

International Criminal Court Trial Competition Case April 2011

A Case before the International Criminal Court (ICC): the Confirmation Hearing in the Case of John Evans:

This is a fictitious case, intended to enable students to familiarise themselves with the law and practice of the ICC. Participants will be divided into three groups: Defence counsel; counsel for the Prosecution; and legal representatives for victims. Each team is expected to write a memorial and to put forward its legal arguments in the context of the Confirmation Hearing in the case of John Evans (see Article 61 of the Rome Statute), in accordance with the schedule established by Pre-Trial Chamber 6.

Each team will be evaluated on its knowledge of the applicable rules of international criminal law; the quality of its arguments; and its overall presentation. The memorials will be graded by the same Judges as the ones adjudicating in Pre-Trial Chamber 6. The Judges of the competition will be comprised of both academics and practitioners.

APPLICABLE LAW AND TIMEFRAME

This case is set in 2019. The applicable law of the ICC in 2019 is the same as the applicable laws of the ICC at the time of this competition; including all the relevant case law. However, the amendment regarding the crime of aggression, as adopted at the Kampala 2010 Review Conference (Resolution no. 6 adopted on 11 June 2010; annexed to this case), has fully entered into force and is fully applicable to the facts set out below.

FACTS AND PROCEDURAL HISTORY

1. Brisk and Ulva became States parties to the ICC in 2004. Both States have not lodged a declaration within the meaning of Art. 15bis (4) of the Rome Statute. Both States are members of the UN and parties to major human rights treaties.
2. Brisk and Ulva are two neighbouring countries but suffer from a long history of conflict and tensions with each other. Brisk has a very small coast line with one major port, which is located in the city of Gyst. Ulva has a much larger coast line with five big seaports. The coastline of Brisk is disputed territory, even though it is claimed by Ulva; 70 % of the people living there are of Brisk ethnicity. In addition, Ulva is very concerned about increased military activities in the port of Gyst, such as the strengthening of the Briskan navy.
3. In July 2016, elections were held in Ulva. The New Democratic Party (NDP), led by John Evans won the elections. John Evans, however, did not become the new Ulvan President. Instead, Benny Thompson, a close political friend of John Evans, became the new president.
4. John Evans became the leader of the NDP in parliament. The majority in parliament supporting the Government consists of the NDP (30% of seats) and the Freedom Party (FP) (21% of seats). Although not officially a part of the Government, it is said that John Evans is very influential on every aspect of the Governmental policy.
5. A series of incidents occurred after the elections in Ulva in July 2016, which led to a further deterioration of already soured relations between Brisk and Ulva. For example, Benny Thompson was particularly upset when his two sons, studying in Brisk, were arrested and indicted for sexual abuse of minors. The Ulvan Government also reacted ferociously against arms deliveries by superpowers to Brisk.

6. On 12 February 2018, as a result of all these tensions, Ulva sent out its large and fully-armed fleet for a blockade of the Port of Gyst. The fleet was instructed to 'use all necessary means to prevent every ship from entering or leaving the port of Gyst'. This instruction was supported by a collective decision of the Ulvan Government.
7. Under the threat of armed navy vessels of Ulva, which were located very close to the port of Gyst and well within territorial waters of Brisk, the effect of the blockade meant that no ship entered or left the port from 12 February 2018 until the day of the confirmation hearing. Needless to say, Brisk and its population suffered heavily from this blockade.
8. Although the relations between the two States were extremely sour and they were reported to be on the brink of a full war, up until the day of the confirmation hearing, the blockade remained the only hostile act between the two States.
9. The blockade decision was taken by the Ulvan Government pursuant to Article 73 of the Constitution of Ulva. Article 73 of the Constitution stipulates that a declaration of war requires two-thirds of votes in parliament. The Ulvan Government never issued a declaration of war and maintains that the conflict with Brisk falls short of a war within the meaning of Article. 73 of the Constitution. The opposition parties, in a debate in parliament, were heavily opposed to this interpretation and called for a vote following Article. 73 of the Constitution. The government parties (NDP and FP), however, fully supported the approach taken by the Government.
10. John Evans, in the media and public speeches, fully supported the Government in its position in the conflict with Brisk. However, John Evans also repeatedly stated that this was a decision for the Government to take.

11. On 12 May 2018, the ICC Prosecutor announced his intention to start an investigation –acting *proprio motu*- into the Brisk-Ulva conflict. On 15 May 2008, the Prosecutor notified the UN Secretary General pursuant to Article 15bis (6) of the Rome Statute.
12. On 1 April 2018, the UN Security Council, acting under Chapter VII, determined by unanimous vote in Resolution 8679 that the blockade amounted to a breach of and threat to international peace and security and condemned Ulva for its actions. However, the UN Security Council did not consider the issue of whether an act of aggression had occurred.
13. Following the ICC Prosecutor’s notification, the Security Council could not reach an agreement to conclude if Ulva had committed an act of aggression. Six months later on 11 November 2018, the ICC Prosecutor, pursuant to Art. 15bis (8) requested authorization from the ICC Pre-Trial Chamber to proceed with an investigation into the crime of aggression. The authorization to proceed was given by the Pre-Trial Chamber on 11 December 2018.
14. On 15 January 2019 the Prosecutor, on the basis of the results of his investigation, submitted to the Pre-Trial Chamber an application for an arrest warrant for John Evans pursuant to Article 58 of the Statute. The Prosecutor’s application was based on the allegation that ‘From 12 February 2018 onwards, John Evans and others committed the crime of aggression (Article 8bis and Article 25 (3) (a) of the Rome Statute).’
15. Regarding the supporting evidence, the Prosecutor submitted that John Evans, being the political leader of the major government party in a democratic State, was –with others- in effective control over Government decisions and failed to take the necessary and reasonable steps to alter Government decision-making.
16. On 15 February 2019 the Pre-Trial Chamber honoured the application and issued an arrest warrant for John Evans. It requested Ulva, pursuant to Article

89 of the Rome Statute, to surrender him to the ICC. Further, it also requested all other States parties to the Rome Statute to cooperate within their jurisdiction in the arrest and surrender of John Evans. The Pre-Trial Chamber ruled that the ICC appears to have jurisdiction; that the case appears to be admissible; that there is sufficient evidence; and that there are grounds to justify arrest and surrender.

17. On 19 February 2019, the Ulvan government responded to the arrest warrant. In a public speech, President Thompson said that Evans, enjoying immunity as a member of parliament, could not be arrested and surrendered to the ICC.
18. On 24 February 2019, John Evans visited Konera, a country in the region, for a private meeting with friends. Konera is not a party to the ICC. Evans and his friends visited a casino on 27 February 2019. The casino was on the border with Arduum, a State party of the ICC. Since gambling is illegal in Konera, the casino is organized in such a fashion that the restaurants, bars and other similar facilities are located on Konera territory; but the gambling takes place on Arduum territory.
19. When John Evans found out that the gambling activities was taking place on Arduum territory the moment he entered the casino, he opted to stay and wait in the bar for his friends. While waiting there, he was requested to accompany private security staff for a security check. When accompanying them he found out that they were entering the gambling area; where the security desk was also actually located. Upon his refusal to proceed to the security desk, he was taken by force to the security desk. Through an identity check, the security officers found out that John Evans was on a list for persons to be arrested. The police was then notified and consequently John Evans was taken into custody in Arduum on 28 February 2019.
20. On the basis of the ICC arrest warrant, a surrender hearing took place in Arduum on 1 March 2019. John Evans claimed that he had been unlawfully arrested and abducted to Arduum. However, both the national court and the

responsible Minister indicated that they had no other choice than to execute the arrest warrant; and further due to Article 59 (4) of the Rome Statute, it was not open to them to challenge the warrant's validity.

21. On 5 March 2019, John Evans was surrendered to the ICC. His initial appearance took place 7 March 2019. The case was assigned to Pre-Trial Chamber 6, with the view of holding a hearing to confirm the charges on which the Prosecutor was seeking trial; and to determine a reasonable period of time after the initial appearance.
22. The charges for which the Prosecutor seeks confirmation are the same as those set out in the application for the arrest warrant.
23. Prior to the confirmation hearing, a number of hearings took place and many motions and responses were filed with Pre-Trial Chamber 6. During these hearings, the Prosecutor indicated that the ICC has jurisdiction over the case and that John Evans had not been unlawfully arrested and detained. Further, the Prosecutor argued that and even if this were the case, it would not affect the jurisdiction of the ICC.
24. The Defence adopted the position that the ICC lacks jurisdiction and that John Evans had been unlawfully arrested and should be immediately released.
25. A few weeks before the confirmation hearing which was scheduled for 17 May 2019, 20.000 Brisk nationals, primarily consisting of inhabitants of the port of Gyst, filed a request to be recognised as victims and to participate in the proceedings against John Evans. They were represented by one counsel. These individuals claimed harm on account of the fact that as a result of the blockade, they were deprived of food and other important resources and that they had been living in constant fear of attack by the Ulvan fleet.

26. On 2 April 2019, Pre-Trial Chamber 6 delivered a decision granting the applicants a provisional status of victims, B01-B20.000. The victims were attributed participatory rights, including the right to make submissions in relation to all points on the agenda for the first day of the confirmation hearing. After that first day, the confirmation hearing would be suspended for a couple of weeks with a view, among other things, to decide on the application by victims.

27. On 1 May 2019, Pre-Trial Chamber 6 decided on an agenda for the first day of the confirmation hearing. The confirmation hearing is scheduled to start on 17 May 2019.

ESTABLISHED AGENDA FOR THE CONFIRMATION HEARING

Pre-Trial Chamber 6 seeks submissions of all parties on the following issues:

- A. In light of the proposed charges, the jurisdiction of the Court.
- B. The legality of the arrest and ensuing detention of John Evans and possible remedies in case of unlawfulness.
- C. The participation of victims B01 – B20000 in the proceedings against John Evans.