



3RD PRAVIN GANDHI COLLEGE OF LAW SAARC INTERNATIONAL MOOT COURT COMPETITION, 2023



MOOT PROPOSITION

THEME – PUBLIC INTERNATIONAL LAW



3rd PGCL SAARC International Moot Court Competition 2023

In the loving memory of Late Dr. L.R Dwivedi

CASE BEFORE THE INTERNATIONAL CRIMINAL COURT, PRE-TRIAL CHAMBER - I

PROSECUTOR V. AFOGATO OF JURASSICA

1. The Republic of Jurassica ("Jurassica") is a Federal Republic that covers much of the large continent of Pleistocenia. Jurassica is extremely wealthy, and heavily industrialized the country with rich oil and natural gas reserves. It has a population of 500 million. It has a written constitution and a presidential democracy. The President is elected for a term of five years with no cap on the maximum number of terms that he or she may be re-elected for.
2. In 1989, Mr. Afogato, a young and charismatic leader of the Alkaloid party, became the youngest President of Jurassica at the age of 46. He subsequently went on to be re-elected five more times. On each of these occasions, he won the elections by an extremely large margin. The Alkaloid party also enjoyed a majority in the Representative Assembly, which comprises a Senate and House of Representatives, for the first 25 years of Mr. Afogato's presidency.
3. However, since the late 1990s, Mr. Afogato's presidency was seen as becoming increasingly autocratic, with his popularity among the masses waning. His elections were surrounded by rumours and accusations of electoral fraud, and the Alkaloid party's popularity also waned. By 2014, the Tannoid party enjoyed a majority in both the Senate and the House of Representatives. The Tannoid party amended the Constitution of Jurassica to ensure that no individual above the age of 75 years of age could contest presidential elections. Consequently, Mr. Afogato was unable to contest the 2019 presidential elections and did not receive a seventh term. The Tannoid party's candidate, Ms. Chamomile, became the President of Jurassica with effect from 01 January 2019. However, Mr. Afogato has continued exercising considerable political influence despite his advancing age and declining health. He was invited to be the keynote speaker at the Global Conference on



Leadership, which was scheduled to be held in Coconut, the capital city of the Democratic Republic of Cocoa Butter (“**Cocoa Butter**”). on 24 January 2023.

4. 60% of Jurassica’s population belongs to the Paleoarchean faith. As per the Constitution of Jurassica, Paleoarchea is the state religion. The Paleoarchean faith, as well as prevalent social mores in Jurassica, view sexual relations outside the ambit of marriage as a sin, with sexual relations being regarded as limited to the purposes of procreation within a marriage. Consequently, Jurassica does not recognize same-sex relationships.
5. Both the Alkaloid and Tannoid parties have consistently taken a stance against the rights of the lesbian, gay, bisexual, transgender, intersex, and queer (LGBTIQ+) community. In particular, Mr. Afogato’s presidency witnessed a pronounced increase in both anti-LGBTIQ+ public discourse and the persecution of the LGBTIQ+ community. Mr. Afogato, throughout his presidency, engaged in hateful anti-LGBTIQ+ rhetoric, in particular, by making statements such as *“the Republic of Jurassica must be purged of these individuals to maintain the sanctity of our religion and morals”*. His tenure as President witnessed widespread profiling of LGBTIQ+ individuals, pervasive discrimination in the public sphere, a slew of unlawful arrests followed by protracted detention, and increasing instances of violence, rape, torture, and murder of LGBTIQ+ individuals by both the police and armed political supporters of Mr. Afogato. Mr. Afogato, whilst repeatedly engaging in extremely hateful anti-LGBTIQ+ rhetoric, never publicly assumed responsibility for any of these incidents.
6. Beginning in 2001, the increasingly widespread persecution of the LGBTIQ+ community led to over 8 million individuals fleeing Jurassica to Triassica, which is situated to the south of Jurassica. 90% of the population of Triassica follows the Neoarchean religion. Following a protracted period of political turmoil and several instances of armed conflict between Jurassica and the Triassic Freedom Front, primarily owing to the alleged persecution and marginalization of individuals professing the Neoarchean faith by the Jurassic government, Triassica unilaterally declared its independence from Jurassica on 05 May 2000. The Constitution of the Republic of Triassica was signed on 15 May 2000 and ratified on 10 September 2000. Triassica’s constitution provides that it is a secular state with a strict separation between state and religion.

Triassica enjoys diplomatic recognition from 160 Member States of the United Nations (UN). Initially, the Triassic Freedom Front was granted recognition as a non-member observer entity on 01 June 2000, under the United Nations General Assembly (UNGA) Resolution 5000/450WS. Subsequently, on 15 September 2012, UNGA Resolution 50/50X accorded the status of non-member observer State to Triassica, with the designation 'Triassica' replacing the use of 'Triassic Freedom Front'.

7. Over some time, 4 million members of the LGBTIQ+ community from Jurassica, who initially were classified as refugees by Triassica, have been granted citizenship through naturalization by the government of Triassica. Likewise, 3 million others have received authorization to live and work permanently in Triassica, whereas 1 million more are still classified as refugees. Given that Triassica is in the process of urbanization, with tremendous scope for new constructions and development in the newer cities, the individuals belonging to the LGBTIQ+ community have tended to build or buy houses adjacent to each other and, as such, certain identifiable localities in Triassic cities have a very high number of LGBTIQ+ residents. There has also been a degree of assimilation between the LGBTIQ+ individuals hailing from Jurassica and the LGBTIQ+ population originally belonging to Triassica.
8. Triassica and Jurassica have remained intertwined in a prolonged conflict, although the same has largely been of a political and non-violent nature since 2001. However, during Mr. Afogato's presidency, Jurassica launched a covert military operation in 2008, with members of the Jurassic Armed Forces infiltrating Triassic borders and engaging in the identification, abduction, imprisonment, rape, and murder of LGBTIQ+ individuals. Whilst most of these individuals were those who had fled persecution from Jurassica since 2001, original LGBTIQ+ residents of Triassica also became the subject of such attacks by the Jurassic Armed Forces. Much of these operations were covert, although there were also some recorded instances of violence between the Jurassic Armed Forces on the one hand, and the Triassic police authorities and army on the other. This operation, which continued for 11 years, was ultimately discontinued in 2019 after Ms. Chamomile became the President of Jurassica. Nonetheless, the persecution of the LGBTIQ+ community at the domestic level has continued unabated in Jurassica.



9. The President of Triassica, Mr. Sapphire, deposited Triassica's instrument of accession to the UN Secretary-General and acceded to the Rome Statute on 23 January 2013. It entered into force for Triassica with effect from 01 February 2013. According to a referral dated 12 March 2016, by Triassica regarding the alleged crimes being committed in its territory against LGBTIQ+ individuals, the Office of the Prosecutor opened an investigation into the situation in Triassica on 15 December 2017.

On 18 October 2018, after examining the application filed by Prosecution on 10 September 2018, the Pre-Trial Chamber – I of the International Criminal Court issued a warrant for the arrest of Mr. Afogato, noting that there were reasonable grounds to believe that he was criminally responsible for:

- i. Murder as a crime against humanity, within the meaning of Article 7 (1)(a) of the Rome Statute
- ii. Deportation or forcible transfer of population as a crime against humanity, within the meaning of Article 7 (1)(d) of the Rome Statute
- iii. Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law as a crime against humanity, within the meaning of Article 7 (1)(e) of the Rome Statute
- iv. Torture as a crime against humanity, within the meaning of Article 7 (1)(f) of the Rome Statute
- v. Rape or any other form of sexual violence of comparable gravity as a crime against humanity, within the meaning of Article 7 (1)(g) of the Rome Statute
- vi. Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, or gender as defined in Article 7 (3) of the Rome Statute, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in Article 7 (1) or any crime within the jurisdiction of the Court as a crime against humanity, within the meaning of Article 7 (1)(h) of the Rome Statute
- vii. Enforced disappearance of persons as a crime against humanity, within the meaning of Article 7 (1)(h) of the Rome Statute
- viii. Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to the body or mental or physical health, within the meaning of Article 7 (1)(i) of the Rome Statute



10. After coming to power, Ms. Chamomile refused to press any charges against Mr. Afogato, because any alleged crimes would be attributable to him only in his official capacity as the President of Jurassica. As of 2023, no attempts have been made to prosecute Mr. Afogato in Jurassica.
11. In the interregnum, Mr. Afogato traveled to three countries, namely, Cappuccino, Espresso, and Cortado, none of which executed the warrant of arrest despite being State parties to the Rome Statute. In response, the Pre-Trial Chamber – I of the ICC issued six decisions informing the United Nations Security Council and the Assembly of States Parties to the Rome Statute about Mr. Afogato's visits to Cappuccino, Espresso, and Cortado, so that they may take appropriate measures.
12. On 23 January 2023, Mr. Afogato landed in Coconut for Global Conference on Leadership. Upon landing, he was arrested by the Cocoa Butter authorities and surrendered to the ICC, and transferred to the ICC's detention center on 25 January 2023. Mr. Afogato, during his appearance before the ICC on 26 January 2023, submitted, *inter alia*, that any actions attributable to him would, at best, be performed in his official capacity, that he was consequently entitled to immunity as a former head of state, that, in any case, the ICC did not have the jurisdiction to proceed with the matter, that his arrest was unlawful, and that any alleged crimes committed against members of the LGBTIQ+ community would not constitute a crime against humanity.
13. The Pre-Trial Chamber directed the prosecution and defense to file submissions on the jurisdiction, and whether there was sufficient evidence for the case to go on trial in the hearing for confirmation of charges.

LEGAL ISSUES:

1. Whether the ICC has the jurisdiction to prosecute and hear the case against Mr. Afogato?
2. Whether Mr. Afogato enjoys any immunity as a former Head of State purporting to have acted in an official capacity?
3. Whether Mr. Afogato's arrest was unlawful?
4. Whether the covert military operation in Triassica constitutes a crime against humanity, and whether the same is attributable to Mr. Afogato?

NOTE:

- *Jurassica is not a State Party to the Rome Statute, whereas Cocoa Butter is a State Party to it.*
- *Jurassica, Triassica and Cocoa Butter have all ratified the Geneva Convention and its additional protocols.*

