

Asia-Pacific Moot Court National Rounds 2012

PROSECUTOR vs. COLONEL CALLEY JONES

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 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 facts are entirely fictitious. 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 th*
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*

BACKGROUND

1. The Federal Republic of **Bariland** (FRB) has a population of over 90 000 000 inhabitants. It is composed of 4 constituent republics: **North Baron**, **South Baron**, **East Drakonia** and **Katoland**. Its capital and largest city is **Centro** which is situated in North Baron, the most populous republic with 55 000 000 inhabitants.
2. The population of the FRB is mainly divided among three ethnic groups: the **Bari**, the **Drak** and the **Katoni**. The Federal Republic was founded on the basis of the historical alliance between the Bari and the Drak peoples. Katoland was conquered and forcefully integrated into the Federal Republic in the XIXth Century (mainly because of its access to the sea).
3. The Bari people mostly live in the North and Northeast, while the Drak people live in the Southwest. The Katoni people are concentrated in the Western region of Bariland:
North and South Baron: Bari (75%) – Drak (20%) – others (5%)
Katoland: Katoni (65%) – Drak (25%) – Bari (5%) – others (5%)
East Drakonia: Drak (85%) – Bari (10%) – Katoni (2%) – others (3%)
4. East Drakonia (10 000 000 inhabitants) is the poorest republic with an average of \$10 000 GDP per capita compared with \$25 000 GDP per capita nationwide. Its capital city is **Drakka**. Katoland is the second largest constituent republic (15 000 000 inhabitants). Its capital city is **Urbo**. Katoland has enjoyed a high rate of growth since the beginning of the 1990's with the exploitation of its large reserve of natural resources, in particular natural gas.
5. The Drak population of Katoland is mostly concentrated in the eastern part of the Republic in a region called **West Drakonia**. Its main city, **Mesto**, lies a few kilometres from the FRB (East Drakonia) border. The region has an autonomous status within the Republic of Katoland, essentially the power to manage its local affairs through a "regional council" whose members are appointed by the Katoland government. The main pipeline bringing Katoland's natural gas to the Southern Sea goes through West Drakonia.
6. Tensions in Katoland began to mount amid rising nationalism among both the Katoni and the Drak populations in the late 1990's. The Katoni had never felt comfortable within the Federation and, along with their growing affluence, were more and more inclined to reject the powers of the Federal Government. In 1998, Katoland's elections brought to power a nationalist government openly seeking Katoland's independence.
7. The Drakonian Nationalist Alliance (DNA) was created in 1995 and became an influential political movement in West Drakonia, surfing on rising Drak nationalism agitated in response to Katoni demands of

subsequent 2002 Katoland parliamentary elections and the DNA organized their own contest in December 2002. The Katoland government declared these elections illegitimate.

9. Violent conflict broke out towards the beginning of 2003. FRB and Katoland security troops were dispatched to West Drakonia in February. The fighting was characterised by general disregard for international humanitarian law by uncontrollable militias, with both sides reporting atrocities. During the war, many Drak villages were attacked and burned, as were Katoni houses and schools in Mesto. As a result, approximately 1,000 died and about 100,000 ethnic Drak fled the territory and Katoland proper, mostly crossing the border into East Drakonia. A further 23,000 ethnic Katoni fled West Drakonia and settled in other parts of Katoland.
10. Meanwhile, negotiations between Centro and Urbo led to an agreement to hold a referendum on the future status of Katoland within the Federation. The Katoni population voted massively in favour of independence, while the Drak mostly voted for Katoland to remain within the Federation. Katoland declared its independence in April 2004 and became an independent republic under the interim leadership of President Stark, leader of the **Katoland National Party (KNP)** which had led the pro-independence campaign. Katoland was admitted in the United Nations in July 2005.
11. The main opposition party was the **Republican National Front (RNF)**. The party at first led the campaign opposing Katoland's independence. Following the declaration of independence, it shifted its main objective to the establishment of an independent state of West Drakonia and allied itself with the more radical DNA. A large rally was held in Mesto attended by thousands of supporters. In his speech, the RNF leader criticised the FRB President and its government for agreeing to the terms of the agreement which led to Katoland's independence. Similar rallies were held in other cities in West Drakonia resulting in widespread demonstration and riots.
12. Due to the increasingly violent and volatile situation in West Drakonia, President Stark declared a state of emergency throughout the country on June 1st, 2004. The Katoland government launched a nationwide crackdown on RNF and DNA supporters. Hundreds of supporters in Mesto and other cities were arrested and detained by security forces. On July 15th, President Stark issued a presidential decree outlawing the DNA on the ground that it constituted a threat to Katoland's national security.
13. In September, violent clashes broke out between Drak and Katoni in Mesto and in Mari, an eastern town of West Drakonia with a large Katoni population. The clashes turn increasingly violent and bloody. It was reported that the Katoni population was attacked by Drak militiamen. Schools, businesses and shops in the Katoni populated areas in Mesto were burned down and looted by Drak demonstrators and DNA supporters. The violence subsequently spread to Mari and other cities in the eastern part of West Drakonia where it was reported that Katoni militiamen attacked Drak people in retaliation for the attacks in Mesto. In Katoland proper, Drak people also felt increasingly threatened. Media reports stated that the death toll could be in the thousands for both sides.
14. The increasing violence in West Drakonia continued for the next 6 months and drew widespread condemnation from the international community. The UN Security Council convened an emergency meeting in February 2005 at the request of FRB and issued a statement condemning the on-going violence in West Drakonia and urged the Katoland government to stop the violence and killings.

15. Katoland finally accepted a ceasefire to avoid a large scale confrontation with the FRB. It paved the way to its admission in the United Nations in July 2005. The government of Katoland and Drakonian nationalists reached an agreement where they would avoid use of force against one another, and Katoland pledged not to impose sanctions against Drakonia. However, the Katoland government still retained control over substantial portions of West Drakonia. The war resulted in West Drakonia breaking away from Katoland and gaining *de facto* independence. No State has however recognized Western Drakonia as an independent state.
16. From then until mid-2010 West Drakonia was generally peaceful. Economic and military ties with the FRB, in particular East Drakonia were strengthened. Dissident Katoland Armed Forces were re-incorporated into "Drakonian Armed Forces (DAF)" which were trained by officers of the Bariland Armed Forces (BAF). With FRB's government backing and financial guaranties, defence capability was reinforced with the purchase of new military equipment. The Katoland government protested regularly against the continually increasing FRB economic and military presence in the Mesto region and against the acts of uncontrolled Drak militias in the region.
17. In 2009-2010, tensions began to rise again. The *de facto* republic held an independence referendum on 12 November 2009. According to the local election authorities, the referendum turned out a majority for independence from Katoland where 80% of Drak voters supported independence. The referendum was monitored by a team of international observers. However, it was not recognized by the United Nations, given the lack of ethnic Katoni participation and the doubtful legality of such a referendum without the Katoland government

assume full authority over West Drakonia by military means if necessary. The Head of KESA was charged in particular to seek the reinforcement of cyber-security within government agencies, as well as to seek means of retaliation for the recent cyber-attacks.

21. The NCC decided to establish an alternative pro-Katoland government in Mari. In April 2010, the Katoland government created the Provisional Administrative Entity of West Drakonia (PAWD) staffed by ethnic Katoni and some Drak opposed to the Western Drakonian authorities in Mesto. It was intended that this provisional administration would negotiate with central Katoland authorities regarding the final status of West Drakonia. On May 10th, 2010, the President of Katoland appointed as the Head of West Drakonia Provisional Administrative Entity the former President of Katoland who still had some prestige with the local population. The NCC also decided to send security forces to close down a vast black market complex, which was one of the region's chief sources of revenue, leading to fighting by Katoland armed and security forces and Drakonian civilian militias. Hostage takings, shootouts and occasional bombings left dozens dead and wounded.
22. On August 1st, police officers investigated a bomb attack in a local police station in Urbo which had injured a score of bystanders. The Katoland Ministry of Internal Affairs announced that 3 police officers had been injured in the attack by two remote control explosive devices. No one formally claimed responsibility for the attack. The Chief of police declared that everything would be done to ensure that those "terrorists" would be found and tried. The investigation finally determined that the two men responsible were associated with the DNA according to police files. The two men were not found and it could not be surely determined whether the DNA was behind the attack. At least one of suspect was thought to have fled to Mesto and then to have crossed the border to East Drakonia. An international arrest warrant was issued.
23. In the wake of the attack, the Katoland government intensified its public nationalist campaign against both West Drakonian authorities – for their responsibility in the alleged attacks by Drak militias on the Katoni population in West Drakonia – and the FRB government, claiming that it sought to take over West Drakonia by reviving the Bari-Drak alliance against the Katoni people. The terrorist attack generally was blamed on the DNA. A press release from the Ministry of Internal Affairs accused the FRB of protecting terrorists and demanded that they be surrendered to the Katoland authorities immediately.
24. Sporadic fighting occurred the following weeks in and around Mari, there were further shootouts with both sides claiming having been fired upon by the other. The Katoland Ministry of Internal Affairs and Defence intervened by sending some units of security and armed forces. The Katoland Ministry of Defence later acknowledged it had lost an armoured personnel carrier during the clashes. Authorities in Mesto said that Katoland had shelled West Drakonian villages, killing ten people. The Katoland Ministry of Defence claimed that Katoland forces had returned fire only after Drakonian positions shelled Katoland-controlled villages injuring six civilians and one Katoland policeman. He accused the West Drakonian side of "trying to create an illusion of serious escalation, an illusion of war." An a live televised address, President declared "A sniper war is ongoing against residents of the villages [in the West Drakonia conflict zone] and as I speak now intensive fire is ongoing from artillery, from tanks, from self-propelled artillery systems – which have been brought in the conflict zone illegally – and from other types of weaponry, including from mortars and grenade launchers. I have asked the Chief of the Armed forces to mobilize all the necessary resources to re-establish public order in West Drakonia and put an end this anarchical situation."
25. In September 2010, the NCC endorsed Colonel Jones's proposal to put Western Drakonia under full military authority. Colonel Jones reassured the Council that "all

necessary measures including any legitimate means and methods of warfare whatever the costs” would be taken to achieve the objective of re-establishing authority over Western Drakonia. He indicated that he would personally supervise the operations but would welcome the assistance of the security forces under the authority of the Ministry of Internal Affairs and KESA. Major Dan Anderson and Mr John Dees were appointed as liaison officers for the KAF and KESA, respectively. The NCC made a public statement to the effect that the 2003 Emergency Proclamation was still in force and that all necessary means would be taken to re-establish public order and protect the security of all citizens of Katoland.

26. By the end of September 2010, the main towns and villages of West Drakonia were combed by armed and security forces. Those suspected to be either associated or supporters of the DNA militias were arrested and kept in custody. In the town of Argus (30,000 inhabitants) alone more than 800 persons were arrested and detained under the Emergency Powers Ordinance.
27. Three women detained at the time have claimed that, during their detention, male guards subjected them to a body search, touched them inappropriately, and threatened to strip them naked. They further claimed that they had been detained in an underground cell in a detention facility staffed entirely by men. According to them, the facility housed persons detained on criminal charges as well as those under administrative arrest. Among other things, they also claimed that: they were only fed twice a day; the heating system was turned off, despite almost freezing temperatures at night; there was inadequate light and ventilation; other prisoners and male staff could watch them use the toilet; and, they were frequently subjected to humiliating comments.
28. As a KAF unit was approaching a town named Corti, it came under heavy fire and shelling. The unit returned fire from tanks and artillery units. The fighting intensified in the next days and eventually the KAF unit with the assistance of KESA forces managed to take full control of Corti and nearby villages after ten days. It was reported that more than 200 civilians were killed or injured during the offensive. Official statements by both Colonel Jones and the KAF stated that some of the reported casualties were members of dissident armed forces and DNA militias’ members who had taken up arms. Important caches of weapons were discovered by KAF in some of the apartments and buildings in Corti, which prompted the arrest for interrogation of a large number of persons.
29. Upon the taking of the town, able-bodied men and women of Drak ethnicity were routinely rounded up, interrogated and interned in the prison and in a school transformed into temporary detention facilities. Within a few days, more than 2000 persons whom the KAF or KESA believe to have some association with or to be otherwise supporters of the DNA militias were detained. Many of the former detainees gave evidence of severe overcrowding. The detention facilities were directly under the authority of the KAF but operated by KESA officers who were in charge of interrogating suspects.
30. Mistreatment of detainees was later reported in newspapers and the media following the release of a report by Women's Rights Watch (a local NGO) of October 2010. The report highlighted various testimonies about the mistreatment of detainees in Argus and Corti, including the testimonies of the three victims mentioned above. Several States called on Katoland to ensure that all precautions were taken to ensure that innocent civilians were spared and that those suspected of unlawful acts benefitted from all the guarantees afforded by international human rights and humanitarian law.
31. When interviewed, the NCC spokesperson declared that all measures were taken to ensure that persons detained would receive a fair treatment, as much as it was possible under the circumstances. The NCC did not condone wilful ill-treatment. Allegations of

such treatment would be investigated in due time. However, given the multiple threats to national security, immediate measures were required. The authorities were taking all necessary steps to ensure adequate conditions of detention would be provided as soon as circumstances and security concerns allow.

32. In addition to the prison and the school known to be places of detention, several locations, including warehouses, abandoned buildings and underground storage areas were used as make-shift detention centres. An NGO reported that torture was prevalent in those places operated by KESA where victims were interrogated before being sent to the known places of detention. A victim testified he was subjected to severe beatings during his interrogation at one of those unidentified location before being transferred to the prison facility.
33. As the KAF were closing down on the town, incidents involving the use of ambulances and small trucks by militia members trying to leave the town were reported to the central command. Some ambulances, displaying makeshift red cross emblems, were found to be transporting armed men and ammunition. In one instance, firing came from an ambulance trying to bypass a control post and two soldiers were killed.
34. The central command issued a new instruction providing:
 - All medical vehicles going through control posts, whatever the service they belong to, have to be thoroughly searched;
 - The identity of any persons present in medical vehicles, including drivers and medical personnel, have to be verified with the central command;
 - If a person on board a vehicle is identified as a member of enemy forces, a separatist militant or if weapons are found on board the vehicle, all persons on board are to be surrendered to the nearest military post;
 - Any vehicle found to be transporting weapons or ammunition is to be confiscated.
35. The implementation of the new instruction led to the death of several persons in need of immediate medical attention. At some control posts, vehicles transporting wounded were systematically stopped and searched. Identity checks delayed controls as well, so that vehicles were immobilized for several hours. The media reported that on October 2nd alone, 5 persons died in the vehicle transporting them. Other reported that there were no emergency vehicles that could not pick up and transport the wounded as many of were immobilized, while others confiscated.
36. Two victims have testified that members of their family gravely wounded by shrapnel were arrested at a control post and prevented from reaching the hospital. They were sent to the prison facility for interrogation without receiving the medical attention they required. They denied that their relatives were active militants although they acknowledged that they had been DNA sympathizers. They died while detained at the prison facility. Autopsies carried out at the request of the families confirmed that their death resulted from the lack of medical attention.
37. Katoland authorities continued to press FRB authorities for the surrender of the alleged authors of the August 1st bombing in Urbo. Both in Mesto and in Centro, authorities continued to deny that they had any knowledge of the suspects' whereabouts. On the internal front, support for the government actions in West Drakonia was decreasing among the Katoland population and both the President and Colonel Jones felt that control over the whole region of West Drakonia, including Mesto, had to be rapidly established in order to maintain popular support for the President and his government.

38. In December 2010, Katoland forces strategically stationed tanks and long-range artillery in the hills overlooking the Mesto river. The city of Mesto is situated on an island in the middle of the Mesto River. Two bridges (east) and an underwater tunnel (west) give access to the city. The KAF took position in order to control all access roads and bridges to the city.
39. Mesto's electric power is supplied by a large power station that lies across the border in East Drakonia, a remnant of the power production and distribution before the independence of Katoland. The Bargo station supplies electricity to the towns and villages in East Drakonia – including the FRB military base in Bargo, as well as Mesto and its surroundings. There is an airfield adjoining the military base (which is used for both military and civilian purposes). An estimated 8,000 troops are stationed. The military base is located 10 km away from the border. The station provides power for an area straddling East and West Drakonia comprising more than 150 000 households.
40. On December 5th, it was reported that the power plant's computer network system was attacked which resulted the complete shutdown of the station which resulted in massive disruptions of power supply in the affected areas. The damage caused by the virus and the sudden shutdown was extensive. It took six weeks to re-establish the power grid. The source of the virus was not identified nor the way it was introduced into the electronic system of the station which was well protected.
41. Although the Bargo military base's had independent sources of power, the installations were partly crippled, in particular the airfield control system.
42. The shutdown of the station severely affected the electricity and water supply of Mesto and its surroundings, as well as the residential areas in East Drakonia. In Mesto, only a few buildings within the city had emergency power generators – including the general hospitals and some schools which were used as shelter. Given the harsh climatic conditions at that time of the year, it is reported that the situation resulted in nearly 500 hundred civilian deaths. Attacks on West Drakonian, East Drakonian and FRB governmental, commercial and banking websites were also reported, causing disruptions to essential public services.
43. Experts and commentators pointed out concordant bits of evidence and information that sustain widespread beliefs that the NCC was behind the cyber-attacks. It was seen as retaliation to the earlier attacks against Katoland's network in December 2009. The coordination of the attacks, as well as their timing – just a few days after the offensive on Mesto had started – were seen as evidence that the Katoland Council had either contracted out some organization to carry the cyber-attacks or had provided information to existing networks in order to enable the coordination of the cyber-attacks. Some also alleged that the Head of KESA had closed ties with organized crime syndicates specialising on electronic fraud. Moreover, allegations of illegal contributions to the campaign fund of President Stark by some individuals closely associated with organized crime had been reported from time to time since the President's elections. The Presidential office had strongly refuted such allegations. However, no public investigation had taken place.
44. On December 6th, the FRB President declared publicly that the attacks on the power station amounted to an **"act of war"**. The FRB government claimed that the Katoland government was responsible for the attacks and indicated that it would take all necessary measures to ensure the protection of its population. On the following day, it referred the situation to the International Criminal Court under Article 14 of the ICC Statute.

45. When asked in a TV/media interview about the cyber-attacks on the Bargo power station, Colonel Jones stated he had no knowledge of any involvement by the KAF or any other Katoland government's agency in planning or carrying out such attacks.
46. On December 24th, the FRB carried out air strikes on KAF positions around Mesto. The following days, land forces crossed the border and made their way to Mesto without meeting any resistance. The FRB announced that it would occupy the area until Katoland paid reparations for the damage that resulted from its unlawful attack on the FRB public utility.
47. National and international reports on the consequences of the shutdown of the power station brought popular support of the Katoland Presidency to an all time low. More and

Count 3. In respect of the cyber-attack on the power station in Bargo in December 2010:

On the basis of contributing to the commission of such a crime by a group of persons acting with a common purpose (Article 25 (3) (d) of the ICC Statute)

(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 which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated (article 8(2)(b)(iv) of the ICC Statute), alternatively

(b) the war crime of intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities (article 8(2)(e)(i) of the ICC Statute).

NOTE

The Federal Republic of Bariland is a party to:

- Four Geneva Conventions of 1949 (ratified on 12th July 1960)
- Additional Protocols I and II of 1977 (ratified on 5th December 1985)
- Additional Protocol III (ratified on 15th May 2011)
- Statute of the International Criminal Court (ratified on 1st May 2009)
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Katoland is a party to:

- Four Geneva Conventions of 1949 (acceded on 15th August 2005)
- Additional Protocols I and II of 1977 (acceded on 3rd September 2010)
- Statute of the International Criminal Court (acceded on 15th January 2009)

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 **3 counts** against **Colonel Calley Jones** 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.

Written and oral arguments on behalf of the Prosecution and Defence are to be confined to these **THREE** (3) counts only. For the purpose of the written memorials, the Prosecutor and the Defence may choose **ONE** of the alternative charges under each count.

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