

JUR5570 - International Criminal Law

Spring 2007

Both questions below must be answered. You are supposed to spend an equal amount of time (three hours) on each of the two questions.

Question 1:

Discuss the possible advantages and disadvantages of prosecuting the crime of genocide in the territorial state.

Question 2:

President Naru Goreng had ruled the state Begonia since 2002. Begonia's population consisted of two ethnic groups; the majorians which counted 75% and the minorians, an intellectual elite which counted the remaining 25%. There were great differences between the two groups regarding religion and culture. By the fall 2006, President Goreng, himself a majorian, began to lose popularity due to increasing unemployment and general dissatisfaction with the President's arrogant style. The next election was scheduled in 2008, and in a strategy meeting, Goreng's political advisor said the President should seek to turn the majorians against the minorians in order to regain popularity. This could be done by broadcasting anti-minorian propaganda in radio and television, the advisor suggested.

The President discussed the idea with his Propaganda Minister, Rudi Manner, who agreed this was probably the only way to win the next election. Manner suggested that in order to make the plan more efficient they should effectively "remove all minorians from Begonian territory". In a radio speech 15 November 2006, Propaganda Minister Manner personally made a speech broadcasted on radio and television. He started by advising all minorians to move to the neighbouring state Petunia, from which this ethnic group originally originated. Here they would be more welcome, he said. As the speech developed, he became more and more agitated and in the end he encouraged majorians to kill all minorians who were still in the territory of Begonia by the end of December.

By the end of December, most minorians had left Begonia, but approximately 10.000 had not left, as they did not believe they would actually be killed. In January 2007, President Goreng sent a sealed order to all military units in Begonia, the soldiers of which were exclusively majorians, ordering that all remaining minorians should be killed as the Propaganda Minister had warned. The President now felt that there was no way back, and as a leader he could not display weakness. One of the generals, Andrew Bito, saw that a sealed envelope arrived at his headquarter, but he did not open it. He explained to a colleague that he had heard the radio speech and feared it might be an order to "do something terrible". When he got home that day, he packed two suitcases and drove to his cabin in the mountains with his half-minorian wife and their two little girls. Two days later, all Begonias military units, including that of General Bito, started to kill minorians. Within two weeks, all 10.000 minorians were killed.

In April 2007, the Chief Prosecutor of the International Criminal Court (ICC) received a complaint regarding the killings in Begonia from the NGO Human Rights Watch (HRW), demanding that the crimes committed in Begonia be prosecuted. According to the organisation, the crimes amounted to crimes against humanity. Both Begonia and Petunia had ratified the Rome Statute in 2000.

a) Will the ICC have jurisdiction over the crimes committed in Begonia?

b) Can the ICC Chief Prosecutor proceed upon the complaint from Human Rights Watch?

c) Can Propaganda Minister Manner be held responsible under the Rome Statute?

d) Can General Bito be held responsible under the Rome Statute?

Ten civilian majorians who lived close to the Begonia-Petunian border had already killed several minorians in Begonia. Then they chased some fleeing minorians into Petunian territory. Here they were arrested by Petunian police before they succeeded in killing the fleeing minorians. Upon a quick regarding the killings Begonia, indictments against all ten for crimes against humanity were investigation issued. If these trials were to be conducted, the ten men would almost certainly be executed as the Petunian legal system was known to be very strict and the judges would probably not give them a fair trial. The ten civilian majorians requested in a complaint to the Chief Prosecutor of the ICC that their cases be prosecuted before the ICC.

e) Would cases against the ten civilian majorians in Petunia be admissible before the ICC?