



## ASIA-PACIFIC MOOT COURT NATIONAL ROUNDS

2017

ICRC

### PROSECUTOR V. GERARD VANDE

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. Facts should not be contested. Teams may nonetheless draw reasonable inferences from the evidence produced. They may also question the credibility or weight of the evidence.*
3. *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. *The problem is not intended to raise questions of procedure before the ICC. Procedural questions should be ignored.*
5. *Questions relating to the jurisdiction of the ICC shall not be raised unless they are linked to the substance or the merits of the case. Counsels may address issues regarding the admissibility of the case under article 17 of the Rome Statute, if relevant.*
6. *Applicable law: In accordance with Article 21 of the Rome 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.*

*The Court may apply principles and the rules of law as interpreted in its previous decisions.*
7. *In preparing the memorials, the Prosecution and the 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 Vande that have to be established by the Prosecutor for the charges to be confirmed and the burden of proof;*
  - *Applicable law, policy and supporting authorities.*

## ***Background***

1. The Atlanpik is a region facing the Atlanpik Sea which is well-known for its diverse political and religious landscape. Two major religions have coexisted in this region for centuries: the Boubha religion and the Ombri religion. Whereas the believers of both religions tend to be conservative, the Boubhans insist that all aspects of the society, including politics, justice, economy, education, health, family etc., should be guided by the Boubhan Commandments. By contrast, the Ombrians have been in favour of a secular society, in which the religion only serves as a compass in each follower's private life.
2. After the Second World War, Federal Republic of Toukanov and Hakova was established as a single State inhabited by both Boubhans and Ombrians. Within the Federal Republic of Toukanov and Hakova, 9 million Boubhans and 4.2 million Ombrians lived together. Almost all the Boubhans resided in the landlocked state of Toukanov, which recognised the Boubha as its state religion. Nevertheless, 800,000 Ombrians and 200,000 Boubhans settled in a Toukanovan province named Kouka, bordering the state of Hakova which had previously been inhabited predominantly by the Ombrians. Hakova is located to the west of Toukanov and embraced the only coastline of the Federal Republic. The capital of Hakova is a harbour city named Atlan-on-the-sea, whereas the capital city of Toukanov is Ziton, situated 1500 km inland. The constitution of the Federal Republic prescribed that Ziton was the capital of the Federal Republic. While the federal government was dominated by the absolute majority of Toukanovans, the state of Toukanov and the state of Hakova each enjoyed a high level of autonomy. The two states maintained close economic ties, as Toukanov was blessed with rich natural resources and the hardworking Hakovans have built excellent port facilities which enabled the export of Toukanov's natural resources.

## ***The Republic of Hakova***

3. In 2009, the election of Mr. Daniel Arlet to the presidency of the Federal Republic provoked uproar in Hakova. Mr. Daniel Arlet belonged to the radical Boubha party "Boubha United Front". During his election campaign, he promised to amend the federal constitution to declare the Boubha as the official religion of the Federal Republic. Soon after his election, this amendment was passed by the Boubhan-dominated federal parliament. In response to this radical move, the parliament of Hakova proclaimed independence on 10 April 2009, and established the Republic of Hakova. At the same time, the Ombrians within the Federal Army pledged their allegiance to the Republic of Hakova and formed the Hakovan Defence Army (HDA). In no more than three months, the newly formed HDA was able to acquire advanced weapons from abroad through Hakova's ports in the Atlanpik Sea, deterring any possible intervention by the Federal Army.

## ***The Boubhan State of Toukanov***

4. In view of these circumstances, President Arlet issued a statement condemning the unilateral declaration of independence by Hakova and refusing to recognise Hakova as an independent State. In 5 August 2010, the federal parliament adopted another amendment to the constitution, changing the Federal Republic's name to the Boubhan State of Toukanov. In this amendment, Hakova was referred to as an autonomous region of the Boubhan State. The federal institutions, including the parliament, were subsequently merged with the institutions of the former state of Toukanov. In essence, the federal government was transformed into a centralised government controlled by the Boubhans. The Federal Army was regrouped as the Toukanov Armed Forces (TAF). The Toukanovan

Central Command acted as the supreme military authority within the TAF, its key members included President Arlet, the Commander-in-Chief of the TAF, Mr. Stan Emdal, the Minister of Defence of the Toukanovan government, and General Gerard Vande, the Chief of the Defence Staff of the TAF. Under Toukanovan law, the Chief of the Defence Staff is the highest-ranking and senior-most military officer in the TAF. He advises the President and the Minister of Defence on all defence matters and is responsible for the use of force and command of all military operations by the TAF. Despite these reforms of the governmental structure, the economy of Toukanov shrank due to reduced exports of its natural resources through Hakova, but the economy of Hakova continued to grow steadily thanks to its mature shipping industry.

5. By June 2017, out of 176 countries that have diplomatic relations with the former Federal Republic and the subsequent Boubhan State of Toukanov, 138 have recognised the Republic of Hakova. Nonetheless, until the present day, Hakova has not been admitted to the United Nations.
6. Concomitant with the restructuring of the government were harsher religious policies in Toukanov. At school, for instance, the children were only allowed to speak the Toukanov dialect, and were only offered orientation courses to the Boubha religion. Public funding for maintaining Ombrian religious sites was also cut. In consequence, the Ombrian population in Toukanov and especially in Kouka province felt completely oppressed and victims of segregation.

#### ***Violence in Kouka Province and Establishment of the FKA***

7. Ever since the independence of Hakova, the Ombrian population in Kouka province have been demanding publicly a referendum to decide the future of Kouka. According to an Ombrian activist, the Ombrians in Kouka were all subscribed to the idea of accession to the Republic of Hakova. This feeling reached its peak in early March 2014 when a 15-year-old Ombrian boy was shot dead by a Boubhan policeman for suspicion of attacking the latter. When the district court decided not to prosecute the policeman, tens of thousands of Ombrians in Kouka took to the streets, demanding justice and independence.
8. The Toukanovan authorities acted swiftly. President Arlet announced a state of emergency in Kouka and declared martial law as of 25 March 2014. TAF troops were deployed to Kouka to control the protests and manage the crowd along with the police, which led to an escalation of violence. Facing the repression, dozens of Ombrian veterans in Kouka decided to take up arms and fight against the police and the TAF. They organised a resistance movement—the Free Koukan Army (FKA). They appointed themselves as majors and colonels of the FKA.
9. Since April 2014, more and more demonstrations took place in Kouka despite the martial law, during which dozens of cars were stoned and burned. Confrontations between the FKA, the demonstrators and the policemen of Toukanov caused the death of at least 300 demonstrators and 50 TAF soldiers and policemen. All clashes were massively covered on the international media, and the Toukanov authorities were restrained by international pressure from making more aggressive moves. During this window, the FKA managed to recruit up to 2,000 men and women who were divided into three battalions led by Ombrian veterans, and obtained light weapons including assault rifles, grenades and rocket-propelled grenades (RPGs). On 20 June 2014, the FKA launched a surprise attack on Teria, a border city in Kouka situated 30 km from the Hakova border. After three days' heavy fighting, the FKA took over Teria and controlled the road connecting Teria and Hakova. Afterwards, the FKA advanced step by step with Teria as their base. By the end of August 2014, the FKA had gained control of half of the Koukan territory, including Biro, the capital city of Kouka province located 150 km southeast of Teria. In these areas, the

FKA expelled the Boubhan government officials and set up its own local authorities and social services.

### ***Alleged Involvement of Hakova in Kouka***

10. Hakova has been sympathetic to the Ombrian population in Kouka since its independence. In fact, many Hakovans claimed Kouka as belonging to Hakova due to historic connections between the two territories.
11. The Hakovan government denied any link between itself and the FKA. However, according to two Toukanovan state-owned news agencies, the Toukanovan Press Agency and the Voice of Toukanov, the HDA had been transferring weapons to the FKA through the cross-border corridor close to Teria since 23 June 2014. The Boubhans still living in FKA-occupied parts of Kouka were quoted by the two agencies to have identified the Hakova military uniform insignia on dozens of trucks and tanks. Several correspondents from Reuters and the AFP present at the FKA controlled area also reported that they had witnessed repeated manoeuvres by the HDA at the Hakova-Toukanov border, including the deployment of hundreds of tanks and thousands of men towards the border. They have also highlighted the fact that young men and women from Kouka frequently crossed the border and received military training in Hakova.
12. Overtaken by the rapid development of events, President Arlet convened an emergency meeting of the Toukanovan Central Command on 30 August 2014, during which he instructed General Gerard Vande to regain control of the whole Kouka province and to crush the Ombrian terrorists by all means. After the meeting, General Vande declared in front of the cameras: "I'll find the FKA terrorists, confront them and destroy them wherever they are. All persons associated with the FKA are equally terrorists who shall be eliminated to protect Toukanov and the Boubha religion. If anyone dares to interfere with our fight against terrorism, we will return fire in the name of our religion."

### ***Lannister Enterprises and the Armed Convoy***

13. General Vande, albeit a military commander, is extremely well-known in the Toukanovan political, business and academic circles. In peacetime, he taught military strategy at several military colleges in Ziton. He also possessed 19% of the shares in Lannister Enterprises, one of the biggest transport companies in Toukanov. Through his close friend Mr. Lannister, who owned 55% of the shares in Lannister Enterprises, he had extensive connections in the transportation industry. General Vande was also renowned as a true believer of Boubha. Every year, he donated one third of his income to the National Boubha Centre, which is dedicated to the development of the Boubha religion and the preservation of the Boubhan traditions.
14. General Vande never concealed his abhorrence of the Ombri religion. In several articles on his personal blog, General Vande repeated that: "The Ombri religion constitutes a danger to the Boubhans. It must be eliminated. Likewise, all the Ombrians must be removed from the sacred Toukanovan territory." Mr. Lannister tweeted every article from General Vande's blog in his twitter account, praising the General as a role model for the younger generation. Since June 2014, Lannister Enterprises saw its profits decreasing substantially. Accounting for 80% of the market share of the carriage services for the food industry in Kouka, Lannister Enterprises was well-known to the FKA fighters and other Ombrians, including its connection with General Vande. Therefore, each time Lannister Enterprises' trucks arrived in the FKA-controlled areas in Kouka, the drivers were victims of violence by local Ombrians, their trucks stolen, and the food plundered. Thus, a significant number of Lannister Enterprises' employees resigned and the investors, having lost confidence, withdrew their investment in the company.

15. In an exclusive interview in the Wall Street Journal dated 15 October 2014, Mr. Lannister announced that “Despite recent attacks against Lannister Enterprises’ trucks, we will continue our business with clients in the FKA-controlled areas of Kouka, not only to uphold the integrity of our company, but more importantly to guarantee sufficient food, water and medical supplies for our Boubhan brothers and sisters in the conflict zones. Thanks to General Vande, the TAF has agreed to protect our trucks. We hope that the Ombrians and the FKA can make way for our humanitarian convoy.”
16. On 10 November 2014, a convoy of Lannister Enterprises’ trucks set off to Biro with a TAF task force consisting of two armoured vehicles with .50 calibre machine guns and a platoon of TAF soldiers. Before departure, the leader of the task force received a direct order from General Vande instructing him to protect the convoy with all necessary means. As soon as the convoy entered the FKA controlled area, they were forced to stop by roadblocks. Shortly after, more than 200 local Ombrians approached the convoy, attempting to rob the trucks as usual. Some unarmed Ombrians tried to grab the weapons from the TAF soldiers as well. The TAF soldiers, outnumbered by the Ombrians, fired warning shots with the intention to disperse the crowd. However, following these warning shots, shots were fired at the convoy from the middle of the crowd, killing a TAF soldier and a truck driver. The TAF soldiers immediately returned fire. The armoured vehicles also opened fire while the Ombrians fled the scene. The convoy subsequently retreated to the TAF-controlled area. In the aftermath of the incident, the TAF operational report showed that 10 TAF soldiers and 3 drivers from Lannister Enterprises were killed. It was reported by local media that some 110 Ombrian civilians died during the incident, with 30 injured.

### ***Mutiny within the TAF and Alleged Sex Abuses***

17. In January 2015, according to Toukanovan Press Agency, dozens of lower-ranking officers and hundreds of soldiers, who were radical Boubhans, mutinied against the higher-ranking officers of TAF arguing that the officers were not vigorous enough to defend the territorial integrity of their motherland, and that the widespread corruption among the higher-ranking officers seriously undermined the TAF’s capability in carrying out effective military offensives. In a public statement, the leaders of this revolt pledged their allegiance to General Vande and demanded that the TAF engage with the HDA directly and if necessary, across the border, in order to respond to Hakova’s support of the FKA. The mutiny ended in March 2015 after General Vande visited the military camps where the insubordinate troops were based. During his visit, General Vande promoted several leaders of the mutiny on the spot and announced his decision to establish a special unit within the TAF—the “Boubha Guards”, consisting mainly of the participants of this mutiny and reporting directly to the Toukanovan Central Command and General Vande himself. He also declared that new military strategies will be carried out to fight against terrorism and protect the territorial integrity of Toukanov.
18. After the mutiny, investigative journalists of the Guardian reported that the mutiny was in effect partly due to the dissatisfaction of the soldiers with the large-scale sexual abuse within the TAF. The report, citing anonymous soldiers who participated in the mutiny, pointed out that since the deployment of the TAF to Kouka in March 2014, the youngest and physically weakest soldiers in each regiment of the TAF, both men and women, had been selected and tasked with logistical services, such as preparing meals, maintaining military supplies and providing medical care for the wounded. However, in the intervals between battles, these soldiers were regularly raped by higher-ranking TAF officers and some senior soldiers returning from the battle. The Human Rights Watch had been following this situation for several months and their report based on interviews of the wounded TAF soldiers corresponded to the report by the Guardian: a system of sexual predation has been in place within the TAF troops deployed to Kouka, where young

soldiers were picked and sexually abused by officers and senior soldiers according to their ranks and performance in the battlefield. This practice lasted until December 2015, when the conflict deescalated. Questioned on this matter by the Guardian, General Vande answered: "My soldiers are all adults. I am not responsible for their activities during their free time. As a military commander, my work is to develop strategies to counter the terrorists and to supervise my troops on the ground."

### ***Operation Blanc***

19. In view of the alleged human rights violations in Toukanov, the UN General Assembly decided to establish a Commission of Inquiry on the Situation in Toukanov in June 2015. While the circumstances of the food shortage in Kouka and the sexual abuses within the TAF were yet to be verified, the Commission's preliminary report published on 27 October 2015 recorded disturbing practices of the TAF since March 2015.
20. In this report, the Commission found that one of the strategies announced by General Vande during his visit to the military camps in March 2015 turned out to be "Operation Blanc", which was spearheaded by the Boubha Guards. With the unfolding of this operation, the TAF regained multiple municipalities in Kouka which had previously been controlled by the FKA. After securing the perimeters of each village in a municipality, the TAF soldiers flushed all the residents from their houses to the central square and asked them one by one their religion. Those who answered as believers of Boubha were greeted and sent back home; whereas the Ombrians were assembled and forced to take the commitment to convert to Boubha, which required them to attend Boubha religious classes and to go to the Boubha sanctuaries three times a day.
21. In addition, within Operation Blanc, General Vande ordered, by virtue of the authority that the martial law vested on him, that anyone who did not attend the classes three times a day would be imprisoned after the fifth day of missing class. The imprisonment took place in the newly-built detention centres in the TAF-controlled municipalities close to the Toukanov-Hakova border, all of which were located more than 200 km away from the municipalities recently regained by the TAF. In fact, many Ombrians had to work long hours, and did not have the time to attend classes. As a result, by October 2015 more than 80,000 Ombrians in the TAF-controlled municipalities in Kouka were detained. Most other Ombrians fled to the FKA-controlled areas in Kouka or to Hakova for fear of detention and particularly the notorious sanitary condition of the detention centres. Only a small number of Ombrians converted to Boubha. Also detained in these centres were FKA fighters captured by the TAF, and Koukan residents arrested by members of the Boubha Guards for offending a TAF officer or government official.
22. The Commission's preliminary report further underlined that "under Operation Blanc, the TAF set up a precise and elaborated system, targeting every municipality in Kouka under its control, which required the registration and authorisation of all religions seeking to practice in public areas. Unauthorised religious practise in public areas, including in churches, would be subject to suppression and imprisonment. To date, only the Boubha was registered and authorised to practise. Thousands of Ombrians in Kouka were arrested for 'publicly practising extremist religion'" and transferred to the detention centres at the border.
23. In September 2015, the measures implemented within the ambit of Operation Blanc were spread to other parts of the country with the approval of President Arlet. On 12 September 2015, General Vande gave a lecture at the National University of Toukanov. In response to a student's question regarding the government's recent religious policies, he stated: "I do not hide that I am a devout Boubhan. Our country is faced with instability and is suffering from poverty. I see only one cause of it: the Ombri. It is time to eliminate this

religion from our country for good.” Two days after the lecture, he was condemned for inciting religious hatred by the governing council of the University. In fact, shortly after the policies were implemented all over Toukanov, the relatively moderate Boubhans in the country had started to voice their concern for possible human rights violations.

24. After the publication of the Commission’s report, the international pressure began to build up on Toukanov. On 6 November 2015, the UN Security Council passed a resolution condemning the violations of international humanitarian law and abuses of human rights by the TAF and the Toukanovan government, and imposed economic sanctions on Toukanov. In face of these sanctions, the discontent within the moderate Boubhan community in Toukanov grew.

### ***The Nessuno Leaks and Impeachment of President Arlet***

25. On 28 November 2015, shocking stories broke out in the Washington Post. An employee of the Toukanov Intelligence Bureau (TIB), under the pseudonym Mr. Nessuno, disclosed thousands of confidential documents which pointed to a mass surveillance programme operated by the TIB. This programme was launched in 2014 in order to “counter the threats posed by Ombrian secessionists in Kouka”, and surveillance was initially limited to collecting telecommunications data of certain Ombrians actively advocating for the referendum in Kouka. However, as the conflict progressed, the programme was expanded to the effect that the TIB had access to the content of all the electronic communications of anybody present in Toukanov, including phone calls, text messages, online chats, etc. Mr. Nessuno claimed that the Arlet administration intended to use this programme to suppress its political opponents.
26. The Toukanovan public was furious at this gross infringement of their privacy. Two weeks after the Nessuno leaks, the approval rate of President Arlet hit historical low at 10%. Amid the uproar, President Arlet was impeached by the Toukanovan Parliament on 14 December 2015.
27. Incidentally, some of the Nessuno documents exposed the secondment of mid-level and high-level Hakovan military officers to FKA ranks since the beginning of December 2014. Telephone tapping records of the FKA members showed that these seconded Hakovan officers were involved in the planning and carrying out of the FKA ground operations. The spokeswoman of the Hakovan government denied any involvement of the HDA in Kouka and accused the Washington Post of falsifying these documents.

### ***End of Hostilities***

28. On 28 December 2015, Congressman Lucion Caron, leader of the Democratic Boubhan Union (DBU), one of the main opposition parties in the Parliament, was appointed as Interim President by the Parliament, pending the formal presidential election in six months. The DBU is a moderate reformist party, which advocates for a peaceful geopolitical and domestic environment in order to revitalise Toukanov’s economy. President Caron stated his willingness to work with the FKA and Hakova to achieve a lasting peace. After one month’s negotiation, the Toukanovan government and the FKA signed a cease-fire agreement on 28 January 2016, providing for the bilateral cease-fire between the TAF and the FKA, on condition that the situation in Kouka from 25 March 2014 to 28 January 2016 would be referred to the International Criminal Court (ICC), which the Toukanovan government formally did on 5 February 2016.
29. Following several months’ investigations, the ICC issued a warrant of arrest for Gerard Vande on 10 May 2016. General Vande was arrested in his residence on 12 May 2016, and was surrendered to the ICC at The Hague on 19 May 2016.

30. The Pre-trial Chamber I of the ICC now holds a hearing to determine whether to confirm the following charges on which the Prosecutor intends to seek trial.

### **Charges**

General GERARD VANDE is charged with:

**Count One** – With respect to the incident on 10 November 2014, the attack from the convoy, 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 the civilian population as such or against individual civilians not taking direct part in hostilities under Article 8(2)(e)(i).

**Count Two** – With respect to the rapes and sexual abuses within the TAF troops deployed to Kouka province,

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

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

**Count Three** – With respect to the treatment of Ombrian residents in Kouka under Operation Blanc from March to October 2015,

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 ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand under Article 8(2)(e)(viii).

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**At the relevant time, the Boubhan State of Toukanov was a party to:**

- 1949 Geneva Conventions
- 1977 Protocols I and II Additional to the Geneva Conventions of 12 August 1949
- Rome Statute of the International Criminal Court
- Vienna Convention on the Law of Treaties
- Charter of the United Nations

**At the relevant time, the Republic of Hakova was a party to:**

- 1949 Geneva Conventions
- 1977 Protocols I and II Additional to the Geneva Conventions of 12 August 1949
- Rome Statute of the International Criminal Court
- Vienna Convention on the Law of Treaties