

IBA ICC MOOT COURT COMPETITION IN THE ENGLISH LANGUAGE  
GOVERNMENT COUNSEL

TEAM NUMBER: 12  
TOTAL WORD COUNT: 9093  
2023



Original: **English**

No. : **ICC -**

Date: **06 March 2023**

---

**THE APPEAL CHAMBER**

---

**Case before the International Criminal Court:**

***PROSECUTOR V. CORLIS VALERON OF THE REPUBLIC OF REGALE***

The Counsel for the State of Giskar's Submission in the Appeal from the Pre-Trial Chamber's  
Decision on Confirmation of Charges against Defendant  
Corlis Valeron of The Republic of Regale

**PUBLIC DOCUMENT**

---

**Source:** Counsel for the State of Giskar

---

**TABLE OF CONTENTS**

---

<b>TABLE OF CONTENTS.....</b>	<b>3</b>
<b>LIST OF ABBREVIATIONS .....</b>	<b>5</b>
<b>INDEX OF AUTHORITIES.....</b>	<b>6</b>
<b>STATEMENT OF FACTS.....</b>	<b>11</b>
<b>ISSUES.....</b>	<b>13</b>
<b>SUMMARY OF ARGUMENTS.....</b>	<b>14</b>
<b>WRITTEN ARGUMENTS .....</b>	<b>15</b>
<b>I. GISKAR’S ACCEPTANCE OF JURISDICTION CONCERNING INTERNATIONAL CRIMES COMMITTED IN THE GOLDEN LOWLANDS WAS VALID .....</b>	<b>15</b>
<b>A. Giskar may grant the ICC jurisdiction over a situation pre-dating its acceptance of jurisdiction under Article 12(3) of the Statute.....</b>	<b>15</b>
<i>a) The Article 12(3) declaration may have a retroactive effect on crimes committed on the territory of the country that accepts the jurisdiction of the ICC.....</i>	<b>15</b>
<i>b) The Golden Lowlands were a part of Giskar during the period of the commission of alleged crimes .....</i>	<b>16</b>
<i>c) Giskar’s full control over the Golden Lowlands territory is not required for the Court to exercise its jurisdiction .....</i>	<b>17</b>
<b>B. The declaration lodged under Article 12(3) complies with the principle of sovereignty and can be extended to separate territories .....</b>	<b>18</b>
<b>II. THE COURT HAS SUBJECT MATTER JURISDICTION IN THIS CASE UNDER ARTICLE 7(1)(K) OF THE ICC STATUTE.....</b>	<b>18</b>
<b>A. The perpetrator inflicted great suffering, or serious injury to the body or to mental or physical health, by means of an inhumane act .....</b>	<b>18</b>
<i>a) OBA, being an act of ecocide, was an inhumane act.....</i>	<b>18</b>
<i>b) Valeron has inflicted great suffering upon the population of the Golden Lowlands .....</i>	<b>19</b>
<i>c) Valeron has inflicted serious injury to mental health.....</i>	<b>19</b>
<i>d) Valeron has inflicted great injury to the body and to physical health .....</i>	<b>20</b>

<b>B. Such act was of a character similar to any other acts referred to in Article 7(1) of the Statute.....</b>	<b>21</b>
<i>a) Such act was of a similar nature to any other acts referred to in Article 7(1) of the Statute</i>	<b>21</b>
<i>b) Such act was of a similar gravity to any other acts referred to in Article 7(1) of the Statute</i>	<b>22</b>
<b>C. The conduct was committed as part of a widespread or systematic attack directed against a civilian population .....</b>	<b>23</b>
<i>a) There are substantial grounds to believe that OBA was an attack directed against the civilian population .....</i>	<b>23</b>
<i>b) The attack was committed in furtherance of an organisational and a state policy .....</i>	<b>24</b>
<i>c) There are substantial grounds to believe, that the attack was widespread and systematic ...</i>	<b>24</b>
<i>d) There is a nexus between the acts of the perpetrator and the attack.....</i>	<b>25</b>
<b>D. Valeron is individually criminally responsible under Article 25(3)(a) as a co-perpetrator for the crime under Article 7(1)(k) of the Statute .....</b>	<b>25</b>
<i>a) The perpetrator fulfilled the subjective elements of the crime .....</i>	<b>26</b>
<i>b) The accused fulfilled objective elements of the co-perpetrating .....</i>	<b>27</b>
<b>III. THERE IS SUFFICIENT AND LEGITIMATE EVIDENCE TO CONFIRM THE CHARGES AGAINST VALERON.....</b>	<b>29</b>
<b>A. IIM Report is admissible according to the Rules of the ICC .....</b>	<b>30</b>
<i>a) The Report is of high probative value .....</i>	<b>30</b>
<i>b) Admission of the Report does not cause any prejudice .....</i>	<b>32</b>
<b>B. Absence of corroboration does not diminish Report’s probative value.....</b>	<b>33</b>
<b>SUBMISSIONS .....</b>	<b>34</b>

---

## LIST OF ABBREVIATIONS

---

<b>CEO</b>	Chief Executive Officer
<b>i.e.</b>	id est ('in other words')
<b>ibid.</b>	ibidem ('in the same place')
<b>ICC, the Court</b>	International Criminal Court
<b>IHT</b>	Iraqi High Tribunal
<b>IIM</b>	International Investigative Mechanism
<b>OBA</b>	“Operation Bug Attack”
<b>OTP</b>	Office of the Prosecutor
<b>SCSL</b>	The Special Court for Sierra Leone
<b>UN</b>	United Nations
<b>UNGA</b>	General Assembly of the United Nations

---

## INDEX OF AUTHORITIES

---

### ICC DOCUMENTS

1. Rome Statute of the International Criminal Court (entered into force on 1 July 2002), [‘Statute’]
2. Republic of Côte d’Ivoire, Declaration dated 18 April 2003, ICC-02/11-01/11-129-Anx16, [‘Côte d’Ivoire Declaration’]
3. The Office of the Prosecutor, Report on Preliminary Examination Activities (2015), [‘OTP Report’]
4. The Office of the Prosecutor, Report on Preliminary Examination Activities (2016), [‘OTP Report 2016’]
5. The Office of the Prosecutor, Report on Preliminary Examination Activities (2017), [‘OTP Report 2017’]
6. The Office of the Prosecutor, Report on Preliminary Examination Activities (2018), [‘OTP Report 2018’]
7. The Office of the Prosecutor, Report on Preliminary Examination Activities (2019), [‘OTP Report 2019’]
8. The Office of the Prosecutor, Report on Preliminary Examination Activities (2020), [‘OTP Report 2020’]
9. Elements of Crimes (2 November 2000), PCNICC/2000/1/Add.2 [‘Elements of Crimes’]

### CASES

#### INTERNATIONAL CRIMINAL COURT

1. *Prosecutor v. Laurent Koudou Gbagbo*, (Decision on the Corrigendum of the challenge to the jurisdiction of the ICC on the basis of articles of the Statute) [2012], ICC-02/11-01/11
2. *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, (Decision on the confirmation of charges) [2008], ICC-01/04-01/07, [‘Katanga-I’]
3. *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, (Judgment pursuant to article 74 of the Statute) [2014], ICC-01/04-01/07, [‘Katanga-II’]
4. *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, (Decision on the Bar Table Motion of the Defence of Germain Katanga) [2011], ICC-01/04-01/07-3184, [‘Katanga-III’]
5. *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, (Decision on the Prosecutor’s Bar Table Motions) [2010], ICC-01/04-01/07, [‘Katanga-IV’]
6. *Prosecution v. Dominic Ongwen*, (Trial Judgment) [2021], ICC-02/04-01/15, [‘Ongwen’]

7. *Prosecutor v. Bemba*, (Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo) [2009] ICC-01/05-01/08-424, ['Bemba-I']
8. *Prosecutor v. Bemba*, (Decision on the admission into evidence of items deferred in the Chamber's "Decision on the Prosecution's Application for Admission of Materials into Evidence Pursuant to Article 64(9) of the Rome Statute") [2013], ICC-01/05-01/08-2299 ['Bemba-II']
9. *Prosecutor v. Bemba*, (Public redacted version of the First decision on the prosecution and defence requests for the admission of evidence) [2011], ICC-01/05-01/08-2012-Red, ['Bemba-III']
10. *Prosecutor v. Bemba*, (Judgment pursuant to Article 74 of the Statute) [2016], ICC-01/05-01/08, ['Bemba-IV']
11. *Prosecutor v. Ruto et al.*, (Decision on the Confirmation of Charges Pursuant to Art. 61(7)(a) and (b) of the Rome Statute) [2012], ICC-01/09-01/11, ['Ruto']
12. *The Prosecutor v. Bosco Ntaganda*, (Trial Judgment) [2019], ICC-01/04-02/06 ['Ntaganda']
13. *Prosecutor v Thomas Lubanga Dyilo*, (Decision on the confirmation of charges) [2007] ICC-01/04-01/06-803-tEN, ['Lubanga-I']
14. *Prosecutor v Thomas Lubanga Dyilo*, (Judgment on the Appeal of Mr. Thomas Lubanga Dyilo against his conviction, Appeal Chamber) [2014], ICC-01/04-01/06-3121-Red. ['Lubanga-II']
15. *The Prosecutor v. Thomas Lubanga Dyilo*, (Judgment pursuant to Article 74 of the Statute) [2012], ICC-01/04-01/06-2842, ['Lubanga-III']
16. *Prosecutor v. Thomas Lubanga Dyilo*, (Decision on the admissibility of four documents) [2008], ICC-01/04-01/06, ['Lubanga-IV']
17. *The Prosecutor v. Al Bashir*, (Decision on the Issuance of a Warrant of Arrest) [2009], ICC-02/05-01/09-3, ['Al Bashir']
18. *Prosecutor v. Al Hassan*, (Prosecution's second request for the admission of documentary evidence from the bar table) [2021], ICC-01/12-01/18, ['Al Hassan']
19. *Prosecutor v. Bosco Ntaganda*, (Decision on Admissibility of Evidence and Other Procedural Matters) [2014], ICC-01/04-02/06-308, ['Ntaganda']
20. *Prosecutor v. Bahr Idriss Abu Garda*, (Decision on the Confirmation of Charges) [2010], ICC-02/05-02/09, ['Bahr Idriss Abu Garda']
21. *Situation in Palestine*, (Decision on the Prosecution request in Palestine) [2021], ICC-01/18, ['Situation in Palestine']
22. *Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar*, (Decision on the Prosecution's Request) [2018], ICC-RoC46(3)-01/18-37, ['Situation in the People's Republic of Bangladesh']

23. *Situation in Georgia*, (Decision on the Prosecutor's request for authorization of an investigation) [2016], ICC-01/15, ['Situation in Georgia']

#### **INTERNATIONAL COURT OF JUSTICE**

1. International Court of Justice, Judgment of 18 November 1953, *Nottebohm case* (Liechtenstein v. Guatemala), ICJ Reports, 1953, ['Nottebohm']

#### **INTERNATIONAL CRIMINAL TRIBUNAL FOR FORMER YUGOSLAVIA**

1. *Prosecutor v. Dusko Tadic* (Decision on the defence motion for interlocutory appeal on jurisdiction) [1995], (IT-94-1), ['Tadic-I']
2. *Prosecution v. Duško Tadić*, (Trial Judgment) [1997], IT-94-1-T, ['Tadic-II']
3. *Prosecutor v. Kupreskic et al.*, (Trial Judgment) [2000], IT-95-16-T, ['Kupreskic']
4. *Prosecution v. Mucić et al. ("Čelebići")*, (Trial Judgment) [1998], IT-96-21-T, ['Čelebići']
5. *Prosecution v. Kordić & Čerkez*, (Trial Judgment) [2001], IT-95-14/2-T, ['Kordic']
6. *Prosecution v. Krstić*, (Trial Judgment) [2001], IT-98-33-T, ['Krstić']
7. *Prosecutor v. Jadranko Prlić*, (Trial Judgment) [2013] IT-04-74-T, ['Prlic']
8. *Prosecutor v Mrksic & Sljivancanin*, (Appeals Judgment) [2009], IT-95-13/1-A, ['Mrksic']
9. *Prosecutor v. Tihomir Blaškić*, (Trial Judgment) [2000], IT-95-14-T, ['Blaskic']
10. *Prosecutor v. Naletilić and Martinović*, (Trial Judgement) [2003], IT-98-34-T, ['Naletilic']
11. *Prosecutor v. Krnojelac*, (Trial Judgement) [2002], IT-97-25-T, ['Krnojelac']

#### **INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA**

1. *Prosecutor v. Athanase Seromba*, (Appeal Judgment) [2008], ICTR-2001-66-A, ['Seromba']
2. *Prosecutor v. Akayesu*, (Trial Judgment) [1998] ICTR-96-4-T, ['Akayesu']
3. *Prosecutor v. Bagilishema*, (Trial Judgment) [2001], ICTR-95-1A-T, ['Bagilishema']
4. *Prosecutor v. Alfred Musema*, (Judgement and Sentence) [2000], ICTR-96-13-T, ['Mesuma']
5. *Prosecutor v. Rutaganda*, (Judgement and Sentence) [1999], ICTR-96-3-T, ['Rutaganda'],
6. *Prosecutor v. Semanza*, (Trial Judgement) [2003], ICTR-97-20-T, ['Semanza']
7. *Prosecutor v. Nindiliyimana et al.*, (Appeal Judgment) [2014], ICTR-00-56, ['Nindiliyimana']
8. *Prosecutor v. Nizeyimana*, (Judgment and Sentence) [2012], ICTR-2000-55C-T, ['Nizeyimana']

#### **EXTRAORDINARY CHAMBER IN THE COURTS OF CAMBODIA**

1. *Prosecutor v. Nuon Chea and Khieu Samphan*, (Trial Judgment) [2007], 002/19-09-2007, ['Nuon']



## **MECHANISM FOR INTERNATIONAL CRIMINAL TRIBUNAL**

1. *Prosecutor v Seselj*, (Appeals Judgement) [2018], MICT-16-99-A, [‘Seselj’]

## **IRAQI HIGH TRIBUNAL**

1. *Judgment of the Dujail Trial at the Iraqi High Tribunal*, (Trial Judgment), [2006], 1/E First/2005, [‘IHT’]

## **SPECIAL COURT FOR SIERRA LEONE**

1. *Prosecution v. Brima et al.*, (Appeal Judgment) [2008], SCSL-2004-16-A, [‘Brima’]

## **UN DOCUMENTS**

1. UN, ‘*Global hunger numbers rose to as many as 828 million in 2021*’, Report <<https://www.who.int/news/item/06-07-2022-un-report--global-hunger-numbers-rose-to-as-many-as-828-million-in-2021>>
2. United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI [‘Charter’]
3. UNGA, Uniting for peace, 3 November 1950, A/RES/377, [‘Uniting for peace’]
4. UN Res 71/248 (21 December 2016) UN Doc A/RES/71/248, [‘Res 71/248’]
5. The Secretary-General, Note verbale dated 8 February 2017 from the Permanent Mission of the Russian Federation to the UN addressed to the Secretary General, UN Doc. A/71/793, 14 February 2017, [‘Note verbale’]

## **INTERNATIONAL TREATIES**

1. UN GA, International Covenant on Economic, Social and Cultural Rights, 1966, United Nations, [‘ICESCR’]

## **PUBLICATIONS**

### **BOOKS**

1. Triffterer and Ambos, ‘*The Rome Statute of the International Criminal Court: A Commentary*’ (C.H. Beck, Hart, Nomos, 2016), 3rd ed., 2378, [‘Triffterer’]
2. Schabas, ‘*The International Criminal Court: A Commentary on the Rome Statute*’ (Oxford University Press, Oxford, 2010), 2d edn., [‘Schabas’]
3. Gerhard and Florian, ‘*Principles of International Criminal Law*’, Oxford University Press, 2020, [‘Gerhard and Florian’]

### **ARTICLES**

1. Zimmermann, ‘*Palestine and the International Criminal Court Quo Vadis?: Reach and Limits of Declarations under Article 12(3)*’ (Journal of International Criminal Justice, 2013) Vol. 11, [‘Zimmertmann’]

2. Nakashidze, ‘*Uniting for Justice: Group Referrals to the International Criminal Court*’, OpinioJuris, 25 March 2022 <<https://opiniojuris.org/2022/03/25/uniting-for-justice-group-referrals-to-the-international-criminal-court/>>, [‘Nakashidze’]
3. Weinstein, ‘*Prosecuting attacks that destroy the environment: environmental crimes or humanitarian atrocities*’, Georgetown International Environmental Law Review, 17(4), 2005, pp. 697-722, [‘Weinstein’]
4. Nugent et. al, ‘*Research on the pathophysiology, treatment, and prevention of suicide: practical and ethical issues*’, BMC Psychiatry, 2019, [‘Nugent’]
5. Sours et al., ‘*Sudden death associated with very low calorie weight reduction regimens*’, The American Journal of Clinical Nutrition, 34(4), 1981, pp. 453-461, [‘Sours’]
6. Mehanna et. al., ‘*Refeeding syndrome – awareness, prevention and management*’, Head & Neck Oncology, 2009, [‘Mehanna’]
7. Roxin, ‘*Täterschaft und Tatherrschaft*’ (Berlin, New York, Walter de Gruyter 2000), [‘Roxin’]
8. Stahn, ‘*A Critical Introduction to International Criminal Law*’, Cambridge University Press, 2018, [‘Stahn’]
9. Whiting, ‘*An Investigation Mechanism for Syria*’, Journal of International Criminal Justice, 2017, 15(2), pp. 231-237, [‘Whiting’]

## **OTHERS**

1. Tomuschat et. al., ‘*Guatemala. Memory of silence*’, Report of the Commission for Historical Clarification, Conclusions and Recommendations, 1999.
2. ICC Pre-Trial Chamber III authorises the Prosecutor to launch an investigation in Côte d’Ivoire (October 2011), ICC-CPI-20111003-PR730 <<https://www.icc-cpi.int/news/icc-pre-trial-chamber-iii-authorises-prosecutor-launch-investigation-cote-divoire>>, [‘Côte d’Ivoire Investigation’]
3. Statement of ICC Prosecutor, Karim A.A. Khan QC, on the Situation in Ukraine: Receipt of Referrals from 39 States Parties and the Opening of an Investigation (March 2022), <<https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-qc-situation-ukraine-receipt-referrals-39-states>>, [‘Statement of ICC Prosecutor on Ukraine’]
4. Statement of ICC Prosecutor, Fatou Bensouda, on the conclusion of the preliminary examination of the Situation in Palestine, and seeking a ruling on the scope of the Court’s territorial jurisdiction (December 2019), <<https://www.icc-cpi.int/news/statement-icc-prosecutor-fatou-bensouda-conclusion-preliminary-examination-situation-palestine>> [‘Statement of the Prosecutor on Palestine’]

---

## STATEMENT OF FACTS

---

### **I. Background**

This case involves two States: the State of Giskar (“**Giskar**”), a developing State whose economy is based on mineral extraction, logging, fishing, and farming; and the Republic of Regale (“**Regale**”), an industrialized State whose largest industry is biotechnology research and production.

The territory where the alleged international criminal acts occurred - the Golden Lowlands, was a region of Giskar during the period of alleged crimes.

Neither State is a party to the Statute.

### **II. The Defendant**

Mr. Corlis Valeron (“**Valeron**”) is a national of Regale, who since 2012 has served as the CEO of Karaxis Corp (“**Karaxis**”). This biotechnology corporation is owned and controlled by Regale and it has been developing pest-resistant seeds/crops. Karaxis has also secretly been developing designer insects that are pesticide resistant but vulnerable to the plant toxins of its engineered seeds/crops. The corporation had not shared this biotechnology with farmers in Giskar before May 2021.

The Defendant is charged with the commission of crimes against humanity in the territory of Giskar concerning his role in the conception and implementation of OBA.

### **III. “Operation Bug Attack”**

According to the Defendant’s plan of OBA, from March 2019 to September 2020, employees of Karaxis conducted repeated aerial releases of bio-engineered bugs on the Giskar side of the Cascading River. The OBA had two main goals: first, to suppress farm output in the fertile Golden Lowlands and second, to induce the people of the Golden Lowlands to vote to secede from Giskar and join Regale, which had the technology to protect their farms from the insect scourge.

As a result, 65% of crops in the Golden Lowlands’ fields were destroyed, demolishing state’s the agro-based economy. Domestic food prices quadrupled, leading to 20,000 people in the region dying of starvation and 5,000 farmers have committed suicide. Furthermore, on a plebiscite held on 15 November 2020, the population of the Golden Lowlands overwhelmingly voted for secession from Giskar and entered into a Merger Agreement, joining Regale on 15 May 2021.

### **IV. The UN’s International Investigative Mechanism**

On 7 April 2022 as a response to committed crimes, Giskar requested the UN General Assembly Resolution under the Uniting for Peace authority to create the investigative mechanism.

On 9 April 2022, the UN General Assembly established the IIM to Assist in the Investigation and Prosecution of Persons Responsible for International Crimes Committed in Giskar by the Resolution.

On 20 April 2022, the IIM issued its first Report where it outlined the situation in Giskar, details of the OBA, and its consequences, as well as IIM's conclusions and recommendations.

#### **V. Resolution “On the recognition of the jurisdiction of the International Criminal Court by Giskar”**

On 10 April 2022, Giskar being a non-State Party to the Statute, submitted a declaration under Article 12(3) of the Statute to the ICC Registrar, accepting the Court's jurisdiction over alleged international crimes committed on its territory, including the Golden Lowlands, since 1 March 2019.

#### **VI. Procedural History**

The next day after IMM issued its first report, 38 States Parties to the Statute requested the ICC Prosecutor to open an investigation into crimes committed by Valeron and other nationals of Regale in the territory of Giskar since March 2019. The Prosecutor requested confirmation of charges against Valeron for committing international crimes.

The Pre-Trial Chamber based on submissions approved the Prosecution's request under Article 15(4) of the Rome Statute to open an investigation into Valeron's involvement in international crimes that have taken place in Giskar since 1 March 2019. During the hearing of the case, Defence Counsel filed a motion in opposition to the confirmation of charges. The Pre-Trial Chamber ruled in favour of the Prosecutor, confirming the charges against Valeron.

However, the Defendant, not agreeing with the decision, filed an appeal.

---

## ISSUES

---

- ( I ) -

Whether the Pre-Trial Chamber erred in holding that the State of Giskar's acceptance of jurisdiction concerning international crimes committed in the region of the Golden Lowlands was valid given that the territory was no longer part of Giskar at the time it lodged its Article 12(3) declaration with the Registrar?

- ( II ) -

Whether the Pre-Trial Chamber erred in holding that it had subject matter jurisdiction in this case under Article 7(1)(k) of the ICC Statute?

- ( III ) -

Whether the Pre-Trial Chamber erred in holding that there was sufficient evidence to confirm charges against Corlis Valeron based solely on the 6 April 2022 Report of the International Investigative Commission whose legitimacy has been challenged by the UN Under-Secretary-General for Legal Affairs?

---

## SUMMARY OF ARGUMENTS

---

- I. Giskar's acceptance of jurisdiction concerning international crimes committed in the Golden Lowlands was valid**
1. Giskar's acceptance of jurisdiction of the Statute concerning international crimes committed in the region of the Golden Lowlands was valid, since the region was a part of Giskar during the period of crime commission and Article 12(3) of the Rome Statute may have a retroactive effect on crimes committed in the territory of the accepting country. In addition, Giskar does not have to have complete full control over the Golden Lowlands territory when submitting a declaration.
  2. The declaration lodged under Article 12(3) complies with the principle of sovereignty and can be extended to separate territories as the Court does not rule on territorial issues.
- II. The Court has subject matter jurisdiction in this case under Article 7(1)(k) of the Rome Statute**
1. The acts of Valeron were inhumane. Said acts inflicted serious suffering, and injury to the body, physical and mental of the civilian population. The conduct resulted in 25000 victims and the destruction of Golden Lowlands' agro-based economy.
  2. The acts were of similar character to those enumerated in Article 7(1) of the Statute in terms of nature and gravity and had a distinct element not reflected in Article 7(1).
  3. The OBA, resulting in a large number of victims, was a widespread and systematic attack directed against the civilian population conducted in furtherance of a State or an organizational policy. The acts of the accused were objectively part of the attack by nature and by consequences.
  4. Valeron had the required *mens rea* for the underlying crime, as he was aware of OBA, its nature, and his acts being part of the attack. As a central figure in designing OBA and CEO of Caraxis, he possessed *dolus directus* of the second degree.
  5. The Defendant is a co-perpetrator under Article 25(3)(a) of the Statute as he acted within the framework of a common plan and knew that this plan included an element of criminality. Valeron essentially contributed to this common plan by virtue of designing and implementing OBA.
- III. There is sufficient and legitimate evidence to confirm the charges against Valeron**
1. The evidence provided is admissible since the criteria set in Article 69(4) of the Rome Statute are met. The report is highly relevant, and has enough probative value being reliable and legitimate, and not causing a prejudicial effect.
  2. The evidence is sufficient and does not require corroboration, as it can solely establish substantial grounds for the confirmation of charges against Valeron.

---

## WRITTEN ARGUMENTS

---

### I. GISKAR'S ACCEPTANCE OF JURISDICTION CONCERNING INTERNATIONAL CRIMES COMMITTED IN THE GOLDEN LOWLANDS WAS VALID

Giskar submits that the ICC can exercise its jurisdiction in the territory of the Golden Lowlands concerning international crimes committed by Valeron since (A) Giskar may grant the ICC jurisdiction over a situation pre-dating its acceptance of jurisdiction under Article 12(3) of the Statute and (B) the declaration under Article 12(3) complies with the principle of sovereignty and can be extended to separate territories.

#### A. Giskar may grant the ICC jurisdiction over a situation pre-dating its acceptance of jurisdiction under Article 12(3) of the Statute

Under Article 12(3), the State may consent to the Court's exercise of jurisdiction by submitting a declaration to the Registrar.<sup>1</sup> In the present case, Giskar submits that (a) the Article 12(3) declaration may have a retroactive effect on crimes committed in the territory of the country that accepts the jurisdiction of the ICC, (b) the Golden Lowlands were a part of Giskar during the period of the commission of alleged crimes and (c) Giskar does not have to have complete control over the Golden Lowlands territory when submitting a declaration.

##### a) *The Article 12(3) declaration may have a retroactive effect on crimes committed on the territory of the country that accepts the jurisdiction of the ICC*

States have a certain discretion in specifying a starting date or a specific period since when or during which the Court will have jurisdiction over alleged crimes.<sup>2</sup> Generally, the ICC may exercise its jurisdiction over crimes perpetrated after the Statute has entered into force for a particular State.<sup>3</sup> However, Article 12(3) declarations may have both a prospective and retroactive application.<sup>4</sup>

Cote d'Ivoire<sup>5</sup>, Ukraine<sup>6</sup> and Palestine<sup>7</sup> have used Article 12(3) declarations for triggering the Court's jurisdiction, in some cases - retroactively. For instance, based on Ukraine's declarations,<sup>8</sup> the ICC

---

<sup>1</sup> Rome Statute of the International Criminal Court (entered into force on 1 July 2002), ISBN No 92-9227-227-6, Article 12, para. 3 ['Statute']

<sup>2</sup> *Prosecutor v. Laurent Koudou Gbagbo* (Decision on the Corrigendum of the challenge to the jurisdiction of the ICC on the basis of articles of the Statute) [2012], ICC-02/11-01/11, para. 59; O. Triffterer and K. Ambos, *The Rome Statute of the International Criminal Court: A Commentary* (C.H. Beck, Hart, Nomos, 2016), 3rd ed., 2378, p. 686 ['Triffterer']

<sup>3</sup> Statute, Art. 11(2)

<sup>4</sup> *Ibid.*; Triffterer, p. 686; A. Zimmermann, '*Palestine and the International Criminal Court Quo Vadis*': *Reach and Limits of Declarations under Article 12(3)*' (Journal of International Criminal Justice, 2013) Vol. 11, p. 311

<sup>5</sup> Republic of Côte d'Ivoire, Declaration dated 18 April 2003, ICC-02/11-01/11-129-Anx16

<sup>6</sup> The Office of the Prosecutor, Report on Preliminary Examination Activities (2015), para. 76-79 ['OTP Report']

<sup>7</sup> *Situation in Palestine* (Decision on the Prosecution request in Palestine) [2021], ICC-01/18, para. 1 ['Situation in Palestine']

<sup>8</sup> OTP Report (2016), para. 149

opened an investigation into alleged crimes committed on its territory, covering within its scope any past (since 21 November 2014) or present allegations of international crimes.<sup>9</sup>

Equivalently, after Côte d'Ivoire submitted the declaration, ICC granted the Prosecutor's request to open an investigation in the situation in the state.<sup>10</sup> And in 2019 the Prosecutor also established a reasonable basis to proceed with an investigation into the situation in Palestine.<sup>11</sup>

Similarly, using the discretion regarding the time frame and requesting to investigate the crimes predating the declaration, Giskar filed a declaration. This action was in line with the ICC practice in Ukraine, Cote d'Ivoire and Palestine whose Article 12(3) declarations also addressed crimes committed before their adoption.

***b) The Golden Lowlands were a part of Giskar during the period of the commission of alleged crimes***

Since Article 12(3) declarations may be retroactive,<sup>12</sup> the Court may consider the situation when the Golden Lowlands were part of Giskar.<sup>13</sup> According to the principle of *la compétence de la compétence*, “judicial body [...] retains the power and the duty to determine the boundaries of its jurisdiction”.<sup>14</sup> In this way, the ICC is equally empowered to determine the limits of its jurisdiction<sup>15</sup> “in the absence of any agreement to the contrary”.<sup>16</sup>

For example, despite the disputed status of the Palestinian territory, Palestinian Authority empowered the ICC to exercise jurisdiction over “acts committed on the territory of Palestine since 1 July 2002”.<sup>17</sup> In the situation of Ukraine, despite the existence of the so-called “*Treaty on the Adoption of the Republic of Crimea into Russia*” between the de-facto Crimean authorities and Russia, the ICC will be able to investigate crimes on the territory of Crimea.<sup>18</sup> In its annual preliminary examination

---

<sup>9</sup> Statement of ICC Prosecutor, Karim A.A. Khan QC, on the Situation in Ukraine: Receipt of Referrals from 39 States Parties and the Opening of an Investigation (March 2022), <<https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-qc-situation-ukraine-receipt-referrals-39-states>> [‘Statement of ICC Prosecutor on Ukraine’]

<sup>10</sup> ICC Pre-Trial Chamber III authorises the Prosecutor to launch an investigation in Côte d'Ivoire (October 2011), ICC-CPI-20111003-PR730 <<https://www.icc-cpi.int/news/icc-pre-trial-chamber-iii-authorises-prosecutor-launch-investigation-cote-divoire>>

<sup>11</sup> Statement of ICC Prosecutor, Fatou Bensouda, on the conclusion of the preliminary examination of the Situation in Palestine, and seeking a ruling on the scope of the Court's territorial jurisdiction (December 2019), <<https://www.icc-cpi.int/news/statement-icc-prosecutor-fatou-bensouda-conclusion-preliminary-examination-situation-palestine>>

<sup>12</sup> Triffterer, p. 686

<sup>13</sup> Competition Case, para. 12

<sup>14</sup> *Situation in Uganda* (Decision on the Prosecutor's Application) [2006], ICC-02/04-01/05, para. 22 [‘Situation in Uganda’]

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.; International Court of Justice, Judgment of 18 November 1953, Nottebohm case (*Liechtenstein v. Guatemala*), ICJ Reports, 1953, p. 119; *Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar* (Decision on the Prosecutor's Request) [2018], ICC-RoC46(3)-01/18-37, para. 33

<sup>17</sup> *Situation in Palestine*, para. 131

<sup>18</sup> Statement of ICC Prosecutor on Ukraine



reports issued even before Russia's 2022 invasion of Ukraine, the ICC Prosecutor analysed alleged crimes perpetrated in occupied Crimea.<sup>19</sup>

Even though the Parliament of Giskar adopted a Resolution on the recognition of the jurisdiction of the ICC after the Golden Lowlands entered into a Merger Agreement, joining Regale,<sup>20</sup> this does not affect the Court's jurisdiction. Moreover, Giskar's position was supported by the UN General Assembly, and in a joint referral 38 States Parties to the ICC Statute requested the Prosecutor to open an investigation.<sup>21</sup> States Parties' joint ICC referral confirmed that they see the Golden Lowlands' devastation as such exceptional circumstance and consider the Lowlands to be part of Giskar's territory for jurisdictional purposes.

Thus, for the purposes of the Court's jurisdiction under Article 12(3), the Golden Lowlands shall be considered a part of Giskar at the time of the commission of alleged crimes.

***c) Giskar's full control over the Golden Lowlands territory is not required for the Court to exercise its jurisdiction***

The territorial jurisdiction of the ICC conferred upon accepting under Article 12(3) can be extended to the separate territories where the accepting State does not currently exercise full control as "*undisputed territorial borders are not required for the Court to exercise its jurisdiction*".<sup>22</sup>

As evident from the *Situation in Georgia*,<sup>23</sup> the ICC can exercise its jurisdiction over the territory of a State-Party without its full control over it.<sup>24</sup> Similarly, according to Prof. Schabas, the ICC has jurisdiction over Northern Cyprus, even though Turkey has occupied it since 1974.<sup>25</sup> In this way, the Court's territorial jurisdiction is not restricted to areas over which the state currently exercises control.<sup>26</sup>

Conclusively, the ICC can extend its jurisdiction to the territory of the Golden Lowlands despite it being controlled by Regal.<sup>27</sup>

---

<sup>19</sup> OTP Reports (2016-2021)

<sup>20</sup> Competition case, para. 7

<sup>21</sup> Competition case, para. 5

<sup>22</sup> *Situation in Georgia*, (Decision on the Prosecutor's request for authorization of an investigation) [2016], ICC-01/15, para. 6 ['Situation in Georgia']

<sup>23</sup> *Situation in Georgia*, para. 6

<sup>24</sup> *Situation in Georgia*, para. 6, 191

<sup>25</sup> William A. Schabas, *The International Criminal Court: A Commentary on the Rome Statute* (Oxford University Press, Oxford, 2010), 2d edn., 1589, p. 285 ['Schabas']

<sup>26</sup> Schabas, p. 285

<sup>27</sup> Competition Case, para. 7

**B. The declaration lodged under Article 12(3) complies with the principle of sovereignty and can be extended to separate territories**

The ICC, exercising its jurisdiction solely over natural persons, is not a court that has the power to determine inter-state border disputes.<sup>28</sup> In the *Situation in Palestine*, the ICC found that its territorial jurisdiction also extends to the territories occupied by Israel<sup>29</sup> while its decision “*does not entail any determination on the border disputes*”.<sup>30</sup>

Comparably to the Palestinian example, at hand the Court is not expected to rule on territorial disputes, yet to convict those who committed possible atrocities on this territory. Consequently, Giskar’s declaration does not violate the territorial sovereignty of Regale.

**II. THE COURT HAS SUBJECT MATTER JURISDICTION IN THIS CASE UNDER ARTICLE 7(1)(K) OF THE ICC STATUTE**

Giskar submits that the Pre-Trial Chamber did not err in holding that it had subject matter jurisdiction in this case under Article 7(1)(k) of the Statute. There is sufficient evidence to establish substantial grounds to believe that the perpetrator committed the crime charged, as required by Article 61(5) of the Rome Statute.<sup>31</sup>

The Court has jurisdiction over the case of Valeron, as **(A)** the perpetrator inflicted great suffering, or serious injury to the body or mental or physical health, by means of an inhumane act; **(B)** the acts of the perpetrator were of a character similar to other acts referred to in Article 7(1); **(C)** the conduct was committed as part of a widespread or systematic attack directed against the civilian population; **(D)** Valeron is individually criminally responsible as a co-perpetrator.

**A. The perpetrator inflicted great suffering, or serious injury to the body or to mental or physical health, by means of an inhumane act**

Giskar submits that the perpetrator has committed **(a)** an inhumane act that **(b)** inflicted great suffering and **(c)** serious injury to mental health and **(d)** body and physical health of the population of GL.

**a) OBA, being an act of ecocide, was an inhumane act**

Giskar states, that OBA, being a crime of ecocide, was an inhumane act.

An ‘inhumane act’ is an act of serious violation of customary international law and the basic rights pertaining to human beings, drawn from the norms of international human rights law.<sup>32</sup> The overall

---

<sup>28</sup> *Situation in Palestine*, para. 59

<sup>29</sup> OTP Report (2020), para. 220

<sup>30</sup> *Situation in Palestine*, para. 60

<sup>31</sup> Statute, Art. 61(5)

<sup>32</sup> *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, (Decision on the confirmation of charges) [2008], ICC-01/04-01/07, para. 448 [‘Katanga-I’]

consequences of the act must offend humanity in such a way that they may be termed “inhumane”.<sup>33</sup> The conduct which led to environmental destruction could be considered a crime against humanity because of its humanitarian consequences.<sup>34</sup>

In the present case, the overall situation in the Golden Lowlands could be considered a humanitarian disaster, as 65% of crops were destroyed, 20000 people died of hunger, 5000 committed suicides, the agro-based economy of the region<sup>35</sup> farming industry collapsed to the point that the central government of Giskar was unable to provide support,<sup>36</sup> and domestic food prices quadrupled.<sup>37</sup>

Hence, an act that has led to consequences of such magnitude is inhumane.

***b) Valeron has inflicted great suffering upon the population of the Golden Lowlands***

Giskar states that the perpetrator has inflicted great suffering upon the people of the Golden Lowlands.

The definition of suffering can be drawn from the war crime of wilfully causing great suffering under Article 8(2)(iii).<sup>38</sup> The term ‘great’ is defined as “*much above average in size, amount or intensity*”.<sup>39</sup>

In the present case, the destruction of crops in the Golden Lowlands has caused food shortages of more than 65% which led to widespread hunger, resulting in over 25 thousand people dead<sup>40</sup> and evidently, even more people suffering from the condition inflicted.

Therefore, the perpetrator has inflicted great suffering upon the people of the Golden Lowlands.

***c) Valeron has inflicted serious injury to mental health***

Damage to mental health can be defined as severe damage to the mental integrity of a person.<sup>41</sup> Such harm includes “*more than minor or temporary impairment of mental faculties such as the infliction of strong fear or terror, intimidation or threat*”.<sup>42</sup>

In view of Giskar, the suicide of victims shall be viewed as “more than minor impairment of mental faculties” and not as random occurrences. Economic desperation is recognized as a frequent cause of

---

<sup>33</sup> *Prosecutor v. Kupreskic et al.* (Trial Judgment) [2000], IT-95-16-T, para 622 [‘Kupreskic’]

<sup>34</sup> Weinstein, ‘*Prosecuting attacks that destroy the environment: environmental crimes or humanitarian atrocities*’, *Georgetown International Environmental Law Review*, Volume 17, Issue 4, 2005, pp. 697-722, p. 720

<sup>35</sup> Competition case, paras. 7

<sup>36</sup> Competition case, Annex III, para. 6-7

<sup>37</sup> Competition case, para. 7; Annex III, para. 6

<sup>38</sup> Triffterer, p. 240

<sup>39</sup> *Prosecution v. Mucić et al. (“Čelebići”)*, (Trial Judgment) [1998], IT-96-21-T, para. 510 [‘Čelebići’]

<sup>40</sup> Competition case, para. 7

<sup>41</sup> *Prosecution v. Duško Tadić*, (Trial Judgment) [1997], IT-94-1-T, para. 729, [‘Tadic’]

<sup>42</sup> *Prosecutor v. Athanase Seromba*, (Appeal Judgment) [2008], ICTR-2001-66-A, para. 46

suicide.<sup>43</sup> Moreover, strict austerity measures along with rising unemployment contribute to an increase in suicide rates.<sup>44</sup>

Giskar submits that the people of Golden Lowlands have suffered a serious injury to mental integrity, as 5000 farmers have committed suicide.<sup>45</sup> If one is to assess the situation of economic desperation and the absence of food, it can be established, that the suicide of the victims has a clear nexus with the conduct committed by Valeron and are not just a random occurrence, as farmers have suffered the greater damage, because of the agricultural nature of the region.<sup>46</sup>

Hence, Giskar states that the perpetrator has caused serious injury to mental health of the civilian population of Golden Lowlands.

***d) Valeron has inflicted great injury to the body and to physical health***

Giskar states, that the perpetrator has caused serious injury to the body and to physical health.

When ascertaining the meaning of the term ‘great’, the ad hoc tribunals looked to the plain ordinary meaning of the word<sup>47</sup> as “not slight or negligible”.<sup>48</sup>

The existence of injury to body and health of the person must be established on a case-by-case basis and is defined by these elements: the victim must have suffered serious bodily or mental harm; the injury was a result of an act by the perpetrator or his subordinates; the offenders were motivated to cause the injury.<sup>49</sup> Additionally, while there is no requirement for the harm caused to be permanent or irremediable, it must result in grave and long-term disadvantages to a person’s ability to lead a normal and constructive life<sup>50</sup> and involve harm that goes beyond temporary unhappiness, embarrassment, or humiliation.<sup>51</sup>

The reversible and irreversible harm of involuntary ecocide-induced hunger can be described as a grave and long-term disadvantage to a person’s ability to lead a normal and constructive life. Starvation may lead to irreversible harm to one’s body or even sudden death, while in a controlled

---

<sup>43</sup> Nugent et. al, *Research on the pathophysiology, treatment, and prevention of suicide: practical and ethical issues*, BMC Psychiatry, 2019, p.3 [‘Nugent’]

<sup>44</sup> Ibid.

<sup>45</sup> Competition case, para. 7

<sup>46</sup> Ibid.

<sup>47</sup> *Čelebići*, para. 510

<sup>48</sup> Ibid.

<sup>49</sup> *Prosecution v. Kordić & Čerkez*, (Trial Judgment) [2001], IT-95-14/2-T, para. 271

<sup>50</sup> *Prosecution v. Krstić*, (Trial Judgment) [2001], IT-98-33-T, para. 513; *Prosecutor v. Akayesu*, (Trial Judgment) [1998] ICTR-96-4-T para. 502

<sup>51</sup> *Krstić*, para. 513

environment of dieting.<sup>52</sup> Furthermore, even if hunger does not cause immediate harm *per se*, in the ordinary course of events victims require prolonged medical treatment.<sup>53</sup>

As to the severity of harm, in the present case, OBA has caused irreversible harm as the destruction of nature has caused a myriad of different social and economic consequences, specifically hunger, that lead to starvation and the eventual death of victims.<sup>54</sup> The Defence might argue that the goal of OBA was to induce the population of the Golden Lowlands to secede from Giskar,<sup>55</sup> yet the Prosecution argues its main objective was to significantly suppress farm output in Golden Lowlands<sup>56</sup> making the induction of hunger by ecocide one of the main goals of the operation.

Hence, Giskar states that the perpetrator has caused serious injury to the body and to physical health of the civilian population of Golden Lowlands.

**B. Such act was of a character similar to any other acts referred to in Article 7(1) of the Statute**

To be held accountable for the crime of other inhumane acts, the act of the perpetrator must be of a similar character to any other acts referred to in Article 7(1) of the Rome Statute.<sup>57</sup> The similarity in character refers to the similarity in (a) nature or (b) gravity.<sup>58</sup>

Holding the defendant liable for ecocide does not violate the *nullum crimen sine lege* principle, as ‘other inhumane acts’ were accepted as a residual category of crimes against humanity under customary international law.<sup>59</sup> There is no requirement for ecocide to be recognised as a specific category of crimes against humanity or even as a specific kind of underlying conduct falling within the category of other inhumane acts.<sup>60</sup>

Giskar argues that ecocide is not identical but is nonetheless ‘similar’ in terms of nature and gravity, to crimes enumerated in Art. 7(1)(a)-(j).

**a) Such act was of a similar nature to any other acts referred to in Article 7(1) of the Statute**

The Chamber can confirm charges under Article 7(1)(k) if the perpetrator inflicts great suffering, or serious injury, by that are not identical, but ‘similar’ to crimes enumerated in Article 7(1).<sup>61</sup> It should

---

<sup>52</sup> Sours et al., ‘Sudden death associated with very low calorie weight reduction regimens’, (The American Journal of Clinical Nutrition), Vol. 34, Issue 4, 1981, pp. 453-461, p. 456

<sup>53</sup> Mehanna et. al., ‘Refeeding syndrome – awareness, prevention and management’, Head & Neck Oncology, 2009, p.2

<sup>54</sup> Competition case, para. 7

<sup>55</sup> Ibid.

<sup>56</sup> Competition case, Annex III, para 6

<sup>57</sup> EoC, 7(1)(k)(2)

<sup>58</sup> Ibid.

<sup>59</sup> *Prosecutor v. Nuon Chea and Khieu Samphan*, (Trial Judgment) [2007], 002/19-09-2007, para. 723. [‘Nuon’]

<sup>60</sup> *Nuon*, para. 741

<sup>61</sup> *Prosecution v. Dominic Ongwen* (Trial Judgment) [2021], ICC-02/04-01/15, para. 2741 [‘Ongwen’]

have at least one materially distinct element that is not reflected in other acts under paragraph 1.<sup>62</sup>

The destruction of crops in some circumstances can constitute a crime of extermination as such destruction can be aimed at inflicting conditions of life calculated to bring about the destruction of part of a population.<sup>63</sup> Nonetheless, ecocide is similar to the crime of extermination in form of deprivation of access to food. At the same time, it has a distinct element, which is not reflected in paragraph 1, namely the consequences of the act, which additionally disrupt the livelihood of the population. Ecocide covers not only the death of the population but also the suffering from ecological destruction.

Using the logic accepted in the SCSL,<sup>64</sup> ecocide cannot be seen exclusively or primarily as a crime of extermination, as people have suffered not only the harm of deprivation of food but also a constellation of other human rights violations, in addition to the consequences of the conduct:<sup>65</sup> deprivation of one's means of subsistence,<sup>66</sup> the right to continuous improvement of one's life,<sup>67</sup> and the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.<sup>68</sup>

Prosecution states, that ecocide not only gravely violates the right to food but also the right to the improvement of living conditions and development. While the bugs have destroyed the crops of the Golden Lowlands, additional harm was done due to the inability of the region to sustain itself economically. The prices in Giskar went up dramatically because of food shortages, unemployment, and the collapse of the agriculturally based economy,<sup>69</sup> making the population unable to sustain their living conditions.

Thus, Giskar states that ecocide is similar in terms of nature to the crime of extermination while having a distinct element, making it a distinct type of conduct under Article 7(1)(k).

***b) Such act was of a similar gravity to any other acts referred to in Article 7(1) of the Statute***

The gravity of the conduct is assessed on a case-by-case basis.<sup>70</sup> The personal circumstances of the

---

<sup>62</sup> Triffterer, p. 237

<sup>63</sup> Statute, Art. 7(2)(b); Triffterer, p. 510; Tomuschat et. al., Report of the Commission for Historical Clarification, Conclusions and Recommendations, 'Guatemala. Memory of silence', 1999, paras. 116, 118.

<sup>64</sup> *Prosecution v. Brima et al.* (Appeal Judgment) [2008], SCSL-2004-16-A, paras. 190-193, 199-200.

<sup>65</sup> Competition case, para. 7

<sup>66</sup> UNGA, *International Covenant on Economic, Social and Cultural Rights*, 1966, United Nations, Art. 1(2) ['ICESCR']

<sup>67</sup> ICESCR Art. 11(2)

<sup>68</sup> ICESCR Art. 12(1)

<sup>69</sup> Competition case, para. 7

<sup>70</sup> *Prosecutor v. Bagilishema*, (Trial Judgment) [2001], ICTR-95-1A-T, para. 92

victim, as well as the impact of the act upon the victim, must be accounted for.<sup>71</sup>

The acts at hand resulted in 25000 victims dead<sup>72</sup> and even more suffering from hunger. Giskar argues that unprovoked and ill-intended conduct that has led to the death and suffering of the civilian population by destroying the main means of survival<sup>73</sup> of that population had a massive negative impact on every side of their day-to-day life.

Thus, Giskar submits that ecocide is similar in terms of gravity to those crimes enumerated in Article 7(1)(a)-(j).

**C. The conduct was committed as part of a widespread or systematic attack directed against a civilian population**

Giskar submits, that (a) OBA was an attack directed against the civilian population; (b) the attack was carried out pursuant to organizational policy; (c) the attack was widespread and systematic; (d) there was a nexus between the actions of the perpetrator and the attack.

**a) *There are substantial grounds to believe that OBA was an attack directed against the civilian population***

According to Article 7(2)(a) of the Rome Statute, an “*attack directed against any civilian population*” means a course of conduct involving the multiple commission of acts referred to in paragraph 1.<sup>74</sup> As it has been established in the ad hoc tribunals, an attack may also be non-violent in nature by exerting pressure on the population to act in a particular manner.<sup>75</sup> Moreover, the civilian population must constitute the primary target<sup>76</sup> and not just an incidental victim of the attack.<sup>77</sup> Additionally, there is no requirement for civilians to be the sole target of the crimes.<sup>78</sup>

In the present case, Karaxis personnel conducted repeated aerial releases of bio-engineered bugs,<sup>79</sup> making the OBA a repeated course of conduct referred to in Article 7(1)(k).

The main objective of the attack was to significantly suppress farm output in the fertile Golden Lowlands and to induce the people of the region to vote to secede from Giskar,<sup>80</sup> making the civilian

---

<sup>71</sup> *Nuon*, para 438.

<sup>72</sup> Competition case, para. 7

<sup>73</sup> *Ibid.*

<sup>74</sup> Statute, 7(2)(a).

<sup>75</sup> *Prosecutor v. Alfred Musema* (Judgement and Sentence) [2000], ICTR-96-13-T, para. 205; *Prosecutor v. Rutaganda*, (Judgement and Sentence) [1999], ICTR-96-3-T para. 70

<sup>76</sup> *Prosecutor v. Jadranko Prlić*, (Trial Judgment) [2013], IT-04-74-T, para. 36 [‘Prlic’]

<sup>77</sup> *Prosecutor v. Bemba* (Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo) [2009], ICC-01/05-01/08-424 para. 76 [‘Bemba-I’]

<sup>78</sup> *Prosecutor v Mrksic & Sljivancanin*, (Appeals Judgment) [2009], IT-95-13/1-A, para. 28

<sup>79</sup> Competition case, para. 7

<sup>80</sup> *Ibid.*

population not the sole, but the main target of attack. The death and suffering of the population were consequently inevitable.<sup>81</sup>

Therefore, there are substantial grounds to believe that the OBA was an attack directed against the civilian population.

***b) The attack was committed in furtherance of an organisational and a state policy***

The attack, within the meaning of Article 7(2)(a) of the Statute, requires active conduct from the entity behind the policy without necessarily amounting to extensive or repeated activity, but sufficiently triggering and directing the attack.<sup>82</sup> An attack that is ‘planned, directed, organised’, as opposed to ‘spontaneous or isolated acts’, satisfies the policy requirement.<sup>83</sup> Importantly, ‘organizational’ refers not only to State or quasi-State entities, but also to “*a private entity consisting of a group of persons pursuing the objective of attacking a civilian population*”.<sup>84</sup>

In the present case, Karaxis, being a state company,<sup>85</sup> had resources available to them to plan, direct and organise the attack. Moreover, the OBA was not a spontaneous act, but a meticulously thought-through operation.<sup>86</sup>

Therefore, the attack was committed in furtherance of a state policy or an organisational policy.

***c) There are substantial grounds to believe, that the attack was widespread and systematic***

The attack is considered ‘widespread’ if it is conducted on a large scale and a high number of victims is caused.<sup>87</sup> It also encompasses an attack carried out over a large geographical area or an attack in a small geographical area but directed against a large number of civilians.<sup>88</sup> The ‘systematic’ nature of the attack refers to the existence of a political objective, a plan pursuant to which the attack is perpetrated, or the repeated and continuous commission of inhumane acts linked to one another, or the usage of significant public or private resources.<sup>89</sup> The overall atmosphere of fear or intimidation

---

<sup>81</sup> Ibid.

<sup>82</sup> Triffterer p. 246

<sup>83</sup> *Prosecutor v. Ruto et al.*, (Decision on the Confirmation of Charges Pursuant to Art. 61(7)(a) and (b) of the Rome Statute) [2012], ICC-01/09-01/11, para. 219 [‘Ruto’]

<sup>84</sup> *Prosecutor v. Katanga*, (Trial Judgment) [2014], ICC-01/04-01/07, para. 1119 [‘Katanga-II’]

<sup>85</sup> Competition case, para. 3

<sup>86</sup> Competition case, para. 7

<sup>87</sup> *Prlic*, para. 41

<sup>88</sup> *Katanga-II*, para. 395; *Prosecutor v. Tihomir Blaškić* (Trial Judgment) [2000], IT-95-14-T, para. 206 [‘Blaskic’]

<sup>89</sup> *Blaskic*, para 203



can show an existence of a widespread and systematic attack directed against the civilian population.<sup>90</sup>

In the present case, the OBA was conducted on the whole territory of the Golden Lowlands<sup>91</sup> and was directed at a large number of victims, as the Golden Lowlands is an agricultural region<sup>92</sup> making the scale of the attack geographically and numerically widespread.

Regarding the systematic nature of the attack, the facts of the case point to the existence of a plan.<sup>93</sup> The release of the bugs was committed multiple times, from March 2019 to September 2020.<sup>94</sup> Significant private and public resources were used, as Karaxis is a state company with rather large resources moneywise.<sup>95</sup> Moreover, Giskar argues that it is virtually impossible for a state company to organize an attack on the neighbouring country and to achieve some if any political goals of receiving a part of the neighbouring country with no support from the state officials.

Hence, there are substantial grounds to believe that the attack was widespread and systematic.

***d) There is a nexus between the acts of the perpetrator and the attack***

The acts of the perpetrator need to be objectively part of the ‘attack’ against the civilian population by their nature or consequence,<sup>96</sup> and must not be isolated but must form part of the attack.<sup>97</sup> The actions may be committed not at the same time and place as the attack or share not all of the features of the attack.<sup>98</sup>

The actions of the perpetrator were *condition sine qua non* for the implementation of OBA, as the operation itself was the idea of the perpetrator,<sup>99</sup> making his actions objectively a part of the attack, by nature and consequences.

Thus, there is a nexus between the acts of the perpetrator and the attack.

**D. Valeron is individually criminally responsible under Article 25(3)(a) as a co-perpetrator for the crime under Article 7(1)(k) of the Statute.**

There are two elements, that need to be satisfied under Articles 7(1)(k), 30 and 25(3)(a) of the Rome Statute to be found guilty. Here, the Defendant fulfilled *(a)* the subjective elements of the crime charged as he *(a.1)* had knowledge of the attack and that his acts were part of it, and *(a.2)* intentionally caused objective elements of the crime; *(b)* the objective elements of the co-perpetrating *(b.1)* acting

---

<sup>90</sup> *Prosecutor v Seselj*, (Appeals Judgement) [2018], MICT-16-99-A, para. 70

<sup>91</sup> Competition case, para. 7

<sup>92</sup> Competition case, para. 1

<sup>93</sup> Competition case, para. 7

<sup>94</sup> Ibid.

<sup>95</sup> Ibid.

<sup>96</sup> *Prosecutor v. Naletilić and Martinović*, (Trial Judgement) [2003], IT-98-34-T, para. 234

<sup>97</sup> *Prosecutor v. Krnojelac*, (Trial Judgement) [2002], IT-97-25-T, para. 55

<sup>98</sup> *Prosecutor v. Semanza*, (Trial Judgement) [2003], ICTR-97-20-T, para. 326

<sup>99</sup> Competition case, para. 7

within the framework of a common plan and (b.2) essentially contributing to the implementation of this plan.

**a) The perpetrator fulfilled the subjective elements of the crime**

*a.1) The perpetrator had knowledge of the attack and knew that his acts were part of it*

Under Article 7(1)(k)(3) of the Elements of Crimes<sup>100</sup>, the “perpetrator must [be] aware of the factual circumstances that established the character of the act.”<sup>101</sup> Moreover, the perpetrator must act with knowledge of the broader context of the attack, being aware that his acts formed part of the widespread or systematic attack against the civilian population,<sup>102</sup> and the consequence that would occur in the ordinary course of events.<sup>103</sup> However, proof of knowledge of the precise details of the plan or policy of the State or organization is not required.<sup>104</sup> Acts committed before the attack against the civilian population may also be considered part of the attack.<sup>105</sup>

For example, in *Awwad al Bandar’s* case, the Iraqi High Tribunal pointed out that the perpetrator’s “knowledge cannot be known except through external manifestations and evidence”,<sup>106</sup> while in *Sadam Hussein’s* case, it inferred knowledge from the statements of the accused before the Tribunal.<sup>107</sup> In addition, knowledge may be shown by the defendant’s position, functions,<sup>108</sup> professional qualification, experience, and express approval of conduct.<sup>109</sup>

In the case at hand, the Defence Counsel admitted, that “the alleged facts indicate an attack against crops, not humans”, which shows the Defendant’s knowledge of the existence of the attack itself.<sup>110</sup> Additionally, Valeron’s high-ranking position within Karaxis, and his approval of OBA also confirm his knowledge. There is no reasonable possibility that he could not have known about the genuine purposes of OBA and how dangerous the consequence of the attack can be, as a central figure in the conception and implementation of the plan.

Hence, Valeron had knowledge of the attack and knew that his acts were part of it.

---

<sup>100</sup> EoC, 7(1)(k)(3)

<sup>101</sup> *The Prosecutor v. Germain Katanga* (Decision on the confirmation of charges) [2008], ICC-01/04-01/07-717, para. 455

<sup>102</sup> *The Prosecutor v. Ndindiliyimana et al.* (Appeal Judgment) [2014], ICTR-00-56, para. 260

<sup>103</sup> *Bemba-I*, para. 87

<sup>104</sup> *Bemba-I*, para. 88

<sup>105</sup> *The Prosecutor v. Bosco Ntaganda* (Judgment), [2019], ICC-01/04-02/06, para. 696 [‘Ntaganda’]

<sup>106</sup> *Judgment of the Dujail Trial at the Iraqi High Tribunal* (Judgment), [2006] 1/E First/2005, p. 63, [‘IHT’]

<sup>107</sup> *IHT*, p. 125

<sup>108</sup> *Prosecutor v. Naletilić and Martinović*, (Judgment) [2003], IT-98-34-T, para. 242; *Prosecutor v. Blaškić*, (Judgment) [2000], IT-95-14-T, para. 258.

<sup>109</sup> *Prosecutor v. Nizeyimana* (Judgement and Sentence) [2012], ICTR-2000-55C-T, para. 1558.

<sup>110</sup> Competition case, para. b.

*a.2) The perpetrator intentionally caused objective elements of the crime*

Under Article 7(1)(k) of the Rome Statute, the infliction of great suffering or serious injury must be ‘intentional’,<sup>111</sup> so the perpetrator must possess a *dolus directus* form of culpability.<sup>112</sup> Under *dolus directus* of the second degree, the suspect, without having the specific intent to bring about the objective elements of the crime (the undesired consequence<sup>113</sup>), is aware that such elements will be the necessary outcome of his actions<sup>114</sup> However, absolute certainty about a future occurrence can never exist, therefore, the standard for the foreseeability of events is a virtual certainty.<sup>115</sup>

Valeron as the CEO of the Karaxis<sup>116</sup> must have known about the main features and dangerous abilities of the designed insects. Likewise, the Defendant could have predicted with his professional skills and knowledge, that attack on crops by genetically modified insects will lead to their destruction since the Karaxis did not share patents on its pest-resistant seeds/crops with farmers in Giskar.<sup>117</sup> Consequently, Valeron should have been aware that the agriculture-based economy of Golden Lowlands would collapse causing great suffering for the civil population of the affected region in the ordinary course of events.<sup>118</sup>

According to Report, the objectives of OBA were twofold: to significantly suppress farm output in the Golden Lowlands and to induce the people of the Golden Lowlands to vote to secede from Giskar and join Regale.<sup>119</sup> Conforming to this, the Defendant could have foreseen such grave consequences as famine and serious casualties resulting from the suppression of agricultural production. Thus, Valeron was aware that such objective elements will be the necessary outcome of his actions.

Accordingly, Valeron had the requisite *mens rea* under Articles 7(1)(k) and 30 of the Statute.

***b) The accused fulfilled objective elements of the co-perpetrating***

*b.1) Existence of a common plan or agreement*

Co-perpetration under Article 25(3)(a) of the Rome Statute requires the existence of an agreement or common plan between the co-perpetrators.<sup>120</sup> Given that the common plan can be directed at the

---

<sup>111</sup> Gerhard and Florian ‘*Principles of International Criminal Law*’ (Oxford University Press 2020), p. 544, [‘Gerhard and Florian’]

<sup>112</sup> *Bemba-I*, para. 135

<sup>113</sup> *Bemba-I*, para. 359

<sup>114</sup> *Ibid.*, para. 359; *Prosecutor v Lubanga Dyilo*, (Decision on the confirmation of charges) [2007], ICC No 01/04-01/06-803-tEN, para. 352

<sup>115</sup> *Prosecutor v. Lubanga Dyilo*, (Judgement on the Appeal of Mr. Thomas Lubanga Dyilo against his conviction, Appeal Chamber) [2014], ICC-01/04-01/06-3121-Red, para. 447

<sup>116</sup> Competition case, para. 3

<sup>117</sup> *Ibid.*

<sup>118</sup> Competition case, Appendix III, para. 7

<sup>119</sup> Competition Case, para. 7

<sup>120</sup> *The Prosecutor v. Thomas Lubanga Dyilo* (Judgment pursuant to Article 74 of the Statute) [2012], ICC-01/04-01/06-2842, para. 981 [‘Lubanga-III’]

achievement of a non-criminal goal<sup>121</sup> there is no requirement to prove that the plan was specifically directed at committing a crime.<sup>122</sup> However, the plan “must include ‘*an element of criminality*’.”<sup>123</sup> It is sufficient that the co-perpetrators are aware of the risk that implementing the common plan will result in the commission of the crime, and accept such an outcome.<sup>124</sup> The plan can be inferred from circumstantial evidence.<sup>125</sup>

First, OBA itself is a conduct that is merely impossible to implement without planning it in advance. Second, existing of the common plan which stood behind OBA can be inferred from surrounding circumstances such as cooperation amongst workers within the Karaxis, large territories covered by OBA, and the considerable amount of resources and funds of the company involved. Third, Report verifies that there had been a plan before OBA started, specifically designed and made by Valeron.<sup>126</sup> Consequently, Valeron as a leader of the Caraxis Corp. and potential author of the plan regarded as OBA could not help but act within its framework.

Taking into consideration that Valeron was aware that such objective elements will be the necessary outcome of his actions (i.e. creation and implementation of OBA) in the ordinary course of events, it satisfies ‘*an element of criminality*’.

Therefore, Valeron has acted within the framework of a common plan.

*b.2) Valeron’s individual contribution was essential*

To demonstrate an ‘essential’<sup>127</sup> contribution, the prosecution does not need to prove that the input of the Defendant, taken alone, caused the crime.<sup>128</sup> Those who commit a crime jointly include those who assist in formulating the relevant strategy or plan.<sup>129</sup> This essential contribution does not need to be made at the execution stage of the crime.<sup>130</sup> Thus, a direct or physical link between the perpetrator’s contribution and the commission of the crimes should not be established.<sup>131</sup> The crime may have been possible to commit without the defendant’s contribution.<sup>132</sup> This captures perpetrators who control or mastermind crimes and do not personally perform any of the acts required by the offence.<sup>133</sup> For example, in *Al-Bashir*, the defendant’s essential contribution was described as “*coordinating the*

---

<sup>121</sup> *Lubanga-III*, para. 982

<sup>122</sup> *Lubanga-III*, para. 984

<sup>123</sup> *Lubanga-III*, para. 982

<sup>124</sup> *Ibid.*

<sup>125</sup> *Lubanga-III*, para. 988

<sup>126</sup> Competition case, Appendix III, para. 5

<sup>127</sup> *Lubanga-III*, para. 989

<sup>128</sup> *Lubanga-III*, para. 994

<sup>129</sup> *Lubanga-III*, para. 1004

<sup>130</sup> Gerhard and Florian, p. 385

<sup>131</sup> *Lubanga-III*, para. 1004

<sup>132</sup> Roxin, ‘*Täterschaft und Tatherrschaft*’ (Berlin, New York, Walter de Gruyter 2000), p. 280, 282-285

<sup>133</sup> Stahn, *A Critical Introduction to International Criminal Law* (Cambridge University Press, 2018), p. 136

*design and implementing the common criminal plan*".<sup>134</sup> The Trial Chamber in *Lubanga* and Appeal Chamber in *Ntaganda* assessed the perpetrator's levels of contribution in light of the position they occupied during the relevant period.<sup>135</sup>

Being the CEO of Karaxis, he had an instrumental role in planning and making the general strategy of OBA. Without his approval of the OBA's implementation, the criminal consequences were not likely to happen. Accordingly, the Defendant as a central figure in the planning (also confirmed by Report<sup>136</sup>), coordinating (as a leader of the company), and implementation of the OBA made an essential contribution to making objective elements of the crime charged happen. Thus, Valeron's individual contribution was essential.

Hence, Valeron is individually criminally responsible under Article 25(3)(a) as a co-perpetrator for the crime under Article 7(1)(k) of the Statute.

### **III. THERE IS SUFFICIENT AND LEGITIMATE EVIDENCE TO CONFIRM THE CHARGES AGAINST VALERON**

Giskar claims that the evidence disclosed establishes substantial grounds to confirm charges against Valeron. According to Article 61(5)(7) of the Statute during the confirmation of charges at the Pre-Trial stage, there must be sufficient evidence presented by the Prosecution to establish "substantial grounds to confirm that the person committed each of the crimes charged".<sup>137</sup>

Reports from international organisations are considered to be indirect evidence.<sup>138</sup> When such kind of evidence, ICC follows the two-step approach: **1)** estimating relevance, the probative value of the evidence and potential prejudice its admission may cause;<sup>139</sup> **2)** verifying whether there is corroborative evidence.<sup>140</sup>

In the present case, Giskar submits that the evidence provided establishes substantial grounds to confirm charges against Valeron since **(A)** the IIM Report is highly relevant and has enough probative value and **(B)** absence of corroborative evidence does not reduce Report's probative value.

---

<sup>134</sup> *The Prosecutor v. Al Bashir*, (Decision on the Issuance of a Warrant of Arrest) [2009], ICC-02/05-01/09-3, para. 221

<sup>135</sup> *Lubanga-III*, para. 1140; *Ntaganda*, para. 829

<sup>136</sup> Competition case, Appendix III, para. 5

<sup>137</sup> Statute, Art. 61(5)(7)

<sup>138</sup> *Prosecutor v. Ruto et al.*, (Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Statute) [2012], ICC-01/09-01/11-373, para. 69 ['Ruto']

<sup>139</sup> *Prosecutor v. Bemba*, (Decision on the admission into evidence of items deferred in the Chamber's "Decision on the Prosecution's Application for Admission of Materials into Evidence Pursuant to Article 64(9) of the Statute") [2013], ICC-01/05-01/08-2299, para. 9 ['Bemba-II']

<sup>140</sup> *Ruto*, para. 75

## A. IIM Report is admissible according to the Rules of the ICC

The Court may rule on the relevance or admissibility of any evidence, taking into account, *inter alia*, the probative value of the evidence and any prejudice that such evidence may cause.<sup>141</sup>

According to Article 69(3) of the Statute<sup>142</sup>, the parties may submit evidence relevant to the case. Relevant evidence has to relate to the matters which will be considered by the Chamber in its investigation of the charges against the accused and its consideration of the views and concerns of participating victims.<sup>143</sup> In particular, that means that the evidence is relevant if it tends to make the existence of a fact at issue more or less probable.<sup>144</sup> Evidence, which is not contemporaneous to the events that happened, can be relevant to the extent of the damage caused.<sup>145</sup>

The IIM Report describes the realization of the OBA and its consequences. In particular, it refers to the role of Valeron and his command position in conducting the OBA operation and his ability to prevent and repress the commission of crimes. In addition, the document may reveal other potential criminals who provided Valeron with instruments for the operation. Moreover, the Report describes in detail the number of victims and the effect the OBA had on the economy of Giskar, which is especially relevant for the Court to assess the harm and damage caused by Valeron and his Corporation.

Therefore, IIM Report is highly relevant to the issue of the case and, consequently may help to detect the facts during the proceedings. In this aspect, the Prosecution submits, that the Report is relevant, *a)* of high probative value and *b)* does not cause any prejudice.

### *a) The Report is of high probative value*

The probative value of the evidence is determined on a case-by-case basis.<sup>146</sup> Generally, its assessment is based on its relevance, the source of origin, direct or indirect nature, credibility, reliability, trustworthiness, and genuineness.<sup>147</sup> When assessing the probative value of the Reports

---

<sup>141</sup> Statute, Art. 69(4)

<sup>142</sup> Statute, Art. 69(3)

<sup>143</sup> *Prosecutor v. Thomas Lubanga Dyilo*, (Decision on the admissibility of four documents) [2008], ICC-01/04-01/06, para. 27

<sup>144</sup> *Prosecutor v. Katanga and Ngudjolo*, (Decision on the Bar Table Motion of the Defence of Germain Katanga) [2011], ICC-01/04-01/07-3184, para. 16 [‘Katanga-III’]; *Prosecutor v. Bemba*, (Public redacted version of the First decision on the prosecution and defence requests for the admission of evidence) [2011], ICC-01/05-01/08-2012-Red, para. 14; Triffterer, p. 1736

<sup>145</sup> *Prosecutor v. Al Hassan*, (Prosecution’s second request for the admission of documentary evidence from the bar table) [2021], ICC-01/12-01/18, para. 12 [‘Al Hassan’]

<sup>146</sup> *Prosecutor v. Bosco Ntaganda*, (Decision on Admissibility of Evidence and Other Procedural Matters) [2014], ICC-01/04-02/06-308, para 27; Triffterer, p. 1528, para. 106

<sup>147</sup> Triffterer, p. 1528, para. 106

established by the UN bodies the Court takes into account their authenticity and reliability.<sup>148</sup> Finally, the official documents that are publicly available from official sources are self-authenticated.<sup>149</sup>

With regard to the reliability of evidence, it is evaluated by considering the source of information, the contemporaneousness, whether the evidence was created for a specific purpose, and whether the information and the way in which it was gathered can be independently verified or tested.<sup>150</sup> Besides, reports of the UN agencies are considered to be *prima facie* reliable.<sup>151</sup>

As to the source of origin of the Report, Giskar submits that according to Article 1 of the UN Charter, the purposes of the UN are maintaining international peace and security and achieving international cooperation in solving international problems.<sup>152</sup> When there is a lack unanimity among the permanent members of the Security Council, which leads to the inability of the Security Council to make decisions to maintain international peace and security, the General Assembly shall consider the matter immediately with a view to making appropriate recommendations to the UN members for collective measures.<sup>153</sup>

Similarly to IIM, an analogous Mechanism was established by the UN General Assembly for the Syrian Arab Republic, which had the power to prepare files in order to facilitate and expedite fair and independent criminal proceedings and call for voluntary cooperation from all States, parties to the conflict and civil society.<sup>154</sup> Even though the establishment of the Mechanism was challenged by Russia, claiming that “*the General Assembly acted ultra vires going beyond its powers as specified*” in the UN Charter,<sup>155</sup> when establishing investigative mechanisms the General Assembly proclaimed that it was acting within its mandate, as it is was with such powers according to Articles 10 and 22 of the UN Charter.<sup>156</sup>

At hand, the IIM Report was prepared in the ordinary course of the activities of the UN as there have already been prepared similar reports by different investigative mechanisms. Moreover, the IIM Report had a specific purpose, in particular, to display the crimes and their consequences committed in the State of Giskar. In addition, it contains other indicia of reliability such as the logo of the United Nations, letterhead, and date of publication.

---

<sup>148</sup> *Bemba-II*, para. 13; *Al Hassan*, para. 14

<sup>149</sup> *Prosecutor v. Germain Katanga*, (Decision on the Prosecutor's Bar Table Motions) [2010], ICC-01/04-01/07, para. 24 [Katanga-IV]; *Al Hassan*, para. 15

<sup>150</sup> *Katanga-IV*, para. 27

<sup>151</sup> *Katanga-IV*, para. 29

<sup>152</sup> United Nations, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI [‘Charter’]

<sup>153</sup> UNGA, *Uniting for peace*, 3 November 1950, A/RES/377, p. 10

<sup>154</sup> UN Res 71/248 (21 December 2016) UN Doc A/RES/71/248.

<sup>155</sup> The Secretary-General, Note verbale dated 8 February 2017 from the Permanent Mission of the Russian Federation to the United Nations addressed to the Secretary General, UN Doc. A/71/793, 14 February 2017

<sup>156</sup> Whiting A, ‘*An Investigation Mechanism for Syria*’ (Journal of International Criminal Justice, 2017), p. 234 <<https://doi.org/10.1093/jicj/mqx008>>

On 5 April 2022, Giskar requested the UN Security Council to take steps to establish the investigative mechanism, but due to the veto of one of the Permanent Members, the mechanism was not created. As Giskar had the right to use the mechanism of the Uniting for Peace Resolution, it requested the UN General Assembly to establish the mechanism.

The IIM for the State of Giskar was established for similar purposes as the Mechanisms for Syria, which was also established by the General Assembly. The latter is considered legitimate and it performs the same functions as preparing case files, drafting indictments and requiring state cooperation. Moreover, according to Articles 10 and 22 of the UN Charter, the General Assembly has the power to establish organs with such authorities.

Therefore, the IIM was created legitimately and has the authority to create criminal cases, draft indictments and require State cooperation.

***b) Admission of the Report does not cause any prejudice***

Enough amount of relevancy and probative value of the evidence outweighs any potential prejudice that its admission may cause.<sup>157</sup> There are several specific forms of prejudice that may impact the Court's decision on admissibility such as violation of the rights to be tried without undue delay or to examine adverse witnesses.<sup>158</sup> Although the defence has the right to examine witnesses, according to Article 61(5) of the Statute, the Prosecution may rely on documentary or summary evidence and the witnesses are not required to testify at the trial.<sup>159</sup> Most of the evidence submitted by the Prosecution at the confirmation of charges stage is documentary in nature.<sup>160</sup> Lastly, enough amount of relevancy and probative value of the evidence outweighs any potential prejudice that its admission may cause.<sup>161</sup>

As to the right to examine witnesses, the Prosecution is not obliged to call the witnesses expected to testify at the trial at the confirmation of charges stage. At hand, admission of the IIM Report into evidence does not violate the rights of the accused, as the evidence is highly relevant and probative, which reduces any prejudice which may arise.

Therefore, IIM Report is admissible as it is highly relevant, probative, and is not prejudicial to the rights of the accused.

---

<sup>157</sup> *Bemba-II*, para. 13

<sup>158</sup> *Katanga-IV*, paras. 40-64

<sup>159</sup> Statute, Art.61(5)

<sup>160</sup> Triffterer, p. 1522

<sup>161</sup> *Bemba-II*, para. 13



## **B. Absence of corroboration does not diminish Report's probative value**

There is no legal requirement for corroboration in order to prove any crime within the jurisdiction of the ICC under Article 63(3) of the Rules.<sup>162</sup> In the Pre-Trial stage, corroboration is required when evidence is based on anonymous witness statements and summaries.<sup>163</sup> An evidentiary weight which depends on the amount and quality of other available evidence on the same issue is assessed at the end of a trial, when the Chamber has heard all other evidence admitted in the case.<sup>164</sup>

Moreover, the amount of the disclosed evidence is not important for the Court, rather its probative value is essential for the decision on the confirmation of charges.<sup>165</sup> The extent to which a piece of evidence, standing alone, is sufficient to prove a fact at issue is entirely dependent on the issue in question and the strength of the evidence.<sup>166</sup>

In the case at hand, the IIM Report is not based on anonymous statements of witnesses which exempts this evidence from the obligation to be corroborated. The current stage of proceedings does not generally require evidence to be corroborated and the evidentiary value of the evidence will be assessed further on the Trial. Moreover, the IIM Report is highly relevant and has probative value, so it has enough strength to prove the fact of crimes committed by Valeron.

Therefore, no corroboration is needed as the IIM Report has enough value and can solely establish substantial grounds for the confirmation of charges against Valeron.

---

<sup>162</sup> *Prosecutor v. Germain Katanga*, (Judgment pursuant to article 74 of the Statute) [2014], ICC-01/04-01/07, para. 110

<sup>163</sup> *Ruto*, para. 78; *Prosecutor v. Bahr Idriss Abu Garda*, (Decision on the Confirmation of Charges) [2010], ICC-02/05-02/09, para. 52

<sup>164</sup> *Katanga-IV*, para. 13

<sup>165</sup> *Bemba-V*, para. 60

<sup>166</sup> *Prosecutor v. Bemba*, (Judgment pursuant to Article 74 of the Statute) [2016], ICC-01/05-01/08, para. 245

---

## SUBMISSIONS

---

Hence, in light of the questions presented, arguments advanced, and authorities cited, the Counsel for the State of Giskar respectfully requests the Appeals Chamber to reverse the impugned decision of the Pre-Trial Chamber and to adjudge and declare that:

- I. The State of Giskar's acceptance of the jurisdiction concerning international crimes committed in the region of the Golden Lowlands is valid and the Court can exercise jurisdiction in the territory of Golden Lowlands.
- II. The Court has subject matter jurisdiction in this case under Article 7(1)(k) of the Rome Statute.
- III. The IIM Report is sufficient to confirm charges against Corlis Valeron.

Respectfully submitted,

Counsel for the State of Giskar

