

Answers by Prof. Göran Sluiter

Please find below a few answers to questions submitted in respect of the case for ICCTC 2010. You will notice that the majority of the questions have not been answered. There is a very simple reason. Just like in real situations and cases at the ICC certain facts are unknown. This means that participants in proceedings may have to take into account more than one possible scenario. Of course, on the basis of the available facts and the broader context, each participant can argue what is the most probable scenario. However, it is not acceptable that facts are invented or distorted.

It is further noted that some questions have been asked more than once. I just answered the first time the question was submitted.

Questions ICCTC 2010

1. Is the date, 15 October 2008, within fact 8 correct?

Answer: No, it should read 15 October 2007

2. Is Tonda a party to the Rome Statute?

Answer: yes

3. Are all the States parties to the Vienna Convention on the law of treaties?

Answer:yes

4. Were the victims from the Emban part of Tuba?
5. Did the interview require a translator?
6. Do Miranda Phoenix and Robert Turf speak the same language?
7. Was the interview given in exchange for payment?
8. Do Tubans have internet access?
9. Is the 'Tondan Daily' available to the general public?

Answer: The Tondan Daily is a big and modern newspaper, which –as every modern newspaper- also informs the audience via the world wide web.

10. Is the 'Tondan Daily' available in Tuba?
11. Where did Robert Turf's public speeches occur?

Answer: The public speeches were given in his own country and reported and broadcast via the media.

12. Who was Robert Turf's audience?
13. Do we have to address admissibility?

Answer: This is not on the agenda

14. Are the victims anonymous?

15. Was the interview accessed via the internet (or any other means) from Tuba?
16. Given that Turf's confirmation hearing is taking place in December 2008, are we permitted to utilize materials, decisions, etc that occurred in 2009 in our arguments?

Answer: this is a good point; yes, for the sake of this Moot Court this material and case law is regarded as available and applicable.

17. Are the victims anonymous?

Answer:yes.

18. What was the location at which Turf gave his interview to Miranda Phoenix?
 19. Does Tuba have any laws specifically enabling universal jurisdiction over the crime of genocide?
 20. Is Rust a party to the Genocide and Geneva Conventions?
 21. Does Rust have any laws specifically enabling universal jurisdiction over the crime of genocide?
 22. With regard to Turf's speeches:
 23. What was the location at which Turf gave his speeches?
 24. In front of who were these speeches given?
 25. Were there any journalist present when Turf gave these speeches?
26. In paragraph 8, the facts of the case state that the PTC gave its authorization for the ICC Prosecutor to start an investigation on 15 October 2008. This seems like an odd date with regard to the rest of the timeline in the facts of the case. Can we assume this is the result of a spelling mistake?

Answer: see answer to question 1.

27. Page 1 mentions a PTC6 schedule. We suspect that this is the agenda on page 5 but the same is not listed as a schedule. Please clarify.
28. Paragraph 16 mentions that Tonda "analysing national law regulating co-operation with the ICC..." Is Tonda a State Party, a signatory or simply a State that co-operates with the ICC?
29. Who is in charge of taking decisions as to the use of nuclear weapons by Tuba against other states?
30. Did Pre-Trial Chamber 6 decide to issue the arrest warrant for Mr.Turf solely on the basis of printed version of his interview in Tonda Daily? If not, what were the other pieces of evidence considered by the Chamber?
31. What is the national/ethnic structure of Tuba? Are there any other nationalities/ethnicities, in addition to Tuban majority and Emban minority, settled in Tuba?
32. Did the Prosecutor, in exercise of his proprio motu powers, send any communications to Tuba in order to determine whether its national courts instituted any proceedings against Mr.Turf?
33. Where does the interview to Marinda take place, in Emba or Tonda?
34. Was the interview only between the requested witness and the accused? Any interpreters involved?
35. Is Tonda, which is said in the case to be a "very different world", a more tolerant and open society for freedom of press, compared with the region where Emba and Tuba are located?
36. Who are the target readers of Tonda Daily? Is it an internationally influential publication? Is Tonda Daily a serious publication on political issues?

37. In paragraph 3, it says “According to Emba authorities...” we would like to know if there’s any other evidence to indicate that “the ethnic Emba minority...been frustrated by a total lack of cooperation on the part of the Tuba authorities.”
38. Also in para3, “their right to self-determination and an own territory”, does it synonymous with they are trying to free themselves from Tuba by force?
39. Is Robert Turf in detention ever since he was surrendered to ICC?

Answer: yes

40. Has Robert Turf ever submitted any petition for a release during his detention?
41. Does Rüst have obligations under international agreements or obligations under international law to Emba?
42. Where was Robert Turf kept in the period of time from 2 January 2008 till 1 March 2008?
43. Are there any witnesses of the interview with Robert Turf, except the journalist Miranda Phoenix?
44. Is the existence of audio-recordings proven?
45. Forms of discrimination of the ethnic Emban minority, living in Tuba?
46. Were all procedural rules observed?
47. Was Robert Turf told that he was arrested on the basis of the ICC arrest warrant?
48. Is Miranda Phoenix a Tondan citizen?

Answer: yes

49. Are victims K01-K34 anonymous or non-anonymous?
50. Was the fear of the victims primarily based on the statements by Robert Turf, or were there other news items in the media that covered the threat?
51. Should we also take into account that victims are entitled to protection and or reparation or just focus on participatory rights of victims?

Answer: only participation is on the agenda

52. Should Miranda Phoenix be considered as a war correspondent?
53. In what language was the statement by Turf made?
54. What are the languages of the two states (Tuba and Emba) involved?
55. Why does point A of the established agenda say “proposed charges” (plural) rather than “charge” (singular), while the case only mentions the committing of one crime, namely “incitement to genocide” ?

Answer: indeed, it should read ‘proposed charge’.

With regard to the interview given by Robert Turf to Miranda Phoenix (para 5):

56. How was the interview conducted (e.g. face-to-face in a private environment, by phone, etc)?
57. Was the interview conducted through an interpreter?
58. With regard to the relevant portions of the interview reported in Tonda Daily (para 6):
59. Were there any other possible translations of the interview excerpt?
60. Does Robert Turf contest that the excerpt was an incorrect record of the

interview?

With regard to the public speeches given by Robert Turf (para 7):

61. Where were the public speeches given?

62. Whom were being addressed in the public speeches?

63. Were there any other possible interpretations of the statement comparing Tuba to

“a cancer in the region, a serious obstacle to long-lasting peace and self-determination for all people”?

64. Whether Emba has, in accordance with Article 12 of the Rome Statute of the International

Criminal Court, lodged a declaration with the Registrar of the International Criminal Court, accepting the exercise of jurisdiction of the Court with respect to the crime Robert Turf is now being charged?

Answer: no

65. With regard to the arrest of Robert Turf in Rust (para 11), was Robert Turf arrested by the police or government officers of Rust?

66. With regard to the 34 nationals of Tuba filing request to be recognized as victims (para 18), was there any medical or psychiatric report supporting the claim that “they had been living in fear of an attack by nuclear weapons ever since Robert Turf had called for the destruction of Tuba”?

67. Had the Prosecutor notified the States concerned that he planned to begin investigating the crime against Robert Turf?

68. If the answer to the above question is in the affirmative, had any of the states concerned informed the Prosecutor that they planned to begin investigations into the situation wrt Robert Turf?

Answer: admissibility is not on the agenda

69. Where had Robert Turf given the interview? In Emba, Tuba or Tonda?

70. Have any of the States that have jurisdiction indicated that they are unwilling or unable to carry out criminal proceedings against Robert Turf?

71. What happened in 1999 that led to severing of diplomatic relations?

72. Is there any previous history of war between the two nations, i.e. has the Emban minority ever been attacked or has there ever been any war between the two nations?

73. What was the coverage of the Tonda Daily i.e. which nations was it published in?

74. Did the PTC request any non-members of the ICC Statute (example: members to the Genocide Convention or members of the UNO) to cooperate in the arrest and surrender of Robert Turf?

75. Was Rust under any international obligation (example: extradition treaty) to not hand over Robert Turf to the ICC?

76. Did Rust have domestic legislation governing the arrest and surrender of individuals to the ICC? If so, what were the relevant provisions?

77. Did the national court in Rust rule on whether Rust had any international obligation to not surrender Robert Turf to the ICC?
78. What was the economic significance and population of the victim town in comparison to the other cities/towns of Tuba?
79. What was the composition of (i) the victim town; (ii) Tuba's population in terms of ethnicity, religion and race?
80. Was the interview published in a language easily understood in the region (was the language widespread? was it common?)? Was the interview translated in other languages?
81. Is the online publication readily available (is it a members or subscribers only website?)?
82. Does Tonda have an extradition treaty or agreement with Emba or Tuba?

Answer: No

83. Are there extradition treaties between Rust, Emba and Tuba?

Answer: No

84. Did Tonda sign the 1949 Geneva Convention and the Genocide Convention?

Answer: Yes

85. Has any other investigation been launched into Turf's statements, apart from the ICC's prosecutor?
86. Where in Tuba does the Emban minority live and especially where in relation to victims K01-K34?
87. When did Emba start to build up its nuclear strike capability?
88. Did the ICC ever formally and specifically ask Rust to arrest Turf?
89. Was Robert Turf aware of the ICC arrest warrant against him when he visited Rüst in January 2008?
90. Did Turf make any statements to Miranda Phoenix or in his public speeches with respect to nuclear weapons?
91. How and when did the victims find out that Emba is developing nuclear weapons?
92. What are the approximate geographic sizes of Emba, Tuba, and Rista? What are the sizes of their populations? What is the size of the Emban minority living in Tuba?
93. How long has Tuba had its nuclear capabilities?
94. Was Miranda Phoenix arrested by Tonda?
95. Have Emba, Tonda, Tuba, Rist, and Rust signed the Optional Protocol to the Genocide Convention consenting to jurisdiction of a criminal tribunal?
96. Have the Victims fulfilled all the documentation requirements of the Court necessary to be deemed "natural persons" for the purposes of participating in the proceedings? Put another way, have each and all of the Victims satisfied the Court of the authenticity of their personhood such that there would be no procedural irregularities with respect to their participation?

97. Does issue D: "The participation of victims K01 – K34 in the proceedings against Robert Turf" encompass participation in *all* stages of the proceedings from the confirmation hearing moving forward? Or does the PTC only want submissions addressing the victims' participation at the impending confirmation hearing?

Answer: It concerns all stages

98. Will the motions and hearings referenced in the first ¶ 14 be relevant to the procedural limitations the Court has, and can the nature of those motions and hearings be clarified to any degree?

99. Will ratification be an issue with any of the signatory states?

100. Has the "volatile security situation" included any physical and/or armed conflicts between Tuba and Emba either before or after President Turf's interview? Has there been any change in these conditions following the interview?

101. How are judges in the Emba judicial system selected? Is there any further information about the judicial system?

102. Has Turf been in continuous detention since 1 March, 2008?

103. Was President Turf arrested without incident?