

ASIA-PACIFIC MOOT COURT NATIONAL ROUNDS

2015

(CORRECTED)

PROSECUTOR V. HASSAN AMIR

BEFORE THE INTERNATIONAL CRIMINAL COURT AT THE HAGUE

INSTRUCTIONS

1. *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.”*
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. Counsel may 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.*

Background

1. The Republic of Alin is on the east coast of the Continent of Oslan. Yousef Aflan, leader of the ruling Revolutionary Party, was elected as President in 2000 and has been in power since then. A close political ally, General Hassan Amir, is heading the Alini Defence Forces (ADF) since 1980.
2. Over the last decade, corruption, abuse of power, arbitrary arrests and stringent restrictions on political activity and freedom of expression have become prevalent under the Aflan regime. The population have become increasingly disillusioned with the Revolutionary Party and the President.
3. Following weeks of social unrest, an estimated 5,000 protesters turned up at Liberation Square in Orkan, the second largest city, on 15 January 2013. Protesters chanted anti-government slogans and called for the immediate resignation of President Yousef Aflan. Security forces in an effort to disperse the crowd killed twenty protesters and scores of them were injured.
4. On the following day, the government of Alin decided to impose censorship on the internet in the wake of increasing criticisms from the people about the economic and social policies of the Revolutionary Party. Resentment among the Alini population, especially among the young generation, surged after the internet censorship was imposed.
5. On 15 March 2013, a militant group, unknown to the public until then, attacked the police and security forces in the southern part of Orkan and took control of a local administrative council. Colonel Aziz Nur, leader of this self-proclaimed "Alin Liberation Army" (ALA), announced in the media that the ALA was "a voluntary force striving for a free Alin through armed struggle". Colonel Nur called for the resignation of Yousef Aflan and a national election.
6. The government immediately denounced the ALA as "terrorists". In the following days, President Aflan, in consultation with General Amir, decided to launch an offensive to neutralize the ALA, as the group was rapidly expanding its control over several towns in the southern part of the country. The ADF commander in Orkan, Colonel Adada reported to General Amir and took instructions from him directly. Colonel Adada was a popular figure among his forces, who swore loyalty to him and claimed to only answer to him.

Demonstrations and Crackdown in North Orkan

7. As the ADF was moving to regain control of the southern part of the city, the Aflan government declared martial law in Okran and its suburbs. Towards the beginning of June 2013, local activists, sympathetic to the ALA but not the use of violence, were planning a demonstration march to the Town Hall in the northern part of Orkan, where the main government administration was located. The march was coordinated by supporters through various social media channels. Its objective was to protest against the ruling government and occupy the Town Hall.
8. General Amir, Colonel Adada and other senior local military staff had a meeting on 10 June 2013 at the Town Hall. A military officer present at this meeting recalled that, invoking its powers under the martial law, General Amir prohibited the manifestation and instructed the ADF to take any necessary measures to prevent it. Another military

staff recounted some disagreement between Amir and Adada over the operational strategy to prevent the gathering.

9. On the morning of 13 June 2013, around 2,000 residents gathered to demonstrate and march towards the Town Hall. They encountered ADF obstructions not long after they started, but kept marching on. As the demonstrators were approaching the Town Hall, the ADF used tear gas and plastic bullets to disperse the crowd. Some armed demonstrators then attacked the ADF soldiers with concealed firearms, killing two and wounding several others. Six persons were killed by ADF soldiers using live ammunition. At noon, the demonstration was dispelled and more than 150 demonstrators were arrested. However, about 200 demonstrators succeeded in occupying another building in the vicinity – the National Technical College (NTC).
10. Later that day, the ADF actively searched the neighbourhood close to the Town Hall, arresting demonstrators. At around midnight, an ADF unit entered the NTC building to carry out a search which led to acts of violence. A demonstrator testified later that she was taken with several other women to the basement of the building where they were raped repeatedly before being transferred to a detention facility operated by the Ministry of Security. She was eventually released on 17 June 2013. Two other women described

3. *Authorizes the establishment of an International Security Support Force (ISSF) to protect civilians and civilian populated areas under threat of attack in Alin, and to maintain security;*
 4. *Authorizes the Member States participating in the International Security Support Force to take all necessary measures to fulfil its mandate; ...*
13. On 21 July 2013, President Aflan announced that the government would comply with Resolution X and implement a ceasefire and, on 7 August, agreed on the deployment of the ISSF in Alin. The ISSF arrived in Alin on 10 September and established its main base in Astor, a city at the edge of the north/south divide of the country. The ISSF consisted of a Military Observers Unit (MOU), a Civilian Police Unit (CPU) and a Protection Force Unit (PFU). The CPU (composed of 80 police officers) was mandated to maintain public security and were armed with light weapons. The PFU (composed of 400 military personnel) had the specific tasks of protecting the civilian population and ISSF non-military personnel. Blin and Clin, two neighbouring countries, and seven other countries contributed to all ISSF components.
14. Within the two weeks following the ISSF's arrival, the fighting between the ALA and the ADF started to resume. The PFU had several violent confrontations with ADF units as the latter were firing at areas where civilians were concentrated in their attempts to regain control over two towns in the region. Some media reported, based on unnamed sources within the Alin government, that the relations between General Amir and Colonel Adada were increasingly frictional and acrimonious.

Attack against ISSF Compound

15. On the morning of 15 September 2013, two ADF fighter jets attacked suspected ALA bases in civilian areas near the ISSF compound. ISSF immediately requested General Amir to cease the attack after shells landed on civilian buildings, but the demand went unheeded. Subsequently, anti-aircraft machineguns fired at the fighter jets from the ISSF compound. The air raid was discontinued in the afternoon.
- 16.

Attack against ISSF Outpost

20. On 2 October, the ISSF received intelligence reports that the number of ADF air strikes were to be increased and carried out over larger areas. In support of the ISSF operations, the air forces of Blin and Clin intervened

End of Hostilities

25. The international community condemned General Amir and the government of Alin over the “despicable” attack against the ISSF outpost in suburban Orkan, and increased its material support for the ISSF. Meanwhile, the Aflan government’s legitimacy was increasingly challenged domestically. On 6 December 2013, President Aflan stepped down. Upon the end of hostilities between the parties, a new election was held with the assistance from the ISSF. Aziz Nur, the ALA leader, was elected President of Alin. With the reshuffles in the military structure and change of political climate, General Amir was no longer able to hold his post. Victims of the past conflict in Alin requested proper investigation and those responsible be punished.
26. On 15 May 2014, Alin referred the situation in its territory from March to December 2013 to the International Criminal Court (ICC). On 20 August 2014, General Amir was surrendered by Alin to the ICC pursuant to a request of the Court.
27. Pre-trial Chamber I of the ICC is going to decide whether to confirm the following three charges put forward by the Prosecutor against Hassan Amir:

Count One – With respect to the incidents against civilians taking place in north Orkan in June 2013,

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

- the war crime of rape under Article 8(2)(e)(vi) of the Rome Statute.

Count Two – With respect to the attack against the ISSF compound on 15 September 2013, 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 directing attacks against personnel, installations, material, units or vehicles involved in a peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict under Article 8(2)(e)(iii) of the Rome Statute.

Count Three – With respect to the attack against ISSF outpost in suburban Orkan on 20 October 2013,

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

- the war crime of killing or wounding treacherously individuals belonging to the hostile nation or army under Article 8(2)(b)(xi); or the war crime of killing or wounding treacherously a combatant adversary under Article 8(2)(e)(ix) of the Rome Statute.

Note:

All States involved, including States participating in ISSF, were parties to the following treaties at the relevant time:

- Four Geneva Conventions of 1949
- Additional Protocols I and II of 1977, to the Geneva Conventions of 12 August 1949
- Charter of the United Nations
- Statute of the International Criminal Court
- Convention on the Safety of United Nations and Associated Personnel

Preparation of the Memorials

In preparing the memorials, the counsel for 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 Amir 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.