

## **Asia-Pacific Moot Court Rounds 2013**

### **Prosecutor vs General Arthur Reed**

#### **before the International Criminal Court at The Hague**

#### **INSTRUCTIONS**

1. *This is the final stage of a trial before a Trial Chamber of the International Criminal Court ("ICC"). The Presiding Judge has declared that the submission of the evidence is closed, and the parties are now to make their closing statements in accordance with Rule 141 of the Rules of Procedure and Evidence of the ICC.*
2. *The case is entirely fictional. Teams should confine themselves to the facts supplied. Neither the Prosecution nor the Defence may introduce new facts. The Moot Problem includes all the facts supported by the evidence that has been presented before the Court. Teams may nonetheless draw reasonable inferences from the evidence produced. They may also question the credibility or weight of the evidence.*
3. *Teams should not hand anything to judges unless asked to by a judge.*
4. *The problem is not intended to raise questions of procedure before the ICC. Procedural questions should be ignored.*
5. *The problem is not intended to raise questions relating to the jurisdiction of the ICC. The jurisdiction of the ICC should be assumed. Although issues of admissibility are not normally dealt with in ICC proceedings in closing statements at the end of a trial, counsel may in this instance address issues regarding the admissibility of the case under article 17 of the Statute of the ICC ("Statute") if relevant.*
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, Colonel 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.*

*The Court may apply principles and the rules of law as interpreted in its previous decisions.*

## **Background**

1. The Federal Republic of Citrea (FRC) once consisted of three republics, namely Citrea, Alphon and Bethuis. Citrea is located to the north of Alphon and Bethuis. In 1990, the FRC disintegrated with the three FRC constituent republics becoming independent states. The capital of Alphon is Alpha and that of Bethuis is Beta.
2. The population in Alphon is mainly composed of two ethnic groups. The Alphonians, which make up 70% of the population, and ethnic Bethuisians. The majority of the latter community lives in the province of Kebia, which is located in the south eastern part of Alphon bordering Bethuis. The Alphonians and Bethuisians speak different languages and have different religions.
3. Alphon is blessed with vast natural resources such as oil and minerals. It had been one of the most developed regions of the FRC well before its independence. Since 1990, Alphon adopted a policy of "strengthening the nation through science and technology" which prompted the growth of a successful high-tech industry and led to unprecedented economic growth in recent years. However, the province of Kebia, where ethnic Bethuisians constitute nearly 80% of the population, is generally lagging behind in terms of development. Household income remains low.
4. The situation in Kebia is blamed partly on its remote location, but also because of governmental policies. Alphon's governments have long accorded preferential treatment to ethnic Alphonians and enterprises in various sectors of the economy, employment and education. The rate of higher education in Kebia has been the lowest compared to other regions. Ethnic Bethuisians felt marginalized and resentment towards the central government has built up among them over economic and social disparities.
5. Bethuis, which borders Alphon to the east, has a homogenous population. Bethuisians speak the same language and share similar cultural practices with their fellow Bethuisians in Kebia. Bethuis used to be closed to the outside world, but has been opening up since the late 90's when its government started to encourage international trade. Benefiting from a large and young population, labour-intensive industries in Bethuis have grown rapidly. Many Bethuisians also started doing business in neighbouring countries such as Citrea and Alphon. Although Bethuis is not as wealthy as Alphon, it is regarded as an emerging economic power.
6. In 2007, very large deposits of a rare metal called "urie" were discovered in Kebia. Urie is an important material for the high-tech industry. Most Bethuisians in Kebia believed that with the current discriminatory policies of the Alphonian government, they are not likely to benefit much from the exploitation of the urie deposits. "Reuniting" with Bethuis is becoming increasingly popular among the Bethuisian people.
7. Bethuis has long been sympathetic to Kebia. Since its independence, it has considered Kebia as a "lost province". It has been providing assistance to Kebia since the late 90's. In recent years, the government has urged the Alphonian government on several occasions to hold a referendum in Kebia to decide the future of the province. With the discovery of the urie deposits, Bethuis became even more vocal on Kebian people's right to self-determination.

## **Kebia's take over**

8. In Kebia, the Bethuisian People's Movement (BPM) led by Neil Bing, has increasingly gained popularity. Bing is a former member of the Alphonian Armed Forces (AAF). He has close relations with the Bethuisian government and has been visiting Beta regularly.

to discuss the future of his Movement with government officials. In 2008, during an interview with the local television, Bing said "the urie deposits are Kebia's hope for its future. The benefits of their exploitation must eschew to the Kebian people. We are not going to let the Alphonian central government selfishly exploit Kebia's resources at our expense. It should not be forgotten that Alpha has been ignoring and discriminating against Bethuisians for decades. Kebia's future belongs with our Bethuisian brothers."

9. Since 2007, Bing had been recruiting people to form a paramilitary group named the "Democratic Kebian Front" (DKF). With the covert support of the Bethuisian government, Bing hired Ventures, a multinational security and military company based in Citrea, to train recruits with military skills. The trainings took place in some isolated part of Kebia. Bethuis has also supplied weapons to the DKF. In June 2008, a succession of mass demonstrations was organized by the BPM, demanding that a referendum be organized on the future of Kebia. The Alphonian government's response was swift and brutal. The manifestations were ruthlessly suppressed with scores of persons killed and several hundred persons injured by the police and security forces. The Alphonian government blamed "foreign" elements stirring violence. Reacting on the condemnation of the conduct of the Alphonian security forces, Alphon sternly denounced the "irredentism" of the Bethuisian government and its intervention in Alphon's internal affairs, while reiterating that Kebia was and would remain an integral part of Alphon.
10. By the end of June, the situation had become very volatile, with more and more violent manifestations. The Alphonian government declared Kebia under a state of emergency and dispatched several AAF units under the command of General Arthur Reed. The Emergency Decree allowed the military commander to order the arrest and detention of any person deemed to present a security threat for a period of three months, renewable once. Judicial review could take place only after the initial period of three months.
11. At the same time, Bethuis reinforced its military presence on its own side of the border, ready to actively support Bing's DKF at any moment according to local newspapers. On 5 July 2008, Neil Bing declared that "we are prepared to endure a long and difficult struggle to achieve freedom". On the same day, DKF's units took over local government buildings in various part of Kebia; and in the following days, military compounds in the eastern part of the province and in Kiesh, Kebia's main city, were attacked. The confrontations between the DKF and the AAF lasted for a week, until Bethuis sent 2000 troops from the People's Army of Bethuis (PAB) led by Colonel Ian Rose to support the DKF. Within 3 days, the DKF, together with the PAB, had gained control over Kiesh and the eastern part of Kebia. The rest of the province remained under Alphonian control.
12. On 13 July 2008, President Arrow vividly condemned Bethuis' "act of aggression" and seized the UN Security Council. The Bethuisian ambassador and the diplomatic staff in Alpha were immediately called back to Bethuis. The following day, the Bethuisian government severed all diplomatic relations with Alphon.
13. On 1 August 2008, the Bethuisian National Assembly adopted an amendment to the Constitution providing that the province of Kebia was part of Bethuis and enjoyed the status of an autonomous region. On 2 August, Peter Blanchette, President of Bethuis and Commander in Chief of the Armed Forces, issued an executive order granting Neil Bing the rank of Colonel in the PAB. The PAB units in Kebia remained, however, under the command of Colonel Rose.
14. For the next six months, the parties strengthened their positions, the situation on the ground remaining unchanged, save for some skirmishes along the front line. Some 2000 new PAB troops were stationed in Kiesh. Both sides accepted the offer of service of the

International Committee of the Red Cross (ICRC) to visit all the persons detained in relation to the conflict.

15. In AAF-controlled Kebia, car bombings had been frequently taking place since July 2008 near the residences of civilian and military officials and at checkpoints. They had been few civilian casualties, but scores of AAF soldiers were killed or injured as a result of the bombings. General Reed condemned the bombings as "terrorist attacks". A number of suspected "terrorists" were arrested and detained in the Westwood medium-security Prison. The prison which is situated at about 20 km to the north-west of Kiesh, had been placed under military control since the declaration of a state of emergency. Jackson Wall, who had been prison warden in Alpha for more than ten years, had been appointed by General Reed as warden to supervise all the operations in the Westwood Prison.

### **Preparation of Operation Thunderstorm**

16. On 15 December 2008, the Alphonian government approved "Operation Thunderstorm" aimed at regaining control over the eastern part of Kebia. General Reed was in charge of the operation. President Arrow, who was running for re-election in the coming election of November 2009, instructed General Reed that "we cannot win this war quick enough. Kiesh is either a gain or a pain for the election campaign."
17. As soon as the DKF and the PAB units took over Kiesh, a command centre was established in a local government building. Kiesh served as the main control, communication, and logistical centre for the Bethuisian forces. The DKF and the PAB remained under the separate command of Bing and Rose respectively.
18. The Alphonian Defence Minister Tom Atom, the Head of National Intelligence Agency (NIA), Perry Ash, General Reed, his deputy, Colonel Harvey Simms as well as other military staff met to plan Operation Thunderstorm. There was a general agreement that recapturing Kiesh was the utmost priority. In a meeting of 7 January 2009, it was decided that artillery attacks and air strikes would be used to "shock, disorient, disrupt the Bethuisians", before undertaking the takeover of the city.
19. Between 20 and 24 February 2009, the PAB conducted artillery attacks against Rica, a Kebian town on the west side of the front line, mostly populated by ethnic Alphonians. The attacks resulted in the death and injury of scores of civilians. The Alphonian government declared that they would reserve all means to react regarding these "barbarian attacks", while the major Alphonian media were calling for "blood for blood".
20. At a meeting on 25 February 2009, General Reed started with saying, "The situation is pressing. We need to react." Minister Atom expressed his concern over civilian casualties possibly resulting from artillery attacks and air strikes. General Reed responded that "Collateral damages cannot be avoided." Ash added that there was indication that civilians had started to leave Kiesh and take refuge in the countryside. He added that a curfew, which prevented all movements within the city from 10pm to 6am, was enforced. Atom warned that given their limited supply of artillery ammunition, they could not afford a long siege of Kiesh and would have to move in rapidly. General Reed replied that "Then we should use them in the most efficient way. It can't last long."
21. General Reed approved a list of targets for artillery attacks and air strikes, with detailed coordinates for each target. The targets were dispersed all over the city, including the DKF/PAB command centre, the BAS factory, the army barracks, the main communication centre and Colonel Bing's residence. The privately-owned BAS factory mainly produced bolts, screws and other metal products, but was also known to have produced certain explosive devices prior to 2007.

22. The targets' coordinates were determined on the basis of the records of Alphonian authorities, information collected by pilotless drones and informants in Kiesh. The location and residence of Colonel Bing was constantly monitored. Artillery spots were established on the western periphery of Kiesh and deployed with well-trained artillery personnel.

### **Artillery attacks and air strikes against Kiesh**

23. On 17 July 2009, General Reed ordered the AAF to engage in a vigorous attack with artillery and air support. Alphonian reconnaissance drones were circling above Kiesh to observe targets, assess the damages and advise the commanders of artillery units how to adjust their fire. Armed drones were occasionally used to carry out air strikes. Drones were operated by a Special Unit of the NIA.
24. On 17 and 18 July 2009, hundreds of projectiles were fired from the west periphery of Kiesh into the city. According to local media news channels, "there seemed to be bombs exploding all over the city."
25. On 17 July, at around 18:00h, 12 artillery shells landed on the BAS factory compound. Around 15 workers were killed, another 30 were severely injured. The factory was essentially producing civilian materials at the time, but had started to prepare for the set-up of a production line to assemble explosive devices in accordance with a PAB contract concluded three weeks before. The normal working hours at the factory were 9:00 -17:30, but on that day, exceptionally, many workers were working overtime on the set up of the new production line.
26. Colonel Bing's apartment was located in a residential area called the "Peace Garden". In the evening of 17 July 2009, Ash transmitted to Reed that they had received information from local intelligence sources that Bing might spend the night in his family's home, a luxurious apartment situated on the top floor of a five-storey building. The next morning, at around 5:30, Ash called Reed to inform him that they had received reliable information indicating Bing was in his home. Ash added that a small PAB detachment was patrolling the area. As in other part of the city, a plan of evacuation to secure locations for the population in case of long-range artillery attacks was in place. Ash suggested using armed drones to attack Bing's apartment since "artillery fire is not that accurate and we might just miss the target". Reed agreed with Ash.
27. At 6:00h on 18 July 2009, an armed drone launched a first strike at Bing's building. At 6:30h, a second missile was launched. Both missiles hit the building. It turned out that Bing had already left his apartment at the time of attack. Thirty-five persons were killed, including 5 members of Bing's family, 20 building residents, as well as 10 patrolling soldiers. Another 50 persons were injured. Most residents were asleep when the first strike took place. More than half of the victims, including two medical staff, were killed by the second strike when trying to bring help after the first strike. The apartment building was severely damaged and the building's residents moved out of Peace Garden.
28. Mr Ahmed Latif, a Peace Garden resident who was severely injured, told the local media that "at the beginning, many of us thought it was just another Alphonian surveillance plane. You know, there are plenty of those in the sky these days. And we did not hide in the bomb shelter. Suddenly it started to drop bombs. It was horrible."
29. As a result of the two-day artillery and air attacks, many of the listed targets were either destroyed or rendered useless. The city of Kiesh sustained extensive damage from the

artillery shelling, shells sometimes landing in areas a hundred metres (from 200 up to 700 metres) from the targets.

30. In the morning of 19 July, the PAB convened a press conference condemning the AAF for targeting civilians and civilian objects. Colonel Bing said the AAF's only aim was to spread terror among innocent civilians. When talking about the BAS factory, Bing stated that it was a "purely civilian facility". He stressed to the media that all the lights in the factory were on at the time of the attack, which could be easily observed from a distance and was a clear indication that there were people inside the factory.
31. With the support of the air strikes and artillery shelling, the main force of the AAF took control of the western part of Kiesh. The rest of the city remained under the control of the DKF and the PAB.

### **Incident at the Municipal Hospital**

32. In the morning of 20 July 2009, the AAF was moving towards the Rosemount district of Kiesh under DFK/PAB's control. While retreating to the east, a number of wounded PAB soldiers in need of immediate medical care were sent to the Municipal Hospital. The hospital was the largest and best equipped medical facility in Kebia. It had been receiving wounded DFK fighters and PAB soldiers since the conflict started. The hospital displayed a large red crystal emblem at the entrance, alongside with a Bethuisian flag. It was protected by Ventures staff. The guards were wearing military uniforms with a Ventures insignia and carrying assault rifles.
33. In the afternoon of 21 July 2009, the AAF was combing the Rosemount District to eliminate potential threats. At 17:30, the Head of NIA, Ash informed General Reed that eye-witnesses had seen Bethuisian soldiers taking refuge in the Municipal Hospital and in the Kebia Military College, an adjoining compound. General Reed immediately ordered a squad to be sent to the hospital area. The squad commander was reminded that "any threat should be eliminated", but that "non-threatening persons should be spared as much as possible."
34. At 18:05, the AAF squad was approaching the Hospital. A Ventures guard first spotted the coming squad and fired a few shots before his supervisor intervened. The squad commander then ordered his men to fire at the Hospital from all directions. There was also intermittent firing from inside the Hospital and from the surrounding area. At around 19:30, the AAF squad finally entered the Hospital. Ten private security guards were found wounded. The squad took away twenty-five people, including PAB soldiers, DKF fighters, Ventures guards and other patients from the Hospital. Four dead PAB soldiers were also found dead in the nearby Kebia Military College. General Reed ordered the wounded to be treated and all twenty-five people detained in the Westwood Prison.
35. The next morning, on 22 July 2009, the attack of the Municipal Hospital made international headline. It was reported that around 35 people were killed during the operation. The Hospital building was severely damaged, with most of the medical facilities destroyed. The international community strongly condemned the attack. The Secretary-General of United Nations issued a statement calling to "end all violence against civilians and medical facilities".

### III-treatment in Westwood Prison

36. The AAF forces eventually gained control over Kiech on 1 August 2009. However, in Alphon controlled area, there was still strong resistance from the local Bethuisian community.
37. Thomas Mange, a 58-year old Professor of history at the University of Kebia, was an outspoken supporter of the incorporation of Kebia to Bethuis. Since 2007, he had made several speeches prompting Bethuisians to "defend Kebia to the last man". At the end of June 2008, five of his students had been arrested by the AAF while distributing leaflets in public places. He was himself arrested on 2 July 2008 after the declaration of a state of emergency.
38. Professor Mange and his students were detained in the Westwood Prison. Ever since his first day in detention, Professor Mange had been protesting his arrest and advocating freedom of speech. He had been put in solitary confinement for four months from April to July 2009. To hasten his release and that of other detainees arrested under the Emergency Decree, on 25 August 2009, Professor Mange embarked on a hunger strike, only sipping water from time to time.
39. The news of Mange's hunger strike soon got through to the major media in Alphon and Bethuis. Bethuisian media termed Mange as a "hero", a "fighter for freedom". In the meantime, other detainees started to join the hunger strike. By 29 August 2009, 26 detainees were on strike, among them members of the PAB and of the DKF, persons suspected of terrorist offences and other persons deemed to present security threats. The ICRC stated that it had sent a delegation to check conditions at the Westwood prison, a week earlier than planned, because of the hunger strike. Alphonian authorities, pushed by the international attention that the strike was attracting, pressed General Reed to solve the issue. Jackson Wall, the Westwood warden sent a letter to Reed, stating that "we cannot condone such an act in prison. Something needs to be done. We started to lose control ever since Mange was here."
40. As Professor Mange's health condition deteriorated, Wall requested Dr. Paul Malade, the doctor attached to the facility to examine Mange. Dr. Malade reported that Mange was susceptible to heart irritability and arrhythmias. Mange was sent to the prison infirmary and placed under medical supervision. More hunger strikers were taken to the infirmary in the ensuing days.
41. On 4 September, after consultation with General Reed's staff, Wall decided to forcibly feed Professor Mange. The procedure took place in a transformed feeding room in the prison infirmary. Dr. Malade, with the help of prison staff, inserted a "10 French" tube (3.3mm diameter) through Mange's nose which threaded down into his stomach. From time to time, Mange twisted during the procedure and the tube kinked on the first attempt but was usually successfully placed on the second attempt. The feeding lasted for around two hours each time, once a day. Mange was then placed under watch for up to 60 minutes to prevent vomiting. Two drugs were also administered to prevent motion sickness, nausea, vomiting, pain - or as a sedative or sleep aid (long-term use of one of them has been known to cause irreversible neurological disorder). Other hunger strikers were subject to forced feeding in the following weeks.
42. A military spokesman said doctors and other medical staff at the prison were treating the detainees on hunger strike ethically and with great care. "The health and well-being of detainees is their primary mission, and they take this duty as seriously as they take their duty to provide medical treatment to any other patient in their care".

43. After 27 days of strike, Professor Mange resumed taking liquid nutritional supplements. Following Mange's step, twelve other hunger strikers ended their strike. The others continued to be subject to forced feeding until their release by the new Alphonian government.
44. Professor Mange was finally released on 15 November 2009. On 1 December, he gave an interview to Global Times, an independent newspaper based in Citrea. He claimed that the force-feeding was a punishment for his leading role in the hunger strike in prison. He told the Global Times the ordeal he went through during the feeding, "it took several attempts to rightly position the tube," Mange said, "I almost lost my breath when it (the tube) went down my throat. There was a gag reflex." He also mentioned that the size of the tube was "too large" for his nostril and "caused great pain".
45. Benjamin Lock, released at the end of November 2009 who had also been on hunger strike told the Global Times that there was collective "pressure" to go on hunger strike: "I felt I had to be part of it. I did not want to starve myself for that long but I feared the unknown consequences for taking food." he said, "You know, some terrorist suspects were quite serious about it."

### **End of hostilities**

46. President Arrow failed to be re-elected in the November 2009 election and was succeeded by the leader of the opposition party, Mr Brian Aristole. With casualties climbing on both sides, the new President was eager to end the conflict as soon as possible, and more amenable to a compromise solution with Kebia. In Bethuis, pressure was also mounting on the Bethuisian government to end the hostilities. On 20 December 2009, Alphon and Bethuis reached a ceasefire agreement under the auspices of the UN. The two countries are now negotiating the future status of Kebia.
47. On 20 February 2010, the Prosecutor of the International Criminal Court (ICC) indicted General Reed, who was surrendered to the ICC by the new Alphonian government.

General Reed faces the following three charges:

**Count One** – With respect to the artillery attack and air strikes on Kebia between 17 and 18 July 2009,

On the basis of individual criminal responsibility for committing, whether as an individual, jointly with another or through another person (Article 25 (3)(a)):

- the war crime of intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated (Article 8 (2)(b)(iv)).

**Count Two** – With respect to the attack against the Municipal Hospital in Kiesh, on 20 July 2009

On the basis of individual criminal responsibility for ordering, soliciting or inducing (Article 25 (3)(b))

- the war crime of intentionally directing attacks against a hospital, which is not a military objective (Article 8 (2)(b) (ix)).



**Count Three** – With respect to treatment of detainees in Westwood Prison, in particular, the practice of solitary confinement and of forced feeding,

On the basis of superior responsibility (Article 28):

- the war crime of torture or inhuman treatment of persons protected under the provisions of the relevant Geneva Convention (Article 8 (2)(a)(ii)).

#### **Note**

##### **Alphon is a party to:**

- Four Geneva Conventions of 1949 (ratified on 10<sup>th</sup> August 1990)
- Additional Protocols I and II of 1977 (ratified on 10<sup>th</sup> August 1990)
- Statute of the International Criminal Court (ratified on 1<sup>st</sup> June 2001)

##### **Bethuis is a party to:**

- Four Geneva Conventions of 1949 (ratified on 15<sup>th</sup> September 1990)
- Additional Protocols I and II of 1977 (ratified on 15<sup>th</sup> September 1990)
- Additional Protocol III of 2005 (ratified on 20<sup>th</sup> September 2006)
- Statute of the International Criminal Court (ratified on 13<sup>th</sup> February 2002)

#### **Preparation of the Brief**

In preparing the brief, the counsels for both Prosecution and Defence are expected to establish the following points:

- The type (s) of armed conflict or other situation of violence and the law that is applicable to the present case;
- The elements of crimes for each of the three counts against General Reed that have to be established by the Prosecution for the suspect to be convicted and the burden of proof;
- Applicable law and policy and supporting authorities.

Questions relating to jurisdiction of the ICC need not be raised unless they are linked to the substance or the merits of the case.