

*Case ICCTC October 2009*

*International Criminal Court Trial Competition, The Hague, February 2010*

## **A Case before the International Criminal Court**

### The Confirmation Hearing in the Case of Robert Turf

This is a fictitious case, intended to enable students to familiarise themselves with the law and practice of the ICC. Participants will be divided into three groups: Defence counsel, counsel for the Prosecution and legal representatives for victims. Each team is expected to write a memorial and to put forward a legal argument in the context of the Confirmation Hearing in the case of Robert Turf (see Article 61 of the Rome Statute), in accordance with the schedule established by Pre-Trial Chamber 6. Each team will be evaluated on their knowledge of the applicable rules of international criminal law and their argumentation and presentation skills. The Expert Jury Group is composed of both academics and practitioners and will grade the performance of each team, while at the same time acting in the capacity of Pre-Trial Chamber 6.

### FACTS AND PROCEDURAL HISTORY

1. Emba and Tuba are two countries located in a region of the world that has had a volatile security situation for more than three decades. They are not neighbouring countries. They are separated by a third country, Rista. Nevertheless, Emba and Tuba have had a hostile relationship for decades.

Emba is not a signatory to and thus also not a state party to the ICC; Tuba has been a state party to the ICC Statute since 23 August 2003. Both States are parties to the 1949 Geneva Conventions and to the Genocide Convention.

2. An Emban minority lives in Tuba and has been striving for self-determination. According to Emban authorities, the ethnic Emban minority in Tuba has been subject to systematic

discrimination and their right to self-determination and an own territory has been frustrated by a total lack of cooperation on the part of the Tuban authorities.

3. With a view to effectively defending itself, Emba has started to build up a small nuclear strike power. It is, however, uncertain whether its nuclear weapons would be able to reach Tuba. Tuba, itself a nuclear power, feels increasingly threatened by the military aspirations of Emba.

4. The tensions between the two nations are on the increase and government officials, including various ministers, have been using unfriendly language criticizing one another. The countries have not had diplomatic relations since 1999.

5. On 2 February 2007 the Emban President, Robert Turf, gave an interview to the journalist Miranda Phoenix, a star reporter for the Tonda Daily, a newspaper in Tonda, which is located in a very different part of the world. The results of the interview were published on 10 February 2007, headlining the Tonda Daily: 'Emban President calls for the destruction of Tuba'

6. Relevant portions of the interview read as follows:

President Turf: 'Well, if you ask me how the current dispute and tension between Emba and Tuba should be resolved, I honestly see no long term option other than the full destruction of Tuba and its population. We simply have to acknowledge that Tuba has never contributed anything positive to the region; on the contrary, it is responsible for decades and decades of war, discrimination and suffering. If countries and leaders in the region -and maybe also a few outsiders- could join efforts to achieve the destruction of Tuba in the coming years, this would be the biggest success of my presidency.'

7. Publication, in both the paper and internet-version of the newspaper, caused significant controversy and upheaval. As a result, tensions between Emba and Tuba have increased significantly. President Turf has consistently refused to answer any question related to the interview, but in his public speeches he continued to use hostile language, such as comparing Tuba to 'a cancer in the region, a serious obstacle to long-lasting peace and self-determination for all people'.

8. On 1 October 2007 the ICC Prosecutor announced his intention to start an investigation –acting proprio motu- in the Emba-Tuba situation, paying special attention

to the statements of President Turf regarding the destruction of Tuba. The authorisation by the ICC Pre-Trial Chamber to do so was given on 15 October 2007.

9. On 1 December 2007 the Prosecutor, on the basis of the results of his investigation, submitted to the Pre-Trial Chamber an application for an arrest warrant for Robert Turf, pursuant to Article 58 of the Statute. The Prosecutor's application was based on the accusation that 'on 2 February 2007 and on subsequent dates Robert Turf committed incitement to genocide (Article 6 and Article 25 (3) (e) of the ICC Statute).'

10. On 15 December 2007 the Pre-Trial Chamber honoured the application and issued an arrest warrant for Robert Turf. It requested Emba, pursuant to Article 89 of the Statute, to surrender him to the ICC; it also requested all other States parties to the Rome Statute to cooperate within their jurisdiction in the arrest and surrender of Robert Turf. The Pre-Trial Chamber ruled that the ICC appears to have jurisdiction, that the case appears to be admissible, that there is sufficient evidence and that there are grounds to justify arrest and surrender.

11. On 2 January 2008, Robert Turf visited Rüst, a country far away from Emba, with a view to discuss a contract on the delivery of oil by Rüst to Emba. Rüst has been a state party to the ICC Statute since 1 July 2004. Shortly after arrival, Turf was arrested on the basis of the ICC arrest warrant. In the national surrender trial, Turf claimed State immunity, but both the national court and the responsible Minister indicated they had no other choice than to execute the arrest warrant and that pursuant to Article 59 (4) of the ICC Statute it was not open to them to challenge the warrant's validity.

12. On 1 March 2008, Robert Turf was surrendered to the ICC; his initial appearance took place 4 March 2008. The case was assigned to Pre-Trial Chamber 6, with a view to hold a hearing to confirm the charges on which the Prosecutor intends to seek trial within a reasonable period of time after the initial appearance.

13. The charges for which the Prosecutor seeks confirmation are the same as those set out in the application for the arrest warrant.

14. Prior to the confirmation hearing a number of hearings took place and many motions and responses were filed with PTC 6.

14. During these hearings, the Prosecutor indicated that the ICC has jurisdiction over the case and that Robert Turf is not entitled to immunity in relation to proceedings before the ICC.

15. In relation to the evidence, the Prosecutor expressed at the hearing of 3 April 2008 his wish to call Miranda Phoenix as a witness at the confirmation hearing, regarding the interview and to ask her to hand over audio-recordings of the interview to the ICC. The Prosecutor informed the PTC that he had contacted Miranda Phoenix, but that she categorically refused all cooperation with the Court. The reason she gave was that any form of cooperation with the Prosecutor would make it impossible for her in the future to effectively report on similar situations or to conduct open interviews with high ranking figures. In short, she claimed an evidentiary privilege on account of her profession.

16. As a result of such lack of cooperation, the Prosecutor informed the PTC that, referring to Article 93 of the ICC Statute, he had also asked Tonda to provide the ICC with all possible assistance to obtain the relevant testimony from Miranda Phoenix in relation to the interview. Tonda replied -upon careful reflection and an analysis of the national law regulating cooperation with the ICC- that on the basis of its domestic legislation it was in a position to arrest, detain and surrender Miranda Phoenix as a witness to the Court.

17. In relation to witness Miranda Phoenix, the Defence submitted to PTC 1 that there is no basis and authority under the Statute to compel any witness to give evidence and that there is certainly no ground for Miranda Phoenix's detention at the ICC shortly before and during her testimony. It was further submitted, that, without the testimony of Phoenix -which according to the Defence could only be provided on a voluntary basis-, the interview was so lacking in reliability that it should be excluded from evidence.

18. A few weeks before the confirmation hearing, 34 nationals of Tuba, represented by one counsel, filed a request to be recognised as victims and to participate in the proceedings against Robert Turf. These individuals, known as victims, claimed harm on account of the fact that they had been living in fear of an attack by nuclear weapons ever since Robert Turf had called for the destruction of Tuba. This fear was exacerbated by the fact that they were living in the Tuban town closest to Emba, which would thus be the first town within the reach of Emban nuclear weapons.

19. On 1 November 2008 PTC 1 delivered a decision granting the applicants a provisional status of victims, K01-K34. The victims were attributed participatory rights, including the right to make submissions in relation to all points on the agenda for the first day of the confirmation hearing. After that first day, the confirmation hearing would be suspended for a couple of weeks with a view, among other things, to decide on the application by victims.

20. On 1 December 2008 the confirmation hearing starts. On 10 November 2008 PTC decided on an agenda for the first day of the confirmation hearing.

#### ESTABLISHED AGENDA FOR THE CONFIRMATION HEARING

Pre-Trial Chamber 6 seeks submissions of all parties on the following issues:

- A. In light of the proposed charges, the jurisdiction of the Court.
- B. The legality of the arrest and ensuing detention of Robert Turf.
- C. The testimony to be provided by Miranda Phoenix, as proposed by the Prosecutor, and the admissibility of her interview with Robert Turf into evidence.
- D. The participation of victims K01 – K34 in the proceedings against Robert Turf.