



INTERNATIONAL
NUREMBERG
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ACADEMY



FRIEDRICH-ALEXANDER
UNIVERSITÄT
ERLANGEN-NÜRNBERG

FACHBEREICH
RECHTSWISSENSCHAFT

Nuremberg Moot Court

Case 2016



Introduction

This is a fictional case before the International Criminal Court (ICC). All participating teams will represent Counsel for the Prosecution (1) and Defence Counsel (2) and must prepare written submissions and pleadings for the Pre-Trial Chamber hearings of the International Criminal Court for both parties, addressing all issues concerning jurisdiction of the Court and merits of the case.

- Memoranda must arrive by **Friday, June 17, 2016, 24:00 Nuremberg-Time**.
- The oral rounds will take place from **Thursday, July 28 to Saturday, July 30, 2016**.

The Prosecutor v. Mr. Sandheaver

Mr Sandheaver was born 1972 in Eureka in the Republic of Astor. He completed the officer's training and served in the armed forces of Astor from 2000. In 2008 he was appointed as General of the 10th Brigade.

In February 2010 a conflict over the boundary between Astor and its neighbouring country Irkania erupted. In the further course of the dispute, both parties raised territorial claims over a group of islands within the territorial waters of both states. In March 2010 in its Resolution 1967 (2010), the UN-Security Council (hereinafter: SC) expressed its great concern regarding the situation between Astor and Irkania as being a threat to peace and security not only in this region. In April 2010 an armed conflict arose between the two countries. As a reaction to reports of atrocities committed by military staff of both sides against civilians, the SC imposed an arms and ammunition embargo against both states.

In January 2011 the government of Astor demanded that all the possible military efforts had to be taken necessary to reconquer zones occupied by the troops of Irkania. As a result the army high command of Astor decided to establish a specialised unit which should attack critical military and civil institutions within the heartland of Irkania. General Sandheaver was appointed for the implementation of the measures envisaged, inter alia for the recruitment process.

Lacking volunteers for the unit, he decided to recruit children under the age of fifteen as ordinary soldiers but dressed as civilian minors.

They were to be trained to commit suicide attacks inside the territory of Irkania with the primary purpose of demoralizing and terrorizing the civilian population of Irkania. The military aim was to put the government of Irkania under imminent pressure to withdraw their troops from the occupied territory.

To facilitate influence over the selected persons, they were kept in isolation and were forced to live under inhumane conditions during their training; they were beaten up and were subjected to waterboarding until they professed their unlimited blind subordination under all the commands to be given. A week before fulfilling their task they were brought into the territory of Irkania and were drugged in order to prevent any insubordination by the recruits. In the course of the attacks more than 1,200 civilians and 400 military personnel died. As a result, the government of Irkania decided to withdraw their military units from the occupied territory in December 2012.

Due to the success of the military operation, in January 2013 General Sandheaver was appointed General of the 18th Brigade and a military offensive started against the mainland of Irkania.

During a total breakdown of communication between General Sandheaver and his troops on 12 November 2013, the soldiers of the 18th Brigade committed massacres on civilians. In particular rape and sexual violence were perpetrated as intended acts of warfare in two towns in Irkania in order to terrorize and humiliate the inhabitants.



Only a few days after the reestablishment of all communication lines General Sandheaver was informed about the atrocities committed on 12 November 2013. General Sandheaver immediately contacted the army high command and sought permission to inform the competent Prosecutor. The army high command rejected the request by pointing out the positive military outcome for the army of Astor and made clear that if a public procedure were to be initiated, General Sandheaver would be degraded to a lower rank and lose the command over the 18th brigade. He acted accordingly and omitted to take any further steps.

In December 2013 the SC set up a peacekeeping mission to prevent further attacks against the civilian population. In January 2014 both parties signed a peace agreement which included the restitution of the occupied zones and granted amnesty to the perpetrators on both sides who had committed atrocities during the armed conflict. Both states are not signatories to of the Rome Statute on the International Criminal Court (ICC). In February 2014, the government of Irkania decided to lodge a declaration to the International Criminal Court in accordance with Article 12 (3) ICC-Statute explicitly accepting the jurisdiction of the ICC over the crimes which took place during the armed conflict on the territory of Irkania. General Sandheaver was arrested during a diplomatic meeting between authorities of Irkania and the Republic of Astor in the capital of Olmaea, Fianar. Olmaea is a signatory to of the Rome Statute. Extradition was requested by the Prosecutor of the International Criminal Court and Irkania. The Republic of Astor claimed the immediate release of General Sandheaver and argued that the arrest was in breach of international law. The Supreme Court of Olmaea decided to give priority to the request of the International Criminal Court and dismissed the claims of the Republic of Astor.

Some days after the declaration on jurisdiction was lodged, the Prosecutor of the International Criminal Court initiated investigations. After intensive and successful efforts by the Office of the Prosecutor (OTP), an arrest warrant was issued against Mr. Sandheaver on 10 February 2016 by the competent Pre-Trial Chamber pursuant to article 58(1) ICC-Statute. The arrest warrant stated that there are reasonable grounds to believe that Mr. Sandheaver is criminally liable under articles 25(3)(a) and (b) and articles 7 and 8 ICC-Statute for ordering the commission of suicide attacks against civilians and recruiting children under the age of fifteen. Furthermore, he is seen as criminally liable under articles 28(a)(ii) and 8 ICC-Statute for committing war crimes by his failure to prosecute his subordinates at that time who allegedly committed the crimes in question.

Defence Counsel argues that the International Criminal Court has no jurisdiction in this case and the arrest warrant issued was unlawful. Reference is made to the diplomatic immunity of General Sandheaver during the diplomatic meeting and the peace agreement which, in paragraph 5, granted amnesty to all alleged perpetrators of both sides. Furthermore, Mr. Sandheaver is not a national of Irkania and therefore cannot be put on trial because of the non-membership of Astor. According to the material prerequisites, the Defence argues that the prerequisites of war crimes and crimes against humanity have not been met in this case because Astor was acting in a case of self-defence to regain the occupied region and as the outcome shows, the military action was proportionate and not excessive to the specific and direct overall military advantage.



It is further submitted that there was no rape or sexual violence at all, as all sexual acts were consented to by the women in Irkania. Moreover, the use of children under the age of fifteen as soldiers is not a crime under the national law of Astor. The prerequisites of war crimes article 8 ICC-Statute have not been met because on 18 November 2013 General Sandheaver informed the competent authorities, as soon as was practicable, about the atrocities committed against the civilian population.

**Established agenda for the
Pre-Trial Chamber's hearing**

- Whether jurisdiction of the International Criminal Court is limited because of the non-membership of the Republic of Astor
- Whether Mr. Sandheaver is criminally liable for certain war crimes and crimes against humanity under the ICC-Statute. The legal assessment is in no way limited to the content of the arrest-warrant but must in any event address the legal evaluation set down in this document.

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