

A Case before the International Criminal Court

The Confirmation Hearing in the Case of General Torzow

This is a fictitious case, intended to enable students to familiarise themselves with the law and practice of the ICC. Participants will be divided into three groups: Defence counsel, counsel for the Prosecution and legal representatives for victims. Each team is expected to write a memorial and to put forward a legal argument in the context of the Confirmation Hearing in the case of General Torzow (see Article 61 of the Rome Statute), in accordance with the schedule established by Pre-Trial Chamber 5. Each team will be evaluated by their knowledge of applicable rules of international criminal law and their argumentation and presentation skills. The Expert Jury Group is composed of both academics and practitioners and will grade the performance of each team, while at the same time acting in the capacity of Pre-Trial Chamber 5.

FACTS AND PROCEDURAL HISTORY

1. Hegia is a big country which after a short civil war fell apart in the 1980s. One of the countries that seceded is Arista. There have been tensions between the two countries ever since, especially because a substantial minority of Hegians lives under Aristan rule in the northern part of the country.
2. The Hegians in Arista have since the independence of Arista complained about discrimination and mistreatment by the Aristan authorities. Under the leadership of Robert Barba the Hegians in Arista have started to organise themselves in a small rebel army which aims at secession from Arista and joining Hegia. In October 2006 the Hegian rebels in Arista attacked a number of Aristan army bases and also the Aristan population in a predominantly Hegian city, Astoria, in the north of Arista. In that attack an estimated 100 civilians –of Aristan ethnicity- were killed.
3. The central authorities in Arista reacted immediately. They launched an armed attack against the rebel forces and also a number of (parts of) undefended towns in the northern Hegian region. An estimated 150 civilians were killed.
4. The central authorities in Hegia expressed indignation and condemned the actions of the central Aristan army in the strongest terms. The Hegian President instructed the army to assist the rebel forces under leadership of Robert Barba, as a humanitarian intervention to prevent the commission of further war crimes and crimes against humanity by the Aristan army. General Eric Torzow was mandated to conduct a military operation in the northern Hegian region within Arista in order to a) expel the Aristan central army from the northern region and b) to protect the Hegian minority from further discrimination and mistreatment.
5. Under the leadership of Eric Torzow the Hegian army attacked the Aristan central army on 25 December 2006, together with the rebel forces directed by Robert Barba. This joint attack managed to eliminate about 75% of the Aristan central army, as a result of various joint air and land attacks against military objectives in both the northern and other regions of Arista.
6. On 1 January 2007 military forces entered the village Kuna on the border between the northern Hegian region and other parts of Arista. Reports indicated that the troops seemed beyond any control or reason. They killed practically all inhabitants – estimated at 500 persons- and there are reports of widespread rape. Furthermore,

survivors have told the media that there was widespread looting and several instances of arson.

7. In a reaction the President of Arista condemned the attack on Kuna and called for prosecution of those responsible, namely the rebels especially their commander Robert Barba and the political and military leaders of Hegia, who were considered as bearing joint responsibility with the rebel forces.
8. Both the rebel forces and the Hegian authorities denied responsibility for the Kuna attack. Each blamed the other side for the operation.
9. On 1 February 2007 General Eric Torzow was on patrol with his unit in the Hegia region within Arista. At night, when leaving a bar in a town in this region he was abducted by unknown individuals and taken to the Arista capital, Vorta. There he was arrested and taken into custody by the Aristan police. He was accused of and officially indicted for command responsibility for various war crimes and crimes against humanity committed in Kuna, on 1 January 2007.
10. Arista has been a State Party to the ICC Statute since 14 February 2005; Hegia has signed, but not ratified the ICC Statute. Both States are parties to the Geneva Conventions of 1949, the Additional Protocols of 1977 and the ICCPR.
11. On 29 January 2007 the ICC Prosecutor announced that he intended to start an investigation –acting proprio motu- in the Hegia-Arista conflict with special attention for the Kuna-incident. The authorisation by the ICC Pre-Trial Chamber to do so was given on 20 February 2007.
12. On 15 March 2007 the Prosecutor, on the basis of the results of his investigation, submitted to the Pre-Trial Chamber an application for an arrest warrant for Eric Torzow, pursuant to Article 58 of the Statute. The Prosecutor’s application was based on the accusation that ‘on 1 January 2007 in Kuna Eric Torzow and Robert Barba with other persons jointly committed, as a joint criminal enterprise, within the meaning of article 25(3)(a) of the Statute, the war crimes of: a. directing an attack against a civilian population as such or against individual civilians not taking direct part in hostilities under article 8(2)(b)(i) of the Statute; b. willful killings under article 8(2)(a)(i) of the Statute; and c. destruction of property under article 8(2)(b)(xiii) of the Statute.’
13. On 22 March 2007 the Pre-Trial Chamber followed the application and issued an arrest warrant for Eric Torzow and requested Arista, pursuant to Article 89 of the Statute, to surrender him to the ICC. The Pre-Trial Chamber ruled that the ICC has jurisdiction, that the case appears admissible, that there is sufficient evidence and grounds to justify arrest and surrender.
14. On 30 March 2007 Eric Torzow was surrendered to the ICC; his initial appearance took place 2 April 2007. The case was assigned to Pre-Trial Chamber 5, with a view to hold a hearing to confirm the charges on which the Prosecutor intends to seek trial within a reasonable period of time after the initial appearance.
15. Prior to the confirmation hearing the Pre-Trial Chamber has received applications from 10 victims, under protection and referred to as nos. xx01 – xx10, to participate in the proceedings; these 10 victims are represented by one counsel. All victims have been granted the right to participate in the Confirmation Hearing.
16. The charges for which the Prosecutor seeks confirmation are the same as set out in the application for the arrest warrant: ‘on 1 January 2007 in Kuna Eric Torzow and Robert Barba with other persons jointly committed, as a joint criminal enterprise, within the meaning of article 25(3)(a) of the Statute, the war crimes of: a. directing an attack against a civilian population as such or against individual civilians not taking direct part in hostilities under article 8(2)(b)(i) of the Statute; b. willful killings under

article 8(2)(a)(i) of the Statute; and c. destruction of property under article 8(2)(b)(xiii) of the Statute. ‘

17. Prior to the Confirmation Hearing there have been many filings between the parties; some of the issues remain unsettled and have been incorporated by the Pre-Trial Chamber in the agenda set out below.

ESTABLISHED AGENDA FOR THE CONFIRMATION HEARING

Pre-Trial Chamber 5 seeks submissions of all parties on the following issues:

- A. In light of the proposed charges, the jurisdiction of the Court
- B. Admissibility of the case
- C. The scope of participation for victims xx01 – xx10. Legal representative has announced the intention to submit additional evidence in relation to Kuna-incident during Confirmation Hearing.
- D. The legality of Eric Torzow’s arrest and the question of appropriate remedy – if any.
- E. The admissibility of the following evidentiary items:
 - i. Statement by witness y21 taken on 20 January 2007 by investigators of the Office of the Prosecution; on 14 October 2007 this witness died.
 - ii. Statement by witness y14 taken on 23 January 2007 by investigators of the Office of the Prosecution; this witness is also participating as victim xx04 in the proceedings.