

**IN THE INTERNATIONAL CRIMINAL COURT
PRE-TRIAL CHAMBER I
March 2018**

Prosecutor v. Admiral Francis Gum

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 *Oral Pleading*: 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 Rule 12 of the Rules for the competition).
- 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*: Counsel 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.*
- 8 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.

9 *Participation to treaties:* At all material times, the following treaties were in force for Highland and Lowland indicated (✓):

| | Highland | Lowland |
|---|-----------------|----------------|
| 1949 <i>Geneva Conventions I-IV</i> | ✓ | ✓ |
| 1969 <i>Vienna Convention on the Law of Treaties</i> | ✓ | ✓ |
| 1977 <i>Protocols I and II Additional to the 1949 Geneva I-IV</i> | ✓ | ✓ |
| 1980/2001 <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> | | ✓ |
| 1982 <i>United Nations Convention on the Law of the Sea</i> | ✓ | ✓ |
| 1998 <i>Statute of the International Criminal Court</i> | ✓ | ✓ |
| | | |

B. FACTS

1. The Republic of Highland is a wealthy and advanced economy with a population of some thirty (30) million inhabitants. Highland has an area of five hundred and fifty (550) thousand square kilometres. It is a democracy with elections being held every four (4) years for persons seeking to sit in the House of Representatives, the sole parliamentary institution. The party holding the majority of seats in the parliament governs the country.
2. For the past twenty-five (25) years the ruling party in Highland has been the Government Party. They generally hold over ninety (90) percent of the seats. While opposition parties may be popular with many of the citizens of Highland, the reality is different when it comes to elections. For the past twenty-five (25) years the commanding officers of the navy, army and air force have maintained a firm grasp on power by controlling who can stand for election. The military regularly engage in joint ventures with mining and resource companies operating within Highland.
3. Admiral Francis Gum has governed Highland for over seven (7) years after a successful coup in 2010. However, news media has reported a growing dissatisfaction amongst members of the House of Representatives with decisions of Admiral Gum. Most of this dissatisfaction concerned economic matters, especially the channelling of most wealth into the bank accounts of Admiral Gum and the junta at the expense of other business leaders, middle managers and workers. While Admiral Gum's linking of luxury with power has upset many in Highland, the Admiral has significant support amongst rural workers who have enjoyed enhanced living and health standards under the junta's rule.
4. The State of Lowland adjoins Highland. Lowland is a mixed economy with an emphasis on rural subsistence farming, occupying a land mass about two hundred and fifty five (255) thousand square kilometres. It has a population of some eighty (80) million inhabitants. The country has been governed by the same political party for twenty (20) years. The leader is President Mary Gonzalez, the elder sister of the head of the armed forces Commander Alberto Gonzalez. President Gonzalez has been in power for fifteen (15) years while Commander Gonzalez, her brother, has directed the modernisation and enlargement of Lowland military forces including acquiring, amongst other military equipment, a submarine.
5. A key difference between Highland and Lowland is geography. Highland's territory rises consistently from the sea to high mountains while Lowland's territory is mostly coastal plain with the majority being less than one (1) metre above high tide (water) level. Lowland's coastal plain is heavily populated by farmers and support businesses and several large fishing villages are located along the coast. This coastal plain is traversed by the River Orb that meanders across the flood plain emptying into the ocean through a wide delta, Orb Delta. Historically, the annual flooding of the plain by the river has ensured plentiful harvests. However, the rise in sea level combined with storm surges and spring tides has, in recent years, resulted in saltwater contamination in parts of the Orb Delta, forcing farmers inland

whilst disrupting the fishing industry. The situation is made worse by the annual flooding by the River Orb of the whole river plain. As a result, farmers and fisherpersons were displaced from their homes and businesses and migrated to the north or the north-west.

6. The border between Lowland and Highland generally starts at a line drawn along the base of the escarpment running south to north from the Blue Sea shore to the Antler Mountains, a chain of mountains that separated Highland and Lowland from independent States to the north. For most of its length the escarpment is a sheer rock wall rising upwards for over five hundred (500) metres, the result of tectonic plate movements millions of years ago. Towards the northern end in a gap in the escarpment caused by a tributary of the River Orb lies the border town of Largo. The southern portion of the border between Highland and Lowland is an escarpment that reaches a peninsula and projects out into the Blue Sea. The eastern side and southern end of the peninsula is either steep cliffs and/or rock falls. The western side of the peninsula slopes down to the Blue Sea. The map of Highland and Lowland is annexed to this document.
7. The two States have been in intermittent frictions for fifty (50) years. The tension is due to a territorial dispute over the lower end of a peninsula that stretches out into the Blue Sea. The dispute began some thirty (30) years after the two States had agreed upon the international border when a newly appointed civil servant in Lowland noticed that Lowlands' official copy of the treaty negotiations was different from all other copies prepared around the same time. According to the map annexed to the treaty, the boundary ended at the northeast of the peninsula when it was supposed to divide the lower end of the peninsula in half from north to south. This mistake gave the whole of the peninsula to Highland. Since the date of discovery of the mistake, Highland has maintained its claim to the land and established a small military observation post and telecommunications station on high ground overlooking the Blue Sea. The peninsula is largely unpopulated due to the forests that cover rocky terrain, but does have logging tracks and facilities spread across the terrain to selectively harvest high quality timber. Lowland has consistently contested Highland's claim of sovereignty over the peninsula, but due to the economic and military superiority of Highland has been unable to press its claim.
8. The armed forces in Highland is called Highland Armed Forces (HAF) and are led by the Admiral Gum. The HAF comprise modern army, navy and air force with key sections of the army equipped with the latest riot-control equipment and commanded by officers loyal to the junta. One of Admiral Gum's first purchases was a second-hand destroyer that immediately underwent a luxury refit to become a demonstration of both Highland's naval power and Admiral Gum's status as leader of Highland. This destroyer operates as both the navy flagship and Admiral Gum's personal yacht. The Admiral also purchased a number of modern frigates and supply vessels as well as the latest patrol craft.
9. The Lowland Armed Forces (LAF) are not as well equipped as the HAF. The LAF have many naval patrol vessels, a small well-equipped army and air force, but collectively lack the operational capacity of the HAF. In an attempt to bridge the

gap between the LAF and the HAF, Commander Alberto Gonzalez has acquired a submarine and semi-autonomous weapons including armed aerial and underwater drones. These acquisitions were not made public, although rumours had spread across the region that the LAF had expended large sums of money acquiring new high-tech equipment. The first time the HAF became aware that the LAF had a submarine was 30 July 2015 when the submarine surfaced at Port Orb. Admiral Gum's immediate reaction was to begin an upgrade of the anti-submarine capacity of Highlands navy frigates. Highland has also sent troops to the escarpment and conducted several military exercises around the peninsula, both on land and at sea. The two States started to increasingly criticise each other for espionage activities and covert operations.

10. In 2013 and 2014, the monsoons coincided with spring tides flooding the Orb river plain for several months. The Government of Lowland sought international assistance in 2014 as domestic food supplies ran out, resulting in widespread hunger and malnutrition amongst its farming population. Many of the Lowland population from the Orb Delta area had to move north and westward to Largo. With the increasing number of displaced persons, population pressures on the remaining arable land in Lowland was reaching a breaking point, necessitating the most recently displaced farmers and other persons to seek even higher ground including small numbers slipping across the border near Largo into adjoining Highland. In October 2015 the HAF and police tried to close the border and started rounding up Lowland citizens and forcing them back across the border into Lowland.
11. On 11 November 2015 the number of displaced Lowland people crowding into the Lowland side of Largo reached one hundred (100) thousand men, women and children with thousands arriving each day seeking dry land, food and water. A camp set up on the outskirts of Largo was unable to provide shelter for new arrivals. On 16 November 2015 several hundred Lowlanders tried to force their way across the border to set up a new camp, but were stopped by Highland police using tear gas. The Highland Police Chief reported to Admiral Gum that *"[t]he numbers of displaced Lowlanders are increasing dramatically each day. Today we were able to stop them, but if they come back in larger numbers they will break through the border fence and we will have thousands pouring past us heading into our territory. My intelligence officer also told me that she recognised some members of the Lowland armed forces in civilian clothing and carrying side arms amongst today's crowd, encouraging the crowd to try harder to force their way across the border and inciting violence. She has also received information suggesting that these agents of Lowland intend to use the cover of the civilians to sabotage Highland's infrastructure, including the communication station on the peninsula."*
12. On 17 November 2015 Admiral Gum deployed an additional specialist army battalion, led by Colonel Power, to support the police along the border around Largo. This battalion was equipped with newly developed sonic guns known as Personnel Dispersal System (PDS), among others. These devices were mounted on tank chassis and operated by specially trained soldiers, who operated the devices in conjunction with remotely controlled drones and human observers using high resolution binoculars.

13. The new PDS equipment had been in development for many years and was designed to force humans to move from a targeted area, without fatal consequences. It consists of two types of device. The PDS Type 1 directly impacts bodily fluids just below the skin surface causing a non-fatal severe burning sensation that can only be alleviated by moving away from the beam of the sonic gun. The PDS Type 2 uses sound waves that severely impact a person's hearing, forcing that person to move away from the beam of the PDS to avoid the pain associated with the sonic gun. After preliminary testing of both types on nonhuman primates, a HAF publication reported that the Research Institute of the Highland Ministry of Defence had concluded that the PDS showed no side effects, with testing on humans to be conducted in the near future. However, unofficial reports that leaked onto the Internet appear to suggest some unfortunate side effects, with a small number of target people suffering permanent ear, eye and tissue damage.
14. At about 9am on 18 November 2015 several thousand displaced Lowlanders approached the border zone in Largo. Highland observers identified small numbers of lightly armed LAF personnel, dressed in civilian clothing, amongst the advancing crowd. Admiral Gum ordered Colonel Power to deploy and use the PDS. As the crowd stormed the border gates Highland police and military personnel withdrew and the PDS was activated, resulting in widespread panic as people turned and ran away from the border. Within minutes the border zone was clear of all people. News media later reported that about two hundred (200) people were injured, some seriously, in the resulting panic to escape the effects of the weapons pointed in their direction. Subsequent medical reports on those who encountered the PDS listed ten (10) people who seemed to suffer permanent hearing loss and another five (5) claiming their blindness was caused by something burning their faces.
15. In the following days, the Military Intelligence Agency of the HAF was informed that the LAF was planning to enter the Peninsula through the Blue Sea. The intelligence was immediately transmitted to Admiral Gum. On 20 November 2015, upon reviewing the information, Admiral Gum directed that security measures must be taken to prevent any LAF vessel from entering into the territorial waters of Highland. Following his instructions, the HAF planted one hundred (100) moored contact mines and two hundred (200) remotely controlled, free-floating mines on the outer edge of its contiguous zone, which is twenty-four (24) nautical miles from the baseline. Posters at all Highland ports advertise the installation of mines, reminding all passing vessels to avoid the route where naval mines have been planted. On 22 November 2015, a notification to the same effect was sent to all foreign embassies in Highland through diplomatic channels.
16. The spokesperson of the Lowland Ministry of Foreign Affairs strongly protested against the installation of sea mines by Highland, and reiterated its claim that half of the peninsula was historically Lowland territory. On the evening of 22 November 2015 Lowland news media reported Commander Gonzalez would be overseeing Lowland's naval vessels conducting naval exercises on the Blue Sea. On hearing the news Admiral Gum ordered his flagship and supporting frigates to be readied to observe the Lowland exercises.

17. On 23 November 2015 at sunrise, a large flotilla of fishing vessels packed with civilians was observed nearing the point of the peninsula heading west. This flotilla was sailing close to the rocks to the south of the peninsula to avoid the mines. While a couple of the smaller vessels were held up by the rocks the rest successfully sailed past the rocks. Also observed, further out to sea, were four (4) Lowland patrol vessels. Some distance behind the flotilla, sailing approximately five hundred (500) metres behind, was a cargo ship. The cargo ship was painted light grey (hull) with a white (superstructure). There were Red Cross emblems (10m x 10m) brightly embossed amidships on the port and starboard sides of its hull. The ship was also flying two Red Cross flags (5m x 5m) and two flags of Lowland (4m x 6m) located fore and aft.
18. Admiral Gum had stationed two Highland naval patrol vessels and a frigate on the western side of the peninsula. Some twenty (20) kilometres further west were several more Highland patrol vessels en route to relieve the Highland vessels off the peninsula. Nearby, heading out into the Blue Sea was Admiral Gum's flagship and several frigates en route to observe the Lowland naval exercises. On being notified of the approaching flotilla, Admiral Gum flew by helicopter to his flagship while at the same time sending a message to the Lowland Government that Highland would do all it could to protect its territorial sovereignty, that Highland reserved the right 'to decide who could come to Highland' and Lowland would be held responsible for whatever happened if Lowland did not recall the flotilla.
19. Lowland responded immediately, warning Highland that their naval vessels were involved in a peaceful naval exercise and maintaining that the flotilla of fishing boats had taken Lowland authorities by surprise.
20. The Highland patrol ships were ordered by Admiral Gum to intercept the fishing boats and force them to turn back to Lowland. The intervention by the Highland patrol ships caused panic amongst the fishing boats, several of which attempted to turn back. While the Highland patrol ships withdrew, the Highland advancing fleet fired a salvo to land in front of the advancing flotilla. When this did not stop all the fishing boats several more salvos were fired resulting in several boats capsizing. At the same time Admiral Gum, observing Lowland patrol vessels heading towards the flotilla, turned his flagship and an accompanying frigate towards the Lowland patrol vessels.
21. The capsized fishing boats threw several hundred men, women and children into the sea. Many wore lifejackets while others hung onto the sides of their upturned boats. The ocean current pushed them towards the Highland side of the peninsula. Commander Gonzalez ordered the cargo ship to rescue those in the water. As the cargo ship headed towards the people in the water, Highland soldiers stationed on the peninsula reported the presence of people on the deck of the cargo ship wearing civilian clothes. One of the Highland frigates operating nearby picked up indications that there was a submarine moving along underneath the cargo ship. Admiral Gum ordered warning shots to be fired across the bow of the cargo ship before it reached the people drifting in the water, while at the same time sending a message to Lowland forces that all Lowland surface and submarine vessels must leave Highland territorial waters immediately. Highland vessels started to pick up

signals that numerous underwater objects were starting to spread out from beneath the cargo vessel. At the same time aerial drones were observed coming from Lowland territory towards the top of the peninsula.

22. Admiral Gum ordered Highland fighter jets to stop the drones once they entered Highland airspace. As the drones entered Highland airspace and headed towards the Highland frigates they were attacked by Highland fighter jets. Several drones were destroyed with one drone crashing into the cargo ship starting a fire that resulted in many dead and wounded.
23. The cargo ship had also been damaged in the engagement by gunfire from one of the Highland frigates and had started to list in the water. Crew members and lightly armed soldiers boarded life rafts and headed towards the western shore of the peninsula. Admiral Gum ordered the life rafts to be stopped from landing on Highland territory. Despite Highland fighter jets strafing the water near the life rafts, the life rafts and their occupants reached the western side of the peninsula. The small number of Highland soldiers occupying the army base on the peninsula was powerless to stop the Lowlanders heading inland.
24. Over the next couple of weeks there was intermittent armed conflict between Highland and Lowland armed forces inflicting further damage on both sides military capability. Highland dispatched armed forces to the peninsula in an attempt to round up those who had landed but the forests and terrain, together with the knowledge that there were small numbers of armed Lowland soldiers on the peninsula, meant few people were caught.
25. A United Nations Security Council Resolution was subsequently adopted, calling on both parties to agree on a cease-fire and start negotiating a solution to the crisis. Within Highland, Admiral Gum had come under sustained criticism for the handling of the crisis, and this was compounded when leaked maintenance reports showed that the Highland flagship had had more money spent on the 'luxury' renovation of the destroyer than the necessary maintenance of the vessel as a fully functioning warship.
26. On 23 December 2015 Admiral Gum was ousted by a group of junior military officers with support from members of the House of Representatives all seeking a greater share in Highland's economic resources. Admiral Gum was confined to his country resort away from the capital city. The new Highland leaders offered to maintain the cease-fire on the condition that Lowland stopped the movement of any more of its citizens towards Highland territory and actively encouraged those on the peninsula to return to Lowland, in return for financial and engineering support to build flood barriers and levees to protect parts of the Orb Delta from flooding.
27. On 10 January 2017 amongst a batch of documents released by WikiLeaks were Lowland Government's internal emails indicating Lowland had deliberately enhanced its naval and air force capabilities as part of a long term plan to seize the whole peninsula. Lowland's goal was not only to rectify what it perceived as an historical wrong, but to secure lands that would not be greatly impacted by sea level change. The same WikiLeaks documents identified Commander Gonzalez as the de-facto leader within Lowland.

28. After months of negotiation, a preliminary agreement was reached. International media sources disclosed that an indictment was about to be issued by the Prosecutor of the International Criminal Court (ICC) against Admiral Gum and Commander Gonzalez. On 29 April 2017 the new Highland government uncovered a plan by retired Admiral Gum to seize power in a coup. Admiral Gum was arrested and despite significant sympathy and support from supporters in Highland, the Highland Government handed the Admiral over to the ICC for trial. At about the same time Commander Gonzalez was killed when his Ferrari failed to take a bend in the road, crashing into the Orb River. The surrender of Admiral Gum to the ICC resulted in continual political unrest within Highland as his supporters and opponents vied for control of the government. The results of the October 2017 elections surprised everyone in Highland with the main coup leaders fleeing Highland and a new coalition government taking control.
29. 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 can be heard at the confirmation of charges hearing. At this hearing the court will also decide on the following three (3) charges put forward by the Prosecutor against Admiral Gum:

Charges:

Count One – With respect to the attack on the Lowland displaced persons on 18 November 2015 and the use of PDS in the course of this attack,

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

- the war crime of “*wilfully causing great suffering or serious injury to body or health*” under Articles 8(2)(a)(iii) of the ICC Statute; 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) of the ICC Statute.

Count Two – With respect to the attack on the fishing vessels on 23 November 2015, and the deaths of civilian migrants,

on the basis of individual criminal responsibility for ordering the commission of (Article 25(3)(b) of the ICC Statute):

- 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)(b)(i) of the ICC Statute.

Count Three – With respect to the attack of 23 November 2015 on the Lowland cargo ship,

on the basis of individual criminal responsibility for ordering the commission of (Article 25(3)(b) of the ICC Statute):

- the war crime of “*intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law*” under Article 8(2)(b)(xxiv) of the ICC Statute.

ANNEX: MAP

