



ICRC

ASIA-PACIFIC MOOT COURT NATIONAL ROUNDS  
2018

PROSECUTOR V. COLONEL MICHELL NAZIR

BEFORE THE INTERNATIONAL CRIMINAL COURT AT THE HAGUE

**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 presented. Teams should not hand anything to judges unless specifically asked to by a judge.*
4. *Teams should set forth legal arguments and not limit themselves to answering yes or no. Submissions will be evaluated on their: i) organisation, structure and analysis of the issues; ii) the use of facts and legal principles; iii) clarity, logic and reasoning.*
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.*
5. *Jurisdiction and admissibility: the problem is not intended to raise questions of procedure before the court. Procedural questions should be ignored. Counsels may address issues relating to admissibility of the case under Article 17 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, 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*

7. *In preparing the memorials, the Prosecutor and the Defence are expected to establish the following points:*

- a) The type(s) of armed conflict or other situation of violence and the law that is applicable to the present case;*
- b) The elements of crimes for each of the three counts against Colonel Nazir that have to be established by the Prosecutor for the charges to be confirmed and the burden of proof;*
- c) Applicable law, policy and supporting authorities.*

## **B. FACTS OF THE CASE**

1. The Republic of Donka and the State of Page are two countries on the continent of Zepelan that is adjacent to the Bay of Jones. Both are economically and technologically developed States and were among the Founding States of the Zepelan Union (ZU). The ZU is a regional inter-governmental organization of all twelve (12) States on the continent of Zepelan. It provides an effective international forum that enables all Member States to adopt consensual and coordinated positions on matters of common concern to the continent.
2. The continent of Zepelan is considered a relatively peaceful region despite the unresolved territorial disputes between some countries. One of the outstanding issues in Zepelan is the territorial dispute between Donka and Page over the cultural province of Bonham in Donka. Bonham is a fertile territory, rich of cultural traditions and monuments and with a rather strong identity. Page believes that Bonham was its territory but when both Donka and Page gained independence from colonial powers in 1965, the territory was given to Donka. Thereafter, the dispute escalated to the involvement of armed forces from both countries in 1966, 1986, 1999 and again in 2007. The rivalry between Donka and Page led to defense spending competition by both States.
3. In January 2016, Page conducted a clandestine nuclear test on its territory. After coverage by the mainstream media, Donka called for an emergency session within the framework of the ZU to discuss the issue. The agenda of the session included a proposal to conclude a resolution to prohibit future nuclear weapon tests in Zepelan. However, the twelve (12) Member States failed to reach consensus due to reservations and objections by Page. As a result, Page boycotted the session and the resolution could not be adopted. This created a rift between Donka and Page. Subsequently, Donka moved another resolution in ZU to impose sanctions against Page on the grounds of threats to regional peace and security. This proposal was supported by a predominant number of Member States. In March 2016, the resolution was adopted.
4. With such political turmoil in the background, new developments started taking place in the Province of Bonham. More than eighty (80) percent of Bonhamians belong to the Blues religion which is also the majority religion in Page. They also speak the same language as people in Page. There has been a feeling among certain sections of the people

of Bonham that they are discriminated against in employment and economically in Donka and that their culture and language are constantly disrespected and undermined. Dissatisfaction with successive Donkan governments has driven educated youth to demand the liberation of the people of Bonham. This led to the formation of the Bonham Liberation Organization (BLO).

5. On 10 April 2016, BLO held its first conference in Mewani, capital city of the Province of Bonham. The conference adopted the manifesto of BLO and its Plan of Action. The Action Plan states that BLO aims to achieve independence and statehood for Bonham and establish democracy in the future State of Bonham. In the following days, nearly two thousand people led by BLO leaders gathered in the city of Mewani to show their support for the newly formed organization. As the size of the group marching toward city hall grew rapidly, the Chief of Police of Mewani deployed the Riot Police Unit and three anti-riot vehicles armed with water cannons. After several warnings given for the crowd to disperse, the police began to charge the crowd with batons. Subsequently, water cannons were used against the crowd. Part of the crowd started to throw stones against the police in retaliation. Three (3) individuals were wounded in the ensuing response of fire from the police. Twenty (20) individuals were arrested for violent acts during the gathering. On the same evening of the protests, the President of Donka called on the people of Bonham to maintain peace and order, while assuring them that their demands would be addressed soon.
6. Following these events, the spokesperson of the Ministry of Foreign Affairs of Page stated that although Page recognised that the liberation movement of Bonham was an internal matter to Donka, Page was of the view that the formation of BLO was the consequence of negligence perpetuated in every field by the government of Donka. She further said that it was the foreign policy of Page to respect the legitimate aspirations of self-determination of Bonhamian people and that Page would extend moral and other forms of support to BLO, as needed.
7. On 1 June 2016, BLO elected Mr Joe Hill as their Head. Mr Hill was known to be vocal in his secessionist demands. In the first week of July 2016, BLO called for week-long protests which included rallies and road blockades. Several violent incidents were reported during the protests. Security forces adopted riot control measures in a few places to control the protestors. During that week, more than one hundred (100) BLO activists were arrested.
8. To address BLO's demands, on 15 July 2016, the President of Donka designated three (3) eminent citizens from Bonham to initiate a dialogue with BLO and to receive their complaints and listen to their concerns. Dissatisfied with this initiative, on 20 July 2016, Mr Hill called for a province-wide blockade of the public transportation system starting from 25 July 2016. To thwart the closure and blockade, security forces arrested hundreds of BLO activists a day before the blockade. Despite the arrests, BLO went ahead with the closure and blockade resulting in violent clashes between security forces and BLO supporters in several places.
9. In early August 2016, the Donka Times, a national newspaper in Donka deemed to be the mouthpiece of the Donkan government, exposed that BLO was acquiring weapons from

Page across the border. As a quarter of the territory of Bonham is forested, Donkan security forces suspected that BLO was using this area to smuggle weapons and to train new BLO members. A contingency plan was immediately drawn up for the deployment of armed forces to the area. On the night of 5 August 2016, a group of people wielding weapons attacked a security post in central Mewani and killed twenty one (21) security personnel and escaped. In three (3) other such incidents in August, seventy six (76) security personnel were killed by suspected BLO activists. BLO never officially claimed responsibility for these incidents but security personnel identified that some of the people attacking the security post wore Blues religion tatoos on the top of their left arms. On 22 August 2016, the Donka Times reported to have witnessed BLO leaders returning from Page to Bonham after a meeting with Ministries of Foreign Affairs and Defence of Page.

10. On 5 September 2016, the Chief of Police of Mewani disclosed that a direct confrontation with a weapon-wielding group of people at the outskirts of Mewani had occurred. As a result of firing from both sides, eighteen (18) people were killed. The Chief of Police in a media briefing stated that all those killed belonged to BLO as they were carrying BLO propaganda material. He also showed the media the weapons they were carrying. He said the markings of the weapons showed that they were manufactured in Page and that it was clear proof of Page's military support to BLO.
11. The next day, the President of Donka made a nationally televised statement:

“It saddens me to see the loss of life in the past few months sustained by both Donka security forces and the people of Bonham. It is also agonising to see the innocent people of Bonham being misguided by BLO. This province, rich in culture, the place of safety and sanctuary for Bonhamian people, has turned into a place of violence and shelter for secessionist criminals. Our nation is now under attack by Page's outrageous attempt to tear Bonham apart from us, which has always been an intergral part of the Republic of Donka. Our intelligence department has traced dozens of phone calls from Page's central government building to BLO leaders. The press has also uncovered overwhelming and convincing evidence of Page's military support to BLO. The recent acquisition of nuclear weapons by Page pose a threat to the security not only of our country but also to the existence of the mankind. There is a strong possibility that these weaspons may fall into the hands of BLO. In view of this imminent threat, I hereby announce the deployment of military forces under the command of Colonel Michell Nazir to the Province of Bonham within the next three days. At this critical moment when the integrity of our nation is at stake, I urge all people in Bonham to stand in solidarity and unity, and fight against every attempt at infiltration into our country.”
12. Promptly after the statement, the spokesperson for the Prime Minister of Page issued a statement rejecting all the allegations. He also insisted that the people in Bonham were exercising their legitimate right to self-determination and that Page was considering submitting the issue to the ZU for collective action. However, no follow-up action was undertaken by Page or by Donka within the context of the ZU.
13. In the first week of October 2016, the Zepelan Observer, an internationally renowned independent newspaper focusing on the region of Zepelan, reported that several BLO activists were detained by Donkan security forces across Bonham. It was also reported that

during six (6) incidents in that week, sixty nine (69) suspected supporters of BLO were killed during exchanges of fire. The Mewani Chief of Police claimed that four (4) security personnel were also killed in these incidents. He released details of these incidents to the media. Following these incidents, over one thousand (1,000) people gathered in the city of Mewani and demonstrated against the government of Donka. The protest turned violent after military presence was spotted. Molotov cocktails were fired from the crowd against the moving military trucks and the military fired back. The area was eventually surrounded by a dozen military trucks equipped with automatic anti-personnel machine guns. After three hours of confrontation, around fifty (50) people were killed and more than one hundred (100) were seriously injured and arrested, according to the reports of the Zepelan Observer.

14. On 3 November 2016, local media in Bonham reported that the night before, there was a major clash between the military forces led by Colonel Nazir and suspected BLO activists. The media also reported that after the incident, more than one hundred and fifty (150) people from the northern suburbs of Mewani went missing as claimed by their family members.
15. Following this, Colonel Nazir held a press conference. He mentioned that, according to reliable intelligence he had received, the leadership of BLO were in a meeting with more than two hundred (200) cadres in the closed community hall of the northern suburban locality of Mewani city, all of them armed. Based on the information, two hundred and fifty six (256) Donkan military personnel under his command were deployed to the venue of the meeting. From a distance of three hundred (300) metres from the community hall, the Donkan military forces announced that everyone involved in the meeting should surrender without any delay. Twenty three (23) people came forward and surrendered. They were subsequently taken to the metropolitan police detention centre. Receiving no response from others, Colonel Nazir ordered his forces to surround and secure the vicinity. When they were about to reach the venue, which had four (4) gates, there was gunfire from one of the gates. Immediately, the military forces broke into four groups and reached all the gates. After nearly twenty (20) minutes of firing, the military forces broke down the gates and entered the hall. People in the hall made no resistance while some of them tried to hide underneath chairs. Military personnel found fifty six (56) dead bodies and arrested seventy two (72) people. Colonel Nazir concluded that his forces acted swiftly, caused the least number of casualties and prevented a major attack by disrupting the BLO meeting.
16. On 5 November 2016, BLO released a detailed statement condemning the 2 November attack on the community hall. According to the statement, none of BLO's top leaders were at the meeting. The statement added that the meeting was convened by local residents in preparation for the upcoming festival. BLO confirmed that some BLO activists attended the meeting but surrendered immediately when the Donkan military forces approached the venue. The statement denounced the Donkan government's policy of targetting civilians and spreading fear among them. The statement also alluded to the fact that more than one thousand (1,000) civilians had been killed in Bonham, including one hundred and fifty three (153) deaths from the community hall attack.
17. On 6 November 2016, the Bonham Human Rights Forum (BHRF), a local non-governmental human rights organisation in Bonham, convened a press conference in Mewani.

In the conference, the BHRF introduced six (6) individuals who claimed to have escaped from the community hall attack on the night of 2 November. Along with them they also introduced ten (10) others who were the family members of those who were killed. The six (6) individuals narrated their experiences. They said that the meeting was convened to discuss a local community event and that they were not aware of the presence of any BLO cadre. They also showed the media a notice calling for the meeting, which was circulated by the local community welfare association on 26 October 2016. They said none of them possessed any weapons and that could be substantiated by the fact that there was no injury to military personnel.

18. The community hall incident and the following coverage turned the public opinion in Bonham against the Donka government. Spontaneous province-wide protests erupted. The call in favour of independence of Bonham became stronger and stronger among Bonhamian people. On 8 December 2016, BLO convened an extraordinary meeting at an undisclosed location near the Page border. Prominent media representatives were invited to the meeting. At the meeting, Mr Joe Hill declared Bonham to be an independent and sovereign nation. In the light of the prevailing circumstances, he announced that BLO would be the legitimate government and proclaimed himself President until such time when a general election is conducted. Meanwhile, ten (10) BLO cadres were appointed to take charge of various ministries. The declaration was immediately reported by the media in the Zepelan region. According to the Zepelan Observer, high-ranking Pagian officials and members of Pagian armed forces were spotted at the extraordinary meeting.
19. Two (2) hours after the declaration, the Government of Page officially recognised Bonham as a State. Later that day, the President of Donka denounced Mr Joe Hill's declaration of independence. He directed the Attorney-General to start prosecutions for treason against Mr Joe Hill and decided to reinforce Colonel Nazir's forces. On 14 December 2016, the Ministry of Defence of Donka entered into an agreement with the 'Black Dog Security' (BDS) Co., Ltd., a private military company based in Novara, a neighbouring country of Donka. The BDS is known for deploying forces in several conflict areas in the last decade. There were various allegations of international humanitarian law violations by BDS' personnel in the past, but all ensuing civil claims were settled out of court and no criminal investigations had been initiated. The Security Arrangement Contract entered into between Donka and BDS included an indemnity clause granting BDS immunity from criminal prosecution in Donka for BDS' operations under the contract. Under the contract, BDS was to be integrated into the Donkan armed forces as a special brigade.
20. On 15 December 2016, BDS forces were mobilised from Novara to Bonham to join Colonel Nazir's forces. Members of BDS forces wore black uniforms with the emblem of the Donka Armed Forces sewn on the uniform. They carried weapons openly. Since the deployment of BDS forces, a large number of Bonhamian people have been reportedly arrested and many of them have gone missing. The Donkan government also imposed restrictions on the movement of people in Bonham to other regions in Donka.
21. The annual religious festival of the Blues religion normally falls in the month of January. Celebrations last for fourteen (14) days. The festival involves religious processions, cultural events and community dinners at the Butterfly Temple, a UNESCO World Heritage site. Throughout the history of Bonham, the Temple has served as a sacred place for the Blues Religion and for community gatherings of Bonhamians. It has inspired various Blues

arts, literatures, tales and music in its one thousand three hundred (1,300) years of existence. Every year, the Temple attracts approximately twenty thousand (20,000) Blues disciples coming from Page and other countries within the region.

22. On 28 December 2016, Colonel Nazir received intelligence information from BDS indicating that BLO leaders were having a preparatory meeting for their next operation with members of Pagian armed forces in the Butterfly Café, a cafe next to the Butterfly Temple. Colonel Nazir immediately ordered an attack against the BLO leaders. The attack was carefully planned in order not to cause panic among people in the area. Donkan soldiers and BDS personnel were instructed to approach the Butterfly Café and target only BLO's forces. Upon their arrival on the street outside the café, a whistle was blown and a group of people fled from the café to the Butterfly Temple. Donkan soldiers encircled the Temple while BDS personnel rushed into the temple to search for the people. After they heard gunfire from within, BDS personnel opened fire inside of the temple for twenty (20) minutes. As a result, twelve (12) people died, seven (7) were seriously wounded and the temple was damaged: ten (10) holy grails were broken, two (2) massive murals were scrubbed, the main statue was thickly dotted, the door to the Temple was irreparably damaged, and the wall was riddled with bullets.
23. Later in a press statement, Colonel Nazir claimed that all the dead bodies and the injured were identified as members of BLO. After searching the scene, BDS discovered an entry pass to a Pagian military base with the name of Hani Picciotto, known as the Deputy National Security Adviser of Page. A USB flash drive was also found at the Butterfly Café, in which a draft strategy document was recovered for BLO's next operation with comments by someone with the initials 'H.P'.
24. The next day, the BHRF updated on its website that nearly one hundred and fifty (150) Bonhamian 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. The BHRF demanded that the arrested people be released immediately or be brought before a court of law.
25. The Mewani Chief of Police informed the public 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 the city, especially for the upcoming Blues religious festival. The operation was requested by the police and carried out smoothly by BDS. He said that they had reliable information that BLO received lethal weapons from Page which had the potential to cause large-scale injury. All persons arrested were on suspicion of their involvement in the transport and storage of weapons, as well as for providing training to BLO forces. During these arrests, BDS collected evidence that these persons were also serving as liaisons between BLO and Page and as such, they should be held in a high security detention centre. A thorough investigation was to be conducted and once confirmed, charges would be pressed against them and they would be brought before a court of law without delay.
26. Meanwhile, to appease the demands of the BHRF and civil society, on 15 January 2017, the Chief of Police invited the International Committee of the Red Cross (ICRC) to visit the

persons detained and convey Red Cross Messages between the detainees and their families. A confidential report of their visit was submitted by the ICRC to the Donkan government the very next day.

27. On 31 January 2017, the Blues Charity Association (BCA), the organiser of the annual Blues religious festival, convened a press conference in which the BCA introduced twenty two (22) individuals who claimed to have been arrested along with others on the night of 28 December 2016 when they were participating in a religious procession. After the arrest, they were taken to an old, abandoned government building (the old building) in the eastern suburb of Mewani. The building did not have electricity, running water supply or even toilets. Detainees were kept in isolation in a closed cell of four (4) to five (5) square metres (m<sup>2</sup>) and were taken for a one-hour walk in the yard of the building once a week. Contact was not allowed either with other inmates or their family except through the Red Cross Messages. They were provided with only two (2) glasses of water and four (4) slices of bread every day as this was what the guards received in terms of rations. Given the lack of electricity and ventilation, they could not sleep and fell sick due to suffocation. The sick inmates were taken away by the black uniformed guards because there were no medical facility or personnel within the building. The whereabouts of those transferred people is still unknown. Due to the detention conditions and isolation, six (6) detainees committed suicide.
28. When the journalists enquired about how they escaped from the building, they said that on the night before, BLO cadres rescued them. At that time, there was resistance from the black uniformed forces at the building. In the exchange of fire, fourteen (14) black uniformed guards were killed and all the inmates were released. They recalled Colonel Nazir's visit to the building in the first week of their confinement. They saw him talking to the black uniformed personnel who were guarding the building and one of the inmates heard him saying that security and order in Bonham needs to be restored, and for this, the mainstream religion and language of Donka should be imposed in Bonham, among other measures to be adopted. They also said that during their confinement, every day they saw new people being brought to the building. Many who came were injured but to their knowledge no medical assistance was provided.
29. The Mewani Chief of Police, in a press release on 5 February 2017, countered the allegations of the BCA and said that all the arrests were made in accordance with the law to maintain peace and security in Bonham. He noted that none of the persons arrested complained of torture or any other abuse. This was a testimony to the training and restraint of the Donkan security forces. The press release stated that the Donkan Preventive Detention Law of 2006 permitted the detention of citizens for a period of thirty (30) days. The press release added that the police had sufficient evidence against all those detained and that necessary legal proceedings against them were about to be initiated. It was also explained that the Donkan government became extra cautious because they had reliable information that nuclear weapons had reached non-state actors in Bonham from Page. Thus, in the opinion of the Mewani Chief of Police, the extraordinary situation that Donka faced required certain extraordinary measures.
30. On 6 February 2017, excerpts of the ICRC's report of the visit to the old building appeared in the local media. The leaked report appeared to show that the ICRC approved of the conditions of detention in the building although the detainees also complained that none



of their medical needs was addressed. The next day, the ICRC condemned the leakage of its confidential report and released the report in its entirety to the media. The report showed that conditions of detention were not approved by the ICRC and had been the subject of a number of recommendations for improvement, especially the lack of healthcare services and the psychological impact of isolation on the detainees. The ICRC's health delegate had also arranged the necessary care of some detainees in urgent need of medical attention.

31. A few weeks after the report's release, Donkan authorities launched investigations into the matter but then decided not to proceed due to the the government's reluctance to delve into what should have been a confidential and bilateral report, as well as the political pressure from Novara and the invocation of immunity by BDS.
32. The inaction of Donkan authorities prompted the BHRF to appeal to the ZU in late February 2017. In its open letter, the BHRF requested the ZU to intervene in the situation in Bonham to prevent further deterioration. The ZU urged Donka, Page and BLO to halt the ongoing clashes and enter into negotiations to resolve their issues. The ZU also established an Independent Enquiry Commission (IEC) consisting of five (5) independent experts to ascertain the allegations of violations of human rights and international humanitarian law and to report to the ZU Assembly, the decision-making body of the ZU. At the request of the ZU, Donka and BLO declared a ceasefire. The IEC travelled across Bonham in the first week of March 2017 to meet the leaders of Donka, Page and BLO. In May 2017, IEC reported gross violations of human rights and international humanitarian law in its first report.
33. On 25 March 2017, the ZU convened a meeting of representatives from Donka, Page and BLO. A consensus emerged on holding a referendum on the status of Bonham. Accordingly, a referendum was held on 2 May 2017 and because of the IEC's first report, more than 90% people of Bonham voted in favour of secession from Donka. With pressure coming from the ZU, the new State of Bonham and the international community, Donka agreed, in the following reconciliation, that allegations of human rights and international humanitarian law violations would be investigated and individuals responsible for such violations would be prosecuted. Nevertheless, due to internal political inertia and a struggle for power, Donkan authorities have not initiated prosecutions.
34. 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. Meanwhile, the BHRF, the BCA and other organizations sent requests to the Office of the Prosecutor of the International Criminal Court (ICC) to initiate an investigation over the situation in Bonham given the apparent unwillingness of Donkan authorities to conduct prosecutions. Based on the requests, the Prosecutor of the ICC sought permission from the Pre-Trial Chamber of the Court to initiate an investigation into the situation. On 15 June 2017, the Pre-Trial Chamber granted the request. Following several months of investigations, the ICC issued a warrant of arrest for Colonel Nazir. Colonel Nazir was arrested in his residence and was surrendered to the ICC at The Hague on 27 December 2017.
35. Pre-trial Chamber I of the ICC will now hold a hearing to determine whether to confirm the following charges which the Prosecutor seeks to institute against Colonel Nazir.

## CHARGES

Colonel Michell Nazir is charged with

**Count One** – With respect to the acts committed at the community hall on 2 November 2016,

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 crime against humanity of extermination under article 7(1)(b) of the ICC Statute.

**Count Two** – With respect to the acts committed on 28 December 2016 against the Butterfly Temple,

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

- the war crime of intentionally directing attacks against buildings dedicated to religion under article 8(2)(b)(ix) of the ICC Statute.

**Count Three** – With respect to the treatment of persons who were arrested on 28 December 2016 and detained in the old building,

on the basis of command responsibility (Article 28(a)),

- the war crime of torture under article 8(2)(a)(ii) of the ICC Statute.

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**At all relevant time, Donka and Page were States Parties to:**

- 1949 Geneva Conventions
- 1977 Additional Protocols I and II, to the Geneva Conventions of 12 August 1949
- Rome Statute of the International Criminal Court (1998)
- World Heritage Convention (1972)
- Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954)
- Protocol for the Protection of Cultural Property in the Event of Armed Conflict (1954)
- Second Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict (1999)
- Treaty on the Non-Proliferation of Nuclear Weapons (1970)
- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)