

Henry Dunant Memorial Moot Competition-2010

International Criminal Court at The Hague

Prosecutor v David Dabar

FACTS OF THE CASE

1. The State of Vanilia is on the continent of Minota. It obtained independence in 1959, is surrounded by the Maxicum sea on the east with a coastline of more than 500kms and borders with Berryland to the south and west and Mingolia to the north. Vanilia is divided into three provinces and has a population of 20 million. People belonging to different ethnic/national identities live in Vanilia. People describing themselves as Lemi constitute 56% of the total population and as Nomag 32%, while other ethnicities/nationalities constitute the rest. Nomags, though spread across the country, are in the majority in the province of Losovo, which borders Berryland. Historically, many believe that Nomags were brought to Vanilia from Berryland during the colonial period as indentured labourers to work for the colonial rulers. However, Nomagologists argue that the Nomag ethnicity originated from Losovo and spread into the geographical area known today as Berryland, and due to colonial division and re-division it was annexed to Vanilia. Conceivably owing to its disputed past, Vanilia continues to have border disputes with the neighbouring countries of Mingolia and Berryland. There have been instances of the exchange of fire across the international border between Vanilia and Mingolia. The official language of Vanilia is Swarohi, the language spoken by Lemis. Nomags speak the Nomagi language, but also understand Swarohi, generally.

2. After independence, Vanilia adopted a political system of representative democracy with a multiparty system. The People's United Democratic Party (PUDP) has formed successive governments since independence. Though the PUDP claims to have pan-Vanilian acceptance, its support base mainly comes from the Lemi people. It is alleged that its main political agenda is to protect the interests of the Lemi majority. Since independence, the Federal Democratic Party (FDP) has been the main opposition party and openly claims to protect the interests of the people of the Nomag ethnicity and the workers and peasants in general of Vanilia.

3. There is a general resentment among Nomags that they have been neglected by successive governments and not proportionately represented in the political decision-making which has resulted in the neglect of the welfare of the Nomag people. The Nomag community has been demanding that the Nomagi language be declared as an official language of Vanilia. Consecutive governments have refused to accept this demand. Though the government census does not provide for the professional and economic status of the people, some organisations claiming to represent the Nomag ethnicity argue that the Nomag people are under-represented in the main sectors of economy. The counterclaim is made that eight out of fifteen major private companies are owned by Nomag individuals. Since the independence of Vanilia, some sections of Nomags have been spearheading the idea of an independent Losovo state for the Nomags. Several groups under different names work in Vanilia claiming to be working for the protection of the rights of Nomag people.

4. In January 2008, general elections were held to elect a new government of Vanilia. The PUDP again obtained the necessary majority and formed the government. However, the FDP got the majority of seats in the Losovo Provincial Council and formed the 20 member administrative body in the Council. In August 2008, a small group of Nomags formed a group called the Nomag Democratic Resistance Alliance (NDRA). This was followed by several groups being formed consisting of Nomags in different regions of Vanilia with similar goals, often relating to independence for Losovo. Media reports in Losovo indicated that this was the result of disenchantment with the successive governments and disappointment with the

FDP's failure to achieve the demands of the Nomags by obtaining enough seats to enter the government.

5. In Rizoba, the administrative headquarters of Losovo, on 15 October 2008, the day of Vanilia's independence, around 500 people belonging to the NDRA hoisted a flag, which they claimed to be the flag of Nomags as opposed to the national flag of Vanilia. On the same night, five people belonging to the NDRA were taken from their residences and charged under the Respect for National Symbols Act of Vanilia. These arrests led to street protests by Nomags in different parts of Vanilia. After these incidents, a group called the Vanilia Patriotic Forum (VPF) was formed in Rizoba mainly consisting of people from the Lemi ethnicity. It claimed that its main objective was to protect the sovereignty and political integrity of Vanilia and that it would support the Vanilian government to the greatest possible extent to achieve these objectives. The VPF opened its central Secretariat in the 'Pleasant Gardens' locality of Rizoba city, which was predominantly a Lemi-inhabited area, and started recruiting volunteers, both men and women to work for its objectives. The NDRA also started recruiting young people, mainly men, and declared, on 30 November 2008, that Mr David Dabar would be the chief of the NDRA under whose leadership the NDRA would campaign for the achievement of its demands. In the January 2008 general elections, Mr David Dabar was elected to the Losovo Provincial Council on behalf of the FDP and was in charge of law and order affairs in the Losovo Provincial Council.

6. A few days later, on 5 December 2008, in Rizoba city, students belonging to Nomag ethnicity in Rizoba University formed the Nomag Student Alliance (NSA) and declared that they would establish co-ordination with other similar groups and fight for the rights of Nomags. On 8 December 2008, they gave 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 similar associations and expressed their solidarity with Nomag students. In Losovo province, where the NDRA activities were concentrated, the situation became tense in the month of January 2009 because of these regular protests in Rizoba.

7. On 2 February 2009, the NDRA convened a meeting inviting all those concerned with the rights of Nomags. The NSA and other associations took part in the meeting. The meeting declared that they should all work for the independence of Losovo from Vanilia and seek necessary national and international support. The meeting declared that all associations would take guidance from the NDRA and entrusted Mr David Dabar to coordinate the activities of all associations.

8. On 3 February 2009, there were several attacks on the Lemis of Losovo in five towns, leading to the loss of 126 lives with 239 people injured. The media reported that as several groups were formed representing the cause of Nomags, it became difficult to know who was responsible for these 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, allegations which it never refuted. Several newspapers published a report based on an internal document of the NSA, which said that the NSA would strive towards eliminating the presence of non-Nomags in Losovo. Government authorities of Vanilia confirmed the forcible displacement of the Lemi People out of Losovo into neighbouring provinces of Vanilia, staying in temporary camps. Again, the NSA did not deny involvement in the displacement.

9. On 10 February 2009, a pro-Lemi TV channel reported that there would be the possibility of attacks on Lemi residences in Rizoba by NSA cadres. The same evening, Mr David Dabar went around the Pleasant Gardens locality along with NDRA cadres and ordered the latter to erect roadblocks preventing the free movement in to and out of the locality. He explained to the media that they wanted to check every movement through the locality in the interest of

Lemis. On the same night, NSA cadres went into the Pleasant Gardens locality who were allowed without any interruption by NDRA cadres guarding the roadblocks. The NSA cadres, dividing into groups, went to the residences and brought more than 400 Lemi residents to the main street in the locality. Some of the people refused to leave their houses and the NSA forced them to the street where others were gathered. The NSA cadres divided the residents into two groups: men in one group and women and children in another, who were told that they would be kept in two separate camps for their safety. After an hour, several trucks left the locality. These trucks were given free passage out of Pleasant Gardens by NDRA cadres. As the roadblocks were erected at the entry points to the locality, the media and others were not allowed in. The NDRA cadres said that they were not allowing any one to enter, to prevent any harm to Lemis at the hands of unruly elements. On 12 February, media reported that all 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 on technical grounds by Vanilia.

10. In response to the criticism on this incident, Mr Dabar informed the media that the NDRA's aim was to secede from Vanilia and was not to target Lemi civilians. He said that they had taken certain measures to isolate Lemi civilians across Losovo in order to protect them from some unorganised Nomag youths. He said, however, that the NDRA also expected Lemi civilians to appreciate the genuine demand of Nomags, otherwise it would become difficult in tense situations like this to control the emotionally stirred-up and politically agitated Nomags. He invited humanitarian organisations, including the International Committee of the Red Cross (ICRC) to visit these camps.

11. The Prime Minister of Vanilia, Mr 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 belonging to Lemi people. There were instances of weapon-wielding young men attacking Lemi people, and in different incidents 39 people were killed. In some instances, Lemi people were forced to leave their residence and flee to other provinces. Several groups claimed responsibility for at least some of those 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.

12. On 22 May 2009 at around midnight, a camp of the security forces on the outskirts of Rizoba city 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 from other parts of Losovo 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 that connect Losovo province with other cities in Vanilia were blocked by armed youths at Losovo borders.

13. On 28 May 2009, Mr David Dabar convened a press conference and informed those present that the NDRA would organise a rally the next day and declare the independence of Losovo. On 29 May 2009, thousands of people gathered at the Rizoba University grounds. Mr Dabar greeted the crowds and thanked them for being supportive of the cause of the liberation of Losovo. He announced that Losovo was now an independent sovereign country, with the total control of its internal and external matters. He said that from now on, the Losovo administration was going to be in the hands of Nomags and all Nomags in other parts of Vanilia were welcome to settle in Losovo as citizens, as the NDRA was worried about their

safety. In a tone of warning, he said that non-Nomag people could remain citizens of Losovo. However, he added, all, including Lemi people, should respect the new laws that were going to be adopted soon. He further said that as Nomags had inadequate representation in the past, they would be given preference in every sphere to correct the historical injustices. At the end of the meeting, in a surprise move, he introduced Mr Wilson Mula, and announced that Mr Mula would be leading the interim government for the next one year, until a new constitution was drafted and a constitutionally-elected government took over.

14. On 2 June 2009, Berryland recognised Losovo, followed by Mingolia on 4 June. In an extension of solidarity to a fellow ethnic group, the Berryland government waived the visa requirement for Losovo citizens for one year, which it said would help Losovo stabilise internally and externally. The Berryland Prime Minister also promised to extend necessary moral and material support to the newly formed Losovo government.

15. With regard to international relations, in his first press conference, Mr Mula announced that Losovo wished to maintain friendly relations with every country in the world and that it would succeed to all multilateral international treaties to which Vanilia was a party, that dealt with issues of disarmament, human rights and international crimes. With regard to treaties dealing with other issues it would review them and would come up with a list of treaties to which it would succeed within the next two years.

16. On 5 June 2009, the Prime Minister of Vanilia, Mr Nijimon Yavi said on national television that Losovo province was very much part of Vanilia and blamed neighbouring countries, principally Berryland, for interfering in the internal matters of Vanilia by supporting the NDRA and other groups, in violation of the UN Charter. He said that Vanilian security forces were in total control of the law and order situation in Losovo province, 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 cadres continued to be in direct confrontation with Vanilian forces on the borders between Losovo and other provinces of Vanilia. The NDRA successfully thwarted the Vanilian security forces' attempts to gain control within Losovo. Thus, it became difficult for Vanilian forces to reach Rizoba city. The Vanilia government called for international support and expressed concerns about the security of the people of Lemi ethnicity in Losovo province.

17. On 8 June 2009, a message was circulated among NDRA and NSA cadres that Vanilian forces were employing civilians to counter the NDRA's offensive. 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. During the night of 10 June, NDRA cadres patrolling Rizoba city went to the VPF secretariat office to check the premises. They found around 150 people, including a few women and children, sleeping in the rooms. NDRA cadres woke them up and enquired about their details. They replied that because of a continuing fear of attacks against them, they were coming to spend the night in the secretariat's premises. Doubting their explanation, NDRA cadres searched the premises and found 16 Vanilia-manufactured weapons in one of the rooms located at the back of the building. When questioned about the weapons, they said they knew nothing about them. Agitated NDRA cadres then separated the women and children, and took the men along with them. The Next morning Mr 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.

18. On 11 June 2009, the 'Losovo Messenger' daily published the details of 108 people who were taken into custody by NDRA cadres 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. In the same evening VPF members convened a press conference and introduced 12 members who were reported to have escaped from the hands of NDRA cadres. They informed the media that they were subjected to physical pain and that many of them had fallen unconscious. When journalists asked about others, they said they were doubtful whether they were still alive as the twelve had escaped only after they suspected that all taken away would be killed. In response to these allegations, the NDRA issued a written clarification that all those who were questioned on the 10 June night at the VPF secretariat were directly linked to Vanilian forces, who had secretly kept weapons in other rooms at the VPF secretariat. The clarification further said 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 did not refute the veracity of the details of civilians that were published by the Losovo Messenger nor did the NDRA clarify the whereabouts of those who were taken by them. On 22 June 2009, newspapers reported that human remains were found in the suburb, where there were evidences of human bodies having been buried. The family members of those who were taken by the NDRA on 10 June night later identified some clothes and a few items at the site as belonging to 15 of the men who had been taken by NDRA cadres from the VPF secretariat building.

19. In the laws week of June 2009, it was reported by the media that the camps, in which Lemi people, displaced on 10 February 2009 night, were kept, were removed and the people were allowed to go. However, it was further reported that they were not returning to Rizoba city, as the situation was unfavourable. 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. The United Nations Security Council, in its meeting on 10 July 2009, adopted a resolution directing all parties to the conflict to stop the use of force with immediate effect. The MEF further invited the Vanilian government and the NDRA to send delegations to New York to negotiate the issues. The Vanilian government expressed its willingness and nominated a ten-member delegation to New York. The NDRA also expressed its willingness to send a delegation provided that the issue of secession remained non-negotiable. In response, the MEF said that the agenda items that could be discussed would be decided only at the beginning of negotiations. Thus, the NDRA nominated its delegation headed by Mr William Tanatia, the Minister for Foreign Affairs of the interim government of Losovo.

20. Meanwhile, many international human rights groups had reported violations of international humanitarian law and other international law by both sides during the armed conflict, in the form of killing, torture, displacement of civilians, attacks on civilians and destruction of civilian property. At the instance of several complaints to his office, the prosecutor of the International Criminal Court (ICC) eventually initiated proceedings against several individuals from both sides of the conflict. For the purpose of the present case against Mr David Dabar, the prosecutor made the following charges:

I. For acts committed during the incidents that took place in Rizoba city on or about 10 February 2009, Mr 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.

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

21. 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 Mr David Dabar into custody from his residence in Rizoba on 5 August 2009 and surrendered him to the ICC.

22. Written and oral arguments on behalf of the Prosecution and Defence are to be confined to these two charges. Counsel for both sides are to make arguments with respect to the applicability of the charges and whether the "Elements of Crimes"(United Nations Doc. PCNICC/2000/1/Add.2 (2000), with relevant parts reproduced below) have been met for each of the two charges. Counsel are expected to bring to the Court's attention relevant jurisprudence and other documentation. Vanilia is a party to the Four Geneva Conventions of 1949 and two Protocols additional to the Geneva Conventions of 1977. Vanilia ratified the Statute of the International Criminal Court on 25 October 2006. Questions relating to jurisdiction may not be raised unless they are substantially linked to the merits of the case.

**Statute of the International Criminal Court
Elements of Crimes**

Article 7 (1) (d)

Crime against humanity of deportation or forcible transfer of population

Elements

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) (a) (i)

War crime of wilful killing

Elements

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.