

**IN THE INTERNATIONAL CRIMINAL COURT  
PRE-TRIAL CHAMBER I  
March 2017**

**Prosecutor v. Helen Troy**

**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 (see Moot Rule 12).
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. Teams should not hand anything to judges unless specifically asked to by a judge.
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. Any other procedural questions should be ignored.
5. *Jurisdiction and admissibility*: Counsels may, if relevant, address any issue regarding the admissibility of the case.
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.*

*The Court may apply principles and the rules of law as interpreted in its previous decisions.*

7. Teams are encouraged to look at the case law of international and national courts. If teams rely on decisions of national courts, these should be leading decisions and teams should expect to be asked for copies of the head note and the portion of the transcript or judgment referred to in their argument.
8. *Participation to treaties:* At all material times, the following treaties were in force for Homeland, Dolmar and Gartenland (✓):

	<b>Homeland</b>	<b>Dolmar</b>	<b>Gartenland</b>
<b>1907</b> <i>Hague Convention IV respecting the Laws and Customs of War on Land</i>			✓
<b>1948</b> <i>Convention on the Prevention and Punishment of the Crime of Genocide</i>	✓	✓	✓
<b>1949</b> <i>Geneva Conventions I-IV</i>	✓	✓	✓
<b>1969</b> <i>Vienna Convention on the Law of Treaties</i>	✓	✓	✓
<b>1977</b> <i>Protocols I and II Additional to the 1949 Geneva Conventions I-IV</i>	✓	✓	✓
<b>1980/2001</b> <i>Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects, and its Protocol I, II (amended), III, IV and V.</i>			✓
<b>1998</b> <i>Statute of the International Criminal Court</i>	✓	✓	✓

## B. FACTS

1. The Federation of Homeland, a country that comprises six federated states, is a wealthy, advanced economy with a population of some 100 million inhabitants. Homeland is about the size of Spain and France combined. It is governed by a federal parliamentary system. A Prime Minister heads the federal government. Each state has its own assembly and an executive lead by a Chief Minister. Under the Homeland Constitution, *inter alia*, foreign affairs, national defence, immigration, trade, internal security, money and banking, customs and taxation come within the jurisdiction of the federal institutions. The administration of justice, public security, health, education and transport come under states' jurisdiction. Each state has its own police force, which is supplemented by a 'civil defence force' composed of ordinary citizens. The civil defence force has some limited law enforcement powers, and operate in aid of local police.
2. The state of Northland is situated in the northern part of the country. With a population of some 15 million inhabitants, the state is quite distinct socially, economically and culturally from the rest of the country. It is separated from the rest of Homeland by a mountain range and the border territory is covered by forests. Northland has one main city, Colmer with a population of 5 million. Colmer is located some 100 kilometres from the Northland/Homeland border. Beyond Northland's eastern border lies the neighbouring country, Gartenland.
3. Beside its elected state assembly and government, Northland politics, society and culture is largely influenced by the "Council of Elders", a traditional authority that dates back to pre-colonial time. The Council comprises a select group of highly respected senior men and women who are regarded as the custodians of Northland history and culture. Their advice is sought on all key issues and policies, and Northlanders view them as the true leaders of their community.
4. Northland has always asserted its historical right to manage its own affairs without federal interference. Since the mid-2000, nationalist sentiments have been growing, for a large part prompted by federal policies perceived as encroaching on Northland affairs and undermining the power and influence of the Council of Elders. From its part, the Homeland government is justifying its policies on the need to address internal and external security threats, notably coming from local and international terrorist networks, and safeguard the country's resources.
5. The Homeland Armed Forces (HAF) are led by the Chief of the Defence Staff, who is advised and assisted by the National Security Council which handles external and internal security issues. The Chief of the Defence Staff, along with the Minister of Defence and Security, sits in the Government Council chaired by the Prime Minister. General Helen Troy was appointed Chief of Defence Staff by the Prime Minister in January 2009. General Troy is a career army officer who

served in the HAF for more than thirty years. She is a specialist in electronic warfare. She was awarded the highest military award for her leadership and commanding role in the Homeland-Gartenland War, a conflict that took place between Homeland and its neighbour in 2005-2007.

6. Upon her appointment, the first task that General Troy instituted was to modernize the HAF. Under her direction, early 2010, Homeland entered into a military cooperation agreement with Dolmar, a close ally of Homeland. The agreement provided for the furnishing of weapons, unmanned air vehicles (UAV), air surveillance equipment and training, at preferential conditions. In addition, the agreement also included provisions for enhanced cooperation in the field of information technology, a domain where Dolmar had developed expertise and advanced capacities. From governmental reports on the negotiations that were later released in December 2012, General Troy appeared very eager to acquire Dolmar's technology and expertise in the field of information technology, in particular in relation the use of cyber means in military operations. In an undisclosed addendum to the agreement, Dolmar also agreed to equip Homeland's Armed Forces with a newly developed modular pistol which enabled the use of various kinds of ammunition, including "ball ammunition" (full metal jacket bullets) and "special purpose ammunition" (hollow-point bullets), within the next two years.
7. The cooperation agreement was followed by a multi-million dollar trade and investment agreement (TIA) which granted preferential treatment to Dolmar's state enterprises in the exploitation of natural resources in Northland, in particular in the timber and mining industries. That trade and investment agreement was one of the elements that fuelled resentment and the rise of nationalism in Northland.
8. On 20 March 2012, Northland's Assembly declared that Northland was seceding from Homeland and called for negotiations with the federal government on the conditions of the secession. The declaration was largely perceived as being the work of the Council of Elders, which on the same day issued a statement applauding the declaration and calling on all to support Northland's path to independence. On 25 March 2012, a demonstration with an estimated one million participants took to the streets in Colmer to celebrate the declaration.
9. The reaction of the federal government was swift. The next day, 26 March 2012, it declared a state of emergency in Northland imposing martial law, and sending 10,000 troops into Northland to control the situation. The Homeland government also dissolved the Northland State Assembly placing Northland's government activities under federal control. At the same time warrants were issued for the arrest of the six members of the Council of Elders. These 'Elders' were accused of treason and of conspiring with foreign organizations to overthrow the democratically elected government of Homeland. In what appeared to be coordinated leaks to key news outlets, interviews with Homeland government officials and associated news releases spoke of the Council of Elders

as terrorist leaders seeking to takeover federal authorities and de-stabilize the whole country.

10. Soon after the federal take-over, forces in Northland sympathetic to secession and self-determination regrouped as the “Northland Forces” comprising police and civil defence forces, as well as dissident soldiers and officers of the HAF (hereinafter referred as “NF militants”) under the leadership of a “Armed Resistance Council” (ARC). The ARC rejected the authority of the federal authorities in Northland and proclaimed to be under the exclusive guidance of the Council of Elders, although the Council itself never acknowledged it was directing or commanding the ARC or the Northland Forces. The Council, however, publicly supported the ARC, praising its commitment in protecting Northland’s people, culture and traditions against foreign encroachments. In the immediate aftermath, several armed confrontations between the HAF and the NF militants took place, with casualties on both sides.
11. By June 2012, the situation had turned into a full-fledged civil war. In the first weeks of the conflict, the ARC quickly took control over Colmer and seized most military facilities and equipment within the borders of Northland. The HAF only succeeded in maintaining control over a small area of Northland territory near the eastern border where the largest HAF military base in Northland was located. The situation nonetheless quickly reached a stalemate. The transport of ground troops and equipment from Homeland was hampered by the limited access over the mountain range separating Homeland and Northland, while Homeland’s air superiority was largely offset by ARC’s control of the anti-aircraft defence installations scattered over Northland territory – a left over from the Homeland-Gartenland War – and of surface-to-air missiles.
12. NF militants were, however, successful in infiltrating Homeland main cities in small groups to launch small-scale attacks against military facilities and public services. They were assisted by sympathizers in Homeland grouped into cells which provided shelter, hideouts and other support. The targets were carefully chosen so as not to alienate the local population, but the attacks fed the Homeland government rhetoric on being engaged in the fight against foreign powers and terrorist groups. At the same time, rumours spread that members of the Council of Elders had fled to neighboring Gartenland and were inspiring the attacks in Homeland.
13. A United Nations Security Council Resolution calling on both parties to agree on a cease-fire and start negotiating a solution to the crisis was adopted on 15 July 2012. On that basis, Northland offered to hold a cease-fire on the condition that talks on Northland’s independence be opened. Homeland responded by calling Northland actions ‘acts of terrorism carried out by terrorists’. In an interview the Homeland Prime Minister sitting alongside General Troy said “Homeland does not negotiate with terrorists”.
14. With Dolmar’s air support, Homeland launched ground attacks to regain control over Northland. Dolmar’s support was limited to the provision of technical

equipment, technical and strategic advice, supply and surveillance aircraft along with the sale of superseded fighter aircraft. The air strikes targeted Northland's armed units, infrastructure and key transport nodes. Ground attacks succeeded in seizing the mountain passes and the high ground in the mountain ranges on the border. On 10 September 2012, the HAF successfully seized the northern mountain pass and were able to capture Wollmere, a small town on the Northland side of the mountains. The HAF quickly established a large military force in Wollmere allowing them to start preparations for an assault on Colmer.

15. In response, the NF militants started building extensive defensive positions just east of Colmer while they intensified their attacks within Homeland in an attempt to influence public opinion and undermine support for HAF operations. The attacks were primarily targeted at police stations, federal institutions and telecommunications installations. Homeland authorities consistently spoke of the ARC and their supporters as terrorists seeking to destabilize the country. National media often carried headlines such as 'Northland terrorists kill civilians'; 'Elders launch terrorist attacks'; 'Elders against democracy'; 'Homeland attacked'; 'War on Homeland' and images of Elders with the headlines 'He's a Terrorist' and 'She's a Terrorist'. Media outlets also reported that the Elders were leading the largest terrorist network in the region and had fled to a neighbouring country. They regularly reminded readers, listeners and viewers that providing assistance to or supporting the Elders in any manner whatsoever was a criminal offence under the law and would be severely punished. A reward of US\$10m was offered to anyone who would provide information leading to the arrest of members of the Council of Elders.
16. General Troy tasked the HAF Intelligence Command (INTELCOM) to locate as a matter of priority the 'Elders'. She believed their capture or neutralisation would demoralize the ARC, put an end to the attacks in Homeland and hasten the defeat of Northland.
17. On 15 September 2012, through intelligence provided by INTELCOM, working closely with the Ministry of Defence and Security, General Troy was alerted to the presence of members of the Council of Elders in an apartment building located in a small town called Heron in Gartenland, a few kilometers from the border. Collected intelligence also revealed that ten families lived in the building. After seeking legal advice from HAF legal advisers and in the presence of Dolmar military advisers, General Troy ordered a strike on the building. At 19:05, the apartment block was struck by a missile launched from an unmanned aerial vehicle (UAV). General Troy and her immediate advisors watched the attack and its aftermath on video transmitted by a hovering drone. At 19:20, two adults and a child were observed on drone video climbing out of the rubble as emergency rescue services were entering the site to search for survivors. One of the adults was identified as an 'Elder'. General Troy ordered an immediate second strike on the site.
18. The Gartenland government vehemently protested against the violation of its territory and airspace. The Homeland government's spokesperson responded

that by harbouring terrorists that planned attacks on Homeland, Gartenland had left no choice to the Homeland government, which had responded in a proportionate manner to the threat. Northland authorities confirmed that three members of the Council of Elders had been killed in the attack. The Homeland government implicitly acknowledged the death of ten adults and one child resident of the building (among which two emergency rescuers and a police officer) by commenting that Gartenland had by knowingly harbouring terrorists, been unlawfully assisting a terrorist organization. Gartenland was also accused of being complicit in the terrorist attacks taking place in Homeland. One of the persons who had been killed was subsequently identified as a suspect appearing on a list of the Ministry of Defence and Security of individuals allegedly linked to an attack against a police station in Homeland's capital city that had claimed a dozen victims.

19. Within the next week, the HAF gradually closed in on Colmer, where the NF militants had entrenched themselves. Following a meeting with General Troy on 1 October 2012, the Homeland Prime Minister gave a media conference wherein he spoke of recent HAF successes in Gartenland and Northland and went on to say "... notwithstanding evidence that Colmer is well defended the HAF has plans to seize it so as to end the terrorist attacks against our people. General Troy informed me that the HAF is ready to complete its operations to re-establish lawful authority and the rule of law in Northland. All precautions are being taken to avoid injuries and casualties in our troops and minimize adverse consequences on the population."
20. In Colmer, on Friday, 5 October, a city-wide power failure occurred at around 15:00 hours (3 pm) at the start of evening peak hour. The outage affected all public services, including traffic control systems, hospitals and medical transport services, and the operation of the water treatment and distribution system. The network failure was attributed to a well-planned cyber-operation that temporarily disabled the operation of the Supervisory Control and Data Acquisition (SCADA) computer systems controlling the city electric grid. The SCADA system had been connected to the internet some years previously in an efficiency drive. In a simultaneous cyber operation, the central archive of the General Hospital was hacked and a large part of the medical records were corrupted or destroyed. Taking advantage of the chaos caused by the outage, on 6 October at 04:00 hours (4 am), following the orders of General Troy, the HAF launched a military offensive preceded at 03:55 hours (3.55 am) by the deployment of a small electromagnetic pulse weapon over the armed forces defending the outskirts of East Colmer. The purpose was to disrupt electronic circuits in weapons, armoured vehicles, missile defence systems and other military computer systems being used by forward elements of the Northland forces entrenched outside Colmer. The HAF attack was initially successful in taking control of large parts of East Colmer.
21. Electric power was only partially re-established some 72 hours after the initial outage. The International Information Analysis Center (IIAC) – an international

expert group specialised in cyber security in the power generating industry – was unable to trace with certainty the precise source of the attack on the SCADA computer systems. However, forensic analysis pointed to Dolmar’s Ministry of Defence Information Technology Center, known to have close cooperation with INTELCOM. Despite this, the attack on the central archive of the General Hospital was claimed by a group self-styled as the “Fighting Terrorist Networks Company” (FTN Company). The FTN Company claimed to be upholding Homeland’s integrity and supporting the Homeland government’s fight against terrorist networks. It was suspected that the FTN Company was on the payroll of the Minister of Defence and Security, or that the information and codes allowing unauthorized VPN access to the General Hospital network had been provided by agents of the Ministry of Defence and Security.

22. The Ministry of Defence and Security, through General Troy’s spokesperson, denied any direct involvement in the planning of the cyber-operations against the operation of Colmar’s power grid or the archive of the General Hospital. The spokesperson nonetheless referred to the long standing military tactic of neutralizing the defences of a city as much as possible before entering it in order to minimize casualties. He added that the Ministry of Defence and Security was ready to cooperate in order to identify the organisers of the attacks and was keen to shed light on the matter. However, information leaked by an anonymous source at INTELCOM one month later showed that money transfers by the Ministry of Defence and Security to the FTN Company had been taking place for more than a year. General Troy later declared that she supported the Government’s decision to forego any criminal investigation: “We are living in dangerous times. The priority for the Government should be the fight against the terrorist networks that are threatening our country. All our energy should be focussed on containing and eliminating that threat.”
23. With a view to strengthen their control over East Colmer, HAF units started to comb the area to track down pockets of resistance. Within a few days, hundreds of people were arrested, interrogated and detained. On 11 October, a HAF unit stormed a two-storey building sheltering a group of some twelve NF militants. Overcoming fierce resistance, the HAF patrol unit succeeded in taking over the building and neutralising the militants. During the assault, six militants were killed and four seriously injured. Three civilians caught in the cross fire were also injured. Forensic reports on the cause of death of the six militants killed indicated that they had been wounded by firearms using expanding bullets. No information was released on the fate of the four militants allegedly injured. The hospital treating the three civilians, through its spokesperson, confirmed that that one of the civilian – who later died of his injuries – had also been wounded by expanding bullets. According to the spokesperson, the two other civilian victims were, however, recovering well. He added that it had not been possible to determine precisely the type or origin of the bullets that had caused the injuries for these last two victims.



24. On 13 October, the Homeland government announced that the HAF had secured East Colmer and although fighting had ground to a halt many “terrorists” had been killed or captured. On the same day, a suicide attack took place near the main gate of Homeland’s Ministry of Defence and Security. Four soldiers controlling the gate and two civilian staff of the Ministry were killed in the attack, while three civilians standing outside the gate were injured by the blast.
25. On 15 November, the International Emergency Medics Association (IEMA) published a report compiling the number of wounded and sick who had been admitted and treated at the Colmer General Hospital since 1 October 2012. Two findings were particularly highlighted in the IEMA statement announcing the publication: (1) According to hospital records, 150 deaths during the month of October 2012 were attributable to the disruption of medical care and transport services caused by the power outage and the inaccessibility of medical records, which blocked, hindered or delayed the treatment and care of patients; (2) More than 75% of firearm deaths and injuries were caused by the use of expanding and fragmenting ammunition – which is not only more likely to cause the instant death of the person hit, but also makes the treatment of wounds difficult and less likely to succeed. The IEMA called on the Homeland government to ensure that medical services were respected and protected as required under international law, that immediate access to medical care for all those in need without discrimination was ensured, and that the use of hollow point ammunition by the armed forces be suspended.
26. When questioned about the use of hollow point ammunition, the Ministry of Defence and Security stated that it had reviewed the use of “special purpose ammunition” and determined that the Armed Forces could use various kinds, including hollow point bullets. The Ministry’s spokesperson added that “there’s a myth that expanding or fragmenting bullets are prohibited on the battlefield, but that doesn’t make any sense now in the current conflicts with terrorists”. He went on to say that “while the 1899 Hague Convention prohibited the use of expanding bullets internationally, very few states have signed it and Homeland is not one of them.” He added: “Law enforcement agencies use hollow points all over the world, so if it doesn’t violate the human rights standards that apply these days, why are we applying those standards on the battlefield? In fact, there are actually humanitarian benefits from the use of this type of ammunition, and its use supports the international law principles of preventing excessive collateral effects and safeguarding civilian lives.”
27. By the start of 2013, discussions were initiated to resolve the political situation. This change was driven by the continued resistance of the Northland population to the “occupation” of Northland by the HAF, the rising sympathy for the Northland cause in Homeland following the deaths of members of the Council of Elders and the calling into question by national media as well as by some members of the Federal Assembly of the benefits of the TIA with Dolmar (which was seen as shadowy and for which General Troy was highly criticized). Change was encouraged by other federated states’ governments which were also

concerned by the encroaching federal policies and thus exerted pressure on the federal government to start negotiations with Northland to seek a peaceful resolution of the conflict.

28. After months of negotiations a settlement was reached whereby Northland achieved limited autonomy, and the TIA with Dolmar was rescinded. The Homeland Government also agreed to drop all charges brought against surviving members of the Council of Elders.
29. During the months of June and July 2013 international news agencies reported that the Prosecutor at the International Criminal Court (ICC) was investigating the civil war in Homeland. On 17 November 2013, an indictment was issued naming General Troy who at that time was traveling overseas. Before General Troy could return to Homeland, she was arrested by a foreign government and transferred to the International Criminal Court.
30. The Homeland Government lodged a challenge to admissibility pursuant to Article 19 of the ICC Statute (on the basis of complementarity).
31. The Pre-trial Chamber I of the ICC issued an order pursuant to rule 58 of the Rules of Procedure and Evidence so that the challenge to admissibility could be heard at the confirmation of charges hearing. At this hearing, Trial Chamber I is going to decide whether to confirm the following three charges put forward by the Prosecutor:

**Count One** – With respect to the attack on the power grid in the city of Colmer between the 5<sup>th</sup> and 11<sup>th</sup> October 2012 which impeded the provision of services, including water and medical services, essential for the survival of the civilian population, individual civilians, as well as those placed hors de combat by sickness or wounds,

- for contributing to the commission or attempted commission of the war of *“violence to life committed against persons taking no active part in the hostilities, including those placed hors de combat by sickness, wounds”*; or the war crime of *“intentionally directing attacks against hospitals and places where the sick and wounded are collected”*, under Articles 8(2)(c)(i) / 8(2)(e)(iv); or in the alternative the crime against humanity of *“other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health”* under Article 7(1)(k); by a group of persons acting with a common purpose, under Article 25(3)(d) of the Rome Statute.

**Count Two** – With respect to the attack on 15 September 2012 in the town of Heron, Gartenland,

- for ordering the commission of the war crime of *“intentionally directing attacks against individual civilians not taking direct part in hostilities”* under Article 8 (2)(e)(i); or in the alternative the crime against humanity of *“murder”* under Article 7(1)(a); and Article 25(3)(b) of the Rome Statute.

**Count Three** – With respect to the campaign to regain control of Northland towns and cities, in particular the search and sweep operations that took place on and around the 11<sup>th</sup> of October 2012,

- for the purpose of facilitating the commission of such a crime, aiding, abetting or otherwise assisting in the commission of the war crime of *“employing arms, projectiles, or material calculated to cause unnecessary suffering, notably bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions”*, under Article 8 (2)(e)(xv); and Article 25(3)(c) of the Rome Statute.

32. The counsel representing General Troy supports the Homeland Government’s challenge to admissibility for several reasons including the belief that she is likely to receive a more lenient sentence if convicted by Homeland courts. The Prosecution will oppose the challenge to admissibility on the grounds that any convictions under Homeland criminal law would be for domestic crimes of murder, manslaughter and grievous bodily harm rather than the more serious war crimes or crimes against humanity. The Homeland Government has not incorporated war crimes and crimes against humanity into its domestic legislation. Furthermore, to date the Homeland Government has not launched any criminal investigation into the conduct which forms the basis for Count 1 (see paragraph 22).