



ASIA-PACIFIC MOOT COURT NATIONAL ROUNDS
2016

PROSECUTOR V. MONA TAMMY
BEFORE THE INTERNATIONAL CRIMINAL COURT AT THE HAGUE

INSTRUCTIONS

1. *The hearing takes place pursuant to Article 61 of the ICC Statute (confirmation of charges). At this stage, the Prosecutor has to “support each charge with sufficient evidence to establish substantial grounds to believe that the person committed the crime charged.”*
2. *The case is entirely fictional. Teams should confine themselves to the facts supplied. Neither the Prosecution nor the Defence may introduce new facts. The Moot Problem includes all the facts supported by the evidence that has been presented before the Court. Facts should not be contested. Teams may nonetheless draw reasonable inferences from the evidence produced. They may also question the credibility or weight of the evidence.*
3. *Teams should set forth legal arguments and not limit themselves to answering yes or no. Submissions will be evaluated on their: (i) organization, structure and analysis of the issues; (ii) the use of facts and legal principles; (iii) clarity, logic and reasoning.*
4. *Teams should not hand anything to judges unless asked to by a judge.*
5. *The problem is not intended to raise questions of procedure before the ICC. Procedural questions should be ignored.*
6. *The problem is not intended to raise questions relating to the jurisdiction of the ICC. The jurisdiction of the ICC should be assumed. Counsel may address issues regarding the admissibility of the case under article 17 of the Statute of the ICC (“Statute”) if relevant.*
7. *Applicable law: In accordance with Article 21 of the ICC Statute, 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.

The Court may apply principles and the rules of law as interpreted in its previous decisions.

8. *In preparing the memorials, the counsel for Prosecution and Defence are expected to establish the following points:*
- *The type (s) of armed conflict or other situation of violence and the law that is applicable to the present case;*
 - *The elements of crimes for each of the three counts against President Tammy that have to be established by the Prosecution for the suspect to be convicted and the burden of proof;*
 - *Applicable law and policy and supporting authorities.*

The Nation of Fodava

- 1 Fodava is a multi-cultural nation with a population of 32 million. It is a parliamentary democracy with three major political parties: the Party for a Brighter Future (PBF), the Starlight Party (SP) and the Freedom Party. The President of the state is also Commander-in-Chief of the armed forces. Fodava consists of 25 municipal districts, the largest two being Osso and Tyra. Major religions in Fodava include the Starlight Path religion (33%) and the Ipso Faith (45%).
- 2 The capital city of Fodava is Osso. Osso is a densely populated city of 4.2 million inhabitants (2011).

The Ipso Faith

- 3 Ipso Faith is an ancient religion that is practiced in the territory of Fodava. The Ipso Faith's ceremonies include the chewing of the Arbola Root, a plant found only locally. The Arbola Root has intoxicating effects which last from 30 minutes to 2 hours. In recent scientific studies, the root has been known to cause mild hallucinogenic effects, including paranoia. The followers of the Ipso Faith believe that the plant was handed down by the Gods, and that its intoxicating effects are a form of ceremonial purification. Although prohibited under the law, its use is tolerated when it is for religious purposes.

Cave Temples of Tyra

- 4 The Cave Temples of Tyra, a UNESCO World Heritage Site, are the oldest landmark in Fodava. The Temples have inspired many tales, literature, art and music in the 1,300 years of their existence and are Fodava's major tourist attraction. They are also an important religious site for the population of Tyra, who are almost exclusively of the Starlight Path religion. The Starlight Path followers are renowned for accomplishing astonishing architectural feats.

Mona Tammy's Election as President and Ensuing Violence

- 5 Since early 2006, the Fodavan economy started to slow down amongst allegations of corruption in the SP-led government. The government had spent millions on building Starlight temples in Fodava, which angered different sections of the society, especially those who suffered from the lack of government investment in infrastructure and in the agricultural sector.
- 6 Tensions started to increase as the economic situation worsened in 2008, leading to the formation of the Party for a Brighter Future in mid-2008, as an alternative to the other two political parties. The PBF succeeded to unite all those of Ipso Faith, but also many of other religions, by making economic recovery and the reduction of temple-

building their main agenda. On 25 May 2010, Mrs. Mona Tammy, then leader of the PBF, was elected President of Fodava. President Tammy was a follower of the Ipso Faith, she was often criticized for using derogatory terms for adherents of other faiths in her public speeches. She had claimed in public that other religions were “uncivilised”.

- 7 Despite controversies surrounding her election, President Tammy advocated radical religious policies. She made it compulsory to chew Arbola Root at every parliamentary meeting. Critics said that she reduced the parliament to “a bunch of drugged-up fools” and was only able to pass controversial legislation in this way. In an attempt to position Ipso followers better than the rest of the population, Tammy’s government began to change laws to curb religious freedom. Apprehension in the population grew rapidly and steadily.
- 8 On 20 November 2010, President Tammy declared the Ipso Faith the religion of the nation. The government stopped all Starlight temple constructions and withdrew funding for the maintenance of existing temples, infuriating Starlight Path adherents and the SP. On 12 May 2011, when responding to increasing international concerns over religious persecution under her rule, President Tammy said in a television interview that “other religions will always be tolerated in Fodava”, but to achieve the “goal of a unified and pure society” it is necessary to “set a good example by making Ipso Faith the religion of the nation”.
- 9 Several opposition groups had been active since Mona Tammy’s rise to power. Flyers using the tagline “Tammy is the Death of us” were handed out by members of the SP to the general public in Tyra and other cities in an intensive campaign throughout December 2010. Most protest groups were led by members of the SP and followers of the Starlight Path, but protesters often included those of other faiths.
- 10 By July 2011, the opposition had formed an armed group called “Warriors of Light” (WOL). WOL mostly consisted of followers of Starlight Path, and was active in areas where Starlight population was dominant. WOL attacked local police stations and some military bases before it started to gain control over some towns. From October 2011 onwards, the WOL have been battling the Fodava military daily. The violent clashes between WOL and Fodavan government forces spread to 13 districts.
- 11 As the conflict escalated, the WOL were joined by clergymen from different religions. Some fought alongside the WOL, others simply offered spiritual support for the fighters. All clergymen bore weapons, considered to be necessary for their own protection in these uncertain times. By August 2012, WOL had gained control over 12 districts, including Tyra.

Destruction of the Cave Temples of Tyra

- 12 On 7 September 2012, Fodavan military forces launched a campaign to regain control over Tyra. WOL and part of the local population fought side by side to defend Tyra. During the battle, President Tammy was interviewed on national radio. Asked about the situation in Tyra, Mona said “the Tyrians will get what’s coming to them! Our forces will lay waste to their city and hit them where it hurts...”. Uproar ensued after these comments and the violence from both sides intensified in Tyra.
- 13 On 9 September, the regional commander General Dan Rambeck reported to President Tammy that according to air surveillance, many WOL fighters carrying high-grade military rifles and arsenals of grenades were going in and out of the Cave Temples of Tyra. The Cave Temples were functioning normally for Starlight religious

activities. On 10 September, scouts sent by Fodavan military were spotted and killed near the Cave Temples. Aerial surveillance of the Cave Temples in subsequent days showed the same frequent passage of armed persons in and out of the Temples.

- 14 On 12 September, faced with the grueling battle with WOL and local resistance, Tammy convened an emergency meeting, with General Rambeck, one legal advisor and one religious advisor present. To begin the meeting, President Tammy and all the other participants said Ipso prayers and chewed the ceremonial Arbola Root. During the meeting, Rambeck warned that the armed resistance motivated by the Starlight faith would be enduring and violent. The religious advisor responded that the Cave Temples were the centre of the Starlight Faith and spiritual pillar of Starlight believers. The legal advisor asked if there were armed WOL fighters or weapons hiding in the Cave Temples. Rambeck responded: "Our intelligence personnel had been killed trying to find out what's going on in the Temples. The WOL and locals must be hiding something. They are probably counting on us not attacking their precious Temples." General Rambeck suggested to "uproot the Starlight fighters" by launching an attack on the Cave Temples of Tyra. President Tammy agreed and signed an order drafted by General Rambeck.
- 15 On the early morning of 13 September 2012, General Rambeck instructed his forces to attack the Cave Temples of Tyra. WOL fighters counter-fired from the vicinity of the Cave Temples but were soon suppressed. Within a few hours, the Cave Temples were completely destroyed. The international community was shocked by the destruction of the Cave Temples and called for thorough investigation. The disheartening news created a pessimistic atmosphere among the locals and WOL. As the WOL armed resistance was losing momentum, the Fodavan forces managed to take over Tyra on 18 September 2012.

Bombings in Osso's suburban areas

- 16 In Osso, WOL were known to hide among the population and launch surprise attacks against Fodavan forces. The WOL were especially active in suburban areas where Starlight followers resided. The WOL surprise attacks had caused increasing casualties of government soldiers. From 15 August to 15 September, the Fodavan Air Force bombed five suburban buildings which they suspected to be WOL bases. On 20 September, the local Fodavan commander Colonel Peter Tomass received intelligence from field agents that a building in a Starlight residential community called Rose Garden was being used by WOL for hostile activities. The Rose Garden building is situated in a highly populated area, squeezed between residential multi-storey buildings and a power station. The power plant, built in the 1980s, was the only source of electricity for the local area.
- 17 President Tammy stated on national television on 18 August: "There is no mercy for any Warriors of Light fighters. They are simply terrorists." She added that Fodavan military had been authorized to "attack any person, group or building that is found to support the Warriors of Light in any way".
- 18 On the night of 22 September, an informer told Colonel Tomass that the WOL was planning to launch an attack from the suspected WOL building in Rose Garden shortly. Earlier that day, there was surveillance report that materials for homemade bombs were moved into the building. On the morning of 23 September, Tomass ordered an airstrike against the suspected WOL building. A warning bomb was first dropped on the roof of the building. Ten minutes later, the Fodavan air forces dropped more bombs.

- 19 The suspected WOL building was completely destroyed. Several other buildings in Rose Garden and the nearby power plant were severely damaged by the wave and shrapnel during the strike. The power plant could no longer generate electricity unless the machineries were replaced and the premise rebuilt. Local communities had a complete power cut, with essential services such as the Starlight Hospital only receiving unstable power from their own generators. A surviving Starlight resident in the neighbourhood told BBC: "I heard a very loud explosion and tried to gather my family to run out of the house. But before we were able to escape, there came two more explosions. All the glass windows of my house were shattered, my daughter was hit by a heavy debris from a nearby building and still in critical condition in the Starlight Hospital. My wife and two sons were also injured by the fallen plaster." The airstrikes made international headline and further contributed to the negative image of the Tammy government. The SP leader said the airstrikes were to "punish and terrorise Starlight followers in the area". On 24 September, President Tammy made a statement on TV about the "regrettable loss of civilian life in the fight against terrorism". She added: "To achieve peace, war is inevitable, so is loss of life."
- 20 According to the report of a respected international organisation dated 30 September 2012, the airstrikes from mid-August to 20 September resulted in 150 deaths and more than 300 injuries among Starlight civilians. Most of the injured were admitted to the Starlight Hospital, including WOL fighters and civilians.

Taking Medical Personnel from Starlight Hospital

- 21 All medical personnel in the Starlight Hospital were followers of the Starlight Path. WOL leaders had requested Starlight Hospital not to receive wounded or sick Fodavan soldiers. Some doctors from the Starlight Hospital had publicly declared chewing Arbola Roots a "health hazard". In fact, many doctors and nurses in Starlight Hospital had been reluctant to treat people of Ipso Faith and often refused to do so.
- 22 On the morning of 24 September, the Fodavan military forces conducted an evacuation in the Starlight Hospital. 70 out of 100 doctors and nurses were brought to Fodava military bases, those left behind were mostly young and inexperienced. Colonel Thomass claimed that the Fodavan forces did not have enough medical personnel to attend to their wounded and sick soldiers in the battlefield. He urged Starlight Path doctors and nurses to treat everyone equally.
- 23 Because of the lack of power and medical staff in the Starlight Hospital, the emergency service of the hospital was shut down. The local population was in effect left without medical services, as very few could travel to or be transported and admitted at the city center hospitals. Furthermore, if they did they risked being arrested as WOL supporters or fighters. Many civilians and WOL fighters died of war injuries and lack of medical attention.
- 24 As the battle in suburban Osso died down, all 70 Starlight Hospital personnel returned home unharmed on 25 October 2012. Colonel Thomass told the press: "We thank the doctors and nurses for their invaluable services. They saved many lives. We should work together, people of all religions, for humanity."

End of Hostilities

- 25 The international community condemned President Tammy and the government of Fodava over the "despicable acts of war" during their fight against WOL. In December 2012, Tammy was ousted in a *coup d'état*, subsequently fleeing the country along with

Dan Rambeck and Peter Tomass. Victims of the conflict in Fodava requested proper investigation and those responsible be punished.

26 On 1 May 2013, Fodava referred the situation in its territory from August to October 2012 to the International Criminal Court (ICC). After investigation, upon application by the Prosecutor, the Court issued a warrant of arrest for President Tammy. On 20 February 2014, as a result of several months of investigations and an international manhunt, Tammy was finally arrested and surrendered to the ICC.

27 The Pre-trial Chamber I of the ICC is going to decide whether to confirm the following three charges put forward by the Prosecutor against Mona Tammy:

Charges

Mrs. MONA TAMMY is charged with:

Count One – With respect to the attack on the Cave Temples of Tyra on 13 September 2012,

on the basis of individual criminal responsibility for committing, whether as an individual, jointly with another or through another person (Article 25 (3)(a)):

- the war crime of 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 under article 8(2)(e)(iv).

Count Two – With respect to the series of bombings on Osso's suburbs in August and September 2012, including the airstrike on the morning of 23 September 2012,

on the basis of individual criminal responsibility for ordering, soliciting or inducing (Article 25 (3)(b)):

- the war crime of intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities under article 8(2)(e)(i).

Count Three – With respect to the transfer of medical personnel from Starlight Hospital from 24 September to 25 October 2012,

on the basis of command responsibility (Article 28 (a)):

- the war crime of violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture 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 under article 8(2)(c)(i).

Fodava was a party to the following treaties at the relevant time:

- 1949 Geneva Conventions
- 1977 Additional Protocols I and II, to the Geneva Conventions of 12 August 1949
- Rome Statute of the International Criminal Court
- World Heritage Convention (1972)
- Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954)
- The Second Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict (1999)