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Committee Study Guide



INTERNATIONAL CRIMINAL COURT (ICC)

TOPIC A: Prosecution of Nicolas Maduro

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LETTER FROM THE CHAIRS

Dear members of the ICC,

As the presidency of the International Criminal Court at John Cabot University Model United Nations, we would like to welcome you to this exciting “committee”. It is an honour to preside this committee, which is outside of the classic MUN procedure and therefore especially challenging. In the ICC at John Cabot University, you will develop and further increase your legal knowledge and argumentation skills. Furthermore, we have one of the most devastating crisis situations before us: the prosecution of Venezuelan leader Nicolas Maduro. We hope that this study guide will give you a solid start for your research.

We are looking forward to meeting you soon and have three days of intense debate in the eternal city of Rome. Please feel free to contact us at any time for questions around the content or functioning of the committee.

With diplomatic regards,

The ICC Presidency



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INTRODUCTION TO THE COMMITTEE

On 17 July 1998, 120 States adopted the Rome Statute, which entered into force on 1 July 2002 thus establishing International Criminal Court in Hague - the first international criminal court for the prosecution of the perpetrators of the most serious crimes committed in their territories or by their nationals. The States that sign and ratify the Rome Statute accept its jurisdiction over international crimes committed on their territory or by their nationals. The ICC is not, however, a substitute for the national courts. The States are entitled under international law to prosecute the perpetrators of the crimes of concern to the international community. Only when the State is unable or unwilling to do so may the case might be investigated and judged by ICC.

The role of the ICC is therefore to address the impunity of the perpetrators of the crimes of genocide, war crimes, crime of aggression and crimes against humanity. The ICC has four principal organs: The Presidency, the Judicial Divisions, the Office of the Prosecutor, and the Registry. At JCUMUN, the ICC simulation shall consist of the Presidency (President and Vice-President), which also serves as the Registry, the Judges, the Prosecution and the Defence Counsel.

The working languages of the ICC are English and French, and the official languages are Arabic, Chinese, English, French, Russian and Spanish. For the purpose of this conference, English shall be the working language of the Court. The Court shall be provided with the tangible evidence as well as the testimony of the witnesses in English, in the case of original document or article being written in different language, the Prosecution or Defence Counsels must submit the English translation together with the original version.

1. Purpose of the Court

As the case is currently in the Trial stage, the Pre-Trial Chamber has already ruled over the jurisdiction of the Court on the case and has found that ICC has the jurisdiction to try the case. The question therefore of whether ICC can judge the Defendant in regard to the alleged crimes he is accused of shall not arise during the proceedings. The task of the Court during the Trial stage is to judge whether the alleged crimes have been in fact committed, whether the accused is responsible for them and if so, how is he going to be punished.



2. Members of the Court

§ 1. Presidency

Presidency of the MUN's ICC consists of the President (Chair) and the Vice-President (Deputy Chair). It is responsible for the organisation of the committee, it supervises the work of the Court during the proceedings, provides guidance for the members of the committee both before and during the committee work. The Presidency might also serve as the Judges, that is to ask questions, vote on the motions etc. yet it shall use this privilege only when necessary to allow Judges greater participation.

§ 2. Judges

The Judges shall hear the case, evaluate each piece of evidence (including the testimony of the Witnesses), ask questions regarding the evidence and speeches of the Counsels and once the Parties have been heard, they shall reach a decision regarding the case (they shall write the verdict). It is necessary for the Judges to be familiar with the Rome Statute (especially at the judgement writing stage, where Judges must refer to the specific articles of the RS in their arguments)

§ 3. Prosecution

The Prosecution's task is to persuade the judges that the accused is guilty of the alleged crimes and should be punished (the Prosecution might suggest the punishment e.g. X years of imprisonment). The Prosecution shall deliver the opening speech at the beginning of the proceedings, present the evidence, prepare and examine the Witnesses, and deliver the closing statement at the end. It is crucial for the Prosecution to prepare the arguments, evidence and Witnesses prior to the session and to co-operate with their fellow Counsels.

§ 4. Defence Counsels

Whereas Prosecution's task is to prove the accused guilty of the crimes, the Defence Counsels must do everything to prove otherwise. The burden of proof rests on the Prosecution, yet the members of the Defence must come up with arguments against the guilt of the accused, supported of course with appropriate evidence and witnesses. The Defence Counsels shall deliver the opening speech at the beginning of the proceedings, present the evidence, prepare and examine the witnesses, and deliver the closing statement. It is crucial for the Defence Counsels



to prepare the arguments, evidence, and witnesses prior to the session and to co-operate with their fellow Counsels.

3. General Instruction for Judges

As Judges your responsibility is to listen to the speeches of Advocates, take note of the points that they make and evidence that they invoke as well as critically examine their arguments. For this to be effective you need to be acquainted with the relevant law and know the most important facts relevant to the case. Thus, you are encouraged to conduct some research on the topic as well as make yourself familiar with the relevant legal documents. You shall be provided with the memorials of both of the Councils prior to the conference to make your research easier.

During the deliberations you will be able to listen to the speeches of Advocates and question them. You will also discuss with other Judges whether to consider an argument presented by an Advocate as a valid legal argument and how a particular argument influences the judgment.

Remember that as judges you should be impartial and that you should focus on the question 'what is the law?', rather than 'what sounds convincing?' or 'what ought to be the law?'. Your interpretation should be strongly rooted within the text of law and legal writings rather than your own moral, political, religious etc. beliefs.

THE PROSECUTION OF NICOLAS MADURO

The Bolivarian Republic of Venezuela declared independence as a sovereign state in 1830. Venezuela's territory extends a vast 916,445 km². The republic, consisting of 23 states, is bordered on the north by the Caribbean Sea and the Atlantic Ocean, on the west by Colombia, Brazil on the south, Trinidad and Tobago to the north-east and on the east by Guyana. Venezuela has the world's largest known oil reserves and has been one of the world's leading oil exporters, making this a vital element of Venezuela's GDP.

Venezuela is a federal presidential republic, in which the executive power is exercised by the President, and the legislative power is vested in the National Assembly. The governing United Socialist Party of Venezuela (Partido Socialista Unido de Venezuela, PSUV) was created in 2007, uniting a number of smaller parties supporting Hugo Chávez's Bolivarian Revolution with Chávez's



Fifth Republic Movement. PSUV and its forerunners have held the Presidency and National Assembly since 1998. The Democratic Unity Roundtable (Mesa de la Unidad Democrática, MUD), created in 2008, unites much of the opposition (A New Era (UNT), Project Venezuela, Justice First, Movement for Socialism (Venezuela) and others). Hugo Chávez, the central figure of the Venezuelan political landscape since his election to the Presidency in 1998 as a political outsider, died in office in early 2013, and was succeeded by Nicolás Maduro (initially as interim President, before narrowly winning the 2013 Venezuelan presidential election).

On 14 April 2013 elections were held between Nicolás Maduro and Henrique Capriles Radonski, opposition leader and co-founder of the political party, Primero Justicia. The Venezuelan elections forces announced that Maduro won with 50.8 percent of the vote, the smallest presidential win margin since the 1968 election.¹

Capriles demanded a recount, which in June reaffirmed Maduro as the victor. These results sparked subsequent demonstrations and protests as many continued to argue that the recount process was illegitimate. Maduro and his government responded with suppression of the uprisings that resulted in hundreds of arrests, that Maduro claimed to be in defence of a coup he was facing.² President Maduro was formally inaugurated as President of Venezuela on 19 April 2013.

During his tenure, Maduro continued most of the existing economic policies of his predecessor Chávez. Upon entering the presidency, his administration faced a high inflation rate and large shortages of goods,³ problems left over from Chávez's policies.⁴

Maduro has blamed capitalist speculation for driving high rates of inflation and creating widespread shortages of basic necessities. He has said he is fighting an "economic war", referring to newly enacted economic measures as "economic offensives" against political opponents, who he and loyalists state are behind an international economic conspiracy.⁵

Government policies during his tenure have been marked by numerous nationalization efforts, growing problems of corruption, and an increased role of the military in both government and the economy.

¹ Ellsworth, Brian. "Venezuela opposition demands vote recount, protests flare". U.S. Retrieved 03 Dec 2019.

² Margarita, López Maya. *El ocaso del chavismo : Venezuela 2005–2015*.

³ Ferdman, Roberto A. (26 March 2014). "[Venezuela's black market rate for US dollars just jumped by almost 40%](#)"

⁴ Kevin Voigt. "[Chavez leaves Venezuelan economy more equal, less stable](#)". CNN.

⁵ Mariano Castillo and Osmary Hernandez. "[Decree powers widen Venezuelan president's economic war](#)"



One of his first acts as President was to announce the Plan Patria Segura which was Maduro's first effort to militarize citizen security in Venezuela by establishing the permanent presence of the military in the streets, alongside the Bolivarian National Police (PNB)⁶ under the pretence of combating crime. This was the first of 23 subsequent strategic plans branded in the guise of citizen security that have increased the role of the military in governance as well as establishing a larger physical, political and security presence throughout the country.⁷

The oil-dependent economy suffered significantly when oil prices dropped in 2014. Combined with widespread corruption issues, economic policies created an economic crisis with levels of inflation reaching an unprecedented 2,700%⁸. The system of controlled currency has created a parallel currency market.⁹ The official exchange rate controlled by the government had been hovering around roughly 10 Venezuelan Bolivars per US dollar.¹⁰ The black-market exchange rate had reached 228,000 Bolivars per US dollar as of Feb 2018.

In November of 2017, Venezuela went into default for the first time¹¹, and as of January was considered in a new category of a 'quasi-default' scenario where some payments have been made, some have not. The ravaged economy has led to an unprecedented, man-made humanitarian crisis. Poverty rates have jumped to 82%¹².

The monthly minimum salary is only about \$7 USD on the commonly used black market rates.¹³ With massive food shortages, malnutrition is at an all-time high, and close to 80% of the population is only able to access two meals a day, another 4.5 million people with only enough

⁶ The Bolivarian National Police is a unified police force that operates throughout the national territory of Venezuela and answers to the Ministry of People's Power for the Interior, Justice, and Peace. The mission of the PNB is to "ensure the rights of individuals in situations that threaten, jeopardize, endanger, or harm their physical integrity, property, the free exercise of their rights, respect for their guarantees, social peace, harmony, and obedience of the law; to assist in the enforcement of the decisions of the competent authorities; control and guard the roads and traffic; and facilitate conflict resolution through dialogue, mediation, and conciliation, in accordance with established national standards." In addition to the National Police, Venezuela also has state and municipal police forces. <http://www.policianacional.gob.ve/index.php/institucion/2016-11-15-14-00-23/mision>

⁷ OVV. "Las 6 claves del relanzamiento del Plan Patria Segura", January 19, 2017, <http://observatoriodeviolencia.org.ve/las-6-claves-del-relanzamiento-del-plan-patria-segura/>

⁸ Moleiro, A. "La economía venezolana, en estado de coma", El País, January 5, 2018, http://elpais.com/internacional/2018/01/05/america/1515108139_270673.html

⁹ OAS. "First Report of the Secretary General on the Situation in Venezuela", May 30, 2018, pages 10-27, <http://www.oas.org/documents/eng/press/OSG-243.en.pdf>

¹⁰ XE. "Convert USD/VEF. United States Dollar to Venezuela Bolívar." <http://www.xe.com/currencyconverter/convert/?Amount=1&From=USD&To=VEF>.

¹¹ Coppola, Frances. "Venezuela Defaults, What Now?", Forbes, November 14, 2017, <https://www.forbes.com/sites/francescoppola/2017/11/14/venezueladefaults/#3f8aa6c82755>

¹² Encuesta sobre Condiciones de Vida en Venezuela, ENCOVI, "Evolución de la Pobreza", February 2016, <https://www.fundacionbengoa.org/noticias/2017/images/ENCOVI-2016-Pobreza.pdf>

¹³ Ulmer, Alexandra. "Venezuela raises minimum wage 40 percent, stoking world's fastest inflation", Reuters, December 31, 2017, <https://www.reuters.com/article/us-venezuela-economy/venezuela-raises-minimum-wage-40-percent-stoking-worlds-fastest-inflation-idUSKBN1EP0K3>



food for one.¹⁴ A recent report of the UN Food and Agricultural Organization (FAO) on food security noted that the number of undernourished people in Venezuela has increased by 1.3 million between 2014 and 2016.¹⁵ Every week, between five and six children die from malnutrition.¹⁶ The limited food that is brought into the country is now distributed by the military, and frequently finds its way to the black market where profit is made from the starvation of the population.¹⁷ Unable to find or afford food, looting and riots have become commonplace.

The healthcare system has been equally devastated. With basic medical supplies unavailable, there has been a resurgence of deaths and complications from treatable conditions. Between 95%-100% of hospitals do not have access to basic medicines.¹⁸ In 2016, maternal deaths rose by 65% and child mortality increased by 29.5%.¹⁹ The government has refused any and all offers international assistance in this regard.

Access to both food and health services is also now managed through a politicized national identity card, Carnet de la Patria. Numerous complaints have been submitted to the Inter-American Commission on Human Rights (IACHR) “that food supplies distributed through so-called Local Supply and Production Committees are not being given to people who oppose the government.”²⁰

The fundamental right to freedom of expression has been steadily under attack.²¹ The Venezuelan government has passed laws targeting media outlets and journalists, as well as any

¹⁴ Telesur, “Venezuela’s Maduro Announces 40% Minimum Wage Increase for New Year”, January 1, 2018, <https://www.telesurtv.net/english/news/Venezuelas-Maduro-Announces-40-Minimum-Wage-Increase-for-New-Year-20180101-0011.html>; and, Telesur, “Venezuela’s Maduro Announces 50% Increase in Minimum Wage”, July 2, 2017, <https://www.telesurtv.net/english/news/Venezuelas-Maduro-Announces-50-Increasein-Minimum-Wage-20170702-0027.html>;

¹⁵ FAO. “The State of Food Security and Nutrition in the World”, 2017, p. 82, <http://www.fao.org/3/a-l7695e.pdf>

¹⁶ IACHR. “IACHR and its Special Rapporteurship on Economic, Social, Cultural and Environmental Rights Urgent the State of Venezuela to Protect and Respect the Rights to Food and Health”, Press Release 2018-16, February 1, 2018, http://www.oas.org/en/iachr/media_center/PReleases/2018/016.asp

¹⁷ OAS. “Second Report of the Secretary General on the Situation in Venezuela”, March 14, 2017 pages 30-32, 61 <http://www.oas.org/documents/eng/press/Informe-VZ-II-English-Final-Signed.pdf>; and, OAS General Secretariat, “Third Report of the Secretary General on the Situation in Venezuela”, July 19, 2017; pages 35-38 <http://www.oas.org/documents/eng/press/TERCER-INFORME-VENEZUELA-ENGLISH-Finalsigned.pdf>

¹⁸ IACHR. “IACHR and its Special Rapporteurship on Economic, Social, Cultural, and Environmental Rights Urge the State of Venezuela to Protect and Respect the Rights to Food and Health”, February 1, 2018; Press release 2018-16, http://www.oas.org/en/iachr/media_center/PReleases/2018/016.asp

¹⁹ SVV. “Comunicado de la sociedad venezolana de puericultura y pediatría”, April 28, 2017, <http://svpediatria.org/secciones/noticias/comunicados/>; and, OHCHR. “Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela of April 1 to July 31, 2017”, August 2017, http://www.ohchr.org/Documents/Countries/VE/HCRReportVenezuela_1April-31July2017_SP.pdf.

²⁰ IACHR. “IACHR and its Special Rapporteurship on Economic, Social, Cultural, and Environmental Rights Urge the State of Venezuela to Protect and Respect the Rights to Food and Health”, Press release 2018-16, February 1, 2018, http://www.oas.org/en/iachr/media_center/PReleases/2018/016.asp.

²¹ OAS. “First Report of the Secretary General on the Situation in Venezuela”, May 30, 2016; pages 31, 91, 94-104, <http://www.oas.org/documents/eng/press/OSG-243.en.pdf>; and OAS. “Second Report of the Secretary General on the Situation in



citizen who is publicly critical of the regime, despite international condemnation.²² More than 50 media outlets have been closed.²³ In 2017, the “Law against Hatred” was passed by the National Constituent Assembly to allow for severe sanction (10 to 20 years in prison) against any information the Regime deems to undermine “public tranquillity”.²⁴

Since Maduro was elected, the IACHR Special Rapporteur on Freedom of Expression has made 12 public statements on the situation in Venezuela.²⁵ The number of political prisoners, individuals detained for their ideas, reached as high as 676 during the 2017 protests, levels not seen in Venezuela since the period under the Pérez Jiménez dictatorship. Since 2013, more than 1,320 political prisoners have been or are still being held in Venezuela. With a quickly deteriorating economy, growing government corruption, and increasing public insecurity, the limited support held by the newly elected Maduro government is diminishing quickly. Growing crime levels exacerbated an already tense environment.

Venezuela”, March 14, 2017; pages 52-57, <http://www.oas.org/documents/eng/press/Informe-VZ-II-English-Final-Signed.pdf>; and OAS. “Third Report of the Secretary General on the Situation in Venezuela”, July 19, 2017; pages 25-27, <http://www.oas.org/documents/eng/press/TERCER-INFORME-VENEZUELA-ENGLISH-Final-signed.pdf>.

²² IACHR. “The Office of the Special Rapporteur for Freedom of Expression of the IACHR condemns arbitrary restrictions on freedom of expression and assembly in Venezuela”, July 29, 2017; Press Release R109/17 <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=1072&IID=1>;

²³ IACHR. “The Office of the Special Rapporteur for Freedom of Expression condemns the closure of more than 50 media outlets in Venezuela without legal guarantees and for reasons related to their editorial line”, September 6, 2017; Press release R135/17, <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=1075&IID=1>; and, IACHR/UN. “Venezuela / Protest: UN and IACHR Rapporteurs condemn censorship, arrests and attacks on journalists”, April 26, 2017, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21535&LangID=E>.

²⁴ IACHR. “The Office of the Special Rapporteur for Freedom of Expression Expresses Serious Concern Over The Enactment Of The “Anti-Hate Law” In Venezuela And Its Effects On Freedom Of Expression and Freedom Of The Press”, November 10, 2017, Press release No. R135/17, November 20, 2017, <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=1082&IID=1>

²⁵ IACHR, “Office Of The Special Rapporteur Expresses Serious Concern Over The Enactment Of The “Anti-Hate Law” In Venezuela”, Press Release R179/17, November 10, 2017; IACHR. “Office of the Special Rapporteur condemns the closure of more than 50 media outlets in Venezuela without legal guarantees”, Press Release R135/17, September 6, 2017; IACHR. “The Office of the Special Rapporteur condemns arbitrary restrictions on freedom of expression and assembly in Venezuela”, Press Release R109/17, July 29, 2017; IACHR/UN, “Venezuela / Protests: UN and IACHR Rapporteurs condemn censorship, arrests and attacks on journalists”, JOINT PRESS RELEASE R51/17, April 26, 2017, <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=1062&IID=1>; IACHR. “Office of the Special Rapporteur Condemns Censorship and Intimidation of International Media and Journalists in Venezuela”, Press Release R16/17, <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=1052&IID=1>; IACHR. “IACHR and Office of the Special Rapporteur Condemn Measures to Shut Down Spaces for Political Participation in Venezuela”, Press Release R154/16, October 25, 2016, <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=1043&IID=1>; IACHR/UN. “Venezuela / Crisis: UN and Inter-American experts raise alarm at deterioration of media freedom”, Joint Press Release R110/16, August 4, 2016, <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=1036&IID=1>; IACHR. “Office of the Special Rapporteur Expresses Concern over Defamation Conviction in Venezuela”, Press Release R34/16, March 14, 2016, <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=1016&IID=1>; IACHR. “Office of the Special Rapporteur Condemns Killing of Journalist in Venezuela”, Press Release R 3/16, January 25, 2016, <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=1009&IID=1>; IACHR. “IACHR and the Special Rapporteur Express Deep Concern over the Stigmatization and Judicial Harassment against Three Media Outlets in Venezuela”, Press Release 93/15, August 24, 2015, <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=1002&IID=1>; IACHR. “Office of the Special Rapporteur Expresses Concern over the Situation of the Freedom of Expression in Venezuela”, Press Release R 107/14, September 22, 2014, <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=961&IID=1>; IACHR. “IACHR Expresses Deep Concern over Acts of Violence in Venezuela and Urges the State to Ensure Democratic Citizen Security”, Press Release 13/14, February 14, 2014, http://www.oas.org/en/iachr/media_center/PReleases/2014/013.asp



In 2015, the Mesa de la Unidad Democrática (MUD) opposition coalition earned a super-majority during the elections for the Legislative Assembly. However, in the days before the term of the former National Assembly ended, the pro-government majority of legislators appointed 13 Magistrates and 21 substitutes to the Supreme Court of Venezuela. The victory of the MUD in the parliamentary elections was quickly undermined by a ruling made by the new Supreme Court (Tribunal supremo de justicia - TSJ) to invalidate the election of three opposition candidates from the State of Amazonas. The Supreme Court has repeatedly ruled in favour of the Executive, overturning any decisions made by the Legislative Assembly. Although the decision was rescinded in the days following, the population took to the streets peacefully exercising their right of peacefully assembly and protest. Large scale demonstrations took place across the country from the beginning of April to the end of July 2017. The crackdown that ensued resulted in at least 133 civilians killed - including at least 105 murdered by state security forces or their paramilitary allies, with estimates for the number of people injured reaching close to 15,000. As of December 31, 2017, 5,475 citizens had been arbitrarily detained since the start of the protests. Accusations of abuse of power, including the use of torture have been widespread.²⁶

In August of 2017, the Office of the UN High Commissioner for Human Rights released a report on the 2017 protests that took place across Venezuela where they observed that the security forces systematically used excessive force, and that these abuses were both widespread and followed a common pattern.²⁷

Plan Patria Segura was followed by the Liberation of the People Operation, and subsequently Plan Zamora, military lead strategies that ultimately turned Venezuela into a military operations theatre. Close to 200 Venezuelans have died in protests since 2014; more than 12,000 have been arbitrarily detained or arrested. At least 8,292 extra-judicial killings have taken place, and in recent months there has been the beginning of a pattern of enforced disappearances bringing to mind the horror of the military-dictatorships that controlled the region in the 1980s and 1990s. Not only have the consequences been severe, the nature of tactics used is getting worse.

Additionally, the government's involvement in organized crime and drug trafficking has become an increasing concern where the Vice President of Venezuela was designated a

²⁶ Vivanco, José Miguel. "Crackdown on Dissent: Brutality, Torture, and Political Persecution in Venezuela", November 2017, https://www.hrw.org/sites/default/files/report_pdf/venezuela1117web_0.pdf

²⁷ OHCHR. "Human rights violations in the context of protests in the Bolivarian Republic of Venezuela from 1 April to 31 July, 2017", pages 8, 12, 24, 33, http://www.ohchr.org/Documents/Countries/VE/HCRReportVenezuela_1April-31July2017_EN.pdf.



“Narcotics Trafficker” by the US Treasury Department in 2017,²⁸ with allegedly billions assets frozen²⁹; two nephews of Venezuela’s First Lady have also been convicted of drug trafficking in a New York federal court³⁰; as well as a growing number of indictments against senior government and military officials. Recent reports also describe the threat of a growing presence of terrorist groups engaged in money laundering and drug trafficking networks.³¹ As the security situation worsens, it increases the threat against peace and security in neighbouring countries.

Repeated democratic and constitutional efforts to challenge the government have been consistently nullified. This includes the 2016 efforts to hold a constitutionally mandated recall referendum as well as the July 17 opposition-led vote that brought out an estimated 7 million voters to oppose the establishment of the “National Constituent Assembly”.³² In July 30, 2017, the government went ahead and established the Constituent Assembly that now, in practice, assumes legislative authorities, ultimately rendering the National Assembly powerless.

During the Presidential elections of May 20, 2018, a majority of the principle opposition figures had been imprisoned, forced into exile or prohibited from declaring their candidacy. In addition, the main opposition coalition was banned from participating.³³ During the weeks leading up to the electoral event, the number of political prisoners increased, spiking between April 29 and May 13, 2018. Some of the political prisoners that had been released in recent months were again detained and tortured, and there have been reports that the brutality of the torture increased considerably.

²⁸ United States Department of Treasury. “Treasury Sanctions Prominent Venezuelan Drug Trafficker Tareck Al Aissami and his Primary Frontman Samark Lopez Bello”, Press release, February 13, 2017, <https://www.treasury.gov/press-center/press-releases/Pages/as0005.aspx>.

²⁹ PANAM Post. “US Treasure Froze US\$3 Billion in Assets of Venezuela’s Vicepresident for Drug Trafficking”, March 27, 2017, <https://panampost.com/panam-staff/2017/03/27/us-treasury-froze-us-3-billion-in-assets-of-venezuelas-vicepresident-for-drug-trafficking/>; and Maria, Antonio, “US sanctions Venezuela vice president and accuses him of being a drug kingpin”, February 13, 2017, <http://www.miamiherald.com/news/nation-world/world/americas/venezuela/article132494809.html>

³⁰ United States Department of Justice. “United States of America v. Efraín Antonio Campo Flores, and Franqui Francisco Flores de Freitas, S2 15 Cr. 765 (PAC)”. July 22, 2016, New York, New York: United States District Court Southern District of New York. pages 1–78, <https://www.justice.gov/usao-sdny/file/792936/download>; and Pierson, Brendan. “Nephews of Venezuela’s first lady sentenced to 18 years in U.S. drug case”, December 14, 2017, <https://www.reuters.com/article/us-venezuela-usa-crime/nephews-of-venezuelas-first-lady-sentenced-to-18-years-in-u-s-drug-case-idUSKBN1E833G>

³¹ Meyer, Josh. “The Secret Backstory of how Obama let Hezbollah off the hook”, 2017, <https://www.politico.com/interactives/2017/obama-hezbollah-drug-trafficking-investigation/>; and Ottolenghi, Emanuele, and John Hannah. “Venezuela’s Toxic Brew, Failed Narco-State Meets Iran-Backed Terrorism”, March 23, 2017, <http://foreignpolicy.com/2017/03/23/in-venezuelas-toxic-brew-failed-narco-state-meets-iran-backed-terrorism/>.

³² Pons, Corina/Ellsworth Brian. “Venezuela opposition says 7 million vote in anti-Maduro poll”, July 16, 2017, Reuters, <https://www.reuters.com/article/us-venezuela-politics/venezuela-opposition-says-7-million-vote-in-anti-maduro-poll-idUSKBN1A1040>.

³³ BBC. “Venezuela opposition banned from running in 2018 election”, December 11, 2017, BBC, <https://www.bbc.com/news/world-latin-america-42304594>.



The Lima Group issued a statement the day following the May 20 election, declaring that they do not recognize the legitimacy of the electoral process because “it does not comply with international standards for a democratic, free, fair and transparent process.”³⁴

The European Union stated that the election was held without “complying with the minimum international standards for a credible process, not respecting political pluralism, democracy, transparency, and the rule of law.”³⁵

Finally, on May 23, 2018, the G7 stated that “by failing to meet accepted international standards and not securing the basic guarantees for an inclusive and democratic process, this election and its outcome lack legitimacy and credibility. We therefore denounce the Venezuelan presidential election, and its results, as it is not representative of the democratic will of the citizens of Venezuela.”³⁶

1. ICC Jurisdiction

In 2000, under the Presidency of Hugo Chavez, the Bolivarian Republic of Venezuela ratified the Rome Statute of the ICC. Consequently, the International Criminal Court has territorial and temporal jurisdiction over the crimes perpetrated in the territory and/or by the nationals of the country since July 1, 2002.

On September 11, 2017, the United Nations High Commissioner for Human Rights, Zeid Ra’ad Al Hussein, in his statement opening the 36th session of the UN Human Rights Council, referring to Venezuela, stated that his “investigation suggests the possibility that crimes against humanity may have been committed, which can only be confirmed by a subsequent criminal investigation.”³⁷

³⁴ Ministry of Foreign Affairs of Peru. “Declaración del Grupo de Lima”, May 21, 2018, <https://www.peruoea.org/declaracion-del-grupo-de-lima/>

³⁵ European Union. “Declaration by the High Representative on behalf of the EU on the presidential and regional elections in Venezuela”, May 22, 2018, http://www.consilium.europa.eu/en/press/press-releases/2018/05/22/declaration-by-the-high-representative-on-behalf-of-the-eu-on-the-presidential-and-regional-elections-in-venezuela/?utm_source=dsms-auto&utm_medium=email&utm_campaign=Declaration+by+the+High+Representative+on+behalf+of+the+EU+on+the+presidential+and+regional+elections+in+Venezuela

³⁶ G7. “G7 Leader’s Statement on Venezuela”, Ottawa, May 23, 2018, <https://pm.gc.ca/eng/news/2018/05/23/g7-leaders-statement-venezuela>

³⁷ OHCHR. “Darker and more dangerous: High Commissioner updates the Human Rights Council on human rights issues in 40 countries”, September 11, 2017, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22041&LangID=E>.



On February 8, 2018, Fatou Bensouda, Prosecutor of the International Criminal Court, announced the opening of a “preliminary examination of the situation in Venezuela will analyse crimes allegedly committed in this State Party since at least April 2017”.³⁸

The ICC’s Office of the Prosecutor (OTP) has to assess whether the court has material jurisdiction.³⁹ The Prosecutor will have to assess under the principles of independence, impartiality and objectivity, whether the referred situation has enough grounds to open an investigation under crimes listed in Art. 5 of the Rome Statute.

Following jurisdiction, the Prosecutor will have to address admissibility under Art. 17 of the Rome Statute. The ICC is a complementary, not a primary court. This means that a case will be inadmissible if there is an ongoing or a concluded national investigation into the case, unless the relevant authorities are unwilling or unable to genuinely investigate the Situation (Art. 17 par. 1 subpar. a).⁴⁰

There is no evidence that Venezuelan authorities have pursued investigations into the violence against citizens mentioned above, but rather deny any possible abuses of state force.⁴¹

The following part shall give delegates an overview about the alleged crimes in question and the further legal proceedings and guiding questions.

2. Widespread Human Rights Abuses

The Inter-American Commission of Human Rights (IACHR) released its first report on the Human Rights Situation in Venezuela under the presidency of Hugo Chavez, highlighting concerns about the independence of the judiciary and related impunity, as well as increasing violence and the growing attacks against civilians and human rights defenders.⁴² Since then, the IACHR has continued to closely monitor the situation, while noting that Venezuela refused any further on-site visits to the country. In 2009, the IACHR produced a follow up report describing the further deterioration of the situation noting the State’s “punitive power is being used to intimidate or

³⁸ OTP. “Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, on opening Preliminary Examinations into the situations in the Philippines and in Venezuela”, February 8, 2018, <https://www.icc-cpi.int/Pages/item.aspx?name=180208-otp-stat>.

³⁹ OTP, Policy Paper on Preliminary Examinations, November 2013, para. 81, https://www.icc-cpi.int/iccdocs/otp/OTP-Policy_Paper_Preliminary_Examinations_2013-ENG.pdf.

⁴⁰ Ibid. par. 8; Mohamed Abdou, Art. 17: Issues of Admissibility, in Mark Klamburg (ed.), *Commentary on the Law of the International Criminal Court*, note 216, www.cmn-kh.org/clicc, updated 30 April 2017.

⁴¹ HRW. “Venezuela: Six States Request ICC Investigation, Unprecedented Effort for Justice”, September 27, 2018, <https://www.hrw.org/news/2018/09/26/venezuela-six-states-request-icc-investigation>.

⁴² IACHR. “Report on the Situation of Human Rights in Venezuela”, December 29, 2003, <http://www.cidh.org/countryrep/Venezuela2003eng/toc.htm>



punish people on account of their political opinions,” as well as a “pattern of impunity in cases of violence”, among other issues.⁴³

On February 12, 2018, the IACHR published an updated country report on Democratic Institutions, the Rule of Law and Human Rights in Venezuela. This report details the human rights situation against the backdrop of the deteriorating political and security conditions facing the country. The report highlights the militarization of citizen security, and the steady increase in extrajudicial executions. In addition to detailing the deterioration of the civil and political rights of Venezuelan citizens with special attention to the attack on the citizen’s right to freedom of assembly and expression. Finally, it considers the government’s culpability in the collapsing socio and economic conditions in the country.⁴⁴

3. Case during the JCUMUN Conference

To initiate an investigation in accordance with Art. 53 of the Rome Statute, the prosecutor needs a reasonable basis to proceed.⁴⁵ Added to the study guide, delegates will find a short evidence briefing which in the scenario of this conference led to the issuing of an arrest warrant for Nicolas Maduro in accordance with Art. 58 of the Rome Statute (raising the standard of proof to a “reasonable grounds to believe” that Nicolas Maduro indeed has committed the alleged charges mentioned above).⁴⁶ Before the case can move forward to trial stage, the Pre-Trial Chamber (PTC) has to confirm the charges through a hearing, in which the standard of proof is raised to “substantial grounds to believe”.⁴⁷

During the trial, the court will only convict if the Prosecutor is able to prove the alleged charges “beyond reasonable doubt”.

However, at JCUMUN, we will simulate the Case “*The Prosecution v. Nicolas Maduro*” starting from the trial stage.⁴⁸ Therefore, witness testimonials listed in the annex to this study

⁴³ IACHR. “Democracy and Human Rights in Venezuela”, December 30, 2009, <http://www.cidh.org/countryrep/Venezuela2009eng/VE09.TOC.eng.htm>

⁴⁴ IACHR. “Democratic Institutions, the Rule of Law and Human Rights in Venezuela” December 31, 2017, para 257, <http://www.oas.org/en/iachr/reports/pdfs/Venezuela2018-en.pdf>.

⁴⁵ Decision pursuant to Article 15 of the Rome Statute on the authorization of an Investigation into the Situation in the Republic of Kenya, ICC, (01/09), Pre-Trial Chamber II, 31 March 2010, p. 10.

⁴⁶ Rome Statute, 58(1).

⁴⁷ Prosecutor v. William Samoeiruto, Henry Kiprono Kosgey and Jushua Arap Sang, ICC (01/09-01/11), Pre-Trial Chamber II, 8 March 2011, at 5; Rome Statute, 61 (7).

⁴⁸ Find an overview about the legal process of an ICC Case under <https://www.icc-cpi.int/about/how-the-court-works/Pages/default.aspx#legalProcess>.



guide, reports from the OAS,⁴⁹ IACHR,⁵⁰ Amnesty International,⁵¹ HRW⁵² and the OHCHR,⁵³ will be assumed to be sufficient grounds to move to trial. Advocates for the Prosecution and the Defence will have to limit their argumentation and pleadings to the charges referred to the Office of the Prosecutor in the "six countries' referral letter".⁵⁴ Additionally, advocates will have the chance to examine Nicolas Maduro, who finds himself in contempt of the court, as well as General Manuel Ricardo Christopher Figuera, former Head of the Venezuelan Intelligence Police (SEBIN).

§ 1. State referral by Argentina, Canada, Colombia, Chile, Paraguay and Peru

On September 26, 2018, the Governments of Argentina, Canada, Colombia, Chile, Paraguay and Peru referred the Situation in Venezuela to the OTP. While the prosecutor had already opened her investigation in February 2018, the 'state referral' facilitates the legal proceedings of moving into an investigation. The preliminary examination *proprio motu* is regulated under Art. 15 (1) of the Rome Statute, the referral was based on Art. 14 of the Statute. The significance of the six states' referral is that now the prosecutor may proceed into investigation without seeking authorization from a Pre-Trial Chamber.⁵⁵ The focus of the referral are allegations of crimes against humanity in Venezuela.

§ 2. Definition of Crimes against Humanity

Pursuant to Art. 5 subparagraph b of the Rome Statute, the ICC has jurisdiction over crimes against humanity, further defined in Art. 7 of the Rome Statute. The general criteria for the acts listed in Art. 7 is that they are committed as part of a widespread or systematic attack

⁴⁹ OAS. "Report of the General Secretariat of the Organization of American States and the Panel of Independent Experts on the possible Commission of Crimes against Humanity in Venezuela", May 29, 2018, <http://www.oas.org/documents/eng/press/Informe-Panel-Independiente-Venezuela-EN.pdf>.

⁵⁰ IACHR. "Situation of Human Rights in Venezuela", December 31, 2017, <http://www.oas.org/en/iachr/reports/pdfs/Venezuela2018-en.pdf>.

⁵¹ Amnesty International. "Amnesty International Report 2017/2018, The State of the World's Human Rights", p. 393-397, <https://www.amnesty.org/download/Documents/POL1067002018ENGLISH.PDF>.

⁵² HRW. "World Report 2019, Venezuela Events of 2018", <https://www.hrw.org/world-report/2019/country-chapters/venezuela>.

⁵³ OHCHR. "Venezuela: Continued impunity amid dismal human rights situation - UN report", June 22, 2018, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23242&LangID=E>

⁵⁴ ICC. "Referral of the situation in Venezuela under Article 14 of the Rome Statute submitted by the Republic of Argentina, Canada, the Republic of Colombia, the Republic of Chile, the Republic of Paraguay and the Republic of Peru", September 26, 2018, https://www.icc-cpi.int/itemsDocuments/180925-otp-referral-venezuela_ENG.pdf.

⁵⁵ OTP. "Prosecutor of the International Criminal Court, Fatou Bensouda, on the referral by a group of six State Parties regarding the situation in Venezuela", September 27, 2018, <https://www.icc-cpi.int/Pages/item.aspx?name=180927-otp-stat-venezuela>.



directed against any civilian population, by individuals having knowledge of the attack. Based on this definition, the pre-trial chamber of the ICC developed 5 general principles:

1. *An attack directed against any civilian population,*
2. *a State or organizational policy,*
3. *the widespread or systematic nature of the attack,*
4. *a nexus between the individual act and the attack, and*
5. *knowledge of the attack.*⁵⁶

The six state referral, having considered the “Report of the General Secretariat of the Organization of American States and the Panel of Independent Experts on the Possible Commission of Crimes against Humanity in Venezuela”, focusses on the following charges that qualify as crimes against humanity: (1) murder, (2) imprisonment or other severe deprivation of liberty, (3) torture, (4) rape, (5) the persecution of an identifiable group or collectivity on political grounds and (6) the enforced disappearance of persons.⁵⁷

Under the criteria mentioned above, the court will have to decide whether there is sufficient evidence to convict an individual for these crimes (in our case Nicolas Maduro).

§ 3. *Construing an argument to the commission of Crimes against Humanity*

It is important to know what are the requirements and limitations of an appropriate line of argumentation connected to Crimes Against Humanity, and thus the guide will inspect in further detail the definition, nature, elements and context of such charges.

While attempting to construe argument, one needs to bear in mind all the *General Principles of Criminal Law*, which the ICC has set out in Part 3 (Articles 22-33) of the Rome Statute, but most importantly the rule of Art. 22 — *nullum crimen sine lege*. Besides encompassing the widely recognisable principle of the assumption of innocence, it also delineates, that for the

⁵⁶ Situation in the Republic of Kenya, ICC PT. Ch. II, ICC- 01/09-19, Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya, 31 March 2010, para. 79; Situation in the Republic of Côte d’Ivoire, ICC PT. Ch. III, ICC-02/11-14, Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Côte d’Ivoire, 3 October 2011, para. 29.

⁵⁷ ICC, “Referral of the situation in Venezuela under Article 14 of the Rome Statute submitted by the Republic of Argentina, Canada, the Republic of Colombia, the Republic of Chile, the Republic of Paraguay and the Republic of Peru”, September 26, 2018, https://www.icc-cpi.int/itemsDocuments/180925-otp-referral-venezuela_ENG.pdf; Details on the elements of crime are listed in the Core ICC texts under the following link: <https://www.icc-cpi.int/resource-library/Documents/ElementsOfCrimesEng.pdf>.



purposes of the ICC *the definition of a crime shall be strictly construed and shall not be extended by analogy. In case of ambiguity, the definition shall be interpreted in favour of the person being investigated, prosecuted or convicted.*⁵⁸ This will be important when advocates go on to analyse the exact elements of a particular crime, they are trying to either charge, or acquit the individual.

Fortunately, the ICC has published an extensive guide to the *Elements of Crimes*, which should be a substantive help for the delegates, and which, according to Art. 21(1)(a) of the Statute, is a document of law applicable before the Chamber. Therein, the Court sets out some general aspects of the charges, some of which the guide will now outline for the Crimes Against Humanity:⁵⁹

Example:

- The action in question is *directed against a (any) civilian population*.
- The action has been *committed as part of a widespread or systematic attack*, which means the attack was *a course of conduct involving the multiple commission of acts referred to in article 7, paragraph 1, of the Statute, pursuant to or in furtherance of a State or organizational policy to commit such attack*. (The acts need not constitute a military attack.)
- The charges *require that the State or organization actively promote or encourage such an attack against a civilian population*
- Such an attack might, in certain circumstances, be committed by omission, or a deliberate failure to take action, given that the knowledge of it and its consequences is proven.
- The defendant has shown the participation in, and knowledge of said attack.
- *The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack against a civilian population*.
- However, a conclusive *proof that the perpetrator had knowledge of all characteristics of the attack or the precise details of the plan or policy of the State or organization* need not be provided.

⁵⁸ Rome Statute, 22.

⁵⁹ all quotes provided in the list are taken from the *Elements of Crimes* document — <https://www.icc-cpi.int/NR/ronlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf>



- A causal link between the accused, and the attack is established.
- Whenever a use of force is required by a particular crime, then *it is not restricted to physical force, but may include threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power against such person or persons or another person, or by taking advantage of a coercive environment.*
- Finally, *the gravity of the conduct was such that it was in violation of fundamental rules of international law and the perpetrator was aware of the factual circumstances that established the gravity of the conduct.*

It is important to note, that (in contrast to the International Criminal Tribunal for Rwanda definition of Crimes against Humanity) the ICC does not require the attack to be carried *out on national, political, ethnic, racial or religious grounds*,⁶⁰ thus the exact motive and details of the policy are not of importance, as far as the effect of the charged crime occurred.

All in all, with such a detailed list of necessary elements of crimes, the ICC provides us with a complex outline of both *actus reus*, and *mens rea* elements that need to be satisfied, in order to deem an individual guilty. This is the applicable law concerning individual liability for Crimes Against Humanity before the ICC,⁶¹ and to its effect advocates will have to construct their argumentation. All of the necessary general characteristics of a Crime Against Humanity, as aforementioned in this section, must be proven beyond reasonable doubt of the Judges, with either evidence material, or witness testimony, alongside a clear proof of the actions specific to each charge, in order to find an individual guilty.

RELEVANT LEGAL PRINCIPLES

1. Individual Criminal Responsibility

So far, the narrative has been on the general “Situation in Venezuela”. One of the most important questions the court will have to address during the conference is the individual criminal responsibility of Nicolas Maduro with regards to the alleged charges. Individual criminal

⁶⁰ ICTR. 3

⁶¹ for further exegesis of the issue, see Part VII of the 67th Report of the International Law Commission — <https://legal.un.org/ilc/reports/2015/english/chp7.pdf>



responsibility is regulated under Art. 25 of the Rome Statute. The grounds for individual criminal responsibility are set forth in paragraph 3. There are no grounds to believe that Maduro himself actively committed the crimes of murder or torture. He might however be the individual who “commits such a crime ... through another person, regardless of whether that other person is criminally responsible”⁶². Another option would be, that Maduro is the one who “orders, solicits, or induces the commission of such a crime which in fact occurs or is attempted”⁶³.

Reports and testimonials lead to the belief that persecution of an identifiable group on political grounds, torture and extrajudicial killings are likely to happen under the security apparatus, especially Bolivarian National Intelligence Service SEBIN.⁶⁴

In the particular case of SEBIN, hearings of the IACHR document the ordering of torture through senior government officials such as the Minister of Internal Relations, Justice and Peace, Major General Gustavo Gonzalez Lopez.⁶⁵ To assess the involvement of Nicolas Maduro, the testimonial of former SEBIN Chief Figuera (predecessor of Major General Lopez) might give clarity about the link between Maduro and the chain of command.

Bearing in mind, that Maduro might not be the only one eventually committing criminal action (Art. 25 (3, subparagraph a), the strategy of the prosecution is focussed on those who hold “the greatest responsibility for crimes within the jurisdiction of the court”⁶⁶.

This principle is further defined in Article 28 of the Rome Statute. While applying to military commanders, subparagraph b includes ‘non-military’ and ‘civilian commanders’. The idea is to hold persons accountable with regards to crimes committed by their subordinates.

⁶² Rome Statute, 25 (3, subparagraph a).

⁶³ Ibid. subparagraph b.

⁶⁴ OAS. “Report of the General Secretariat of the Organization of American States and the Panel of Independent Experts on the possible Commission of Crimes against Humanity in Venezuela”, May 29, 2018, p. 29, 102f., 115, 121f., 126, 130ff., 137; IACHR. “Democratic Institutions, the Rule of Law and Human Rights in Venezuela: Country Report”, December 2017, par. 78, www.oas.org/en/iachr/reports/pdfs/Venezuela2018-en.pdf; OHCHR. “Report of the United Nations High Commissioner for Human Rights in the situation of Human rights in the Bolivarian Republic of Venezuela”, 5 July 2019, par. 32, 43.

⁶⁵ Ibid, p. 137.

⁶⁶ OTP. “Paper on some policy issues before the Office of the Prosecutor, September 2007, p. 7, https://www.icc-cpi.int/nr/rdonlyres/1fa7c4c6-de5f-42b7-8b25-60aa962ed8b6/143594/030905_policy_paper.pdf; OTP. “OTP Strategic Plan 2016-2018, November 16, 2015, par.35-36, https://www.icc-cpi.int/iccdocs/otp/EN-OTP_Strategic_Plan_2016-2018.pdf



To fall under the scope of Art. 28 of the Rome Statute, one must prove first superior-subordinate relationship. This relationship includes the capability of the superior “to prevent and punish subordinates from committing international crimes”⁶⁷. The Committee should note that superior responsibility entails a rather passive element compared to Art. 25 of the Rome Statute. The Commander must not specifically order the criminal action itself but should rather be judged in his or her incapability to prevent or punish.⁶⁸

Aside from the objective criteria of proving superior-subordinate relationship, further subjective elements have to be evaluated before the Court. The criminal responsible (Art. 25) or liable (Art. 28) must commit the material elements in question with both intent and knowledge.⁶⁹ It is up to interpretation what should be understood with intent as engagement in conduct (Art. 30 (2), subparagraph a). While common law systems in Europe refer to intent as a part of *mens rea* meaning the free determination to act, US criminal law rather suggests review of voluntary or involuntary movement of the body.⁷⁰

The concept of knowledge is interfaced with the discussion around intent of the Accused. The standard of proof in the early history of the ICC was set with regards to knowledge at a stage of practical certainty, the Court further established a version of *dolus eventualis*.⁷¹ *Dolus eventualis* includes the “awareness by the suspect of the substantial likelihood that his or her actions or omission would result in the realisation of the objective elements of crime; and the decision by the suspect to carry out his or her actions or omission despite such awareness.”⁷² The Court later added a “virtual certainty” to allow *dolus eventualis*.⁷³

Note, that the mental elements of the alleged charges should not only be considered during the evaluation of culpability, but especially in -if found guilty- the decision of the penalty.⁷⁴

⁶⁷ Kortfält, Linnea, Art. 28: Responsibility of commanders and others, in Mark Klamberg (ed.), *Commentary on the Law of the International Criminal Court*, note 280, www.cmn-kh.org/clicc, updated 30 April 2017; Note that the ICC does not precisely define ‘material elements’. What is meant is a combination of action of the accused with a charge where the ICC holds jurisdiction.

⁶⁸ *Ibid*, note 281.

⁶⁹ Rome Statute, 31 (1).

⁷⁰ Badar, Mohamed E./Porro, Sara, Art. 30: Mental element, in Mark Klamberg (ed.), *Commentary on the Law of the International Criminal Court*, note 307, www.cmn-kh.org/clicc, updated 30 April 2017.

⁷¹ *Ibid*, 308.

⁷² ICC. “Decision on the confirmation of Charges”, 29 Januar 2007, ICC-01/04-01/06-803-tEN, para.353ff.

⁷³ ICC. “Judgment on the Appeal of Mr. Thomas Lubanga Dyilo against his conviction”, December 1 2014, ICC-01/04-01/06-A-5, para. 441ff.

⁷⁴ Compare ICC. “Notice of Appeal against Sentencing Judgement”, December 9 2019, ICC-01/04-02/06-2442.



2. Head of State Prosecution

§ 4. § 1. Head of State Immunity

According to Art. 119 (1) of the Rome Statute, the Court is the sole authority to decide disputes concerning the judicial functions of the Court.⁷⁵ In the Case “*The Prosecution v. Omar Al Bashir*”, the ICC issued an arrest warrant for the former president of Sudan. Jordan argued that it did not have to comply with the arrest warrant, as Al Bashir enjoys immunity *ratione personae*.⁷⁶ The Court reminded Jordan that such customary international law immunities only apply as defences to national court jurisdiction.⁷⁷ Article 27 (2) of the Rome Statute specifically excludes immunity as a defence against the jurisdiction of the ICC.

The African Union still supports the idea of absolute immunity for heads of states and senior officials, thus creating a differing framework to the provisions of the Rome Statute.⁷⁸ In the case of Omar Al Bashir, the question surely is highly relevant, as Sudan itself is not a party to the Rome Statute. The Security Council referred the Situation in Darfur to the ICC under Chapter VII of the UN Charter, giving the ICC jurisdiction over a non-Party state.

As mentioned above, Venezuela is a State party to the Statute. Therefore, Head of State immunity does not apply.

⁷⁵ ICC. “Decision pursuant to article 87(7) of the Rome Statute on the refusal of the Republic of Chad to comply with the cooperation requests issued by the Court with respect to the arrest and surrender of Omar Hassan Ahmad Al Bashir”, December 13, 2011, ICC-02/05-01/09-140-tENG, p.3.

⁷⁶ ICC. “Decision under article 87(7) of the Rome Statute on the non-compliance by Jordan with the request by the Court for the arrest and surrender of Omar Al Bashir”, December 11, 2017, ICC-02/05-01/09-309, para.14.

⁷⁷ ICC. “Judgement in the Jordan Referral re Al-Bashir Appeal”, May 06, 2019, ICC-02/05-01/09-397-Corr, p.5.

⁷⁸ IJRC. “African Union Approves Immunity for Government Officials in Amendment to African Court of Justice and Human Rights’ Statute.” *International Justice Resource Center*, 2 July 2014, <https://ijrcenter.org/2014/07/02/african-union-approves-immunity-for-heads-of-state-in-amendment-to-african-court-of-justice-and-human-rights-statute/>.



GUIDE

UN GENERAL ASSEMBLY. "Rome Statute of the International Criminal Court", 17 July 1998 (last amended 2010).
The Rome Statute serves as the central legal document establishing the court. The Prosecution and the Defence will have to argue on the basis of its articles as should judges refer to in their considerations and final verdict.

KLAMBERG, MARK. *Commentary on the Law of the International Criminal Court*. Torkel Opsahl Academic EPublisher, 2017.

This commentary on the Rome Statutes gives all members of the court a deeper understanding of the articles. The commentary explains the articles focusing on case law.

OAS. "Report of the General Secretariat of the Organization of American States and the Panel of Independent Experts on the possible Commission of Crimes against Humanity in Venezuela", May 29, 2018, <http://www.oas.org/documents/eng/press/Informe-Panel-Independiente-Venezuela-EN.pdf>.

The OAS report is the most detailed document combining testimonials of from witnesses and victims of the Crisis in Venezuela. Members of the court will find helpful information on their argumentation but should limit themselves on the charges listed in the Study Guide.

IACHR. "Situation of Human Rights in Venezuela", December 31, 2017, <http://www.oas.org/en/iachr/reports/pdfs/Venezuela2018-en.pdf>.

Arguably not as detailed as the report by the OAS, this report an overview about the overall crisis in Venezuela from a structural perspective.

Amnesty International. "Amnesty International Report 2017/2018, The State of the World's Human Rights", <https://www.amnesty.org/download/Documents/POL1067002018ENGLISH.PDF>.

The Amnesty report should serve as a research starter about structural problems surrounding Venezuela while also providing information about the alleged charges in the Study Guide.



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IACHR. “Democratic Institutions, the Rule of Law and Human Rights in Venezuela” December 31, 2017, <http://www.oas.org/en/iachr/reports/pdfs/Venezuela2018-en.pdf>

IACHR. “IACHR and its Special Rapporteurship on Economic, Social, Cultural and Environmental Rights Urgent the State of Venezuela to Protect and Respect the Rights to Food and Health”, Press Release 2018-16, February 1, 2018, http://www.oas.org/en/iachr/media_center/-PReleases/2018/016.asp.

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