

# 2011 Moot Problem

## PROSECUTOR v. DAVID DABAR

### Before the International Criminal Court at The Hague

1. Vanilia obtained its independence in 1959. It is bordered by the Maxicum Sea on the east with a coastline of more than 500 kilometres, by the Republic of Berryland to the south and west and the Republic of Mingolia to the north. Vanilia is federal state divided into three provinces and has a population of around 20 million people. It is populated by the Lemi people who are mostly Protestant and Swarohi speaking (56% of population) and by the Nomag people who are Catholic and Nomagi speaking (32% of population). The Nomag people, though spread across the country, are in the majority in the province of Losovo, which borders Berryland. Many believe that the Nomags came to Vanilia from Berryland during the colonial period as indentured labourers. Others think that Losovo is in fact the original land of the Nomags, and that they later spread from Losovo into Berryland. It was made part of Vanilia only because of the existing colonial administrative divisions at the time of independence. Owing to the circumstances of the independence of the three countries which left many issues unresolved, Vanilia continues to have border disputes with its neighbours Mingolia and Berryland. There have been sporadic border incidents with exchange of fire across the borders.

2. After the independence, Vanilia adopted a political system of representative democracy with a multiparty system. The President appoints the leader of the party which wins the majority in the legislative elections as Prime Minister, who then chooses the members of his cabinet among elected deputies. The People's United Democratic Party (PUDP) has formed the successive governments since independence. Though the PUDP claims to be secular and have countrywide support, it is mainly supported by the Lemis. Its main political agenda is said to be the protection and promotion of Lemi rights and well-being (which feel that they were discriminated against as a minority during the colonial era). The Federal Democratic Party (FDP) has been the main opposition party and openly claims to protect the interests of the Nomags.

3. There is a general resentment among Nomags that they have been neglected by the successive governments and are not proportionately represented in the political decision-making which has resulted in the neglect of their welfare and economic development. The Nomag community has been demanding since the proclamation of the Federal Constitution that the Nomagi language be declared as an official language of Vanilia. Successive governments have refused to accept the demand. Some organisations also claim that the Nomags are under-represented in the main sectors of economy and discriminated against in the public service. Ever since independence, some Nomag groups have been spearheading the idea of an independent Losovo state.

4. In January 2008, general elections were held in Vanilia. The PUDP again obtained the majority of seats in the federal legislative assembly and formed the government. Three months later, in the provincial elections, the FDP won an overwhelming majority in the Losovo Provincial Assembly and formed the executive council. In August 2008, a radicalized faction of the FDP established the Nomag Democratic Resistance Alliance (NDRA), with the avowed objective to obtain the independence of Losovo. David Dabar, elected to the Losovo Provincial Assembly on behalf of the FDP and in charge of law and order affairs in the Losovo Executive Council was seen as the figurehead of the NDRA. Several support groups were formed in different regions of Vanilia with similar goals. Media reports in Losovo indicated that this was the result of disenchantment with the successive federal governments

and disappointment with the failure to achieve a fair representation of Nomag interests at the federal level.

5. In Rizoba, the capital city of Losovo, on 15 October 2008, the day of Vanilia's independence, a demonstration of around 500 people belonging to the NDRA hoisted a "Losovo national flag", while desecrating and burning the Vanilia national flag. On the same night, five people belonging to the NDRA were arrested in their residences and charged under the Respect for National Symbols Act. These arrests led to street protests in different parts of Vanilia. After these incidents, a group called the Vanilia Patriotic Forum (VPF) was formed in Rizoba mainly consisting of Lemi people. It claimed that its main objective was to protect the sovereignty and political integrity of Vanilia and that it would support the federal government to the greatest possible extent to achieve these objectives. The VPF opened its central secretariat in the 'Pleasant Gardens' area of Rizoba, which was predominantly a Lemi-inhabited area, and actively started to recruit new members, both men and women. The NDRA also started to accelerate its recruitment and declared, on 30 November 2008, that it was breaking away from the FDP. David Dabar was proclaimed the chief of the NDRA under whose leadership the NDRA would campaign for the achievement of the independence of Losovo. Dabar remained a member of the Losovo Executive Council.

6. A few days later, on 5 December 2008, students from the Rizoba University formed the Nomag Student Alliance (NSA) and announced that they would establish co-ordination with other groups fighting for Nomags' rights. On 8 December 2008, the NSA issued a call for the indefinite boycott of classes in the University which they declared would be enforced, if necessary, in "militant forms". During the following weeks, factory workers, journalists and university teachers also formed pro-independence associations. In Losovo, the situation became more and more tense with regular protests and demonstrations during the month of January 2009.

7. On 2 February 2009, the NDRA convened a meeting in which the NSA and other pro-independence associations took part. In the discussions, the participants agreed that they should all coordinate their work and activities for the independence of Losovo and seek the necessary national and international support. The final declaration indicated that all associations would take guidance from the NDRA and its leader David Dabar.

8. On 3 February 2009, there were several attacks on the Lemis of Losovo in five towns near the provincial border, leading to the loss of 126 lives with 239 people injured. The media reported that the increased level of violence in the last months made it difficult to identify who was responsible for the attacks. However, it was strongly believed by the government of Vanilia, and the most important newspapers of Vanilia, including those based in Losovo, that the NSA was behind these attacks.

9. Several newspapers published a report based on an NDRA internal document, which said that the organization would strive towards eliminating the influence of Lemi in Losovo. Government authorities of Vanilia confirmed the expulsion of Lemis out of Losovo into the neighbouring provinces. Temporary camps were set up by the Vanilia government near the border to shelter the displaced families. Neither the NDRA nor the NSA deny their involvement in the forced expulsion of Lemis, but alluded in their press releases that Lemis that had left the province would be welcomed back in only after Losovo had achieved independence and on the condition that they would swear allegiance to the new state of Losovo.

10. On 10 February 2009, a pro-Lemi TV channel reported that increasing attacks on Lemi residences in Rizoba by NSA members were to be expected. The same evening, David Dabar went around the Pleasant Gardens area along with NDRA members and ordered the latter to erect roadblocks to control the movement of residents. He explained to the media

that they wanted to check every movement through the locality, in particular to protect the Lemis from growing violence. The NDRA cadres said that they would not allow any one to enter the area. On the same night, NSA members easily went into Pleasant Gardens without being stopped by NDRA roadblocks. The NSA members, divided into groups, went to the residences and forcibly brought out more than 400 Lemi residents into the area's main square. The NSA members divided the residents into two groups: men in one group and women and children in another. They were told that they would be brought to the border until their safety would be ensured in Rizoba. After an hour, several trucks left the area without any hindrances. The trucks were granted unimpeded passage out of Pleasant Gardens through NDRA roadblocks. On 12 February, media reported that the Lemi people from the Pleasant Gardens locality were taken by the NSA and kept in camps, 60 kilometres away from Rizoba. The media of Berryland also highlighted that the camps were actually located just across the border, on the territory of Berryland, though this territory remained a contentious one as Vanilia also claimed it despite an arbitral award in favour of Berryland, which was disputed by Vanilia.

11. Responding to criticism, Dabar declared that the NDRA's aim was secession from Vanilia. There was no intention to target or injure Lemi civilians. On the contrary, measures had been taken to ensure their protection from the disorganised violence caused by the federal government's acts. He said, however, that the NDRA also expected Lemi civilians to appreciate the genuine demand of Nomag people, otherwise it would become difficult in such tense situations to control the emotionally stirred-up and politically agitated Nomag population. He further invited humanitarian organisations, including the International Committee of the Red Cross (ICRC) to visit the camps.

12. The Prime Minister of Vanilia, Nijimon Yavi, issued a stern warning to those involved in the displacement of Lemi people and deployed security forces in Losovo with the backup support of 300 army soldiers. In the next few days, it was reported that, across Vanilia, several attacks had taken place on property of the Vanilian government, as well as on private property. There were instances of weapon-wielding young men attacking Lemi people, and in different incidents 39 people were killed. In some instances, Lemi people from Losovo were again forced to leave their residence and flee to other provinces. Several groups claimed responsibility for some of the attacks. The month of March witnessed continuous protests by NDRA supporters across Vanilia but mainly in the province of Losovo. Vanilian security and intelligence forces arrested a chain of weapons suppliers operating from Berryland whom they claimed the NDRA was acquiring weapons from.

13. On 22 May 2009 at around midnight, a camp of the security forces on the outskirts of Rizoba was attacked by armed men and in the pitched battle that ensued between the armed men and security forces, the camp site was in ashes by the next morning. 156 bodies of the security forces and 53 unidentified bodies were recovered from the site. It was reported by local officials that armed men were continuing their attacks on government property, mainly offices and vehicles, as well as on Lemi people and their property. Three highways connecting Losovo with other cities in Vanilia were blocked by armed youths at Losovo borders.

14. On 28 May 2009, David Dabar convened a press conference and declared that the NDRA would organise a rally the next day and declare the independence of Losovo. On 29 May 2009, thousands of people gathered on the Rizoba University grounds. Dabar greeted the crowds and thanked them for being supportive of the cause of the liberation of Losovo. He announced that the FDP government had issued a declaration of independence. Losovo was now an independent sovereign country. The NDRA was soon to be in control of the entire province. He said that from now on, the Losovo administration was going to be in the hands of Nomag and for the interests of the Nomags. All Nomags in other parts of Vanilia were welcome to settle in Losovo to participate in the development of the new country.

Adopting a warning tone, he said that non-Nomag people could remain in Losovo. However, he added, all, including Lemi people, should respect the law of the country. At the end of the meeting, he introduced Wilson Mula, leader of the FDP, and announced that he would be leading the interim government for the next one year, until a new constitution was drafted and a constitutionally-elected government took over.

15. On 2 June 2009, Berryland recognised Losovo, followed by Mingolia on 4 June. In an extension of solidarity to a fellow people, the Berryland government waived the visa requirement for Losovo citizens for one year, which it said would help stabilising Losovo. The Berryland Prime Minister also promised to extend the necessary support to the newly formed Losovo government.

16. With regard to international relations, in his first press conference, Mula announced that Losovo wished to maintain friendly relations with all countries and that it would succeed to all multilateral international treaties to which Vanilia was a party that dealt with human rights and international humanitarian law. With regard to other treaties, including bilateral treaties, they would be reviewed within the next two years. The first official act of the new government was to grant by decree Losovo citizenship to all Lemis residing in the province. Other residents were to be granted citizenship at their request if they undertook to live in Losovo and swore allegiance to the new State. A new law on citizenship was soon to be adopted.

17. On 5 June 2009, the Prime Minister of Vanilia, Nijimon Yavi, said on national television that Losovo province was an integral part of Vanilia and blamed neighbouring countries, in particular Berryland. Supporting the NDRA and its secessionist stance constituted an unacceptable intrusion in Vanilia's internal affairs in violation of the UN Charter and would be dealt with in an appropriate manner. In manifest contradiction with the situation on the ground, he said that Vanilian security forces were in total control of the situation in Losovo, that they would take into custody the main leaders of the NDRA soon, and that they would try them in accordance with law. Meanwhile, NDRA fighters continued to be in direct confrontation with Vanilian forces at the Losovo borders. The NDRA successfully thwarted the Vanilian security forces' attempts to gain control of Losovo territory, let alone to re-take control of Rizoba. The Vanilia government called for international support and expressed concerns about the security of the Lemi people in Losovo.

18. On 8 June 2009, a message was circulated among NDRA and NSA members that Vanilian forces were employing civilians to counter the NDRA control. In the night of 9 June 2009, more than 500 Vanilian forces were attacked when they moved into Losovo, but nonetheless managed to come within 100 kilometres of Rizoba. Fierce fighting continued through the night resulting in heavy casualties on both sides.

19. During the night of 10 June, NDRA fighters patrolling Rizoba and reinforcing their control over the city took control of the VPF secretariat office. They found around 150 people, including women and children, having taken their quarters in the building. Interrogated by the NDRA, they replied that because of the continuing fear of attacks against them, they had taken refuge in the secretariat's premises to spend the night. After searching the premises, 16 Vanilia-manufactured weapons were found in one of the rooms located at the back of the building. When questioned about the weapons, the occupants said they knew nothing about them. The NDRA fighters then separated the women and children, and took the men along with them. The next morning, David Dabar declared that they had successfully thwarted an attempt of Vanilian forces, wearing civilian clothing, taking shelter in the VPF secretariat to imminently attack, in co-ordination with other forces entering Losovo, the new government of Losovo.

20. On 11 June 2009, the 'Losovo Messenger' daily published the details of 108 people who were taken into custody by the NDRA during the night of 10 June. It further reported that the

details were provided by the family members who were there on that night at the VPF secretariat and all were confirmed as not belonging to Vanilian forces. On the same evening VPF members convened a press conference and introduced 12 members who were reported to have escaped from the hands of the NDRA fighters. They declared that they were ill-treated and subjected to severe beatings. When journalists asked about the others that were taken away, they said they were doubtful whether they were still alive. In response to these allegations, the NDRA issued a statement that all those who were questioned on the night of 10 June at the VPF secretariat were either active supporters of the Vanilian forces, if not members thereof. It added that the NDRA had successfully thwarted the attempt of Vanilian forces in the garb of civilians, and that they were no longer in their custody. However, the NDRA failed to clarify the whereabouts of those who were taken away. On 22 June 2009, newspapers reported that the human remains of 15 persons were found in a suburban area. They were later identified as some of those who were taken by the NDRA on 10 June.

21. In the last week of June 2009, it was reported by the media that the camps, in which Lemis were kept since the 10 February 2009, were evacuated and the people were allowed to go. It was further reported that most had not returned to Rizoba. It was unclear whether they had been prevented to return or did not wish to return because of the security situation.

22. As the situation worsened, on 6 July 2009, the Minota Economic Forum (MEF), a regional organisation working for economic co-operation in the region, appealed to all parties to restrain themselves and to declare a ceasefire, and requested the United Nations Security Council to intervene in the matter. It further invited the Vanilian government and the FDP to Geneva to negotiate a solution to the conflict. The Vanilian government expressed its willingness and nominated a ten-member delegation. The FDP also expressed its willingness to send a delegation provided that the issue of secession remained non-negotiable. The FDP nominated its delegation headed by Mr William Tanatia, the Minister for Foreign Affairs of the interim government of Losovo.

23. Meanwhile, both Amnesty International and Human Rights Watch had reported violations of international humanitarian law by both sides: killings, torture, displacement of civilians, attacks on civilians and destruction of civilian property. At the instance of several complaints to Office of the Prosecutor, the prosecutor of the International Criminal Court (ICC) initiated proceedings against several individuals from both sides of the conflict.

For the purpose of the present case against David Dabar, the prosecutor decided to bring the following charges against him:

I. David Dabar was charged, on 26 July 2009, with the crime against humanity of 'deportation or forcible transfer of population' under Article 7(1)(d) of the Statute of the International Criminal Court for acts committed during the incidents that took place in Rizoba city on or about the 3 and 12 February 2009.

II. David Dabar was charged, on 26 July 2009, with the war crime of 'taking of hostages' under Article 8(3)(c)(iii) of the Statute of the International Criminal Court for acts committed during the incidents that took place in Rizoba on or about 12 February 2009 and thereafter.

III. David Dabar was charged, on 26 July 2009, with the war crime of 'killing' under Article 8(2)(a)(i) of the Statute of the International Criminal Court for acts committed during the incidents that took place in Rizoba on or about 10 June 2009.

24. Based on the warrant issued by the ICC Prosecutor, and confirmed by a pre-trial chamber of the ICC, plain-clothed Vanilian security forces took David Dabar into custody from his residence in Rizoba on 5 August 2009 and surrendered him to the ICC for trial.

## **PREPARATION OF THE BRIEF**

You have been nominated to act either the prosecution or defence for David Dabar in relation to the **THREE (3)** charges above.

In preparing the brief, the counsels for both Prosecution and Defence are expected to establish the following issues:

- The type (s) of armed conflict that is applicable to the present case
  
- The Elements of Crimes for each of the 3 charges against David Dabar based on the United Nations Doc. PCNICC/2000/1/Add.2 (2000)
  
- **Written and oral arguments on behalf of the Prosecution and Defence are to be confined to these THREE (3) charges only.**
  
- Other relevant issues and jurisprudence that are applicable to the present case

The following information are to be noted:

- **Vanilia is a party to the Four Geneva Conventions of 1949 and their two Additional Protocols of 1977.**
  
- **Vanilia ratified the Statute of the International Criminal Court on 25 October 2006.**
  
- **Questions relating to jurisdiction of the ICC need not be raised unless they are substantially linked to the merits of the case.**
  
- **STATUTE OF THE ICC: ELEMENT OF CRIMES**
  - **Article 7 (1) (d) - Crime against humanity of deportation or forcible transfer of population**

### **Elements of Crimes**

1. The perpetrator deported or forcibly transferred, without grounds permitted under international law, one or more persons to another State or location, by expulsion or other coercive acts.
  
2. Such person or persons were lawfully present in the area from which they were so deported or transferred.
  
3. The perpetrator was aware of the factual circumstances that established the lawfulness of such presence.
  
4. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
  
5. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

- **Article 8 (2) (c) (iii) - War crime of taking hostages**

**Elements of Crimes**

1. The perpetrator seized, detained or otherwise held hostage one or more persons.
2. The perpetrator threatened to kill, injure or continue to detain such person or persons.
3. The perpetrator intended to compel a State, an international organization, a natural or legal person or a group of persons to act or refrain from acting as an explicit or implicit condition for the safety or the release of such person or persons.
4. Such person or persons were either hors de combat, or were civilians, medical personnel or religious personnel taking no active part in the hostilities.
5. The perpetrator was aware of the factual circumstances that established this status.
6. The conduct took place in the context of and was associated with an armed conflict not of an international character.
7. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

- **Article 8 (2) (a) (i) - War crime of wilful killing**

**Elements of Crimes**

1. The perpetrator killed one or more persons.
2. Such person or persons were protected under one or more of the Geneva Conventions of 1949.
3. The perpetrator was aware of the factual circumstances that established that protected status.
4. The conduct took place in the context of and was associated with an international armed conflict.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.