



INTERNATIONALE
AKADEMIE
NÜRNBERGER
PRINZIPIEN

Nuremberg Moot Court
Moot Court Case 2014



Introduction

This is a fictional case before the International Criminal Court (ICC). Participating teams will represent Counsel for the Prosecution (1) and Defense Counsel (2) and should prepare written submissions and pleadings for the Pre-Trial Chamber hearings of the International Criminal Court for both parties, addressing all issues concerning jurisdiction of the Court and merits of the case.

- **Memorials must be sent to ianp@stadt-nurnberg.de by Wednesday, July 30, 2014.**
- **The oral rounds will be held on Friday, August 1, 2014, and Saturday, August 2, 2014.**

The Prosecutor v. Mr. Flaneli

Mr. Hail Flaneli was born in 1959 in Bua in the Republic of Flania (F). From 2007 to 2011, he worked as a freelance print and online journalist and blogger and earned a solid reputation as a talented newcomer in the journalistic circles of the city.

In 2011, Mr. Flaneli started his employment as a TV-journalist with the Flanian national TV station, the FRS, and hosted his own talk show 'Perspectives at 9', in which he discussed various political, social, and cultural aspects of Flanian society. His show on the state-controlled TV-station soon earned a large following, leading to his hosting more shows. He simultaneously continued his freelance career as a print journalist and often wrote op-ed pieces in prominent online publications. In February 2011, Mr. Flaneli was made director of FRS, and in this position he had complete control of both the creative and administrative policies and decisions of the station.

In April 2011, after the election of Mr. Kenelly, a member of the Fenian People's Party, to the Presidency, the Benian indigenous minority of the Flanian population began to protest against the elections. According to the Benians, systematic irregularities marred this election. Rumors had arisen that there were instances of electoral fraud after the first ballot count, and that many votes cast in favour of the presidential candidate of the Benian Freedom Movement (BFM) had not been counted. Demonstrations by members of the Benian population, protesting the violation of their rights to equitable treatment and political representation in the Parliament, led to massive riots. Benians have always been in the minority in Flania and in the neighbouring region of Malania. Subsequently, Benians, both from Flania and Malania, came together to protest actions by the government that they alleged suppressed their rights. The recently elected President of Flania, K, decided to authorize military force against the protests.

This was the beginning of the Flanian civil war, which raged from May 2011 to July 2013 and tragically claimed the lives of 75,000 people. A recent report from the United Nations High Commissioner for Human Rights concluded, inter alia, that there is evidence that under the government of President K, the military leadership of Flania created an "extermination and resettlement plan," with the objective of exterminating the indigenous Benian minority of the Flanian community, which constituted up to 25 percent of the population.

Mr. Flaneli, himself a Fenian and member of the FPP, became at this time (2011–2013) the Information Minister in the cabinet of President K. From that point on, he was one of the most influential members of the Flanian media and the Fenian community in general. As a popular figure in Flania, he opened his own Twitter account, which accumulated 500,000 followers within the Fenian community, and his own Facebook page, which received more than 1,000,000 "likes" from all over the world. His TV station regularly presented programs in which supposed social and cultural scholars accused the Benian minority population of being "uncultured and inferior."

These programs were uploaded frequently by Mr. Flaneli's personal social media assistant, Mr. Oballo, who had complete control over all social media accounts of Mr. Flaneli and made updates to the accounts, pursuant to his directions.



On his show, Mr. Flaneli served mainly as a moderator of the discussions, but he deliberately and specifically invited speakers and supposed experts who accused the Benian minority, for example, of being a terrorist group that aimed to “burn down the Republic of Flania” and claimed that they posed a dangerous threat to the “civilized values and way of life of the Fenian population.”

The producers of Mr. Flaneli’s show invented statistics and fabricated reports, most notably when the station and other government-controlled television channels reported that a group called the Benian Patriotic Movement had started attacking Fenians in cities, where Fenians were the majority population. Mr. Flaneli often supported and emphasized his guests’ controversial speeches on his TV show and made statements such as, “It would be best for the Flanian population if every single Benian would disappear and the whole population would vanish.”

During the course of the civil war, Mr. Flaneli wrote inflammatory and discriminatory posts for his Facebook Page, in which he made many false accusations and racist statements against Benians. Due to his following and his influence at the TV station, in Flanian society, and with the social media community, various reports determined that these inflammatory TV shows and social media posts contributed substantially to increasing ethnic tensions, and in some cases allegedly inspired and prompted certain specific attacks on the Benian population, especially in Bua, Mr. Flaneli’s home town, where more than 25,000 Benian people were killed by government forces on August 7–9, 2012. The world was shocked by the atrocities committed by the military forces of Flania and by the massive flow of Flanian refugees to all neighboring countries. The Security Council of the United Nations discussed a resolution authorizing measures against the then still ongoing civil war and the massive human rights violations committed in Flania, but one of the permanent members used his state’s veto power to prevent the adoption of a Chapter VII Resolution concerning the situation in Flania.

Before the massacre in Bua, there was active discussion in a forum on Mr. Flaneli’s Facebook page of “starting some action soon to make them disappear forever.” This occurred in one of the video posts of a very heated debate on Perspectives at 9 in which the most radical FPP members, who were active perpetrators in the civil war, took part.

Neither Mr. Flaneli himself nor his social media assistant deleted these commentaries or Mr. Flaneli’s latest Twitter post before the killing, which was “#letsfighttheenemy.”

After further meetings and discussions, the Security Council of the United Nations finally adopted Resolution 9876 (2013) under Chapter VII of the Charter of the United Nations, recognizing that genocide was taking place in Flania and, inter alia, referring the situation in Flania since April 2011 to the International Criminal Court (ICC) in The Hague, pursuant to Art. 13 b) of the Rome Statute.

A few months after intensive investigation by the prosecutor of the ICC, an arrest warrant was issued against Mr. Flaneli on January 7, 2014, by the competent pre-trial chamber according to ICC article 58 (1). In the arrest warrant the prosecutor considers that there are reasonable grounds to believe that Mr. Flaneli is criminally liable under Art. 25 III lit. e) and Art. 6 of the Rome Statute for the crime of genocide, and under Art. 25 III lit. b) and Art. 7 of the Rome Statute for crimes against humanity.

The Republic of Flania is not a member state of the Rome Statute. Flania’s national prosecution service decided to open investigations in the case of Mr. Flaneli in February 2014, indicting him for “violation of public order,” a crime punishable by a fine or deprivation of liberty of a maximum period of six months under the Flanian Penal Code. Since these



national investigations had already been conducted, the Republic of Flania refused the execution of the ICC arrest warrant, referring to the principle of complementarity according to Art. 17 (1) lit. a) of the ICC Statute. Furthermore, Flania declared that since it is not a member state of the Rome Statute, it has no obligation to cooperate with the ICC.

In a status conference, the competent Pre-Trial Chamber of the ICC decided to schedule a hearing under Art. 61 (2) of the Rome Statute. It has set a hearing date, August 1, 2014, and invited parties to prepare arguments. The prosecutor requests that the chamber confirm the charges against Mr. Flaneli under ICC Art. 6 and Art. 7 (1) of the Rome Statute.

Defense counsel argues that the ICC has no jurisdiction in this case. Furthermore, the defense argues that the prerequisites of genocide according to Art. 6 of the Rome Statute have not been met in this case and that Mr. Flaneli was not directly responsible for any crimes committed that constituted genocide or crimes against humanity, because he was at no time a member of the military forces.

**Established agenda for the
Pre-Trial Chamber's hearing**

The Pre-Trial Chamber seeks submission of all parties on the following issues:

- Whether jurisdiction of the ICC is limited because of Art. 17 (1) lit. a) of the Rome Statute or the fact that Flania has not ratified the Rome Statute
- Whether Mr. Flaneli is criminally liable for genocide and crimes against humanity under the ICC Statute