



ICRC

**Asia-Pacific Moot Court National Rounds
2018**

**International Criminal Court
PROSECUTOR v. COLONEL
NAZIR**

PROSECUTOR v. COLONEL NAZIR

A. INSTRUCTIONS

1. Proceedings: The hearing takes place pursuant to Article 61 of the ICC Statute (confirmation of charges). At this stage, the Prosecutor has to “support each charge with sufficient evidence to establish substantial grounds to believe that the person committed the crime charged.” The Accused may “object to the charges” and/or “challenge the evidence presented by the Prosecutor”.
2. For the purpose of the moot, the hearing comprises a main speech and a rebuttal for the Prosecution and a main speech and a surrebuttal for the Defence.
3. Facts and evidence: The case is entirely fictional. The Moot problem includes all the facts supported by evidence that have been transmitted to the Defence, as well as facts and evidence presented by the Defence for the purpose of the hearing. Teams should confine themselves to the facts supplied. Neither the Prosecutor nor the Defence may introduce new evidence or facts at the hearing (Article 61 (6) (c) of the ICC Statute is not applicable). Teams may nonetheless draw reasonable inferences from the facts. They may also question the credibility or weight of the evidence. Teams should not hand anything to judges unless specifically asked to by a judge.
4. Procedure: The problem is not intended to raise questions of procedure other than the rights of the accused pursuant to Articles 66-69 of the ICC Statute. Any other procedural questions should be ignored.
5. Jurisdiction and admissibility: Counsels may, if relevant, address any issue regarding the admissibility of the case.
6. Applicable law: In accordance with Article 21 of the ICC Statute:

The Court shall apply

- a) In the first place, this Statute, Elements of Crimes and its Rules of Procedure and Evidence;
- b) In the second place, where appropriate, applicable treaties and the principles and rules of international law, including the established principles of the international law of armed conflict;
- c) Failing that, general principles of law derived by the Court from national laws of legal systems of the world including, as appropriate, the national laws of States that would normally exercise jurisdiction over the crime, provided that those principles are not inconsistent with this Statute and with international law and internationally recognized norms and standards.
- d) The Court may apply principles and the rules of law as interpreted in its previous decisions.
- e) The application and interpretation of law pursuant to this article must be consistent with internationally recognized human rights, and be without any adverse distinction founded

on grounds such as gender as defined in article 7, paragraph 3, age, race, colour, language, religion or belief, political or other opinion, national, ethnic or social origin, wealth, birth or other status

8. Teams are encouraged to look at the case law of international and national courts. If teams rely on decisions of national courts, these should be leading decisions and teams should expect to be asked for copies of the head note and the portion of the transcript or judgment referred to in their argument.

9. Participation to treaties: At all material times, the following treaties were in force for Plant and Page: The 1949 Geneva Conventions; the 1977 Additional Protocols; the Hague Convention for the protection of cultural property in the event of armed conflict, 1954; the First Protocol to the Hague Convention, 1954 and the Second Protocol to the Hague Convention, 1999. Plant and Page are also party to the main International Human Rights Law Treaties, including the 1966 International Covenant on Civil and Political Rights and the International Covenant on Economic Social and Cultural Rights.

B. Facts of the Case

1. Plant and Page are two countries in the continent of Zepelan that is adjacent to the Bay of Jones. Historically, both States have maintained a cordial and friendly relationship with each other. Both are economically and technologically developed States. Zepelan Union (ZU), a regional organization is a politico-economic union of 12 States that are located in the continent of Zepelan. ZU operates through a system of supranational institutions and intergovernmental-negotiated decisions by the member States. As a regional organization the ZU provides an effective forum that enables all Member States to adopt consensual and coordinated positions on matters of common concern to the continent at the international fora.
2. The continent of Zepelan is considered as a relatively peaceful region despite the fact that there are unresolved territorial disputes between some countries and consequent security concerns. Most of the countries in Zepelan have ratified all the major Human Rights and International Humanitarian Law treaties including the International Covenant on Civil and Political Rights (1966), International Covenant on Economic, Social and Cultural Rights,

(1966), the four Geneva Conventions of 1949 and the two Additional Protocols of 1977. They are also party to the Treaty on the Non-Proliferation of Nuclear Weapons of 1970.

3. However, one of the outstanding issue in Zepelan is the territorial dispute between Plant and Page. The dispute is related to the cultural province of Bonham in Plant. Bonham is a fertile territory, rich of cultural traditions and monuments and with a rather strong identity. Page believes that Bonham was its territory and when both Plant and Page got independence from colonial powers in 1965, the territory was given to Plant. After the independence of both States, on three occasions the dispute escalated to the involvement of armed forces from both the countries. Thus there has been a rivalry between Plant and Page leading to competitive spending on military by both States.
4. In January 2016 the State of Page secretly conducted nuclear tests. Taking cognizance of the seriousness of the situation, the ZU member States convened an emergency session to discuss the issue. The agenda of the session was to arrive at a resolution to prohibit testing of nuclear weapons in the future in the continent of Zepelan. However, the 12 participating States in the emergency session failed to arrive at a common consensus on the issue due to the reservations and objections made by Page. As a result of this, Plant boycotted the session and the resolution could not be adopted. This issue created a rift between Plant and Page. Subsequently Plant moved another resolution in ZU to impose sanctions against Page on the grounds of threat to regional peace and security. This move was appreciated and supported by a predominant number of the member States of ZU. The resolution was adopted imposing sanctions on Page.
5. With such a political turmoil in the background, new developments started taking place in the province of Bonham in Plant. 80% of the people of Bonham belong to the Blues religion which is also the majority religion of Page. There has been a feeling among certain sections of the people of Bonham that they are adversely discriminated in employment and economic opportunities in Plant and that their culture and language are constantly disrespected and undermined. Disgruntlement with the successive Plant governments led

the educated youth to seek for liberation for the people of Bonham. This led to the formation of Bonham Liberation Organization (BLO).

6. BLO held its first conference on 10 April 2016 in Mewani, capital city of the province of Bonham. The conference adopted the manifesto of the BLO and its political plan of action. The political plan of action stated that it aimed to achieve independence and statehood for Bonham and establish democracy in the future State of Bonham. While recognizing that Plant would not accept their democratic demand, the political plan of action of BLO clearly stated that they would adopt every possible means to achieve independence for Bonham.
7. Two days after the conference, the official spokesperson of the Ministry of Foreign Affairs of Page stated that though they recognize that the movement for liberation of Bonham was an internal matter to Plant, they were of the view that formation of BLO was the consequence of negligence perpetuated in every field by the successive governments in Plant. He further said it was their foreign policy to respect the legitimate aspirations of the right to self determination of the people and accordingly they would extend moral and other forms of support to BLO and its demands.
8. On 1 June 2016, BLO elected Mr. Joe Hill as the head of the BLO who was known to be vocal in his secessionist demands. In the first week of July 2016, BLO gave a call for week long protests which included rallies and road blockades. Several violent incidents were reported during the protests. Security forces adopted riot control measures at a few places to control the protestors. More than 100 activists of BLO were arrested. The Prime Minister of Plant gave a call to the people of Bonham to maintain peace and assured that their genuine demands would be addressed soon. Accordingly, on 15 July 2016, he announced the establishment of a committee consisting of three eminent citizens from Bonham which was mandated to receive concerns and opinions from the people of Bonham and come out with a report. Mr. Joe Hill in an address to the media on the same day rejected the committee and recalled that three such committee reports in the past were never respected by the Plant governments. He therefore concluded that the same fate would be meted out to the proposed committee report.

9. Ignoring the appeal made by the Prime Minister of Plant, BLO gave a call for a Bonham wide blockade of transport system on 25 July 2016. To thwart the closure and blockade, security forces arrested hundreds of BLO activists a day before as a preventive measure. Despite arrests, BLO went ahead with closure and blockade which led to violent clashes between security forces and BLO supporters in several places.
10. It was reported in the media that BLO was acquiring weapons from across the borders to equip itself. As a quarter of the territory of Bonham is forest area, Plantian security forces suspected that BLO was using this area for mobilization and for the purpose of training and harboring other BLO fighters. On the night of 5 August 2016, a group of people wielding weapons attacked a security post in central Mewani and killed 21 security personnel. They then escaped with their weapons. In the month of August itself three other such incidents took place in which 76 security personnel were killed by suspected BLO activists. BLO officially never claimed responsibility for these incidents.
11. On 5 September the chief of police of Mewani announced that they had a direct confrontation with weapon wielding group of people on the outskirts of Mewani. As a result of firing from both sides, 18 people were killed. The Chief of Police in a media briefing stated that all those killed belonged to the BLO as they were carrying the BLO propaganda material. He also displayed to the media the weapons they were carrying. He said the weapons show that they were manufactured in Page. He said it was a clear reflection of the fact that Page was extending military support to the BLO.
12. The next day, the Prime Minister of Plant, in his address to the media said that some people of Bonham were misguided by the BLO which was the handiwork of Page. He said Page was trying to create instability in Plant. He added that Page's recent acquisition of nuclear capability was a major threat to Plant and there was every possibility that nuclear weapons from Page would reach into the hands of BLO to the detriment of the existence of Plant. Thus, he urged the people of Bonham to distance themselves from the BLO and Page. He further warned that Plant would be forced to resort to strict measures in accordance with

the law against those who were acting against the national security interests and territorial integrity of Plant. He announced that to support the police personnel of Bonham he would be ordering the deployment of military forces. Promptly, within the next three days, military forces were deployed under the command of Colonel Nazir.

13. In the first week of October 2016, it was reported that several BLO activists were detained by the security forces across Bonham. It was also reported that in six incidents in the first week of October itself, 69 suspected supporters of BLO were killed in cross firing. Bonham police chief claimed that four security personnel were also killed in these incidents. He released the details of these incidents to the media.
14. On 3 November 2016, media reported that in the previous night there was a major confrontation between the military forces under the guidance of Col. Nazir and suspected BLO activists and sympathizers. The media reported that more than 150 people from the northern suburban locality of Mewani were missing as claimed by their family members. Following this the Chief of Police of Mewani clarified to the media that the previous night they had a reliable intelligence information that some of the top leadership of BLO were in a meeting with more than 200 cadres in the closed community hall of the northern suburban locality of Mewani city. He said that they had the information that all of them were armed.
15. The chief of police further explained that based on this information, 256 Plantian military personnel were deployed to the place of meeting. From a distance of 300 metres from the community hall the Plantian military forces announced that all those in the meeting should surrender without any delay. The Chief of Police said that in response 23 people came forward and surrendered. They were detained and taken to the metropolitan police detention centre. As there was no response from others the forces proceeded to the venue of the meeting. As they were about to reach the venue, which has four gates, there was firing from the military forces from behind one of the gates. Immediately the military forces broke into four groups and reached all four gates, some of them made themselves as human ladder, and others returned fire after scaling the gates. After nearly 20 minutes of firing the military forces opened the doors and went into the meeting ground as there was no

resistance from inside. They saw the people trying to hide underneath chairs. The military personnel found 56 dead bodies. They arrested 72 people. The Chief of Police claimed that the Plantian military had prevented a major attack by thwarting the BLO meeting on that night. He praised the military forces for acting in such a meticulous manner so that there was the least number of human casualties.

16. On 5 November 2016, BLO released a detailed statement condemning the 2 November attack on the community hall. The statement said that none of their top leaders were there in the meeting and that the meeting was convened by local residents to discuss the upcoming local festival preparations. It was a fact that some of the BLO activists reached there but knowing that Plantian military forces had approached the meeting venue, they immediately surrendered to prevent any harm to the civilians present in the meeting. The statement said it had been the policy of the Plant government to target civilians and create fear among them and so far more than 1000 civilians were killed in Bonham.
17. On 6 November, Bonham Human Rights Forum (BHRF) convened a press conference in Mewani in which they introduced six individuals that the Forum claimed to have escaped from the community hall when security forces attacked on the night of 2 November. Along with them they also introduced ten others who were the family members of those who were killed. The six individuals narrated their experiences. They said that the meeting was convened to discuss a local community welfare event and that they were not aware that there were any BLO cadres. They also showed a notice to the media which was circulated by the local community welfare association convening the meeting on 2 November. None of them had any weapons and that could be substantiated from the fact that there was not even an injury to any of the military personnel. By way of confirmation, the statement of the Chief of Police also did not mention any such injuries or deaths on the side of the security forces.
18. The community hall incident of 2 November 2016 turned the public opinion in Bonham against the elected Plant government. Spontaneous province wide protests erupted. The Prime Minister of Page issued a statement condemning the killing of innocent civilians while underlining that it was the internal matter of Plant. However, he also stated that

people of Bonham should be given opportunity to decide their right to self-determination. BLO intensified its activities across Bonham. Three business men, who were not natives of Bonham but had business establishments in Bonham were killed in different incidents on 15 November 2016. The Plant government accused the BLO of targeting the people and the property of the government as well as of the civilians who were suspected as being government supporters. Three businessmen who were natives of Bonham were killed in separate but simultaneous incidents on 15 November 2016.

19. Sensing a strong desire for secession among the people of Bonham, BLO instructed its cadres to prepare for the independence of Bonham. On 1 December 2016 Mr. Joe Hill issued a statement appealing to the international community, particularly to the neighboring countries to support the democratic cause of Bonham people. On 8 December 2016 BLO invited prominent media representatives to an undisclosed location near the Page border. Mr. Joe Hill addressed the media and said that Plant lost control over Bonham and people of Bonham overwhelmingly supported BLO. He added that the BLO leadership had decided to declare independence. In light of the prevailing circumstances he stated that he was declaring the Bonham as an independent State immediately. He said that from that day onwards BLO would be the legitimate government of the independent State of Bonham. Mr. Joe Hill declared himself as the President and announced the list of ten names who would be in charge of various administrative wings till next elections were held and a new government was formed.
20. This was prominently reported by the media on 9 December 2016 in Plant and in Page. The government of Page declared its recognition of Bonham. In response to the BLO's declaration of independence, Plant government rejected Mr. Joe Hill's declaration of independence and in its cabinet meeting took a decision to deploy more forces in Bonham to support the existing forces under Col. Nazir. Plant entered into an agreement with 'Black Dog Security' (BDS), a private military Company based in the State of Novara, a neighboring country. BDS is known for deploying forces in several conflict areas in the last ten years. There were also allegations of Human Rights and International Humanitarian Law violations by the BDS personnel in the past in a few conflict situations.

21. On 15 December 2016, BDS forces were deployed in Bonham to support Col. Nazir led forces. BDS forces wear black uniform and most of them carry weapons openly. Since the deployment of BDS forces, a large number of people was reportedly arrested and many went missing. The Plant government imposed restrictions on the movement of people.
22. Annual religious festival of Blues religion normally falls in the month of December. Celebrations continue for fourteen days. Festival involves religious processions, cultural events and community dinners. On the night of 28 December nearly 150 people were taken into custody when they were taking part in the religious procession in the western part of Mewani city. The arrested people were taken to an undisclosed location. On the next day BHRF demanded that the arrested people should be released immediately or produced before the court of law. That same night, following the orders of Col Nazir, an attack was launched close to the important Butterfly Temple where, following the intelligence information gathered by the soldiers BLO leaders were meeting. Out of the operation, 12 people died, three got seriously wounded and the temple got damaged. Few other people present managed to escape. Some people who witnessed part of the scene later found a D850 Nikon Camera at the issue of the Temple, where the successful escape was made.
23. The Chief of Police informed that the arrests of some anti-social elements across Bonham as well as episodes of use of force were intended to maintain law and order in Mewani. He said that as it was the time for annual religious festival and they were taking all measures to prevent any untoward incidents. He said that they had reliable information that BLO received lethal weapons from Page which had the potential to cause large scale damage to the people and property in Bonham. He sought the cooperation of the people of Bonham.
24. On 31 January 2017 Blues Charity Association (BCA) which organizes annual Blues religious festival convened a press meeting in which it introduced 22 individuals who it claimed were arrested along with others on the night of 28 December 2016 when they were participating in a religious procession. Some of them narrated their experiences. They said that after they were arrested, they were taken to an abandoned government old building in

the eastern suburb town of Mewani. The building did not have electricity and there was no running water supply. There were no toilets. They were provided with only one glass of water and four slices of bread every day. As there was no electricity and the doors and windows were closed, they could not sleep. Due to suffocation and lack of ventilation, they fell sick. The sick inmates were taken away by the black uniformed guards and they did not know their present status.

25. When media people asked how they escaped from the building, they said that the previous night BLO cadres came to rescue them. They said that there was resistance from the black uniformed forces at the old building. In the exchange of fire, 14 black uniformed forces guarding the building were killed and all the inmates were released. They said they were not aware of the whereabouts of other inmates who were released by BLO. They also said that Col. Nazir once visited the old building. However, he did not interact with any of the inmates. They saw him talking to the black uniformed personnel who were guarding the old building. They also said that when they were in confinement, every day they saw new people being brought to the old building and being confined. Many came with injured bodies but no medical assistance was provided to any inmates.
26. Chief of police in a press release on 5 February 2017 countered the allegation of BCA and said that all the arrests were made in accordance with law to maintain peace in Plant. The press release stated that Plant's preventive detention law of 2006 permitted the detention of citizens for a period of 30 days. It further mentioned that they had sufficient evidence against all those detained and they would initiate necessary legal proceedings against them. It also mentioned that the Plant government became extra cautious because they had reliable information that nuclear weapons reached the non-state actors in Bonham from Page. Thus the extraordinary situation required certain extraordinary measures.
27. BHRF appealed to ZU to intervene in the situation in Bonham to prevent further violations of Human Rights and International Humanitarian Law. ZU requested the parties to the conflict to declare ceasefire and entered into negotiations to resolve the issues involved. Further ZU sent an Independent Enquiry Commission (IEC) consisting of five members

from its member States to enquire into the allegations of violations of Human Rights and International Humanitarian Law and report to the ZU Secretariat. On the request of the ZU, Plant and BLO declared ceasefire. The IEC travelled across Bonham in the first week of March 2017 and also met the leaders of Plant, Page and BLO. The IEC reported gross violations of Human Rights and International Humanitarian Law by the parties to the conflict.

28. ZU convened a meeting of representatives from Plant, Page and BLO on 25 March 2017. Mr. Joe Hill announced that they were participating in the meeting as the independent State of Bonham. A consensus emerged on holding referendum on the status of Bonham. It was also agreed that allegations of Human Rights and International Humanitarian Law violations would be investigated and individuals responsible for such violations would be prosecuted, if necessary, by an international criminal tribunal. Accordingly, a referendum was held on 2 May 2017 in which more than 90% people of Bonham voted in favour of secession from Plant. In accordance with the results of the referendum Mr. Joe Hill declared that the government formed on 8 December 2016 would continue till the next elections.

29. Meanwhile, BHRF, BCA and other organizations sent requests to the Office of the Prosecutor of the International Criminal Court (ICC) to initiate investigation in Plant and Bonham. Based on the requests received, the Prosecutor of the International Criminal Court sought permission from the Pre Trial Chamber of the Court to initiate investigation into the situation on 15 June 2017. Later on the Plant government arrested Col. Nazir and surrendered him to the ICC. Lawyers representing Col Nazir lodged a challenge to admissibility pursuant to article 19 of the ICC Statute (on the basis of complementarity). The Pre-trial Chamber I of the ICC issued an order pursuant to rule 58 of the Rules of Procedure and Evidence so that the challenge to admissibility can be heard at the confirmation of charges hearing. At this hearing the court will also decide whether to confirm the following three charges put forward by the Prosecutor:

Count I - For the acts committed at the community hall on 2 November 2016, Col. Nazir, committed as an individual, jointly with another or through another person (Article 25(3)(a)), the crime against humanity of 'extermination' under Article 7(1)(b) of the Statute of the International Criminal Court.

Count II - For the acts committed on 28 December 2016 and for the subsequent confinement in the old building, Col. Nazir, on the basis of command responsibility (Article 28 (a)), is charged with the war crime of 'wrongful confinement' under Article 8(2)(a)(vii) of the Statute of the International Criminal Court.

Count III – For the operation conducted on the night of 28 December and for the subsequent damage to the temple, Col. Nazir, on the basis of individual criminal responsibility for ordering, soliciting or inducing the commission of (Article 25 (3) (b)), is charged with the war crimes of attacking/destroying/seizing cultural property under Article 8(2)(b)(ix).

Elements of Crimes

Article 7 (1) (b)

Crime against humanity of extermination

Elements

1. The perpetrator killed¹ one or more persons, including by inflicting conditions of life calculated to bring about the destruction of part of a population.²
2. The conduct constituted, or took place as part of,³ a mass killing of members of a civilian population.
3. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
4. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

Article 8 (2) (a) (vii)

War crime of unlawful confinement

Elements

1. The perpetrator confined or continued to confine one or more persons to a certain location.
2. Such person or persons were protected under one or more of the Geneva Conventions of 1949.
3. The perpetrator was aware of the factual circumstances that established that protected status.
4. The conduct took place in the context of and was associated with an international armed conflict.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict

¹ The conduct could be committed by different methods of killing, either directly or indirectly.

² The infliction of such conditions could include the deprivation of access to food and medicine.

³ The term “as part of” would include the initial conduct in a mass killing.

Article 8 (2) (b) (ix)

War crime of attacking protected objects¹

Elements

1. The perpetrator directed an attack.
2. The object of the attack was one or more buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals or places where the sick and wounded are collected, which were not military objectives.
3. The perpetrator intended such building or buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals or places where the sick and wounded are collected, which were not military objectives, to be the object of the attack.
4. The conduct took place in the context of and was associated with an international armed conflict.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

¹ The presence in the locality of persons specially protected under the Geneva Conventions of 1949 or of police forces retained for the sole purpose of maintaining law and order does not by itself render the locality a military objective.