



THE INTERNATIONAL CRIMINAL COURT

The International High School Moot Court Program at The Hague

The Justice Resource Center (JRC), Inc., in partnership with the International Debate Education Association (IDEA), in conjunction with the International Bar Association (IBA-England), has developed the first International high school Moot Court competition. The International Moot Court is an outgrowth of the nationally acclaimed, MENTOR: law firm/school partnership program. MENTOR, which was created in the 1980's by lawyers, pairs major law firms with New York City public high school students. The lawyers--partners and associates--help the students prepare for an appellate argument. Countless hours are spent analyzing and dissecting judicial opinions, strategizing and honing oral advocacy skills. The MENTOR Moot Court is held in such high esteem, the Second Circuit Court of Appeals judges preside over the final round. The International Moot Court is the next step. This competition will afford high school students an exceptional opportunity to argue at The Hague, to develop an in-depth knowledge of the International Criminal Court, to gain a heightened respect for international law and an opportunity to exchange ideas with students from other countries.

Justice Resource Center (JRC)

www.jrcnyc.org

International Debate Education Association (IDEA)

www.idebate.org

The International Bar Association (IBA):

www.ibanet.org

Program Components:

During the Summer 2008, up to eight will be invited to present their oral arguments at The Hague. The cities were selected because New York law firms that have been involved with MENTOR for many years have satellite offices in those countries. If you are interested in having your city participate in this program, contact Debra Lesser (deblesser@aol.com).

It is anticipated in future years, to have a thriving league with local and national Moot Court competitions, leading to greater participation at the international level.

"Child Soldiers" is the topic for this first competition, a timely and compelling issue. The problem, written by the International Bar Association, will be released in December 2007. This should afford students and their coaches ample time to prepare for what will be an educational experience that is second to none. Students will prepare their arguments based upon the Rules of Procedure and Evidence adopted by The Assembly of States Parties for the International Criminal Court.

Sponsorship:

The Justice Resource Center, Inc. a 501©3charitable organization will spearhead the fundraising efforts for this project. Corporations and law firms will be solicited for financial support, in various forms, including, "naming rights" to sponsoring a student from a country to compete in the International Moot Court.

For further information, please contact Debra Lesser, Executive Director, Justice Resource Center deblesser@aol.com or telephone 1-212-580-5905.

Introduction to the International Criminal Court

By Mark Ellis*

The following essay is part of the book *International Moot Court: An Introduction* by the International Bar Association. The book will be published in 2008 by Idebate Press.

Using a sample case entitled “The International Criminal Court: A Moot Court Exercise for Students”, the book includes an introduction to moot court, courtroom decorum, researching the issues, body of argument, how to listen to your opponent, handling questions, dealing with judges and justices, the successes and rewards of competition and collateral issues.

The Creation of the ICC

The concept of justice manifests itself in several ways—fairness and integrity, forgiveness and healing, retribution and punishment—and is the single most important element of a successful legal system. Justice is at the heart of the International Criminal Court (ICC). Among the international community, the creation of a permanent international criminal court was a long standing – and long elusive – goal. Dating back to World War I, experts debated ways to establish such a court. It was not until 1947, when the United Nations (UN) was prosecuting Axis war criminals for the atrocities they committed, that the UN genuinely acknowledged the need for a permanent international criminal court.¹ In conjunction with its adoption of the Convention on the Prevention and Punishment of the Crime of Genocide, the UN General Assembly invited the International Law Commission (ILC) to codify the principles of international law that emerged from the Nuremberg and Tokyo Tribunals. Throughout the next decade, the ILC drafted two statutes. Still, the political atmosphere of the Cold War made the idea of an international permanent court impractical.

Nearly half a century later, in 1989, Prime Minister Arthur Napoleon Raymond Robinson of the Republic of Trinidad and Tobago—principally motivated to combat drug trafficking—reintroduced the idea of an international criminal court to the UN General Assembly. Accordingly, the ILC resumed work on a draft statute. At the same time, the UN Security Council formed two ad hoc tribunals—the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR)—to prosecute war crimes committed after 1991 on the territory of the former Yugoslavia and for genocide committed in Rwanda in 1994. While these two tribunals revived a spirit of international justice that had been dormant since the days after World War II, they were temporary and had limited jurisdiction. The need for a permanent international court was clear.

The ILC submitted a comprehensive draft statute of the International Criminal Court (ICC) to the UN General Assembly in 1994. The Preparatory Committee on the Establishment of an International Criminal Court then held a series of conferences at which UN member states and non-governmental organizations (NGOs) convened to develop the text of the Statute. Following negotiations, the UN General Assembly met to finalize the Statute. The Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court was conducted in Rome, Italy in June 1998. The Conference lasted five weeks, with the final vote taken July 17, 1998; 120 states voted in favour of the Rome Statute. The Treaty came into force on July 1, 2002; as of late 2007, 105 countries have ratified the Rome Statute. Although support for the ICC was overwhelming, several key states, notably the United States, opposed or abstained.

Still, the establishment of the ICC represents a monumental advance in international criminal law. The ICC is the missing link in the scheme of international justice. In a world that is becoming more global, the Court, if successful, will become the mainstay of the international criminal justice system.



The ICC v. The ICJ

The International Criminal Court is often confused with the International Court of Justice (ICJ). Both institutions are permanent courts and have their headquarters in The Hague. However, their similarities end there. The ICJ was established by the United Nations Charter in 1945 as the official judicial organ of the United Nations.² It is a civil tribunal with jurisdiction to settle legal disputes between states; it is not a criminal court and does not have jurisdiction to hear cases against individuals. Nor can the ICJ initiate a case by its own motion. However, the ICJ can issue non-binding advisory opinions. These are influential statements that help UN agencies decide complex issues on legal matters referred to it by the UN.

Conversely, the ICC is an international organization that arose from a multilateral treaty, the Rome Statute, in 2002. The ICC is not a civil tribunal; it is a criminal court that currently hears disputes against individuals for war crimes, crimes against humanity and genocide. Although the ICC is technically independent, it does work closely with the UN. This liaison is governed by a Relationship Agreement that establishes a framework for cooperation between both institutions. Additionally, Article 13 of the Rome Statute allows the Security Council to refer “cases” to the Court that do not fall under its jurisdiction. Furthermore, Article 16 allows the Security Council to require the Court to defer from investigating a “case” under certain circumstances.

The ICC's Structure and Officials

The ICC is comprised of four sectors: (1) the Judicial Division, (2) the Presidency, (3) the Office of the Prosecutor and Deputy Prosecutors, and (4) the Office of the Registrar.

Eighteen judges serve on the Court, although Article 36 of the Rome Statute gives the President the option to increase this number if considered necessary and appropriate. Judges are elected for terms of three, six or nine years to serve in the Appeals, Pre-Trial and Trial Divisions. Judges holding office for a nine-year term generally may not be re-elected, while judges holding three-year terms may serve two terms.

The Presidency is the administrative center for the entire Court (with the exception of the Office of the Prosecutor), and includes the President, First Vice-President and Second Vice-President who are each elected by an absolute majority of the Court for a three-year renewable term. The

first Presidency was elected in March 2006, and is comprised of Judge Philippe Kirsch of Canada as President, Judge Akua Kuenyehia of Ghana as First Vice-President, and Judge René Blattmann of Bolivia as Second Vice-President.

The Office of the Prosecutor (OTP) is the only Court sector that acts independently of the others. However, the Prosecutor, who has full authority over the OTP, including staff, facilities and resources, is similarly elected by the Assembly of State Parties. The current Prosecutor, Luis Moreno-Campo of Argentina, was elected in June 2003 for a term of nine years and is assisted by the Deputy Prosecutor, Fatou Bensouda of Gambia, who was elected in September 2004.

The Office of the Prosecutor comprises three divisions: (1) Investigation Division, (2) Prosecution Division, and (3) the Jurisdiction, Complementarity and Cooperation Division. Generally, the OTP is responsible for conducting investigations and prosecuting crimes that fall within the jurisdiction of the Court. Furthermore, the Prosecutor may only open an investigation in three circumstances: (1) when a “case” is referred by a State Party; (2) when a “case” is referred by the UN Security Council acting to address a threat to international peace and security; and (3) when the Pre-Trial Chamber authorizes an investigation of crimes within the jurisdiction of the Court based on information provided by other sources, such as non-governmental organizations or individuals.

The Office of the Registrar is the Court body principally responsible for clerical functions. This includes: management of all cases before the Court, maintenance of all Court records, financial management, security of ICC buildings, and organization and supervision of the Victims and Witnesses Unit. The Registrar also acts as the channel of communication between the Court, the United Nations, Assembly of State Parties, other government organizations, and the public. The Registrar is elected for a five year term, and eligible for re-election once. The first Registrar was Bruno Cathala of France, who was elected in June 2003. Pending the election of a Registrar, the position is temporarily performed by the Director of Common Services.

The ICC's Jurisdiction

The ICC may hear only the gravest crimes affecting the international community. The Court has jurisdiction over the following criminal acts: the crime of genocide, crimes against humanity, war crimes and the crime of aggression. While the Rome Statute defines the first three, it does not define “aggression.” Until the State Parties adopt an agreement clarifying what “aggression” is and the conditions under which it may be prosecuted, the Court may not exercise jurisdiction over the crime of aggression. Additionally, while several State Parties proposed that crimes of terrorism and drug trafficking be included in the Court’s jurisdiction, their lobbying was unsuccessful. However, the Rome Statute provides that the list of crimes may be amended at a Review Conference seven years after the Rome Statute entered into legal force; this Conference is expected to take place in 2009.

The Rome Statute further restrains the Court from acting retroactively. Thus, the ICC has jurisdiction only over crimes committed after July 1, 2002 when the Rome Statute entered legal force. As for nations who became State Parties to the Rome Statute after its entry into legal force, the Court may only exercise its jurisdiction with respect to crimes committed after the date the nation joined, unless the state has made a declaration under Article 12, paragraph 3 of the Statute.

Another limitation on the Court’s jurisdiction is that it does not have universal jurisdiction over the enumerated crimes. The Rome Statute mandates that the Court can only exercise jurisdiction in three situations: (1) where the accused person is a national of a State Party; (2) where the crime was committed on the territory of a State Party; and (3) in either of those two situations if a State is not a Party to the Rome Statute, but has accepted the Court’s jurisdiction.

However, recall that the Court has jurisdiction when a “case” is referred to it by the UN Security Council because of a conflict threatening international peace and security, as in the case of Sudan. Sudan is not a State Party to the Rome Statute. However, the prevailing conditions prompted the

Security Council to refer the “case” to the ICC Prosecutor for further investigation.

The last constraint on the Court’s jurisdiction stems from the concept of complementarity, which can be viewed as a procedural and substantive safeguard for the sovereign rights of nations. The ICC does not aim to replace national courts as the arbiter of these crimes. The Rome Statute instead asserts that the Court will establish a complementary relationship between itself and national courts. In order to properly function, the ICC relies on cooperation from State Parties. This leaves the primary responsibility for prosecution to the states, allowing the ICC to take jurisdiction when national courts are unwilling or unable to prosecute.

This scheme requires State Parties to fortify national courts’ powers and abilities to prosecute international crimes, thus strengthening their status in the international law arena. Moreover, countries that ratify the Rome Statute must adopt complementary domestic legislation to ensure cooperation with the ICC. This legislation must enable national courts to prosecute crimes of genocide, war crimes and crimes against humanity.

Victims’ Rights and Protections Under the ICC

Prior to the establishment of the ICC, international courts focused primarily on punishing perpetrators; victims were a secondary concern.³ However, the Rome Statute explicitly authorized a Victims Trust Fund and a Victim Participation and Compensation Unit which allows victims to participate in court proceedings and claim compensation. For the first time, an international court struck a fair balance between retributive and restorative justice—providing victims the opportunity to speak out against their suffering, while granting them appropriate redress.

The Victims Trust Fund was included in the Rome Statute to provide victims with reparations. The Fund is supported by State Parties’ contributions to the ICC, other non-member states, international organizations, foundations, corporations, individuals and convicted perpetrators. Reparations come in many forms—direct compensation, restitution, indemnification, rehabilitation, public apology, commemoration and memorial—in order to help survivors heal physically, emotionally and materially. Reparations may be paid to a collective or to individuals; the Victims Trust Fund works with the victims to develop the proper repairation scheme. Moreover, the Victims Trust Fund oper-



ates at the local, national and international levels to involve victims at all stages of the trial.

The Victim Participation and Compensation Unit is a revolutionary provision which gives victims the right to appear in Court to present their views and observations relating to the crimes. Victims are permitted to file submissions on all matters relating to the competence of the Court and the admissibility of a case at the pre-trial, trial and appeal stages. They may choose their own legal representative and may request financial assistance from the Court to cover these expenses. The Court is also obligated to ensure that victims have appropriate security, medical care and counselling at all stages of the trial.

The IBA and the ICC

The International Bar Association (IBA) has been a staunch and long-time supporter of the ICC. In 1995, the IBA's Council passed a Resolution calling for unconditional support for the ICC; it has always viewed the Court as a cornerstone in the network of international and national courts that defend international law and protect victims of the world's gravest atrocities.

The IBA has assisted with development of the Court by identifying suitable candidates for the position of ICC Prosecutor; leading the effort to draft a Code of Professional Conduct for Counsel before the ICC; and convening meetings with the Prosecutor, Registrar and IBA leaders.

In 2005, the IBA Human Rights Institute began a new ICC Monitoring and Outreach Programme. The IBA monitors the work and proceedings of the Court on issues affecting fair trial rights of the accused. The IBA also monitors significant developments in international criminal law and human rights law which result from the Court's rulings.

The IBA's ICC Outreach Programme aims to deepen understanding of the Court's place in international law. The IBA works with bar associations throughout the world to support the ratification of the Rome Statute, and the ICC is a regular feature at the IBA's annual conferences and special seminars. In 2007, the IBA Council passed its latest Resolution in support of the ICC. The Resolution calls for states that have not already ratified the Rome Statute to do so, and appeals to states that have ratified the Rome Statute to develop appropriate legislation enabling them to respond to a Court request. The Resolution also recommends that IBA member organizations (law associations and law societies)

facilitate debate among their constituencies on how to support and advance the goals of the ICC.

The ICC and the Future for International Justice

The goals of the International Criminal Court are to end impunity, help prevent the gravest international crimes, and promote and guarantee respect for the enforcement of international justice.⁴ For the first time in history, individuals accused of egregious international crimes are being prosecuted by a permanent international criminal court, something that only ad hoc tribunals could accomplish previously. The ICC is the first permanent international court to prosecute individuals, including Heads of State, for war crimes, crimes against humanity and genocide. Too often in the past these individuals escaped justice.

The establishment of the ICC is a significant step in the universal human rights movement, and an impressive achievement for international justice. It is hoped that the ICC will contribute also to the prevention of conflicts, so many of which historically have arisen over a sense of injustice. The ICC will raise global awareness of serious international crimes, secure a historical record, and ensure that perpetrators are brought to justice. Ultimately, the Court's success will be measured in terms of its power to combat impunity.

*Mark Ellis is the Executive Director of the International Bar Association, London. He would like to acknowledge Brittany Banta for her superb assistance in researching and drafting this introduction.

Endnotes:

1. <http://www.un.org/law/icc/general/overview.htm>.
2. U.N. Charter art. 92 ("The International Court of Justice shall be the principal judicial organ of the United Nations. It shall function in accordance with the annexed Statute, which is based upon the Statute of the Permanent Court of International Justice and forms an integral part of the present Charter.")
3. See Richard Dicker & Elise Keppler, Beyond the Hague: The Challenges of International Justice, Human Rights Watch, Jan. 2004; available at <http://hrw.org/wr2k4/10.htm>.
4. ICC Stat., pmb., July 17, 1998, 2187 U.N.T.S. 90.



THE INTERNATIONAL CRIMINAL COURT

A MOOT COURT EXERCISE FOR STUDENTS

FELIPE TORRES v THE PROSECUTOR

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About the International Bar Association - the global voice of the legal profession

The International Bar Association (IBA), established in 1947, is the world's leading organisation of international legal practitioners, bar associations and law societies. The IBA influences the development of international law reform and shapes the future of the legal profession throughout the world. It has a membership of 30,000 individual lawyers and more than 195 Bar Associations and Law Societies spanning all continents.

Contact information:
International Bar Association
tel: +44 (0)20 7691 6868
fax: +44 (0)20 7691 6544
website: www.ibanet.org

Introduction

This exercise is intended to introduce you to the work of the International Criminal Court (ICC).

In this exercise, you are given an ICC judgement involving events which happened during a civil war in a fictional country, Malenga. During the war, a large number of war crimes were committed which were so serious that the International Criminal Court in The Hague wants to put people on trial for them. The ICC has responsibility for dealing with the very serious crimes of genocide, crimes against humanity and war crimes; you can find descriptions of these crimes on page 42, below (Extracts from the Rome Statute, articles 5 and 8).

The young man whose trial concerns you in this exercise is called Felipe Torres. He was the defendant (person accused of crimes) in a trial at the ICC in the first part of 2007. The accusations against him were made by the Prosecutor and his team of lawyers. The trial was conducted by a Trial Chamber of 3 judges. At the end of his trial, the Trial Chamber convicted him (found him to be guilty) of a number of war crimes.

He now wishes to appeal to the Court of Appeal. This is a court of five judges which has the power to decide that the Trial Chamber was wrong in its decision. Felipe Torres is asking them to overturn the decision of the Trial Chamber.

You will be conducting a part of his appeal. You will need people to act the following roles:

- the Appeal Court Judges - five;
- Mr Torres's defence lawyers – at least two, but can be a team of up to six;
- the Prosecutor and his lawyers – at least two, but can be a team of up to six;
- two witnesses;
- the registrar

The judges, the defence lawyers and the prosecution lawyers will each need to choose one of themselves as their leader.

The leader of the judges is the Presiding Judge. He has control of the court, and takes the main speaking role for the judges.

The leader of the prosecution lawyers is the Prosecutor. The leader of the defence lawyers is Lead Counsel for the Defence. These two leaders must be in charge of their teams, must answer questions from the judges when they are asked and must decide which lawyers on their teams will present each argument or question each witness.

The prosecution and defence teams each work together to prepare the arguments for the hearing. It is best to have only one member of each team speaking at each stage; whether it is questioning of the witness or presenting an argument. The other members of the team help prepare the arguments before the hearing, as well as following the argument and making suggestions to answer questions in the hearing.

You can also choose someone to act as the defendant Felipe Torres, but you should note that he will not be saying anything in court during his appeal. His lawyers will say anything that needs to be said on his behalf.

Preparation in Teams

When all the roles have been decided, the teams of lawyers for the defence and prosecution will each need to decide their tactics. They should discuss what they are trying to achieve, what arguments will be the most effective, and decide who should present each argument and question each witness. There are at least four different roles which need to be played: questioning witness 1; questioning witness 2; presenting argument 1; and presenting argument 2.

The judges can also discuss among themselves what the likely arguments for both sides will be, what questions they may have for the lawyers, and what is likely to influence them in coming to a decision. But they should be careful not to come to any decisions at this stage before they have heard the arguments and the evidence.

For the purposes of these discussions, you may want the people you have chosen to play the defendant and the two witnesses to join the team of defence lawyers. The registrar can join the judges.

The Court Hearing

The Judges will sit at the front of your courtroom. The defence lawyers will sit on their right, and the prosecution lawyers on their left. The defendant will sit behind his lawyers.

Although the participants are playing the part of international judges or lawyers, there is no need for them put on voices or accents. Also the people play-

ing the part of witnesses should keep to the information provided in the statement of those witnesses; they should not start telling a story different from the one in the statement, or make up information which they have not been given.

The hearing will take place as follows:

The Presiding Judge will declare the proceedings open in the appeal of Felipe Torres against the Prosecutor. He will ask the Prosecutor to introduce his team of lawyers. The prosecutor will name himself and the lawyers on his team. The Presiding Judge will then ask Lead Counsel for the Defence to introduce his team of lawyers.

The lawyers in the court will all call the judges “Your Honour” or “Your Honours” at all times. They must remember that all the things they say must be addressed to the judges, and not to each other or to the lawyers on the other side.

The opening stage may sound like this:

Registrar: “I declare this session of the International Criminal Court open. The first case listed today is the Prosecutor against Fillipe Torres. Judge Green presiding.”

Presiding Judge: “This is an appeal hearing in the case of Fillipe Torres. Both parties have prepared written submissions to the court. I call upon the Prosecutor to introduce his team.”

Lead Prosecutor: “Your Honours, I am Victor Black. I am the lead counsel for the prosecution. I am assisted by the following lawyers [...]”

Lead defence counsel: “Your Honours, I am Maria White. I am the lead counsel for the defence. I am assisted by the following lawyers [...]”

Presiding Judge: “Thank you. I understand this is an appeal by the Defendant. I therefore invite the defence to begin and to present their first argument.”

The Presiding Judge is responsible for maintaining order in the court. He should make sure that only one person is speaking at a time, and that the person speaking is not interrupted by the other side. He should also make sure that the lawyers do not speak for too long, or repeat the same arguments, thereby wasting time.

The First Argument

The Presiding Judge will then ask the defence to proceed with their first argument. This is the argument that the Trial Chamber was wrong to find that the defendant was present at the diamond mine on the night of the 26th December.

A defence lawyer will tell the Judge very briefly what the first argument is. He will say that he wants to call 2 new witnesses. The Presiding Judge will ask the Prosecutor if he has any objection. The Prosecutor will say no. The Presiding Judge will then give the defence permission to call the witnesses.

Witness 1

A defence lawyer will call the first witness, Goncalves Torres. The registrar will bring the witness into the court: He will sit opposite the judges. The registrar will ask him to repeat after him:

“I solemnly declare that I will speak the truth, the whole truth, and nothing but the truth.”

A defence lawyer will then stand up and ask the witness questions. He would normally start by asking his name and age, and where he lives. He may then ask whether and how the witness knows the defendant. Then he will ask the witness questions which will allow the witness to tell the court what the defence wants the court to hear – in this case, that Felipe Torres was with the witness on the night of 26th December 2005. These questions, asked of the party’s own witness, are called examination-in-chief. When asking these questions, the lawyer is not allowed to suggest answers to the witness (known as “leading”). The witness must give their own evidence in their own words.

When the defence lawyer has finished, he will say to the Presiding Judge that he has no further questions. The Presiding Judge will then ask the prosecution whether they have any questions. A prosecuting lawyer will stand up and will ask the witness some questions. He will be trying to show that the witness cannot be sure of what he has said to the defence. He may try to show that the witness is lying. These questions, asked of the other party’s witness, are called cross-examination. When asking these questions, the lawyer is allowed to suggest answers to the witness. Getting angry or harassing a witness is not allowed, and the Presiding Judge must intervene to stop this happening where necessary.

When the prosecution lawyer has finished, he will say to the Presiding Judge that he has no more questions. The Presid-

ing Judge will ask the defence if there is anything else they want to ask. The defence may have no further questions, or they may wish to ask another question or two to clear up any uncertainties in the answers the witness gave to the prosecution. The defence should not start a new line of questioning or repeat questions they have already asked.

If the defence has no more questions, the Presiding Judge may have some questions for the witness. Any of the other judges may also ask a question if the Presiding Judge allows them to. The judges do not have to ask any questions at all, but they may wish to clear up any points they think the defence and prosecution has left out.

The Presiding Judge should remember throughout this procedure that he is in charge. If he thinks that the lawyers are taking too long or repeating themselves he can tell them to hurry up. If he thinks they are bullying the witness he can tell them to stop.

After the witness has finished being questioned, the Presiding Judge will thank him for coming and tell him he may now leave the court.

Witness 2

The same procedure is then followed with the second witness, Lieutenant Colonne.

Legal Argument

After the witnesses have given evidence the court will hear the first legal argument.

The Presiding Judge will ask the defence to present their argument. This is the argument that the Trial Chamber was wrong to find that the defendant was present at the diamond mine on the night of the 26th December. If the defence can persuade the judges that the defendant's alibi (statement that he was somewhere else at the time that the crimes was committed) casts doubt on the prosecution case, the judges will have to find that he is not guilty of the crimes which were committed on that night. The new evidence which the Appeals Chamber has just heard will be very useful in making this argument.

When the defence lawyer has finished presenting the argument, a prosecution lawyer will present the prosecution arguments on the same issue. It may be useful to decide in advance that each side has a certain amount of time – e.g. 10 minutes – to present their argument. If either side continues

for too long the Presiding Judge may ask them to hurry up.

After these presentations the Presiding Judge may have some questions for the lawyers about their arguments. Any of the other judges may also ask a question if the Presiding Judge allows them to.

No decision is made by the judges at this stage – they will make all their decisions at the end of the hearing.

The Second Argument

The Presiding Judge will then ask the defence to present their second argument. This is the argument that the sentence which the Trial Chamber passed of 25 years was too long. The argument will proceed in the same way as the first argument.

Argument 2 is only relevant if Argument 1 has failed; if Argument 1 is won by the Defence, there would be no need to consider the appropriate sentence, as Filipe Torres would have been found not guilty. However, the judges will not consider their judgement until after both arguments have been heard. So it is necessary for the lawyers to present both arguments in full; and to assume that Argument 1 is not successful for the Defence.

After the arguments have been heard, the Presiding Judge will tell the court that the session is closed and the judges will now retire to consider their judgement.

The Judges' Decision

The judges will then discuss among themselves what decision they will reach on Arguments 1 and 2. They must decide with regard to each argument whether they think that the defence should win or not.

Argument 1

- If they decide the defence should win, they will find the defendant NOT GUILTY of war crimes on Counts 1 and 2.
- If they decide that the defendant should not win, they should confirm the decision of the Trial Chamber in finding him GUILTY of counts 1 and 2.

Argument 2

- if they decide the defence should win, they should reduce the sentence of 25 years. They must decide on an appropriate lower sentence.
- if they decide the defence should not win and the sentence of the Trial Chamber was correct, they should confirm the decision of the Trial Chamber in sentencing the defendant to 25 years' imprisonment.

Please note that the arguments are independent of each other: the defendant can lose Argument 1 and win Argument 2, or vice versa.

If the judges cannot agree they should take a vote. The decision of the majority should prevail.

The judges will then return to court and read out their judgement. If any judge disagrees with the judgement of the majority, he may briefly tell the court why.

The Presiding Judge then closes the session.

The Competition

The Moot Court is a competition. The assessors of the competition will have to decide which team wins. This is not based upon who wins the argument with the judges.

The assessors will be looking for:

- Good structure to questions and submissions
- Clarity in argument
- Quick thinking in response to arguments from the opposition
- Clear understanding of the issues when answering questions from judges
- Good use of language
- Clear and confident speech

Remember, a team may lose the judges decision on the facts and law, but win the competition.

At the end of the Moot Court the assessors will summarise what they liked and didn't like about each teams performance. They will then announce the winner.

DO

Judges:

- keep order in the courtroom
- listen carefully to what the witnesses are saying
- ask questions of the witnesses only once the prosecution and defence have finished their questions

Prosecutors:

- speak slowly and clearly
- give your questions or speech a structure which can be followed by you
- write down your questions for witnesses

Defence Counsel:

- speak slowly and clearly
- concentrate on your best points
- remember that time will probably go more quickly than you plan for

Witnesses:

- learn what the statement says, so you don't have to keep checking it before answering each question
- stick to what is said in the statements
- speak slowly; remember people may be writing down what you say

DON'T:

Judges:

- let the lawyers harass the witnesses
- let the lawyers run over the time allowed
- interrupt the lawyers too often

Prosecutors:

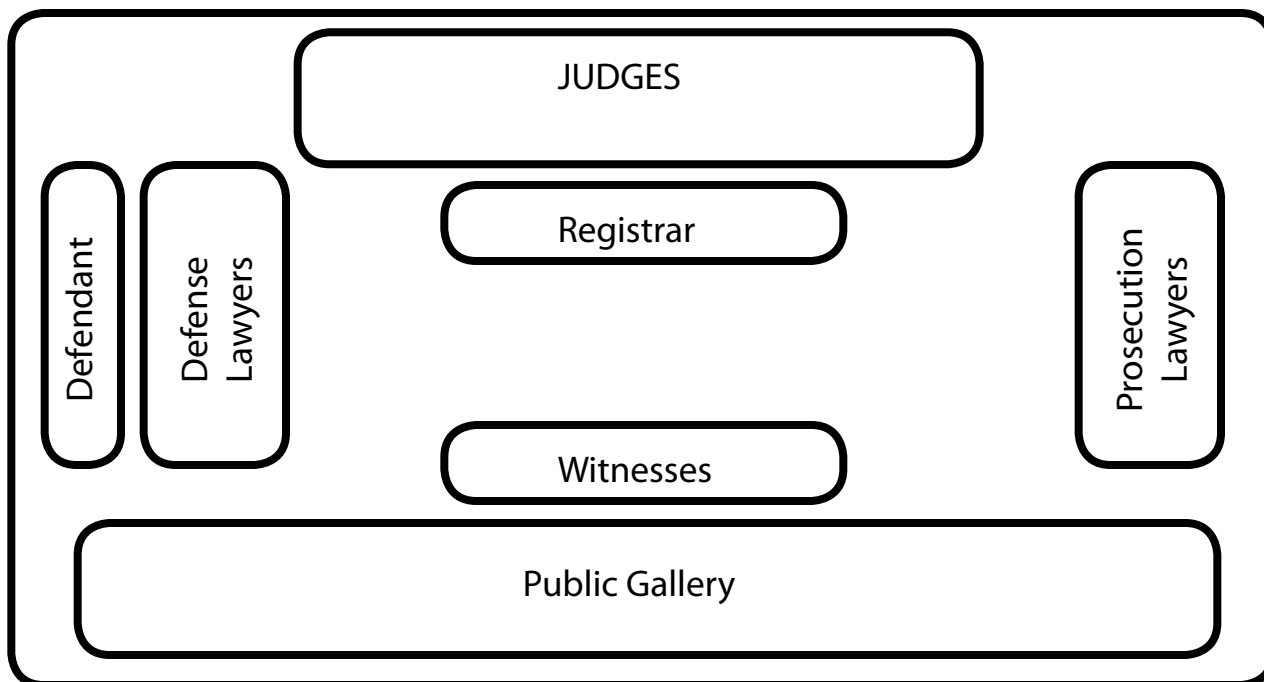
- use emotional language; stick to the facts and the law
- ask the witnesses for opinions; just ask about the facts
- try to make the witness look stupid or small

Defence:

- use personal insults about the prosecution case; stick to the facts and the law
- repeat points made by other members of your team
- ask leading questions of your witnesses (ones that suggest to the witness the answer you want to hear)

Witnesses:

- make jokes or try to be smart
- refer to things you've heard from other people
- make arguments about the law; that is for the lawyers



The International Criminal Court – Qs and As

What is the International Criminal Court?

The ICC is a criminal court which tries people from countries all over the world who are accused of committing very serious crimes.

When was an International Criminal Court first suggested?

An international criminal court was first suggested at the end of the 19th century, but it was not possible for the countries of the world to reach agreement about what its powers would be. During the last decade of the 20th century pressure for such a court grew. This led to a conference in Rome in July 1998, at which all the countries of the world were represented.

How was the ICC established?

The International Criminal Court (ICC) was established by a treaty called the Rome Statute. This was signed by 120 countries in July 1998.

When did the ICC start to operate?

Under the provisions of the Rome Statute, in order for it to come into force, at least 60 countries had to ratify (confirm their signatures) to join the treaty. This is a process that can take some time as different countries have different rules as to what is required for a new treaty to be ratified. By early 2002

the necessary 60 countries had joined, and the Rome Statute therefore came into force on 1 July 2002.

Where is the ICC based?

It was agreed in the Rome Statute that the ICC would be based in The Hague, where many other international courts are based.

How does the ICC differ from other international courts in The Hague, like the ICJ and ICTY?

The ICC differs from the International Court of Justice (ICJ) in that it tries people, not states. The International Criminal Tribunal for the Former Yugoslavia (ICTY) only deals with crimes committed in the countries which used to make up Yugoslavia; Bosnia and Herzegovina, Croatia, Macedonia, Serbia.

What crimes are tried by the ICC?

The ICC tries people accused of the most serious crimes of international concern, namely genocide, crimes against humanity and war crimes. Crimes against humanity and war crimes include a large number of different crimes such as extermination, murder, rape, deportation.

Can anyone in the world be tried by the ICC?

Usually, no. The ICC can usually only try people who are nationals of states which have joined, or

who have committed crimes on the territory of states which have joined. The only other situation when people can be tried by the ICC is following the intervention of the United Nations Security Council, where there is a threat to international peace and security.

Are there any other limits to who can be tried?

Yes. Only people who are charged with committing crimes after 1 July 2002 when the Statute came into force (or later, if a country joined later) can be tried by the ICC. And such people can only be tried by the ICC if for some reason it is not possible for them to be tried in their home courts, or the courts of the country where the crime was committed. This might be because the country in question did not have the resources to have a big trial of this kind. Or it might be because their home country refuses to try them because it is trying to shield them from prosecution for their crimes.

Can children be tried for crimes by the ICC?

No. The ICC can only try people over the age of 18.

Why weren't Slobodan Milosevic and Saddam Hussein tried by the ICC?

Milosevic was not tried by the ICC as his alleged crimes were committed before 1 July 2002, when the ICC Statute came into force. The same applied to Saddam Hussein, and in addition Iraq has not joined the ICC.

Who are the judges of the ICC?

There are currently 18 judges from different countries. These judges are elected by the representatives of the countries which have joined. They will decide whether a person being tried before the court is guilty or not guilty of the crimes with which they are charged. Unlike in many countries, juries are not used to make this decision.

How many judges are there in a trial?

The judges are divided into Trial Chambers. Each Trial Chamber has three judges. These three judges decide whether a person is guilty or innocent.

What if the judges can't agree?

If the judges can't agree, the decision of the majority prevails.

Who prosecutes cases at the ICC?

There is a Prosecutor, who is elected by the representatives of the countries which have joined. He is the head of the Office of the Prosecutor, which decides who will be charged with crimes under the Rome Statute.

Do the people accused of crimes have lawyers?

People who are charged with crimes (defendants) have lawyers to help them and to defend them in their trials. They are able to choose these lawyers from a list of lawyers from all over the world who have experience in defending serious criminal cases.

How do the judges decide whether someone is guilty or not guilty of a crime?

The judges listen to the evidence. The evidence is presented by the prosecution. They bring witnesses to the court to tell the judges what happened. These witnesses are often the victims of crimes. They also show the court any documents or other evidence which they think will help the court to decide whether the defendant has committed a crime.

Can the defendant bring his own witnesses and evidence to court?

Yes. After the prosecution has presented all its evidence (which can take many months in serious cases) the defence gets a chance to bring its own witnesses to give evidence.

What happens if the judges decide after all the evidence that a defendant is guilty of a crime?

If the Trial Chamber finds the defendant is proved to be guilty it will convict him (declare him to be guilty). If not, it will acquit him (declare him to be innocent). A defendant is often charged with a number of crimes, and the Trial Chamber can convict him of some crimes and acquit him of others.

What happens next?

If a defendant is acquitted of all charges he will be free to go, and may be entitled to compensation if he has served time in prison waiting for his trial. If a defendant is convicted of any charges he will be sentenced by the Trial Chamber.

What sentences can the Trial Chamber give to defendants?

The Trial Chamber has the power to sentence defendants to up to 30 years imprisonment, or in particularly serious cases to life imprisonment. It can also fine defendants or require them to pay compensation to their victims.

Can defendants be sentenced to death?

No. There is no death penalty at the ICC.

What if the defendant doesn't agree with the Trial Chamber's decision?

The defendant or the prosecutor has a chance to appeal to the Appeals Chamber if they think that the Trial Chamber was wrong in its decision.

What is the Appeals Chamber?

The Appeals Chamber is a court of five judges which has the power to decide whether a Trial Chamber came to the correct decision. It has the power to change any decision made by a Trial Chamber. Like the Trial Chamber, if the Appeals Chamber can't agree, the majority prevails.

If the defendant loses his appeal, what then?

There is no higher court than the Appeals Chamber. If the defendant loses his appeal, he must serve his sentence. But he can come back to the Appeals Chamber at any time if he has new evidence which he could not reasonably have brought to the court before – for example if new witnesses have come forward.

Where does the defendant serve his prison sentence?

Several of the countries which have joined the ICC have agreed to allow their prisons to be used for prisoners who have been convicted by the court.

People and Places

Malenga – country in which the fighting took place

Lusota – the capital of Malenga

Bikindi – a neighbouring country which is friendly to Malenga

President Palumbo – the President of Malenga

PDF – the Peoples Democratic Forces, the official army of Malenga

URF – the United Resistance Front, a rebel militia army which controlled much of the south of Malenga until December 2005

Colonel Katoma – the leader of the URF

Lieutenant Colonne – a lieutenant in the URF serving under Colonel Katoma

Felipe Torres – a member of the URF militia, who is nicknamed the “Archangel”

Angels of Mercy – a grouping in the URF militia under the command of Felipe Torres

Ferdinand Namunga – a soldier in the PDF who was captured and imprisoned by the URF in Garuda

Goncalves Torres – the brother of Felipe Torres

Timeline

YEAR	DATE	EVENT
1986	16 October	Felipe Torres born
1991		Palumbo is installed as President of Malenga following a coup
1995		Civil war begins between government forces and URF which are sympathetic to the former regime
1998		Felipe Torres joins the URF
2002	1 July	Malenga becomes a member of the International Criminal Court
2004	16 October	Felipe Torres is 18

YEAR	DATE	EVENT
2005	December	President Palumbo refers the situation in Malenga to the Prosecutor of the ICC
	Thursday 1 December	PDF attacks town of Garuda; captured soldiers imprisoned in buildings of diamond mine
	Sunday 25 December	Felipe Torres claims that he travelled to his home town of Otara, 25 miles from Garuda, in the evening
	Monday 26 December	Namunga and 9 other prisoners tortured in the Red House; all but Namunga killed
	Tuesday 27 December	Garuda is liberated by PDF forces
	Wednesday 28 December	Felipe Torres claims that he travelled from his home town of Otara to Garuda, in the morning



THE INTERNATIONAL CRIMINAL COURT

ANNEX 1

The Judgement of the Trial Chamber
in the case of
Prosecutor against Filipe Torres

(starts next page)



THE INTERNATIONAL CRIMINAL COURT

Original: English

Case No:ICC/07-001/22

Date: 21 May 2007

SITUATION IN MALENGA

The Prosecutor vs. Felipe Torres

TRIAL CHAMBER

Judges:

Registrar:

JUDGEMENT OF THE TRIAL CHAMBER

Prosecutor:

Defence:

BACKGROUND

1. Malenga, under the leadership of President Palumbo, was one of the first 60 countries to sign and ratify the Rome Statute for the International Criminal Court. It has therefore been a member of the ICC since its inception on 1st July 2002.
2. In December 2005 President Palumbo referred the situation in Malenga to the Prosecutor of the ICC.
3. The ICC has issued warrants of arrest for a number of leaders of the URF for crimes against humanity and war crimes committed since 1st July 2002. It has also issued warrants for 3 members of the PDF. As a result President Palumbo has now refused to co-operate with the ICC, or to hand over any accused persons from either side.

Felipe Torres

4. Felipe Torres was born in Malenga on 16 October 1986 and is now 20 years old.
5. He was recruited as a member of the United Resistance Front (URF) in 1998, when he was 12 years old.
6. By July 2002 he was the leader of a small militia group known as the "Angels of Mercy". He himself went under the nickname of "Archangel". His group numbered between 150 and 200 soldiers. At the age of 16, he was one of the oldest of the group.
7. On 16 October 2004 Torres turned 18. Thereafter his actions were not excluded from the jurisdiction of the ICC due to his age.

Arrest of Felipe Torres

8. On 3 April 2006 the Prosecutor of the ICC applied for a warrant of arrest to be issued against Felipe Torres in respect of events which occurred in Garuda during December 2005.
9. After the liberation of the south of Malenga, Felipe Torres and a small group of his militia fled to neighbouring country of Bikindi, where they hoped to find asylum. Here they were arrested and imprisoned. Bikindi was sympathetic to the government of President Palumbo. It offered to extradite the imprisoned soldiers back to Lusota.

10. Subsequently, Torres was conveyed to The Hague in the summer of 2006 to be tried by the ICC.
11. The defendant has been in ICC custody since his arrest.

Charges

12. In December 2006 the Pre-Trial Chamber confirmed the following charges against Filipe Torres:

Count 1

War Crimes under section 8(2)(a) of the Rome Statute

In respect of the nine men killed on the night of 26th December 2005: Wilful killing under Section 8(2)(a)(i)

Count 2

War Crimes under section 8(2)(a) of the Rome Statute

In respect of those nine men and Ferdinand Namunga: Torture under Section 8(2)(a)(ii)

Trial

13. Filipe Torres denied both counts.
14. His trial began in January 2007 and has lasted 3 months.
15. At the conclusion of the trial, the case was adjourned for 2 months for the Judgement to be prepared.

Prosecution Evidence

16. During the trial, evidence was given by Ferdinand Namunga, as well as three other survivors of the camp. One of Torres' own militia, aged 14, also gave evidence against him. His identity was protected and he gave the evidence under the pseudonym "Witness A".
17. The Trial Chamber heard evidence about the events at the diamond mine from Ferdinand Namunga. Mr Namunga gave evidence over the course of two days. He was aged 21 at the time of the events he related. He said that he had been serving in the PDF forces for a year when he was involved in fighting in the town of Garuda in early December. The PDF forces were outnumbered by URF militia, and he was captured with a number of other soldiers. They were transported to a disused diamond mine about 2 km from the town in buses, and were detained in small huts roofed with corrugated iron.
18. There were about 20 men in his hut, which was about 3 by 6 meters. There was no room for anyone to lie down, and the heat in the daytime was intolerable. They were taken out of the huts once a day to a larger building where they were given food. This consisted of small amounts of bread and watery soup. There was water to drink but it was dirty and foul smelling. During the 3 weeks he was imprisoned in this way several men in his hut fell ill. Those who lost consciousness were taken from the hut by guards and he believed that they died: he had not seen any of them since.
19. Many different militia guarded the camp. Most of them seemed to be little more than children, but all were armed with AK 47s and machetes. They killed people at random. Once when he was eating his lunch he heard a shot and a prisoner standing 3 feet away from him, whose name he did not know, fell down dead. He saw some of the guards laughing, but he did not see who had fired the shot.
20. At night, guards would come into the huts and call names. Those who answered were taken out for questioning. Sometimes they returned with horrific injuries. Sometimes they did not return at all. No one spoke of what happened to them – it was clear to Mr Namunga that they were being tortured by the militia.
21. Mr Namunga stated that he often saw the man they referred to as the Archangel. He was at the camp nearly every day when we were taken for meals. He seemed very young. The boy soldiers seemed scared of him. If he gave an order it was followed immediately. The boy soldiers often laughed and joked among themselves, but no one laughed when the Archangel was around.
22. Mr Namunga stated that he was called out for interrogation on the night of 26th December. He remembers the date because the previous day the guards had been saying that it was Christmas, and laughing that the prisoners were

having a happy Christmas. Four or five others were called out of his hut, and there were also some from other huts. They were all taken to a building he knew as the Red House. Everyone knew that the Red House was where interrogations happened.

23. In the Red House he was tied to a bedstead. He recalls that the soles of his feet were beaten, and that he felt “incredible pain”. His memory of events after that was not clear, but he remembered seeing the man he knew as the Archangel in the house. He saw him quite clearly; although the night was dark there were lamps alight on tables in the Red House. Mr Namunga had a clear view of the Archangel’s face in the light of the lamp as he bent over the bedstead to look at Mr Namunga. At one point he asked Mr Namunga whether he had been “killing innocent children”. His voice was clearly recognisable. He seemed to be in charge. He was not giving orders but he was overseeing what the other soldiers were doing. There was no-one else there who was in authority.
24. At some stage during the night Mr Namunga stated that he must have lost consciousness. His next clear memory is of being in a makeshift hospital where army medical staff were in attendance. He had significant injuries to his head and body, and has still not recovered the use of his right leg as a result of the beatings. He still suffers from dizzy fits and periods of memory loss.
25. When he was questioned by investigators for the ICC he was shown a set of 14 photographs. He immediately picked out the photograph of the defendant as being the man he knew as the Archangel. The evidence of the investigators supports this account (see paragraphs 287-9 below).
26. In cross examination Mr Namunga admitted that he had regularly taken drugs while he was serving as a soldier. He had not had any drugs while he was in the camp, but he denied that he felt any symptoms of withdrawal. He admitted that his recollection of the events of 26th December was “hazy and a bit muddled” due to the pain that he suffered, and that he was unconscious for the latter part of the night. He has no memory of the camp being liberated by the PDF. However, he stressed that he was sure that the man he knew as the “Archangel” was present in the Red House when he was tortured. He stated “I can never forget that voice or that face. The memory will stay with me until the day I die”.
27. During the night the camp was patrolled by Torres and his guards. PDF soldiers would be routinely taken out from the cells for “interrogations” in a building known as the Red House during which they were beaten and tortured. On the night of December 26th ten PDF soldiers were called out from their shed and taken to the Red House. There they were tied to bedframes and beaten on the soles of their feet by child soldiers under the command of Torres. They were then tortured and killed with machetes and knives. On this occasion Torres himself was clearly identified by the one survivor of the night, Ferdinand Namunga. Namunga was left for dead and piled with the other corpses on a truck to be taken to the mine shaft. However, on finding in the morning that he was still alive, a guard returned him to the shed with the other surviving prisoners. Later that day there was a surprise attack by PDF troops, and the camp was liberated. Namunga was taken to a hospital camp, where he miraculously recovered from his horrific injuries.

Defendant’s Evidence

28. Felipe Torres gave evidence and admitted that he was known as the Archangel. He did not know why people called him that. No one else was known by that name to his knowledge.
29. Felipe Torres stated that he was rarely present at the diamond mine and had no knowledge of or control over what happened there. He said the militia were under the direct orders of Colonel Katoma. His subordinate, Lieutenant Colonne, was in fact in charge of the diamond mine camp, and of all the militia in the Garuda area.
30. Torres said he himself had duties as a traffic control officer at a road junction 5 miles from the mine. He came to the mine to eat and sleep but took no part in the custody of the prisoners.
31. On the night of 26th December, he had leave from Lieutenant Colonne himself to go and visit his family in the town of Otara 30 miles away. His mother had been very sick and he was desperate to visit her. He travelled there in an open cart on the evening of 25th December, and didn’t return until the early morning of 28th December. By this time the camp had been liberated by the PDF. Many people had been killed, and he could only find a small number of his militia. Taking advantage of the chaos he fled with his soldiers to the neighbouring country of Bikindi.
32. Lieutenant Colonne could give evidence that Torres was not present at the camp on the night of 26th December and so could Felipe’s younger brother Goncalves, who lives with their mother and was there during Felipe’s visit. However, there is a warrant out for the arrest of Lieutenant Colonne, and he is therefore not likely to be willing to attend court.

His brother is willing to attend, but he has not been able to secure his attendance due to difficulties in obtaining the appropriate permission from the Malengan authorities, who are hostile to the work of the court.

33. Therefore, the only evidence given on behalf of Torres at his trial was his own: he was able to call no witnesses.

FACTUAL FINDINGS

34. The country of Malenga has been riven by civil war since 1995. The country is led by President Palumbo and his People's Democratic Party (PDP). He keeps control with the assistance of the government's army, the People's Democratic Force (PDF).
35. The south of the country is effectively run by a rebel group known as the United Resistance Front (URF). The URF is led by a maverick ex-PDF Colonel called Colonel Katoma. Colonel Katoma has control of a strong militia force made up of disaffected members of the PDF and other locally recruited and trained soldiers.
36. Many of the locally recruited and trained soldiers are under the age of 18. Some are as young as 10.
37. The PDF has made repeated attempts to gain control of the south of the country.
38. In December 2005 the PDF launched a prolonged attack on URF strongholds in the south. After several weeks of fighting the URF was effectively defeated. Many of its leaders, including Colonel Katoma, were captured and are under arrest in the capital of Malenga, Lusota. Some members of the militia fled to neighbouring countries where they sought asylum.

Events of December 2005

39. During December 2005 Torres and his child militia army were stationed in the town of Garuda in the south of Malenga. Garuda was a URF stronghold, and several URF militia forces were stationed there.
40. When the PDF attacked Garuda on 1st December they met with strong resistance. Hundreds of combatants on both sides were killed in the fighting. About 85 PDF soldiers were taken into the custody of the URF. The remainder fled.
41. The "prisoners of war" were kept in the buildings surrounding a deserted diamond mine. The prosecution claim that Torres and his militia, along with other militia groups, were charged with controlling them. It is thought that the URF planned to use them as hostages in negotiations with the Malengan government.
42. The prosecution state that the prisoners were kept in inhumane conditions. They were given little food and water, and were locked into crowded sheds in the blazing heat of the Malengan summer. They were let out only once a day to eat and drink. In the 4 weeks during which they were held, at least half of them died as a direct result of the heat, dehydration, and disease.
43. Based on the evidence of Mr Namunga and other witnesses we find it proved that about 10 men, including Mr Namunga, were taken to the Red House on the night of 26th December.
44. They were tortured and beaten, and Mr Namunga was the only survivor.
45. Based on the evidence of Mr Namunga alone we find it proved that the Defendant was present in the Red House on the night of 26th December and was responsible for the tortures and killings which occurred there. We accept that no other witness saw the defendant on that night. However, most of the potential witnesses to the events of the night were killed during the course of it. We find the evidence of Mr Namunga wholly reliable in this respect. He had the opportunity to see the witness clearly, and also to hear his voice.
46. The Defendant stated in evidence that he was visiting his mother several miles away from Garuda on the night of 26th December. However, he has provided no other evidence to support this statement, and we do not find that it is sufficient to cast doubt on the clear evidence given by Mr Namunga.
47. Felipe Torres is unanimously convicted on all counts.

SENTENCE

48. Having found the defendant guilty of two counts of war crimes, we now proceed to consider the matter of sentence.
49. The crimes of which the defendant has been convicted are extremely serious. He has used his power as a militia leader to imprison, torture and murder defenceless victims. While he has expressed regret for his actions, he has continued to deny that he committed any crimes. This shows that he has no genuine regret.

50. The court takes into account the age and background of the defendant. We take into account his relative youth and his lack of education. We consider that his enlistment as a soldier when he was 12 years old provides little mitigation for crimes committed as an adult. We consider that his extensive use of cocaine and other drugs provides no mitigation for the commission of these crimes.
51. Under Article 77 of the Rome Statute the court has the power to impose the following penalties:
 - (a) Imprisonment for a specified number of years, which may not exceed a maximum of 30 years; or
 - (b) A term of life imprisonment when justified by the extreme gravity of the crime and the individual circumstances of the convicted person.
52. The court does not in this instance consider that a term of life imprisonment is justified either by the gravity of the crime or by the individual circumstances of the defendant.
53. However, we consider that a lengthy determinate sentence is required in a case where crimes of this magnitude have been committed.
54. Having taken into account all relevant factors, we consider that the correct sentence in respect of all the crimes of which the accused has been convicted is one of 25 years' imprisonment.

Signed:

Judge

Judge

Judge

Dated: 21st May 2007

ANNEX 2

Grounds Of Appeal Against Conviction And Sentence Lodged By The Defendant

(starts next page)





THE INTERNATIONAL CRIMINAL COURT

Original: English

Case No: ICC/07-001/27

Date: 16 June 2007

SITUATION IN MALENGA

The Prosecutor vs. Felipe Torres

APPEALS COURT

Judges:

Registrar

**GROUNDS OF APPEAL AGAINST
 CONVICTION AND SENTENCE
 LODGED BY THE DEFENDANT**

Prosecutor:

Defence:

The Defendant appeals against his conviction and sentence, under Article 81 of the Rome Statute. The appeal is made on the following grounds:

A. Error of Fact

1. The Trial Chamber erred in finding it proved that Torres was present at the diamond mine camp on the night of 26th December. It put excessive weight on the eye-witness evidence of Ferdinand Namunga, who admitted in court that he was in a highly distressed state at the time and that his memory of events is “hazy and a bit muddled”.
2. The conditions at the time – the poor lighting and limited opportunity that the witness would have had to look at his torturers – make his identification unreliable.
3. The Trial Chamber failed to take into account the difficulties that Torres had in securing any evidence to support his alibi.
4. There is new evidence not available at the time of trial which the Appeals Chamber is asked to call and take into account under Article 83(2) of the Rome Statute.
5. Since the conviction, the brother of Felipe Torres has left Malenga, and has travelled to The Hague with the help of friends. He is now ready to give evidence on his behalf.
6. Further, Lieutenant Colonne has now been arrested and extradited to the ICC by Bikindi, having escaped from prison in Malenga and fled across the border. He is in The Hague awaiting his own trial, and is prepared to give evidence on Torres’s behalf.
7. The Appeals Chamber is therefore requested to call the 2 new witnesses to give evidence on behalf of the defendant under Article 83(2) of the Rome Statute.
8. In the light of the new evidence that Appeals Chamber is requested to amend the decision of the Trial Chamber convicting the defendant on Counts 2 and 3 of the indictment, and replace the decision with one of acquittal.

II. Disproportion between the crimes and the sentence

The Trial Chamber erred in failing to balance all the relevant factors, including any mitigating and aggravating factors, and consider the circumstances both of the convicted person and of the crime, under Section 145(2)(b) of the Rules of Procedure and Evidence. In particular the Trial Chamber:

1. Failed to take into account the significant mitigating factors in the defendant's case and imposing a lower sentence in respect of the crimes for which he was convicted. These factors include:
 - a. His age at the time of conviction
 - b. His lack of education
 - c. His background circumstances, namely that he had himself been forced to fight as a child soldier from the age of 12
 - d. His significant use of cocaine and other drugs from the age of 12
 - e. His expressions of sincere regret for his actions, and his wish to return to a normal life
2. Failed to take into account the fact that there were no significant aggravating factors present, under Rule 145(2)(b) of the Rules of Procedure and Evidence.
3. Erred in imposing a sentence only 5 years less than the longest determinate sentence available to it, on a person who played only a minor part of the overall criminality of the URF forces.

Signed:
Lead Counsel for the Defendant

Dated: 16 June 2007

ANNEX 3

Extract From The Prosecutor's Response To The Grounds Of Appeal Against Conviction And Sentence Lodged By The Defendant

(starts next page) 



THE INTERNATIONAL CRIMINAL COURT

Original: English

Case No:ICC/07-001/34

Date: 7 July 2007

SITUATION IN MALENGA

The Prosecutor vs. Felipe Torres

APPEALS COURT

Judges:

Registrar

**RESPONSE BY THE PROSECUTOR
TO THE GROUNDS OF APPEAL
AGAINST CONVICTION AND SENTENCE
LODGED BY THE DEFENDANT**

Prosecutor:

Defence:

The Prosecutor opposes the Defendant's appeal. This response is made on the following grounds:

A. Error of Fact

1. The Prosecutor contends that the Trial Chamber did not err in finding that Felipe Torres was present at the diamond mine camp on the night of 26th December. It was entitled to convict the defendant on the evidence of a single witness. Although the witness Ferdinand Namunga stated in court that his memory of events of that night was "hazy and a bit muddled" owing to the torture he suffered at the hands of the defendant and others, he stated in cross examination "I can never forget that voice or that face. The memory will stay with me until the day I die".
2. The witness was clear in his evidence that he had had sufficient light in which to get a good view of the defendant. Moreover, he was able to recognise his voice.
3. The Prosecutor agrees that the Defendant should be allowed to call 2 new witnesses who were not previously available to support his alibi. However, the Prosecutor has seen the statements of these witnesses, and does not believe that they will alter the Trial Chamber's clear view of the reliability of Mr Namunga's evidence.
4. The Prosecutor will make full submissions on the new witnesses' evidence after it has been heard by the court. At this stage it confines itself to the following observations:

Goncalves Torres

5. The Prosecutor doubts that the witness can clearly remember the exact dates or order of events which happened over a year before he was first asked to recall them.
6. The witness has an obvious motive to give evidence which is favourable to his brother.

Lieutenant Colonne

7. The witness cannot remember the date on which he gave the permission to Felipe Torres to travel; his evidence is therefore of little value to the alibi.
8. Lieutenant Colonne is himself awaiting trial on charges of war crimes. He has a reason to lie about what happened.

He is clearly trying to show that no crimes were committed at the camp. The evidence he will give in support of Felipe Torres is likely to be self serving.

ii. **Disproportion between the crimes and the sentence**

The prosecutor submits that the Trial Chamber imposed the correct sentence in respect of the defendant.

1. Factors such as age and lack of education are of limited significance in relation to crimes of this magnitude.
2. The fact that the defendant was himself a child soldier does not mitigate his crimes which were committed when he was an adult.
3. The use of cocaine and other drugs is no mitigation for the commission of crimes; further, there is no evidence that he was under the influence of drugs at the time these crimes were committed.
4. The fact that the defendant now regrets his actions is of limited importance. He does not admit that he committed any crimes. His continued denial of guilt shows his lack of co-operation with this court. He has made no effort to compensate his victims.
5. The Prosecution submits there were aggravating factors present: the defendant was the leader of a militia group, and he used this position of power in order to commit these crimes.
6. Further, these crimes were crimes of particular cruelty which were committed against a large number of defenceless victims.
7. A sentence of 25 years is a correct reflection of the magnitude of the crimes committed by the defendant.

Signed:
Prosecutor of the ICC

Dated: 7 July 2007

ANNEX 4

Statement Of Goncalves Torres

(starts next page) 



THE INTERNATIONAL CRIMINAL COURT

Original: English made in Malengan

Case No:ICC/07-001/45

Statement of Goncalves Torres

My name is Goncalves Torres. I was born on 19 November 1989. I am 17 years old.

I live in the town of Otara. I have lived there all my life with my mother. I have an older brother and a younger sister who is 13. My father died when I was 4.

We work on the fields and have very little money. When I was 9 my brother went away to be a soldier. My mother was sad to see him go, but the soldiers he went with gave her some money to help our family.

In December 2005 my mother became very ill. She could no longer work and spent all day lying in her bed. My sister and I looked after her. She was eating nothing and we were very worried.

She spoke a lot about Felipe. We had not seen him since he left to be a soldier all those years ago. She cried a lot and said she wanted to see him before she died.

We had heard that there had been a lot of fighting in the country, but there had been no fighting in our village. An old man in the village said that the army was not far away, and that he knew someone who could help find my brother. I asked him to get the message to my brother that my mother was ill and wanted to see him.

I did not hear anything more for 2 weeks, and then one day my brother arrived in the village. It was the day after Christmas day. I know that as there is a church in the town which is run by a missionary priest. My family and I go there every Sunday. I know that the day my brother came back was the day after Christmas day as I had been to church on Christmas day. My mother was too ill to come but I went with my sister.

My brother arrived in the middle of the day. He looked very different but I recognised him immediately. He had grown a beard. He was much older and thinner than I remembered. I felt a bit scared of him.

He spent all that day with us, and most of the next day. My mother was overjoyed to see him. She kept crying and she wouldn't let go of his hand. In the evening of the next day he said he had to go back to the army. He promised that the war would be over soon, and then he would come back and live with us. He gave us some money – I can't remember how much.

After he left my mother seemed to get better. She said now that she knew Felipe was coming back she had something to live for.

In the following weeks we heard that the war was over. We kept waiting for my brother to return, but he didn't. The one day a man came to the village. He said that people were making accusations against my brother, and that he needed my help. He said I had to travel with him to see my brother and tell people that the things they were saying were not true. I said I would do anything I could to help him.

Several months later the men came back. They said I had to go with them now. I was brought here by an aeroplane. I am sure that my brother was with me and my family on 26th December 2005. It was a very important day for us and you do not easily forget such a thing.

All I want now is for my brother to come home.

Signed: Goncalves Torres

Dated:

ANNEX 5
Statement Of Lieutenant Colonne



THE INTERNATIONAL CRIMINAL COURT

Original: English made in Malengan

Case No:ICC/07-001/45

Statement of Lieutenant Colonne

My name is Pierre Colonne. I was born in Lusota, Malenga and I am 28 years old.

Until recently I was a lieutenant in the URF. I worked under Colonel Katoma. He was our hero and we did everything that he said.

After the defeat of the URF in December 2005 I was arrested by URF forces and imprisoned in Lusota. I escaped in February 2007 and made my way to Bikindi, where I was captured in March 2007. I was extradited to The Hague in April 2007 as I have been charged with war crimes by the ICC. I am currently awaiting my trial here for war crimes. I am in prison with Felipe Torres and I often see him. We do not talk about our trials. I have not talked to him about what he has been charged with.

In this statement I will talk only about what happened in Garuda with Felipe Torres. I will not talk about the other crimes which I am accused of.

When Garuda was attacked by PDF forces in December 2005 I was the commanding officer in charge of all militia troops in the area. I ordered the captured soldiers to be taken to the diamond mine. They were well treated. No one was beaten or tortured. I was there every day and I would have known if they had been. Many of the soldiers died, but that was due to an outbreak of cholera. Some of my forces died as well.

Felipe Torres was often at the diamond mine camp. All troops stationed in the area came to the diamond mine complex to eat and sleep. I do not remember what his duties were at the time. It was possible that he was sometimes in charge of one of the checkpoints in a five mile radius of the camp. It is likely that he would have had duties of guarding the prisoners at times as well, but it was a long time ago and I can't remember. There were books containing duty rosters which were kept at the time. I don't know where they are now.

I do recall that he came to me one day and asked permission to go and visit his mother. I remember it well as it was an unusual request. Most militia members have little contact with their families. In normal circumstances I would have refused, but in fact there was no fighting in the area at the time and there were few prisoners left to guard, so I had many more soldiers than I needed. I said that he could go but he must be back in 48 hours.

I do not remember the date on which this happened, but it was towards the end of December. I think it may have been around the time when the PDF forces came and attacked the camp and freed the prisoners. It was then that I was captured and taken to prison. Certainly I recall that Felipe Torres was not there when the camp was attacked, because I had to take charge of his men myself. I think that must have been the time when he had gone to see his mother, but I cannot be sure.

In any case I know for certain that no crimes were committed at the camp at any time. We are all the victims of the political interference of so-called developed countries. They should leave us to sort out our own problems, and should not meddle in things they don't understand.

Signed: Pierre Colonne

Dated:

ANNEX 6

Relevant Extracts From The Rome Statute

INTERNATIONAL CRIMINAL COURT

Article 5

Crimes within the jurisdiction of the Court

1. The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes:

- (a) The crime of genocide;
- (b) Crimes against humanity;
- (c) War crimes;
- (d) The crime of aggression.

Article 8

War crimes

1. The Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes.

2. For the purpose of this Statute, “war crimes” means:

(a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

- (i) Wilful killing;
- (ii) Torture or inhuman treatment, including biological experiments;
- (iii) Wilfully causing great suffering, or serious injury to body or health;
- (iv) Extensive destruction and appropriation of

property, not justified by military necessity and carried out unlawfully and wantonly;

(v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;

(vi) Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;

(vii) Unlawful deportation or transfer or unlawful confinement;

(viii) Taking of hostages.

(e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:

(vii) Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities;

Article 76

Sentencing

1. In the event of a conviction, the Trial Chamber shall consider the appropriate sentence to be imposed and shall take into account the evidence presented and submissions made during the trial that are relevant to the sentence.

2. Except where article 65 applies and before the completion of the trial, the Trial Chamber may on its own motion and shall, at the request of the Prosecutor or the accused, hold a further hearing to hear any additional evidence or submissions relevant to the sentence, in accordance with the Rules of Procedure and Evidence.

3. Where paragraph 2 applies, any representations under article 75 shall be heard during the further hearing referred to in paragraph 2 and, if necessary, during any additional hearing.

4. The sentence shall be pronounced in public and, wherever possible, in the presence of the accused.

Article 77

Applicable penalties

1. Subject to article 110, the Court may impose one of the following penalties on a person convicted of a crime referred to in article 5 of this Statute:

- (a) Imprisonment for a specified number of years, which may not exceed a maximum of 30 years; or
 - (b) A term of life imprisonment when justified by the extreme gravity of the crime and the individual circumstances of the convicted person.
2. In addition to imprisonment, the Court may order:
- (a) A fine under the criteria provided for in the Rules of Procedure and Evidence;
 - (b) A forfeiture of proceeds, property and assets derived directly or indirectly from that crime, without prejudice to the rights of bona fide third parties.

Article 78

Determination of the sentence

1. In determining the sentence, the Court shall, in accordance with the Rules of Procedure and Evidence, take into account such factors as the gravity of the crime and the individual circumstances of the convicted person.
2. In imposing a sentence of imprisonment, the Court shall deduct the time, if any, previously spent in detention in accordance with an order of the Court. The Court may deduct any time otherwise spent in detention in connection with conduct underlying the crime.
3. When a person has been convicted of more than one crime, the Court shall pronounce a sentence for each crime and a joint sentence specifying the total period of imprisonment. This period shall be no less than the highest individual sentence pronounced and shall not exceed 30 years imprisonment or a sentence of life imprisonment in conformity with article 77, paragraph 1 (b).

Article 81

Appeal against decision of acquittal or conviction or against sentence

1. A decision under article 74 may be appealed in accordance with the Rules of Procedure and Evidence as follows:
 - (a) The Prosecutor may make an appeal on any of the following grounds:
 - (i) Procedural error,
 - (ii) Error of fact, or
 - (iii) Error of law;

- (b) The convicted person, or the Prosecutor on that person's behalf, may make an appeal on any of the following grounds:
 - (i) Procedural error,
 - (ii) Error of fact,
 - (iii) Error of law, or
 - (iv) Any other ground that affects the fairness or reliability of the proceedings or decision.

2. (a) A sentence may be appealed, in accordance with the Rules of Procedure and Evidence, by the Prosecutor or the convicted person on the ground of disproportion between the crime and the sentence;
- (b) If on an appeal against sentence the Court considers that there are grounds on which the conviction might be set aside, wholly or in part, it may invite the Prosecutor and the convicted person to submit grounds under article 81, paragraph 1 (a) or (b), and may render a decision on conviction in accordance with article 83;
- (c) The same procedure applies when the Court, on an appeal against conviction only, considers that there are grounds to reduce the sentence under paragraph 2 (a).

Article 83

Proceedings on appeal

1. For the purposes of proceedings under article 81 and this article, the Appeals Chamber shall have all the powers of the Trial Chamber.
2. If the Appeals Chamber finds that the proceedings appealed from were unfair in a way that affected the reliability of the decision or sentence, or that the decision or sentence appealed from was materially affected by error of fact or law or procedural error, it may:
 - (a) Reverse or amend the decision or sentence; or
 - (b) Order a new trial before a different Trial Chamber.

For these purposes, the Appeals Chamber may remand a factual issue to the original Trial Chamber for it to determine the issue and to report back accordingly, or may itself call evidence to determine the issue. When the decision or sentence has been

appealed only by the person convicted, or the Prosecutor on that person's behalf, it cannot be amended to his or her detriment.

3. If in an appeal against sentence the Appeals Chamber finds that the sentence is disproportionate to the crime, it may vary the sentence in accordance with Part 7.

4. The judgement of the Appeals Chamber shall be taken by a majority of the judges and shall be delivered in open court. The judgement shall state the reasons on which it is based. When there is no unanimity, the judgement of the Appeals Chamber shall contain the views of the majority and the minority, but a judge may deliver a separate or dissenting opinion on a question of law.

5. The Appeals Chamber may deliver its judgement in the absence of the person acquitted or convicted.

ANNEX 7

Relevant Extracts From The Rules Of Procedure And Evidence

INTERNATIONAL CRIMINAL COURT

Rule 145

Determination of sentence

1. In its determination of the sentence pursuant to article 78, paragraph 1, the Court shall:

(a) Bear in mind that the totality of any sentence of imprisonment and fine, as the case may be, imposed under article 77 must reflect the culpability of the convicted person;

(b) Balance all the relevant factors, including any mitigating and aggravating factors and consider the

circumstances both of the convicted person and of the crime;

(c) In addition to the factors mentioned in article 78, paragraph 1, give consideration, inter alia, to the extent of the damage caused, in particular the harm caused to the victims and their families, the nature of the unlawful behaviour and the means employed to execute the crime; the degree of participation of the convicted person; the degree of intent; the circumstances of manner, time and location; and the age, education, social and economic condition of the convicted person.

2. In addition to the factors mentioned above, the Court shall take into account, as appropriate:

(a) Mitigating circumstances such as:

(i) The circumstances falling short of constituting grounds for exclusion of criminal responsibility, such as substantially diminished mental capacity or duress;

(ii) The convicted person's conduct after the act, including any efforts by the person to compensate the victims and any cooperation with the Court;

(b) As aggravating circumstances:

(i) Any relevant prior criminal convictions for crimes under the jurisdiction of the Court or of a similar nature;

(ii) Abuse of power or official capacity;

(iii) Commission of the crime where the victim is particularly defenceless;

(iv) Commission of the crime with particular cruelty or where there were multiple victims;

(v) Commission of the crime for any motive involving discrimination on any of the grounds referred to in article 21, paragraph 3;

(vi) Other circumstances which, although not enumerated above, by virtue of their nature are similar to those mentioned.

3. Life imprisonment may be imposed when justified by the extreme gravity of the crime and the individual circumstances of the convicted person, as evidenced by the existence of one or more aggravating circumstances.