



Australian Red Cross
THE POWER OF HUMANITY

INTERNATIONAL HUMANITARIAN LAW
MOOT COMPETITION
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QUESTION

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a. Statement of Facts 'The Livna Camp'

1. In 1990 the United Federation of Verona (UFV) slowly disintegrated following the death of the Federation's president. The UFV had covered a sizeable land mass although the majority of this land was arid and subject to long periods of drought. The lack of food production and the poverty suffered by many of those living in the UFV was a major factor in the political instability which led to its eventual breakdown.
2. During the next 10 years a number of nations emerged from the former Federation and declared their independence.
3. The nation of Montaguia declared independence in 1995 and has been ruled by President Mercut since this time. President Mercut is also head of the Montaguian Territorial Army (MTA).
4. The nation of Capuleta is situated to the south east of Montaguia and shares a common border. Capuleta also declared independence in 1995 and is now ruled by General Tybalt, following a military coup in 2000. General Tybalt is head of the Capuletan Defence Force (CDF).
5. Montaguia is considerably larger than Capuleta in land mass. Both nations share similar arid conditions which have resulted in the population of both countries suffering considerably from poor living standards due to the lack of food producing capacity.
6. The border between Montaguia and Capuleta was created during the breakdown of the UFV and has been the subject of some disputes for several years. Whilst there have been a number of border skirmishes between the two countries, both have lacked the resources to take further action against the other. Both nations maintain a military presence along the borders.
7. In recent times both Montaguia and Capuleta have been the subject of extensive mineral exploration by overseas companies including the Livna Gold Mining Corporation Pty Ltd (Livna Mining).
8. In 2006, extensive gold reserves were discovered by Livna Mining in the north western part of Capuleta, approximately 200 kilometres from the border with Montaguia, near a town called Amiens. This area is known as the Greater Amiens region in Capuleta.
9. Following this discovery, negotiations took place between the government of Capuleta and Livna Mining which resulted in an agreement that mining could take place in the Greater Amiens region with a certain amount of royalties to be paid to the government. Livna Mining also agreed to employ mainly local inhabitants of Capuleta to work at the

gold mine. Livna Mining also agreed to build certain infrastructure for employees of the mine and to benefit those people living near the gold mine in Amiens.

10. Livna Mining commenced operations to develop the mine in 2007. The investment by Livna Mining resulted in a significant increase in the general wealth of Capuleta.
11. The general living standards of the Capuletan people began to improve as more people were able to gain employment, resources were available for the importation of food and the building of infrastructure including a school and health care centre was completed.
12. The discovery of the gold reserves and the agreement made between Livna Mining and the Capuletan government was widely reported in the daily newspapers of both Montaguia and Capuleta. This information also included a number of scientific reports which indicated that the gold reserves which had been discovered were part of a large gold seam that ran between the border regions of both nations.
13. The development of the Livna gold mine near the border of the two countries, together with a growing resentment about the disparity in living standards between the two, resulted in an increase in tension along the border and an increased level of violent skirmishes occurring between the forces. This resulted in both nations increasing their military presence along the border and recruiting more people into their military forces.
14. In 2008 President Mercut disputed the payment of the royalties paid by Livna Mining to the Capuletan government, demanding that a percentage be paid to Montaguia due to the existence of the gold reserves running beneath the border of the countries. This was refused by Capuleta and by Livna Mining who both argued that the gold mine was only operating in Capuleta.
15. President Mercut appeared on Montaguan State television and radio strongly criticizing this response from Capuleta and stating '*we may have to take what will not be shared*'
16. General Tybalt responded angrily, stating that Montaguia was to respect the sovereignty of Capuleta and that all necessary steps would be taken to protect Capuleta and the resources that it has.
17. This state of affairs rapidly increased the tension between the countries with an escalation in violent incidents between military forces of Montaguia and Capuleta along the border regions of both countries.
18. As the violence increased in late 2008, the Livna gold mine began to restrict its operations and sent home all expatriate workers. When the fighting intensified the Chief Operating Officer of Livna Mining advised

General Tybalt that operations at the mine would be suspended until stability was restored.

19. During this time many of the inhabitants of the small towns in the Greater Amiens Region had fled the border and taken shelter in the buildings located in the complex of the Livna gold mine which had been left vacant as mine workers left the area.
20. On 4 January 2009, General Tybalt spoke on national television advising that operations at the Livna gold mine had '*ceased due to the hostilities created by Montaguia*'.
21. On 7 January 2009 President Mercut met with the commanding officers of the MTA. President Mercut was very clear in his directions in this meeting to the MTA Commanders that he wanted to seize control of the gold mine and the Greater Amiens region '*for the good of the Montaguian people*'.
22. In February 2009, the MTA broke through parts of the border with Capuleta and made their way towards the gold mine. Heavy, yet sporadic fighting occurred as they encountered some resistance from members of the CDF. The sudden incursion by the MTA had caught the CDF by surprise and the CDF were overwhelmed by the number of MTA.
23. The bulk of the CDF forces were pushed back into the central area of Capuleta known as the Laertes Region. The CDF units in this region established temporary quarters in a disused factory complex approximately 40 kilometres south east of the Livna gold mine in the Laertes Region. The factory complex was known as the Amarga factory due to the name of the company who previously owned it.
24. As the MTA forces travelled through the area near the border they captured Capuletan civilians and CDF soldiers that they found hiding in the villages in order to retain control of the region.
25. On 10 February 2009 MTA General Benvolio ordered that all Capuletan civilians and captured CDF soldiers were to be detained at the Livna gold mine. General Benvolio ordered several of the MTA units to establish a detention facility at the gold mine for this purpose.
26. The mine infrastructure of a kitchen, sports hall, offices and general accommodation areas was established as a detention facility which became known as the 'Livna Camp'.
27. General Benvolio appointed Commander Escalus as warden of the Livna Camp. Commander Escalus had not served in the MTA and had been a civilian policeman in Montaguia, prior to the conflict breaking out. Commander Escalus had also worked as an official in several of the Montaguian prisons before he became a police officer.

28. General Benvolio appointed Commander Escalus to ensure the smooth running of the Livna Camp and to supervise the MTA Military Police (who were to administer the Livna Camp) in the regular duties that they carried out.
29. Commander Escalus was required to report to General Benvolio on a regular basis in respect of the detention facility/Livna Camp on issues such as the number of detainees being held and any problems that were occurring in the Livna Camp.
30. Due to the lack of appropriate facilities at the Livna Camp, Commander Escalus lived in the local village of Amiens which was approximately 2 kilometres from the Livna Camp and travelled to the camp each day to carry out his duties.
31. There were approximately 20 MTA Military Police (MP) responsible for running the Livna Camp. The MP lived on site at the Livna Camp in the accommodation quarters of the mine site. The MP would occasionally be required to return to front line combat duties when needed and other MTA soldiers would step in to assist at the Livna Camp when this happened.
32. Documents obtained from the Livna Camp record that Commander Escalus usually attended the camp each morning from 7am to 8am and again in the evening from 6pm to 7pm. This would allow Commander Escalus to be present for the roll calls each day and to be present when new detainees came in.
33. Documents obtained from the Livna Camp show that Commander Escalus made several complaints to General Benvolio about the lack of respect that the MP were showing to him in the Livna Camp which he believed was as a result of his lack of military experience. These documents also indicate that the situation in the camp was tense with the MP unhappy that they had to stay in the camp and '*look after the CDF filth.*'
34. Statements obtained from a detainee of the Livna Camp record a conversation in which an MP Officer stated '*Escalus won't help you; he sleeps in the village because he knows who runs this camp.*'
35. By March 2009, the Livna Camp was holding over 200 detainees. Statements obtained from some of the detainees after the conflict indicate that conditions inside the camp were extremely cramped with limited food and water available. There was little heating and the area where the detainees were kept was extremely cold. The detainees slept on pallets with only a few blankets made available.

36. During this period the conflict in Capuleta had intensified with General Tybalt increasing the CDF military presence on the outskirts of the Greater Amiens Region in an effort to push back the military forces of Montaguia and regain control over the gold mine.
37. In response, General Benvolio ordered that the defence for this area be increased and that artillery units be dug into positions around the Livna gold mine. General Benvolio spoke with his Commanding Officers and Commander Escalus about defensive strategies that were to be deployed.
38. On 3 March 2009 Commander Escalus met with the MP unit to advise them of what was happening and what needed to be done to defend the gold mine.
39. Statements obtained from a number of male detainees claimed that during March to April 2009, male detainees were selected each morning at the roll call at the Livna Camp, to be used for work in the nearby area.
40. These statements indicated that some of the detainees worked in the small market garden outside the camp, whereas the remainder were taken further away from the camp in vans to dig trenches.
41. One of the detainees claimed that the MP would come each morning to the large hall where the detainees were kept and would select 30-40 prisoners to be taken out to work. One of the detainees claimed that on several occasions Commander Escalus attended the selection of detainees asking '*who would like to do some work?*' Some detainees were unsure whether Commander Escalus had been present when detainees were selected for work.
42. Statements obtained from a number of detainees claim that they were mistreated by several of the MPs who would guard them on each occasion that they were taken to dig trenches. This mistreatment included being hit about the head with rifle butts and physically beaten with rope and truncheons. The detainees recall that on a number of occasions the MPs would laugh at the detainees when this physical mistreatment occurred stating '*Your riches are not helping you now.*' These statements also indicated that detainees were taken out to dig trenches from early morning until about 6pm in the evening and were given a small amount of water and several pieces of bread during this time.
43. One of the detainees, Detainee Y, stated that he was beaten badly one day after he stopped digging to rest. The beating caused his face to become so swollen that he couldn't eat anything when he returned to the camp. Detainee Y asked one of the MPs for some medical care. The detainee stated that one of the MPs went to Commander Escalus' office and later came out with the key for one of the small vans that was in the

camp. The detainee stated that he was driven by a MP to a doctor in Amiens to receive medical care.

44. One of the detainees has stated that on or about 16 March 2009 he was walking across the main yard of the camp when saw a representative from the International Committee of the Red Cross (ICRC) speaking with Commander Escalus.
45. A statement from an unnamed MP claimed that the MP were required to meet with Commander Escalus on 17 March 2009 and that during this meeting Commander Escalus stated that detainees were only to be used for the market gardens and that '*encouragement*' by the MPs towards the detainees was to cease. As a junior officer, the unnamed MP was asked to leave the meeting approximately 10 minutes before it actually finished.
46. Statements from detainees indicate that, from approximately 18 March 2009, the detainees were taken to dig trenches in the same area at night time, usually from 8pm to 4am before they were driven back to the camp.
47. Statements from detainees confirm that Commander Escalus did not accompany the detainees when they were taken out to work.
48. In late April 2009 the Human Rights Monitoring Group (HRMG) published a report on the Capuleta-Montaguia conflict which included information that some of their field workers had seen approximately 40 detainees from Livna Camp digging trenches in the vicinity of the gold mine. The HRMG reports stated that this had been seen on four separate occasions on 19, 20, 21 and 22 April 2009 and that the detainees seemed in poor physical condition. The report denounced the actions that were occurring and accused the MTA of using the detainees for forced labour.
49. Excerpts from this report were widely published in papers and online throughout the world. These reports generated growing international concern with the United Nations (UN) calling on Capuleta and Montaguia to refrain from hostilities and enter into negotiations to resolve the conflict. The international community had been divided in respect to this conflict prior to this, but concern had '*increased over the treatment of the civilian population in Capuleta*'.

b. Statement of Facts 'The Amarga Factory'

50. On 19 March 2009 General Benvolio met with his commanding officers to discuss the occupation of the Greater Amiens region by the MTA. General Benvolio expressed his view that the MTA needed to increase their presence in Capuleta to ensure that the occupied gold mine and Greater Amiens region could not be retaken by the CDF. Documents obtained from that meeting show that General Benvolio was of the view that the MTA needed to gain control over the Laertes region as soon as possible. In particular, General Benvolio wanted to weaken the CDF position by concentrating offensive efforts at the factory complex where certain CDF units had based themselves.
51. General Benvolio ordered that Colonel Abraham, who was in charge of the 5th Brigade of the MTA, lead this offensive action.
52. Colonel Abraham then began preparations to launch an offensive attack against the Amarga factory complex and met with senior officers in the 5th Brigade to advise them of this.
53. A senior officer from the 5th Brigade advised Colonel Abraham of reports that the CDF were aware of the MTA offensive that was being planned and that intelligence suggested that the CDF were using civilians as human shields to defend the factory complex.
54. Colonel Abraham stated that he was skeptical of some of the reports and that preparation for the incursion should begin, with the '*usual assessment*' to be made. Colonel Abraham also noted intelligence reports that he received that indicated the presence of small groups of Capuletan civilians who were voluntarily remaining in a village close to the factory complex to deter the MTA from launching any attack on the factory.
55. These intelligence reports further indicated that several persons not in uniform had been observed in the factory complex with grainy, surveillance photos showing persons who appeared to be civilians assisting in the loading and unloading of ammunition onto several CDF army trucks. Several of these surveillance photos appeared to show the civilians carrying weapons of various types.
56. A further HRMG Report was published on 26 April 2009 which noted the presence of civilians near the factory complex and voiced concerns about the CDF using these civilians as human shields for the complex. This report was picked up by several international newspapers with headlines reading '*Capuletan army using humans as shields*'. These reports created significant public debate about the issue. In one newspaper an interview with a former CDF soldier indicated that CDF sympathizers may

be voluntarily shielding the factory complex to deter any attack by the MTA forces.

57. Intelligence gathered by the MTA forces indicated that the CDF appeared to be regrouping in particular areas on the outskirts of the Laertes region and the CDF were very likely preparing for an attack on the area already occupied by the MTA. As a result the majority of the Capuletan forces stationed at the factory complex had deployed to an area closer towards the areas where the MTA were situated. This action left a minimal number of CDF soldiers at the factory complex. An unmanned aerial vehicle recorded these movements of CDF troops and relayed these back to MTA Commanding Officers on 4 May 2009.
58. On 6 May 2009 the 5th battalion of the MTA, led by Colonel Abraham, began attacking the factory complex.
59. Reports of this bombing indicate that 40 civilians and 15 CDF soldiers were killed.
60. On 10 May 2009 the UN Security Council (UNSC) met to discuss the Montaguia – Capuleta conflict. UNSC Resolution S/RES/1034 (2009) expressed deep concern in respect of the conflict and the effect of it on the civilian population of Capuleta.
61. Faced with the imminent possibility that the UNSC would authorise military intervention to stabilise the conflict, President Mercut and General Tybalt agreed to enter into peace negotiations. After lengthy negotiations a peace settlement was reached which included an agreement for any mining royalties to be split equally between the two nations. It was also agreed that an international tribunal would be set up by the UN to investigate and try alleged violations of the laws and customs of war during the conflict.
62. In 2010 an international tribunal was set up by the UN called the International Tribunal for Capuleta and Montaguia. The Tribunal was mandated to try individuals accused of having committed the most serious violations of the laws and customs of war in Capuleta during the period of the conflict.
63. The Prosecutor subsequently indicted a number of individuals, alleging various crimes. Commander Escalus and Colonel Abraham were among those to be prosecuted under the relevant parts of the International Tribunal's Statute.

c. STATUTE FOR THE INTERNATIONAL TRIBUNAL FOR CAPULETA AND MONTAGUIA

Article 1

Competence of the International Tribunal

The International Tribunal shall have the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of Capuleta from 2008 to 2010, in accordance with the provisions of the present Statute.

Article 2

Crimes within the jurisdiction of the Tribunal

The jurisdiction of the Tribunal shall be limited to the most serious crimes committed in the territory of Capuleta from 2008 to 2010. The Tribunal has jurisdiction in accordance with this Statute with respect to the following crimes:

- (a) The crime of genocide;
- (b) Crimes against humanity; and
- (c) War crimes.

Article 3

Applicable Law

The International Tribunal shall apply:

1. In the first instance, the Statute of the Tribunal and its Rules of Evidence and Procedure;
2. 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; and
3. Failing that, general principles of law derived by the Tribunal 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.

Article 4

Grave breaches of the Geneva Conventions of 1949

The International Tribunal shall have the power to prosecute persons committing or ordering to be committed grave breaches of the Geneva Conventions of 12 August 1949, namely the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

- (a) wilful killing;

- (b) torture or inhuman treatment, including biological experiments;
- (c) wilfully causing great suffering or serious injury to body or health;
- (d) extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
- (e) compelling a prisoner of war or a civilian to serve in the forces of a hostile power;
- (f) wilfully depriving a prisoner of war or a civilian of the rights of fair and regular trial;
- (g) unlawful deportation or transfer or unlawful confinement; and
- (h) taking civilians as hostages.

Article 5
Violations of the laws or customs of war

The International Tribunal shall have the power to prosecute persons violating the laws or customs of war. Such violations shall include, but not be limited to:

- (a) employment of poisonous weapons or other weapons calculated to cause unnecessary suffering;
- (b) wanton destruction of cities, towns or villages, or devastation not justified by military necessity;
- (c) attack, or bombardment, by whatever means, of undefended towns, villages, dwellings, or buildings;
- (d) intentionally launching an attack in the knowledge that such an attack will cause incidental loss of life or injury to civilians which would clearly be excessive in relation to the concrete and direct overall military advantage anticipated; and
- (e) seizure of, destruction or wilful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments.

....

Article 10
Individual Criminal Responsibility

1. A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 4 and 5 of the present Statute, shall be individually responsible for the crime.
2. The official position of any accused person, whether as Head of State or Government or as a responsible Government official, shall not relieve such person of criminal responsibility nor mitigate punishment.
3. The fact that any of the acts referred to in articles 4 and 5 of the present Statute was committed by a subordinate does not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

4. The fact that an accused person acted pursuant to an order of a Government or of a superior shall not relieve him of criminal responsibility, but may be considered in mitigation of punishment if the International Tribunal determines that justice so requires.

....

Article 12
Responsibility of commanders and other superiors

In addition to other grounds of criminal responsibility under this Statute for crimes within the jurisdiction of the Tribunal:

- (a) A military commander or person effectively acting as a military commander shall be criminally responsible for crimes within the jurisdiction of the Tribunal committed by forces under his or her effective command and control, or effective authority and control as the case may be, as a result of his or her failure to exercise control properly over such forces, where:
 - (i) That military commander or person either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes; and
 - (ii) That military commander or person failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.
- (b) With respect to superior and subordinate relationships not described in paragraph (a), a superior shall be criminally responsible for crimes within the jurisdiction of the Tribunal committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise control properly over such subordinates, where:
 - (i) The superior either knew, or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit such crimes;
 - (ii) The crimes concerned activities that were within the effective responsibility and control of the superior; and
 - (iii) The superior failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

d. The Escalus Indictment

The Office of the Prosecutor has issued an indictment against Commander Petro Escalus which includes the following charge:

From 1 February 2009 to 20 May 2009, **PETRO ESCALUS**, accepted 200 detained Capuletan individuals from the Montaguian Territorial Army (MTA) at the detention facilities at the Livna gold mine, known as Livna Camp. During this period a number of the detainees under his control were subjected to inhumane treatment, namely physical and psychological harm and forced labour by the MTA Military Police who were under the command of **PETRO ESCALUS**, and that **PETRO ESCALUS** knew, or had reason to know, that his subordinates were about to carry out these acts, or had done so, and failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

By his acts or omissions **PETRO ESCALUS** is responsible for:

Count 1: Inhuman treatment; willfully causing great suffering or serious injury to body and health (grave breaches of the 1949 Geneva Conventions) punishable under Articles 4, 10 (3) and 12 of the Statute of this Tribunal.

e. The Abraham Indictment

The Office of the Prosecutor has issued an indictment against Colonel Michael Abraham which includes the following charge:

On 6 May 2009, **MICHAEL ABRAHAM**, Commanding Officer of the 5th Brigade of the Montaguian Territorial Army (MTA), ordered an attack on the Amarga Factory complex in the Laertes Region, resulting in the death of 40 civilians.

By his acts or omissions **MICHAEL ABRAHAM** is responsible for:

Count 1. Violations of the laws or customs of war (intentionally launching an attack in the knowledge that such an attack will cause incidental loss of life or injury to civilians which would clearly be excessive in relation to the concrete and direct overall military advantage anticipated, in contravention of Article 57 Additional Protocol 1 to the Geneva Conventions of 1949) punishable under Articles 5 and 10 of the Statute of this Tribunal.

f. Your brief

You have been nominated to act as either the prosecution or defence team for Commander Escalus and Colonel Abraham in relation to the charges listed above.

In preparing your arguments you are to assume that:

1. Both States involved in the conflict have signed and ratified the Geneva Conventions and their Additional Protocols I & II
2. Issues of evidence and procedure are not relevant to your argument
3. Only the offences with which Commander Escalus and Colonel Abraham are actually charged with are to be taken into account
4. It is an agreed fact that the deaths of the civilians at the Amarga Factory were not causally linked to the events at the Livna Camp.

Indicative case list

Prosecutor v Tadic, 2 October 1995, ICTY Case Number IT-94-1

Prosecutor v Martić, 12 June 2007, ICTY Case Number IT-95-11-T

The Prosecutor v Galic, 5 December 2003, ICTY Case Number IT-98-29-T

The Prosecutor v Delalic et al, 16 November 1998, ICTY Case Number IT-96-21-T

The Prosecutor v Delalic et al, 20 February 2001, ICTY Case Number IT-96-21

The Prosecutor v Blaskic, 3 March 2000, ICTY Case Number IT-95-14-T

The Prosecutor v Blaskic, 29 July 2004, ICTY Case Number IT-95-14-A

The Prosecutor v Kordic, 26 February 2001, ICTY Case Number IT-95-14/2-T

The Prosecutor v Krnojelac, 15 March 2002, ICTY Case Number IT-97-25-T

The Prosecutor v Kvoka, 2 November 2001, ICTY Case Number IT-98-30/1-T

The Prosecutor v Kordic and Cerkez, 26 February 2001, ICTY Case Number IT-95-14/2-T

The Prosecutor v Galic, 5 December 2003, ICTY Case Number IT-98-29-T

The Prosecutor v Galic, 30 November 2006, ICTY Case Number IT-98-29-A

The Prosecutor v Aleksovski, 25 June 1999, ICTY Case Number IT-95-14/1-T

Public Committee against Torture in Israel et al v Government of Israel et al.,
Judgement (Dec.13, 2006)

g. Maps of Montaguia and Capuleta

