

INSTRUCTION SHEET

Please accept our sincere apologies for any confusion that has arisen regarding the issues that are to be argued and the procedure that is to be followed at the 2020 International Moot Court Competition in Gdnyia, Poland.

Please **disregard** the following sections in the case/problem that was previously distributed:

Page 3 Defence Team

Page 3-4 Prosecution Team

Page 4-5 Procedure

In lieu of those pages, please refer to the Proceedings of the IMC Memorandum (attached hereto) which sets forth the issues that are to be argued and the order in which they are to be argued.

Further, regarding ANNEX 5, the Myanmar case, please note that paragraphs 62 through 73 are not applicable to this case since there is no issue of jurisdiction pursuant to Article 12(2)(a) of the Rome Statute.

GOOD LUCK TO EVERYONE!

PROCEEDINGS OF THE IMC: GDYNIA, POLAND 2020

Total time limit for each team is 30 minutes!!

For purposes of the argument counsel for the Prosecution and the Defense are to rely upon the facts as set forth in (i) the Factual Outline; (ii) the Prosecution Case; (iii) Evidence 1 - Affidavit of Ms. Angela Sanchez; (iv) Evidence 2 – Statement of Xiang 'Tony' Qiao; (v) Evidence 3 – Exhibits 1 through 4; and (vi) Evidence 4 – Exhibits 1 through 4. Note: The photographs in Evidence 4 may be enlarged for purposes of the oral argument.

DEFENSE

Lawyer 1 (approximately 2 minutes)

Introduction of co-counsel and brief summary of argument.

Arguing Jurisdiction – Is there a Crime Against Humanity. Specifically, the crimes of Deportation and/or Forcible Transfer of Population.¹ If the elements of either or both of those crimes are satisfied, is there sufficient evidence to establish substantial grounds to believe that Tony Qiao committed the crimes charged. The Defense will argue that the Court lacks jurisdiction because the evidence is not sufficient to establish substantial grounds to believe that (i) the material elements of the crime of Deportation and/or Forcible Transfer has been committed or (ii) that Tony Qiao committed the crimes charged.

Counsel should be prepared to address the following, in this order, in his or her argument.

First, the Material Element: Article 5(b) of the Rome Statute (Crimes against Humanity)

- i. Rome Statute - Article 7(1)(d) and 7(2)(d) (Deportation or Forcible Transfer of Population)**
- ii. Article 7(1)(d) Elements of Crimes (See ANNEX 4.)**

Second, the Mental Element: Article 30 Rome Statute (Knowledge and Intent).

Material elements of the crime charged must be committed with intent and knowledge. This relates to Xiang 'Tony' Qiao's intent and knowledge. (See Annex 7 (included herewith), Rome Statute, Article 30.)

¹ Deportation and Forcible Transfer are to be treated as two separate and distinct crimes. (See Annex 5 paragraph 60.)

Third, Mode of Liability: Article 25(b)(3)(b) Rome Statute – Individual Criminal responsibility. Article 25(b)(3) provides: [A] person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person ... [o]rders, solicits or induces the commission of such a crime which in fact occurs or is attempted." (See Annex 7 (included herewith), Rome Statute, Article 25(3)(b)).

Counsel may refer to and rely upon Annex 8 document prepared by Case Matrix Network which includes excerpts from Deportation and Forcible Transfer decisions, included herewith, in preparing their argument. Counsel should not read the cases cited or use other portions of those cases in preparing their argument.

Lawyer 3 –(approximately 8 minutes)

Arguing Admissibility: Article 17 of the Rome Statute

Note: Article 17(1)(a) through 1(c) of the Rome Statute are not at issue in this case. The only question is whether Article 17(1)(d) is satisfied. Specifically, is this case of "sufficient gravity to justify further action by the Court." The Defense will argue that the case does not satisfy the test of sufficient gravity.

In making your argument you may refer to and rely upon the February 10, 2006 decision of the Pre-Trial Chamber I in Prosecutor v. Thomas Lubanga Dyilo. A copy of the entire case is provided with this memorandum. The relevant portion of the decision is paragraphs 41 through 75. You are to rely only on those paragraphs. You are not to do any additional research such as reviewing any materials or cases cited in the footnotes associated with those paragraphs.

PROSECUTION

Lawyer 1 (approximately 2 minutes)

Introduction of co-counsel and brief summary of argument.

Lawyer 2 (approximately 12 minutes)

Arguing Jurisdiction: Is there a Crime Against Humanity. Specifically, the crimes of Deportation and/or Forcible Transfer of Population. The Prosecution will argue that the Court has jurisdiction because the evidence is sufficient to establish substantial grounds to believe that (i) the material elements of the crime of Deportation and/or Forcible Transfer has been committed or (ii) that Xiang 'Tony' Qiao committed the crimes charged.

Counsel should be prepared to address the following, in this order, in his or her argument.

First, the Material Element: Article 5(b) of the Rome Statute (Crimes against Humanity)

- i. Rome Statute - Article 7(1)(d) and 7(2)(d) (Deportation or Forcible Transfer of Population)**
- ii. Article 7(1)(d) Elements of Crimes (See ANNEX 4.)**

Second, the Mental Element: Article 30 Rome Statute (Knowledge and Intent). Material elements of the crime charged must be committed with intent and knowledge. (See Article 30 of the Rome Statute, a copy of which is included with this memorandum.)

Third, Mode of Liability: Article 25(b)(3)(b) Rome Statute -- Individual Criminal responsibility. Article 25(b)(3) provides: [A] person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person ... [o]rders, solicits or induces the commission of such a crime which in fact occurs or is attempted." (See Annex 7 (included herewith) Rome Statute, Article 25(3)(b)).

Counsel may refer to and rely upon Annex 8 document prepared by Case Matrix Network which includes excerpts from Deportation and Forcible Transfer decisions, included herewith, in preparing their argument. Counsel should not read the cases cited or use other portions of those cases in preparing their argument.

Lawyer 3 –(approximately 8 minutes)

Arguing Admissibility – Article 17 of the Rome Statute

Note: Article 17(1)(a) through 1(c) of the Rome Statute are not at issue in this case. The only question is whether Article 17(1)(d) is satisfied. Specifically, is this case

of "sufficient gravity to justify further action by the Court." The Prosecution will argue that the case is of sufficient gravity.

In making your argument you may refer to and rely upon the February 10, 2006 decision of the Pre-Trial Chamber I in Prosecutor v. Thomas Lubanga Dyilo. A copy of the entire case is included with this memorandum. The relevant portion of the decision is paragraphs 41 through 75. You are to rely only on those paragraphs. You are not to do any additional research such as reviewing any materials or cases cited in the footnotes associated with those paragraphs.

THERE WILL BE A BRIEF FIVE MINUTE BREAK AT THIS TIME

REBUTTAL:

Prosecution

Lawyer 1 –(approximately 8 minutes)

Counsel is to address the Defense arguments regarding jurisdiction and admissibility and provide a Conclusion.

Defense

Lawyer 1 –(approximately 8 minutes)

Counsel is to address the Prosecution's arguments regarding jurisdiction and admissibility. Counsel, at his or her discretion, may address the Prosecution's rebuttal argument. Counsel is to provide a Conclusion.