in Yazen. On 1 October 2022, the ICC Prosecutor announced: "I have, upon a preliminary examination of the situation in Utia, decided to open an investigation there, as rapidly as possible."

To this, the Utian Government argued first, that since Utia had withdrawn from the Rome Statute, the ICC did not have jurisdiction over crimes allegedly committed in Utia in the spring of 2022.

Secondly, Utia argued that Yazen, as a non-state party to the Rome Statute, was not entitled to refer a situation to the ICC, and that therefore the ICC Prosecutor could not open an investigation into the situation. The ICC Prosecutor replied that his authority to open an investigation was not affected neither by Utia's withdrawal from the Rome Statute nor by the fact that Yazen was not a party to the Rome Statute.

Now based on the relevant case laws as studied, answer the following questions:

- a) Does Utia's withdrawal from the Rome Statute mean that the ICC does not have jurisdiction over the above-mentioned crimes in Utia?
- b) Does the fact that Yazen is not a party to the Rome Statute mean that the ICC Prosecutor cannot open an investigation into the situation in Utia?

- Q.7 Discuss the role and importance of the international adjudicating bodies, established under the international criminal law. What are the major defences which are accepted at the level of these institutes and do you think that amnesty schemes discourage the very principle of bringing justice to the victims? Elaborate your answer with suitable case laws and provisions of law. (10)
